

BRAZOS COUNTY COMMISSIONERS COURT
RESOLUTION AMENDING THE BRAZOS COUNTY PACE PROGRAM

STATE OF TEXAS §
 §
BRAZOS COUNTY §

WHEREAS, the 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the "PACE Act"), which allows the governing body of a local government, including a City or County, to designate an area of the territory of the local government as a region within which an authorized representative of a local government and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease energy or water consumption or demand; and

WHEREAS, the installation or modification by property owners of qualified energy or water saving improvements to commercial, industrial, and large multifamily residential real property in Brazos County ("County") will further the goals of energy and water conservation without cost to the public; and

WHEREAS, the Commissioners Court finds that third-party financing of energy and water conserving projects through contractual assessments maintained by the County ("PACE financing") furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, conserving water resources, and reducing greenhouse gas emissions; and

WHEREAS, the Commissioners Court adopted a Resolution of Intent to establish a PACE program for Brazos County on October 4, 2016, including a reference to the report on the proposed program prepared as required by Section 399.009 of the PACE Act and made the report available to the public on the County website and for inspection in the County Judge's office; and

WHEREAS, The Commissioners Court finds that the administration of the PACE Program by one or more registered municipal advisor ("RMA") or nonprofit organizations as independent third-party ("Authorized Representative or Authorized Representatives") contracted by the County and compensated by application and administration fees paid by the participating property owners, will enable the program to be administered without use of Brazos County resources, will assure the objectives of impartiality and confidentiality of owner information, and will be convenient and advantageous to Brazos County; and

WHEREAS, the Commissioners Court also finds that because no County funds will be expended for PACE financing of the Authorized Representative's services, the selection of such an independent third-party Authorized Representatives is not subject to the Professional Services Procurement Act or other Brazos County purchasing requirements; and

WHEREAS, the Commissioners Court held a public hearing on October 11, 2016 at 10:15 a.m. in the Brazos County Commissioners Courtroom of the County Administration Building, 200 South Texas Avenue, Suite 106, Bryan, Texas, at which the public could comment on the proposed program, including the report available for public inspection as mentioned above and as required by Section 399.008(a)(2); and

WHEREAS, the Commissioners Court adopted a Resolution Establishing the Brazos County PACE Program on October 18, 2016; and

WHEREAS, the Commissioners Court held a public hearing on November 19, 2024 at 9:30 a.m. in the Brazos County Commissioners Courtroom of the County Administration Building, 200 South Texas Avenue, Suite 106, Bryan, Texas, at which the public could comment on the proposed program, including the report available for public inspection as mentioned above and as required by Section 399.008(a)(2); and

NOW THEREFORE, be it resolved by the Commissioners Court of Brazos County that:

1. Recitals. The recitals to this Resolution are true and correct and are incorporated into this resolution for all purposes.
2. Amendment of Program. Brazos County hereby adopts this Resolution Amending the Brazos County Property Assessed Clean Energy Program ("Brazos County PACE"), herein called "the Program," and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose and is convenient and advantageous to Brazos County and its citizens.
3. Contractual Assessments. Brazos County will, at the property owner's request, impose contractual assessments on the property to repay PACE financing for qualified energy and water conserving projects available to owners of privately owned commercial industrial, and large multifamily property.
4. Qualified Projects. The following types of projects are qualified projects for PACE financing that may be subject to such contractual assessments:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial industrial or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

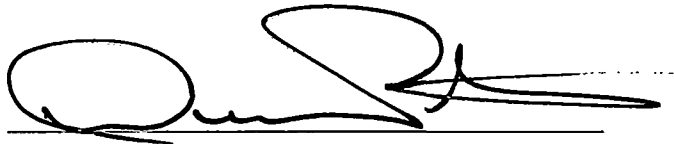
An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment, or the purchase or installation of products or devices not permanently fixed to real property.

5. Region. The boundaries of the entire geographic area within the County's jurisdiction are included in the boundaries of the region where PACE financing and assessments can occur.
6. Third-Party Financing. Financing for qualified projects under the Program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the Authorized Representative to service the debt through assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to financing documents executed between the lenders and the owners. Brazos County will maintain and continue the assessments for the benefit of such lenders and will enforce the assessment lien for the benefit of a lender in the event of a default by an owner. Brazos County will not, at this time, provide financing of any sort for the Brazos County PACE program.
7. Authorized Representatives. The Brazos County Commissioners Court will designate one or more registered municipal advisor firms or non-profit organizations to act as Authorized Representatives with authority to enter into written contracts with the record owners of real property in Brazos County to impose assessments pursuant to the PACE Act to repay the financing of qualified projects on the owners' property, to enter into written contracts with the parties that provide third-party financing for such projects to service the debts through assessments, and to file written notice of each contractual assessment in the real property records of the County, all on behalf of Brazos County. The Authorized Representative may make technical and conforming updates as necessary so long as the changes are consistent

with the resolution to establish the PACE program and the statute. The County Judge or his designee will be the liaison with the Authorized Representatives.

8. Enforcement. The County will enforce the collection of past due assessments and may contract with a qualified law firm to assist in collection efforts.
9. Report. The amended report on the Brazos County PACE program, prepared in accordance with Section 399.009 of the Texas Local Government Code is attached and incorporated into this resolution. The County will post the resolution and report on the County's website.
10. Further Amendment of Program. The Commissioners Court may further amend the Brazos County PACE Program by resolution. However, another public hearing is required before the Program may be further amended to provide for Brazos County financing of qualified improvements through assessments.

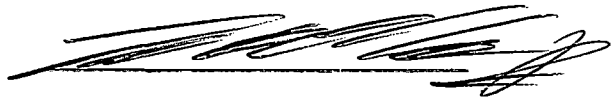
Adopted this 19TH day of NOVEMBER, 2024.

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Honorable Duane Peters, County Judge

A handwritten signature in black ink, likely belonging to Steve Aldrich.

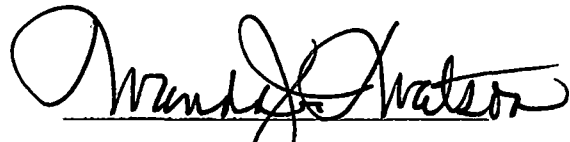
Honorable Steve Aldrich
Commissioner, Precinct 1

A handwritten signature in black ink, likely belonging to Chuck Konderla.

Honorable Chuck Konderla
Commissioner, Precinct 2

A handwritten signature in black ink, likely belonging to Nancy Berry.

Honorable Nancy Berry
Commissioner, Precinct 3

A handwritten signature in black ink, likely belonging to Wanda Watson.

Honorable Wanda Watson
Commissioner, Precinct 4

**UPDATED REPORT REQUIRED BY TEXAS LOCAL GOVERNMENT CODE
SECTION 399.009**

**FOR BRAZOS COUNTY PROPERTY ASSESSED CLEAN ENERGY (PACE)
PROGRAM**

This Updated Report is adopted by the County Commissioners Court for Brazos County, Texas (the “County”) Property Assessed Clean Energy (“PACE”) Program (the “PACE Program”) in accordance with the requirements of the Property Assessed Clean Energy Act (the “PACE Act”) as set forth in Texas Local Government Code Chapter 399.

The County and its constituents benefit when older existing buildings are modified with new technology and equipment that increases energy efficiency and reduces water consumption. On October 18, 2016, the County established the commercial PACE Program to encourage private sector investment in energy efficiency and water conservation. The PACE Program is offered to property owners on a strictly voluntary basis and does not require the use of any public funds.

Authorized under the PACE Act enacted in 2013, the PACE Program is an innovative financing program that enables private sector owners of privately owned commercial, industrial, and multi-family residential properties with five or more dwelling units to obtain low-cost, long-term loans to pay for water conservation, energy-efficiency improvements, and renewable energy retrofits. PACE loans provide up to 100% financing of all project costs, with little or no up-front out-of-pocket cost to the owner. The County has chosen, in part, to follow the administrative principles, program processes, and model documents of the uniform Texas PACE in a Box model program.¹

Loans made under the PACE Program by independent lenders are to be secured by voluntary assessments on the property that are imposed by Local Government at the request of the owner. Assessments may be amortized over the projected life of the improvements. The utility cost savings derived from improvements financed with PACE loans are expected to equal or exceed the amount of the assessment. In turn, these improvements are able to generate positive cash flow upon installation because the debt service will be less than the savings.

PACE assessments are tied to the property and follow title from one owner to the next. Each owner is responsible only for payment of the assessments accruing during its period of ownership. When the property is sold, the payment obligation for the remaining balance of the assessment is transferred automatically to the next owner. As a result, the PACE Program will help property owners overcome market barriers that often discourage investment in energy efficiency and water conservation improvements.

1. Eligible Properties

The County’s PACE Program is a strictly voluntary program. All private sector owners of Eligible Properties located within the County’s PACE region may participate in PACE financing. “**Eligible Properties**” include commercial, industrial, and multi-family residential properties with five or

¹ <https://www.keepingpaceintexas.org/pace-in-a-box>.

more dwelling units. Governmental real property, residential property,² undeveloped property and property undergoing development at the time of the assessment are not Eligible Properties.

2. Qualified Improvements

PACE financing may be used to pay for Qualified Improvements to Eligible Properties. “*Qualified Improvements*” are permanent improvements intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer’s side of the meter that use energy technology to generate electricity, provide thermal energy, or regulate temperature. Under the PACE Act, products or devices that are not permanently fixed to real property are not Qualified Improvements.

The following upgrades may constitute Qualified Improvements:

- High efficiency heating, ventilating and air conditioning (“HVAC”) systems
- High efficiency chillers, boilers, and furnaces
- High efficiency water heating systems
- Energy management systems and controls
- Distributed generation systems
- High efficiency lighting system upgrades
- Building enclosure and envelope improvements
- Water conservation and wastewater recovery and reuse systems
- Combustion and burner upgrades
- Heat recovery and steam traps
- Water management systems and controls (indoor and outdoor)
- High efficiency irrigation equipment.

An assessment under the PACE Program may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment.

3. Benefits of PACE to Property Owners

The PACE Program will enable owners of Eligible Properties to overcome traditional barriers to capital investments in energy efficiency and water conservation improvements, such as unattractive returns on investment, split incentives between landlords and tenants, and uncertainty of recouping the investment.

By financing Qualified Improvements through the PACE Program, property owners may achieve utility cost savings that exceed the amount of the assessment and reduce their exposure to utility price volatility. As a result, the value of the property will be enhanced, and the owner will only be obligated to pay the assessment installments that accrue during its period of ownership of the property. Additionally, by investing in energy efficiency and water conservation with PACE financing, property owners may also qualify for various rebate, tax credit, and incentive programs offered by utility providers and state or federal governmental authorities to encourage these types of investments.

² This encompasses single family residential and any multi-family properties with fewer than five units.

4. Benefits of PACE to Brazos County

The PACE Program benefits the entire County by improving buildings, increasing property values, encouraging economic development, and saving energy and water, all without requiring any public funds.

Among other things, projects financed through the PACE Program will:

- Enable property owners and occupants to save substantial amounts in utility costs;
- Reduce demand on the electricity grid;
- Mitigate greenhouse gas emissions associated with energy generation;
- Enhance the value and efficiency of existing buildings;
- Boost the local economy by creating new job opportunities and new business;
- Provide opportunities for contractors, engineers, commercial lenders, professionals, and equipment vendors and manufacturers;
- Increase business retention and expansion in the PACE region by enabling cost effective energy and water saving updates to existing property;
- Improve productivity through optimized energy usage;
- Support the State's water conservation plan; and
- Better enable the County to meet its water conservation goals.

Finally, through the reduction in energy consumption as a result of the PACE Program, there will be a decreased demand for power resulting in lower emissions from power plants.

The PACE Program requires minimal support from the County. It is designed to be self-sustaining and is administered by qualified third-party administrators. Furthermore, because the PACE Program is not tax supported, it achieves all the benefits listed in this report without imposing a burden on the County's general fund.

Under the PACE Act, the establishment and operation of the PACE Program are governmental functions.³ The 84th Texas Legislature added a provision to the PACE Act that shields from liability a local government, employees of a local government, and board members, executives, employees, and contractors of a third party who enter into a contract with a local government to provide administrative services for a PACE Program under the PACE Act.⁴

5. The Benefits of PACE to Lenders

PACE loans are attractive to lenders because they are secure investments. Like a property tax lien, the assessment lien securing the PACE loan has priority over other liens on the property. Therefore, the risk of loss from non-payment of a PACE loan is low compared to most other types of loans. PACE assessments provide lenders with an attractive new product to assist existing and new

³ Tex. Local Gov't Code §399.003(b).

⁴ Tex. Local Gov't Code §399.019. In the 85th Legislature, HB 2654 clarified that the personal immunity provisions apply to all elected officials performing rights and duties under chapter 399 of the Local Government Code. Acts 2017, 85th Leg. R.S., Ch. 864 (H.B. 2654), Sec. 1, eff. September 1, 2017.

customers in addressing a demand for needed commercial and industrial property equipment modernization. To protect the interests of holders of existing mortgage loans on the property, the PACE Act requires their written consent to the PACE assessment as a condition to obtaining a PACE loan.

6. The Benefits of PACE to Contractors, Engineers, and Manufacturers

PACE loans provide attractive sources of financing for water and energy saving retrofits and upgrades, thereby encouraging property owners to make substantial investments in existing commercial and industrial buildings. As a result, PACE will unlock business opportunities for contractors, engineers, and manufacturers throughout the commercial and industrial sectors.

7. Administration of the Brazos County PACE Program

The PACE Act authorizes the County to enter a contract with one or more third parties to provide administrative services for the PACE Program and act as a representative of the County in executing the contracts with property owners and lenders (the “*Authorized Representative*”). The County has chosen to delegate administration of the PACE Program to the following qualified third parties that can administer the PACE Program at no cost to the County: Texas PACE Authority⁵ and Lone Star PACE.⁶ The property owner has the choice of which Authorized Representative to use for their project.

The Authorized Representative’s role is to act on behalf of the County to provide oversight of the PACE Program, to ensure best practices in a transparent and ethical manner, and to provide education and outreach. The Authorized Representatives will not receive compensation or reimbursement from the County. Authorized Representatives must agree to the County’s administrative, underwriting, and technical standards.⁷

Because the PACE Program is created by the County as a benefit to constituents and because the County imposes, maintains and enforces assessments on behalf of the property owners, constituents have a reasonable expectation that the PACE Program will be administered ethically and transparently. To that end, Authorized Representatives are expected to adhere to the highest ethical standards on behalf of the County, including:

- a. Financial Transparency and Prohibition of Self-Dealing. Authorized Representatives (including its officers, directors, partners, employees, affiliates and other similarly related parties, family member, or any company that Authorized Representatives own or have a financial interest in) may not:
 1. have an ownership or financial interest in any Project or any person or company involved in the project, the real property, or its owner;

⁵ <https://www.texaspaceauthority.org/>.

⁶ <https://www.lonestarpace.com/>.

⁷ The County has chosen to closely follow the administrative principles, program processes, technical standards, and model documents of the uniform Texas PACE in a Box model program at <https://www.keepingpaceintexas.org/pace-in-a-box/>.

2. review, approve or participate in funding any project in which it has or may have a direct or indirect interest or may derive a potential financial benefit (apart from authorized application and administration fees); or
 3. receive or accept any financial benefit from any organization involved in any PACE project within the jurisdiction of the local government (other than application and administration fees or other appropriate travel, event sponsorships) without prior written authorization from the County.
- b. Fee Approval and Disclosure. All fees charged or received in conjunction with administration of a PACE project under the PACE Program by the Authorized Representative (including its officers, directors, partners, employees, affiliates and other similarly related parties, family member, or any company that the Authorized Representatives own or have a financial interest in) must be approved in advance by the County consistent with the PACE Act, publicly disclosed, and reviewed annually by the local government.⁸
- c. Marketplace Distortion. Authorized Representatives (including its officers, directors, partners, employees, affiliates and other similarly related parties) shall not:
1. Provide or offer to provide any commercial services of any nature for or in connection with PACE projects located within the jurisdiction of the local government without prior written authorization from the County.; or
 2. Require property owners to obtain services from specific, favored vendors other than objective minimum standards for quality assurance that apply to all parties.
- d. Stakeholder Inclusion. Authorized Representatives will endeavor to provide education, outreach and training to all potential stakeholders including underserved communities and small businesses and describe these efforts annually to the County.

The Authorized Representatives will be funded by administrative fees paid by the property owners participating in the PACE Program, authorized charitable grants or other authorized sources of revenue. Authorized Representatives must obtain authorization in advance and in writing from County to receive any direct or indirect fee income, charitable grants, or donations that are received from property owners, lenders, or contractors participating in the PACE Program.

Periodic updates to the standard form documents (described in Section 9) will be necessary as the PACE Program evolves, incorporating best practices and standardizing the PACE documents using Texas PACE in a Box. Authorized Representatives will be tasked with maintaining the form documents and making technical and conforming updates as necessary so long as all Authorized

⁸ Tex. Local Gov't Code §399.008(e).

Representatives and the County approve of the changes to the form documents in advance and the changes are consistent with the PACE Act and the resolution to establish and update the PACE Program.

8. Eligible Lenders

The PACE Act does not set criteria for financial institutions or investors to be PACE lenders. The County will follow best practices of other PACE programs and the Texas PACE in a Box model program by requiring that lenders be:

- A federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- An insurance company authorized to conduct business in one or more states;
- A registered investment company, registered business development company, or a Small Business Administration small business investment company;
- A publicly traded entity; or
- A private entity that:
 - Has a minimum net worth of \$5 million;
 - Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending; and
 - Can provide independent certification as to availability of funds; and
- All lenders must be financially stable and have the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

Any financially stable entity with the ability to carry out, either directly or through a servicer, the obligations of a lender under the PACE Lender Contract may participate in the PACE Program. The property owner, not the County or the Authorized Representative, selects the lender and Authorized Representatives may not limit a property owner's choice of qualified lender.

Authorized Representatives will not guarantee or imply that funding will automatically be provided by a third-party lender; endorse or take responsibility for, any lender; or create any type of express or implied favoritism for any lender.

9. Components of the PACE Program

As required under Section 399.009 of the PACE Act, the following components describe the PACE Program:

- a. Map of Region. A map of the boundaries of the region included in the PACE Program is attached to this Report as Exhibit 1. The region encompasses the entire territory within the County limits.
- b. Form Contract with Owner. A PACE form contract between the County and the record owner of the Eligible Property is attached as Exhibit 2. It specifies the

terms of the assessment under the PACE Program and the financing to be provided by an Eligible Lender of the property owner's choosing.

- c. Form Contract with Lender. A PACE form contract between the County and the Eligible Lender chosen by a property owner is attached to this Report as Exhibit 3. It specifies the terms of financing and servicing of the debt through assessments.
- d. Form Notice of Contractual Assessment Lien. In compliance with the PACE Act, a PACE form Notice of Assessment Lien to be filed by the Authorized Representative with the County Clerk for each project is attached to this Report as Exhibit 4.
- e. Qualified Improvements. The following types of projects include Qualified Improvements that may be subject to financing by contractual assessments under the PACE Program:

Projects that (i) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial or residential real property with five (5) or more dwelling units;⁹ and (ii) are intended to decrease energy or water consumption or demand by installing a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.¹⁰

A sample list of potential Qualified Improvements appears in Section 2 above.

The PACE Program may not be used to finance facilities for undeveloped lots or lots undergoing development at the time of the assessment, or for the purchase or installation of products or devices not permanently fixed to real property.¹¹

- f. Authorized Representative. The PACE Act authorizes the County to delegate administration of the PACE Program to a third-party "Authorized Representative." The County may delegate all official administrative responsibilities, such as the execution of individual contracts with property owners and lenders, to one or more Authorized Representatives. This relationship will be monitored and maintained by the County Judge or his designee.
- g. Project Review. Authorized Representatives shall track and provide a public overview with savings metrics for all PACE projects in accordance with the PACE Act.¹²

⁹ Tex. Local Gov't Code §399.002(5).

¹⁰ Tex. Local Gov't Code §399.002(3).

¹¹ Tex. Local Gov't Code §399.004.

¹² Tex. Local Gov't Code §399.009, §399.011.

- h. Plans for Ensuring Sufficient Capital. Lenders will extend loans to finance Qualified Improvements. Financing documents executed between owners and lenders will impose a contractual assessment on Eligible Property to repay the owner's financing of the Qualified Improvements. Lenders will ensure that property owners demonstrate the financial ability to fulfill the financial obligations to be repaid through contractual assessments. Authorized Representatives may list qualified lenders on their websites to help property owners identify capital providers. Such web pages must state that the list is not exclusive and the property owner may use any eligible qualified lender.
- i. No Use of Bonds or Public Funds. The County does not intend to issue bonds or use any other public monies to fund PACE projects. Property owners will obtain all financing from the Eligible Lenders they choose.
- j. Limit on Length of Financing. The PACE Act prohibits the assessment payment period from exceeding the useful life of the Qualified Improvement that is the basis for the assessment. As part of the application process, the property owners will submit an independent third-party review prepared by a licensed engineer showing the water or energy baseline conditions and the projected water or energy savings.
- k. Application Process. Authorized Representatives will accept applications from property owners seeking to finance Qualified Improvements under the PACE Program. Each application must be accompanied by the required application fee and must include:
 - (1) A description of the specific Qualified Improvements to be installed or modified on the property;
 - (2) A description of the specific real property to which the Qualified Improvements will be permanently fixed; and
 - (3) The total amount of financing, including any transaction costs, to be repaid through assessments.

Based on this information, Authorized Representatives may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the proposed project appears to meet PACE Program requirements. Based on this preliminary letter, the property owner may initiate an independent third-party review of the project and submit the project to Eligible Lenders for approval of financing.

Once the above processes are completed, the property owner must submit the application to their chosen Authorized Representative to obtain preliminary approval. The property owner is expected to provide the following documentation to the Authorized Representative prior to closing on the PACE loan:

- (1) A report conducted by a qualified, independent third-party reviewer, showing water or energy baseline conditions and the projected water or energy savings, or the amount of renewable energy generated attributable to the project;

- (2) Such financial information about the owner and the property as the lender chosen by the owner deems necessary to determine that the owner has demonstrated the financial ability to fulfill the financial obligations to be paid through assessments; and
- (3) All other information required by the Authorized Representative.

- I. Financial Eligibility Requirements. Authorized Representatives will determine whether the owner, the property, and the improvements are eligible for financing under the PACE Program. The Eligible Lender chosen by the owner has the responsibility to determine whether the owner has demonstrated the financial ability to repay the financial obligations to be collected through contractual assessments. The statutory method for ensuring such a demonstration of financial ability must be based on appropriate underwriting factors, including the following:
 - (1) verification that the person requesting to participate in the PACE Program is the legal record owner of the benefitted property;
 - (2) the applicant is current on mortgage and property tax payments;
 - (3) the applicant is not insolvent or in bankruptcy proceedings;
 - (4) the title of the benefitted property is not in dispute; and
 - (5) there is an appropriate ratio of the amount of the assessment to the assessed value of the property. The County determines that it will follow the Texas PACE in a Box model program recommendation for determining the appropriate loan to assessed value of the property.¹³

In order to be eligible for PACE financing, the County requires that the projected savings derived from the Qualified Improvement must be greater than the cost of the PACE assessment and lien over the life of the assessment (i.e., the Savings to Investment Ratio (SIR) should be greater than one, $SIR > 1$).¹⁴ A third-party lender and a for profit-property owner may request a waiver in writing for a project with an $SIR < 1$ and address the interests of tenants and future property owners. Authorized Representatives may consider factors in a variance request including:

- (a) Are there other environmental benefits such as air or water quality or resiliency that are not captured in the SIR analysis;
- (b) Will the proposed qualifying improvements generate environmental marketable credits that can be monetized;
- (c) What is the SIR calculation for the project (how far below 1);
- (d) If the SIR is < 1 over the term of the assessment, is the SIR > 1 over the useful life of the equipment;
- (e) What is the impact of a variance request on affected third parties; and
- (f) Other information the owner and lender wish to submit regarding the impact of the qualified improvements on the community.

¹³ Tex. Local Gov't Code §399.009(b).

¹⁴ Subject to the current Texas PACE in a Box requirements.

Any such variance request must be formerly approved in advance by the County.

- m. Mortgage Holder Notice and Consent. As a condition to the execution of a written contract between the chosen Authorized Representative and the property owner imposing an assessment under the PACE Program, the holder of any mortgage lien on the property must be given notice of the owner's intention to participate in the PACE Program on or before the 30th day before the date the contract is executed, and the owner must obtain the written consent of all mortgage holders.¹⁵
- n. Imposition of Assessment. The chosen Authorized Representative may enter a written contract with the property owner, only after:
 - (1) The property owner delivers to the Authorized Representative written consent of all mortgage lien holders;
 - (2) The Authorized Representative's determination that the owner and the property are eligible to participate in the PACE Program, that the proposed improvements are reasonably likely to decrease energy or water consumption or demand, and that the period of the requested assessment does not exceed the useful life of the Qualified Improvements; and
 - (3) The Eligible Lender notifies the Authorized Representative that the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

The contract will impose a contractual assessment on the owner's Eligible Property to repay the lender's financing of the Qualified Improvements. The Authorized Representative will file "A Notice of Contractual Assessment Lien," in substantially the form in Exhibit 4 in the Official Public Records of Brazos County, the county where the property is located, as notice to the public of the assessment, from the date of filing. The contract and the notice must contain the amount of the assessment, the legal description of the property, the name of the property owner, and a reference to the statutory assessment lien provided under the PACE Act.

- o. Collection of Assessments. The execution of the written contract between the County and the property owner and recording of the Notice of Contractual Assessment Lien incorporate the terms of the financing documents executed between the property owner and the lender to repay the financing secured by the assessment. The lender will advance financing to the owner, and the terms for repayment will be such terms as are agreed between the lender and the owner. Under the PACE form lender contract attached as Exhibit 3, the lender or a designated servicer will agree to service the debt secured by the assessment.

With funds from the lender, the property owner can purchase directly the equipment and materials for the Qualified Improvement and contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of the Qualified Improvements. Alternatively, the

¹⁵ Tex. Local Gov't Code §399.010.

lender may make progress payments to the property owner as the Qualified Improvement is installed.

The lender will receive the owner's assessment payments to repay the debt and remit to the chosen Authorized Representative any administrative fees. The lender will have the right to assign or transfer the right to receive the installments of the debt secured by the assessment, provided all the following conditions are met:

- (1) The assignment or transfer is made to an Eligible Lender, as defined above;
- (2) The property owner and the Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least thirty (30) days before the next installment is due according to the schedule for repayment of the debt; and
- (3) The assignee or transferee, by operation of the financing documents or otherwise, written evidence of which shall be provided, assumes lender's obligations under the lender contract.

- p. Verification Review. After a Qualified Improvement is completed, the chosen Authorized Representative will require the property owner to provide verification by a qualified independent third-party reviewer that the Qualified Improvement was properly completed and is operating as intended.¹⁶ The verification report conclusively establishes that the improvement is a Qualified Improvement and the project is qualified under the PACE Program.¹⁷
- q. PACE Program Marketing and Education Services. Authorized Representatives will provide service provider outreach and education for all stakeholders including presentations, conference booths and individual meetings, and provide written and electronic materials such as case studies, flyers, and webinars. The County may choose to collaboratively promote energy and water conservation and economic development to facilitate marketing, outreach and education services for the PACE Program.
- r. Quality Assurance and Antifraud Measures. Authorized Representatives will institute quality assurance and antifraud measures for the PACE Program and will review each PACE application for completeness and supporting documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the property owner, the property itself, and the proposed project all satisfy PACE Program underwriting and technical standard requirements. Measures will be put in place to provide safeguards, including a review of the energy and water savings baseline and certification of compliance with the technical standards manual from an independent third-party reviewer (ITPR), who must be a registered professional engineer, before the project can proceed. This review will

¹⁶ TX Local Gov't Code §399.011(b).

¹⁷ TX Local Government Code §399.011(a-1)

include a site visit, report, and a letter from the ITPR certifying that he or she has no financial interest in the project and is an independent reviewer. After the construction of the project is complete, an ITPR will conduct a final site inspection and determine whether the project was completed and is operating properly. The reviewer's certification will also include a statement that the reviewer is qualified and has no financial interest in the project.

- s. Delinquency. Under the terms of the PACE form lender contract attached as Exhibit 3, if a property owner fails to pay an agreed installment when due on the PACE assessment, the lender agrees to take at least the following steps to collect the delinquent installment:

- (1) Mail a written notice of delinquency and demand for payment to the property owner. Lender shall mail a copy of the first notice of delinquency to the holder(s) of any mortgage lien on the Property, to HUD if this is a HUD assisted or FHA insured Project; and to Freddie Mac if the lien is held by Freddie Mac.
- (2) Mail a second notice of delinquency and demand for payment to the property owner at least 30 days after the date of the first notice if the delinquency is continuing; and lender shall also mail a copy of the second notice of delinquency to the holder(s) of any mortgage lien on the Property, to HUD if this is a HUD assisted or FHA insured Project, and to Freddie Mac if the lien is held by Freddie Mac.

The holder(s) of any mortgage lien on the property, HUD, if this is a HUD assisted or FHA insured Project, and Freddie Mac if the mortgage lien is held by Freddie Mac, shall have not less than a 60-day notice and right to cure the delinquency by paying the amount of the delinquent Installment. If property owner or other parties with the right to cure under this contract fails to cure the delinquency on or before the 30th day after the mailing of the second notice of delinquency, lender or its designee may notify the chosen Authorized Representative in writing of a default in payment by property owner. Upon receipt of such notice and after doing its own due diligence, Authorized Representative shall certify the default to the County.

Upon request by the lender, the Authorized Representative will initiate steps to enforce the assessment lien in the same manner as a property tax lien against real property may be enforced. Delinquent installments will incur penalties and interest in the same manner and at the same rate as delinquent property taxes, according to Texas Local Government Code Section 399.014(d), and such statutory penalties and interest will be due to the County to offset the cost of collection.

To ensure that the collection of delinquent installments of assessments is congruent with the collection of delinquent property taxes the following procedures will be followed:

- (1) Any delinquent account on which two thirty (30) day notices of delinquency have been mailed as specified herein shall be enforced by means of Judicial Enforcement.
- (2) Delinquent installments of assessment(s) through November 30 of any year will incur penalties and accrue interest as specified in the Financing Documents.
- (3) On or after February 1 of any year, the Authorized Representative will notify the County Tax Assessor/Collector and the entity that collects delinquent taxes for the County of the amount due as of January 31 of said year. The amount due on January 31 shall become the base amount of delinquency which will incur penalties and accrue interest and collection fees in the same manner and on the same schedule as delinquent property taxes.
- (4) Installments of assessment(s) becoming delinquent after November 30 of any year will incur penalties and accrue interest as specified in the Financing Documents but, notification of the County Tax Assessor/Collector and the entity that collects delinquent taxes for the County shall not occur until February 1 following delinquency. The amount due on January 31 following delinquency shall become the base amount of delinquency which will incur penalties and accrue interest and collection fees in the same manner and on the same schedule as delinquent property taxes.

If the County files suit to enforce collection of an assessment, the County may recover costs and expenses, including its attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner and at the same rates as in suit to collect delinquent property taxes. If a delinquent installment of an assessment is collected in a judicial foreclosure proceeding, the County may recover the payment of any delinquent ad valorem taxes due to it, and the costs and expenses as set forth in the Texas Tax Code Sec. 33.48, and the Lender will be remitted the net amount of the delinquent assessment installments and any additional sums collected that are due to it under the Financing Documents. The County shall also remit to the Authorized Representative the amount of any administrative fees collected.

- t. Judicial Enforcement: Authorized Representatives are authorized to enter into a contract with the entity that collects delinquent taxes for the County to enforce the collection of delinquent installments of the assessments including interest, penalties, and fees in accordance with Texas Law governing delinquent property tax collection and the agreement between the parties. Any lawsuit to enforce collection of an assessment including foreclosure of a delinquent assessment lien shall be brought in the name of the County. Such lawsuits will be filed and prosecuted in accordance with the statutes, procedures, and rules for the collection of delinquent property taxes.

EXHIBIT 1

MAP OF THE BRAZOS COUNTY PACE REGION

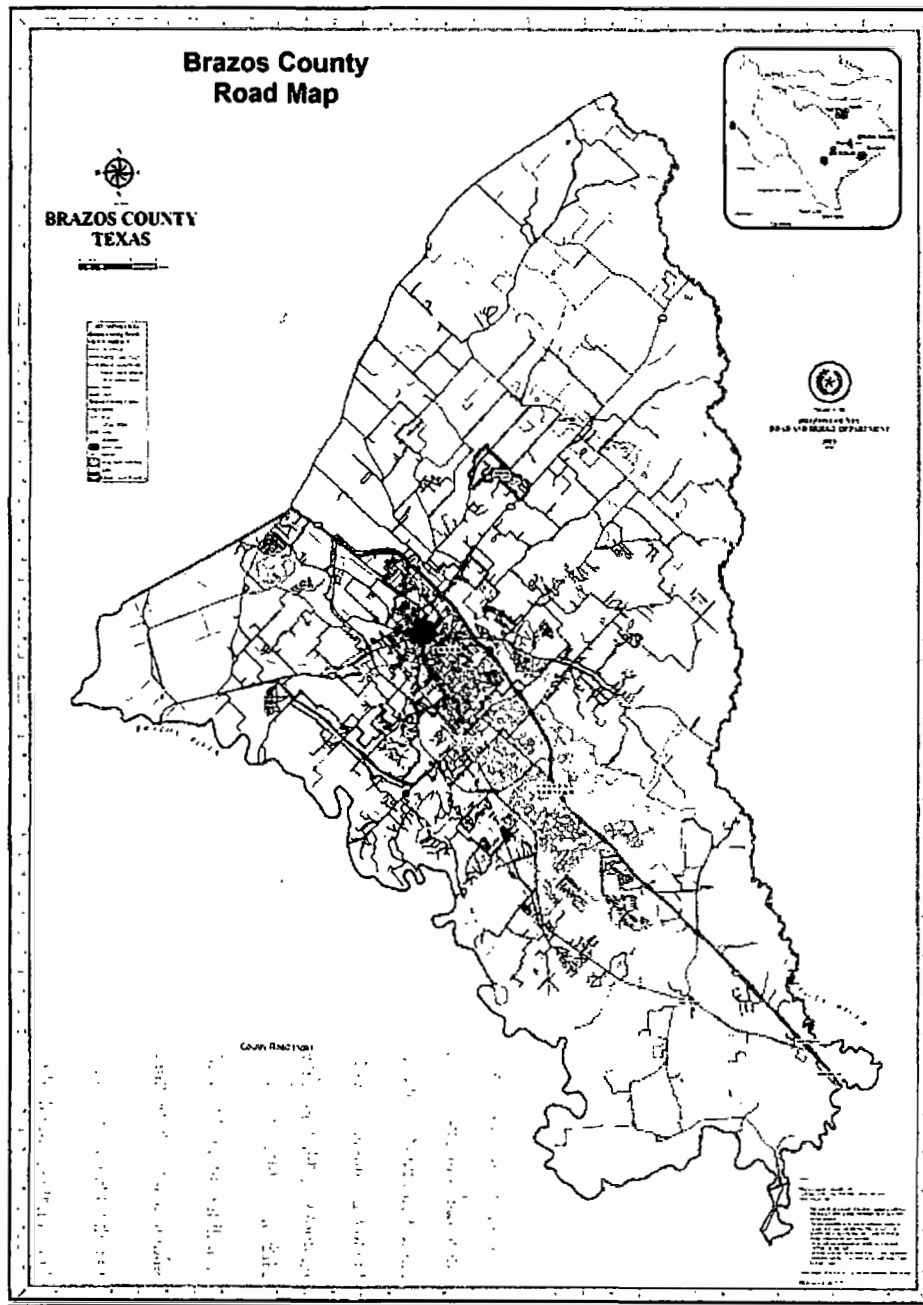


EXHIBIT 2
FORM PACE OWNER CONTRACT

FORM PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY ("**PACE**") OWNER CONTRACT including the attached exhibits ("**PACE Owner Contract**") is made as of the _____ day of _____, _____ ("**Effective Date**"), by and between Brazos County, Texas ("**Local Government**"), and _____ ("**Property Owner**"). Local Government and Property Owner are hereafter referred to collectively as "the parties" or individually as "party."

RECITALS

A. The Property Assessed Clean Energy Act ("**PACE Act**"), Texas Local Government Code Chapter 399, authorizes the governing body of a Local Government to establish a program and designate a region within the Local Government's jurisdiction within which an authorized representative of the Local Government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated October 18, 2016, adopted by the Commissioners Court ("**PACE Program**"). Pursuant to a resolution dated _____ and adopted by the Commissioners Court, the Program was updated and designated _____ as a representative of Local Government ("**Authorized Representative**") authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein. Local Government has designated the entire territory within the boundaries of Brazos County, Texas jurisdiction as a region (the "**Region**") within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner's property pursuant to the PACE Program.

C. Property Owner is the legal and record owner of the qualified "**real property**," as defined in Section 399.002 of the PACE Act, within the Region located at _____, Texas _____ - _____ (the "**Property**"). The Property being more particularly described in the Notice of Contractual Assessment Lien, attached hereto as Exhibit A.

D. Pursuant to Application number _____, Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as "qualified improvements", as defined in Section 399.002 of the PACE Act (the "**Qualified Improvements**"). The installation or modification of such Qualified Improvements on the Property will be a "qualified project" as defined in Section 399.002 of the PACE Act (the "**Project**"). Property Owner has requested that

Local Government enter into this PACE Owner Contract pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment (the "**Assessment**") on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the Official Public Records of Brazos, County, Texas (the "**Notice of Contractual Assessment Lien**"), a copy of which is attached hereto as Exhibit A and made a part hereof, to repay the financing of such Qualified Improvements. The Property, Qualified Improvements and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing of such Qualified Improvements for the Project ("**Financing**") will be provided to Property Owner by _____ ("**Lender**"), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 399.006(c) of the PACE Act (the "**PACE Lender Contract**"). The financing will include only those costs and fees for which an assessment may be imposed under the PACE Act. Local Government has agreed to maintain and continue the Assessment for the benefit of Lender until such financing is repaid in full and to release the Assessment upon notice from Lender of such payment, or to foreclose the lien securing the Assessment for the benefit of Lender upon notice from Lender of a default by Property Owner.

F. As required by Section 399.010 of the PACE Act, Property Owner represents and warrants that it has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the effective date of this PACE Owner Contract of Property Owner's intention to participate in the PACE Program. The written consent of each mortgage holder to the Assessment was obtained on or prior to the date of this PACE Owner Contract and is attached hereto as Exhibit B and made a part hereof ("**Lender Consents**").

AGREEMENT

The parties agree as follows:

1. Imposition of Assessment. In consideration for the Financing advanced or to be advanced to Property Owner by Lender for the Project under the PACE Program pursuant to the PACE Lender Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment in the principal amount of \$_____, as set forth in the Notice of Contractual Assessment Lien. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Authorized Representative on behalf of Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and thereafter Authorized Representative shall record an amended Notice of Contractual Assessment Lien. The Assessment includes the application and administration fees authorized by the PACE Program and Section 399.006(e) of the PACE Act. Property Owner promises and agrees to pay the Assessment, Contractual Interest thereon, any prepayment penalty, and all penalties, interest, fees, attorney's fees, and costs due under and/or authorized by the PACE Act, PACE Program and the financing documents between Property Owner and Lender (the "**Financing Documents**") which are described or listed in Exhibit C attached hereto and made a part hereof by reference.

Property Owner promises and agrees pay such amount and interest to Local Government, in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to this PACE Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to secure the payment of such amount, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

2. Maintenance and Enforcement of Assessment. In consideration for Lender's agreement to advance Financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Lender until the Assessment, including all interest, fees, penalties, costs, and other sums due under and/or authorized by the PACE Act, PACE Program and the Financing Documents are paid in full, and to release or cause the release of the Assessment upon notice from Lender of such payment. Local Government, through its delinquent property tax collection process, agrees to undertake reasonable efforts to enforce the Assessment against the Property for the benefit of Lender in the event of a default by Property Owner. Authorized Representative agrees to send an annual notice of assessment to the Property Owner each year there is a PACE lien balance. However, any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner will not affect the Assessment or Property Owner's obligations under the PACE Owner Contract.

3. Installments. The Assessment, including the amount financed and contractual interest, is due and payable in installments ("**Installments**") as set forth in the Notice of Contractual Assessment Lien and the Financing Documents. The Assessment shall include: (1) an application fee to be paid by Property Owner to the Authorized Representative at the time of application, and (2) a closing fee (less application fee) paid to the Authorized Representative at the closing of the Financing. The Property Owner is further required to pay a recurring administration fee to Authorized Representative until the Assessment is released. The recurring administration fee amount shall be collected by Lender and paid to the Authorized Representative within thirty (30) days of receipt by Lender. The administration fees amounts due to Authorized Representative are identified in Exhibit C hereto.

(a) If this is a US Department of Housing and Urban Development ("**HUD**") assisted or a Federal Housing Administration ("**FHA**") insured Project, then the Financing Documents shall provide for Installments to be escrowed in a manner acceptable to HUD or FHA lender and paid to Lender.

(b) When the Assessment, together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government's rights under this PACE Owner Contract will cease and terminate, except for rights under Section 18, 19, 20, and 21. Upon notice from Lender that all amounts due have been paid in full, Local Government will direct the Authorized Representative to execute a release of the Assessment and this PACE Owner Contract and record the release. As required by Section 399.009(a)(8) of the PACE Act, the Property Owner represents to the Local Government that the period during which such Installments are payable does not exceed the useful life of the Project.

4. Assignment of Right to Receive Installments or Require Enforcement of Lien. Lender will have the right, with or without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with all corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender as defined in the PACE Lender Contract;

(b) Property Owner, Authorized Representative, the holder(s) of any mortgage lien on the Property, and HUD, if this is a HUD assisted or FHA insured Project are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed not less than 30 days before the next Installment is due according to the payment schedule included in the Financing Documents, and

(c) The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Lender's rights and obligations under the PACE Lender Contract related to the receipt of the Installments or the enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative not later than ten (10) days after execution of the assignment.

Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer of the right to receive the installments that meets all of these conditions, the assignor shall be released of all of the obligations of the Lender under such PACE Lender Contract accruing after the date of the assignment assumed by and transferred to such assignee or transferee and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the installments that does not meet all of these conditions is void.

5. Lien Priority and Enforcement. Pursuant to Section 399.014 of the PACE Act:

(a) Delinquent installments of the Assessment will incur penalties and accrue interest in the same manner and in the same amount as delinquent property taxes under Texas law. Statutory penalties and statutory interest payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents, may be imposed and retained by Lender. To ensure that the collection of delinquent installments of Assessments and other amounts due pursuant to the Financing Documents is congruent with the collection of delinquent property taxes the following procedures will be followed:

(1) Any delinquent account on which two thirty (30) day notices of delinquency have been mailed as specified herein shall be enforced by means of Judicial Enforcement as defined in Section 9(u) in Brazos County's PACE Program Updated Report.¹

(2) Delinquent installments of Assessment(s) through November 30 of any year will incur penalties and accrue interest as specified in the Financing Documents.

(3) On or after February 1 of any year, the Authorized Representative will notify the County Tax Assessor/Collector and the entity that collects delinquent taxes for the County of the amount due as of January 31 of said year. The amount due on January 31 shall become the base amount of delinquency which will incur penalties and accrue interest and collection fees in the same manner and on the same schedule as delinquent property taxes.

(4) Installments of Assessment(s) becoming delinquent after November 30 of any year will incur penalties and accrue interest as specified in the Financing Documents but, notification of the County Tax Assessor/Collector and the entity that collects delinquent taxes for the County shall not occur until February 1 following delinquency. The amount due on January 31 following delinquency shall become the base amount of delinquency which will incur penalties and accrue interest and collection fees in the same manner and on the same schedule as delinquent property taxes.

(b) The Assessment, together with any penalties and interest thereon,

(1) is a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the Official Public Records of Brazos County as provided by Section 399.013 of the PACE Act, until the financing secured by the Assessment and any penalties and interest (including any Contractual Interest and penalties) are paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax.

(c) Pursuant to Section 399.014(b) of the PACE Act, the lien created by the Assessment runs with the land, and according to, any portion of the Assessment that has not yet become due shall not be eliminated by foreclosure of (i) a property tax lien, or (ii)

¹ **Judicial Enforcement:** The Authorized Representative is authorized to enter into a contract with the entity that collects delinquent taxes for the County to enforce the collection of delinquent installments of the Assessments including interest, penalties, and fees in accordance with Texas Law governing delinquent property tax collection and the agreement between the parties. Any lawsuit to enforce collection of an Assessment including foreclosure of a delinquent Assessment lien shall be brought in the name of the Local Government. Such lawsuits will be filed and prosecuted in accordance with the statutes, procedures, and rules for the collection of delinquent property taxes.

the lien for a past due portion of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse on Local Government or Authorized Representative and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.

(d) In the event of a default by Property Owner in payment of the installments called for by the Financing Documents, the lien created by the Assessment will be enforced by Local Government, in the same manner according to Texas Tax Code Secs. 33.41 through 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.

(f) Distribution of Proceeds of a foreclosure sale pursuant to a Judgment ordering foreclosure of Property Tax Lien(s) and delinquent installments(s) of an Assessment Lien shall be made in the following order:

- (1) the payment of the costs of suit and sale;
- (2) the payment of ad valorem taxes, penalties, interest, and attorney's fees due under the judgment; and
- (3) the payment of delinquent installment(s) of the Assessment, penalties, interest, fees, costs, and attorney's fees due under the judgment.

(g) As provided in Section 399.014 (a-1) of the PACE Act, after the Notice of Contractual Assessment Lien is recorded in the Official Public Records of the County in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a "qualified improvement" or the project is not a "qualified project", as such terms are defined in Section 399.002 of the PACE Act.

6. Written Contract Required by PACE Act. This PACE Owner Contract constitutes a written contract for the Assessment between the Property Owner and Local Government as required by Section 399.005 of the PACE Act. The Notice of Contractual Assessment Lien will be recorded in the Official Public Records of Brazos County as public notice of the contractual Assessment, in accordance with the requirements of Section 399.013 of the PACE Act.

7. Qualified Improvements. Property Owner agrees that all improvements purchased, constructed, and/or installed through the financing obtained pursuant to this PACE Owner Contract

shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of a sale or transfer of the Property. Property Owner agrees to provide to Authorized Representative within 30 days after the completion of the Project a verification by an independent third-party reviewer ("ITPR") that the project was properly completed and is operating as intended. Property Owner agrees that Lender may retain the final advance of Financing until such verification is submitted or require Property Owner to pay liquidated damages for a failure to do so, according to paragraph 19 below.

8. Water or Energy Savings. For so long as the Assessment encumbers the Property, Property Owner agrees, on or before January 31st of each year, to report to Authorized Representative the water or energy savings realized through the Project in accordance with the reporting requirements established by Local Government.

9. Construction and Definitions. This PACE Owner Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the PACE Program and/or the PACE Act.

10. Binding Effect. This PACE Owner Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, successors, representative, agents, and assigns.

11. Notices. All notices and other communications required or permitted by this PACE Owner Contract shall be in writing and delivered by first class mail return receipt requested or by electronic mail with written confirmation of receipt, addressed to the other party at its address shown below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law and Venue. This PACE Owner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas without regard to Texas' choice of law provisions. Venue for any disputes or suits between the parties arising from or related to this PACE Owner Contract shall be in a state court located in the Region, and the parties consent to the personal and subject matter jurisdiction of such state court.

13. Entire Agreement. This PACE Owner Contract and its Exhibits constitutes the entire agreement between Local Government and Property Owner with respect to the subject matter hereof and may not be amended or altered in any manner except by a document in writing executed by both parties.

14. If this is a HUD assisted or FHA insured Project, then HUD and FHA must also consent in writing to any amendment or alteration of this PACE Owner Contract, for as long as the Project remains HUD assisted or FHA insured.

15. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

16. Counterparts. This PACE Owner Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together will constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

17. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the “**Usury Limit**”). If the total amount of interest payable to Local Government exceeds the Usury Limit, the interest payable to Local Government will be reduced and any interest in excess of the Usury Limit will be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this PACE Owner Contract.

18. Costs. No provisions of this PACE Owner Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

19. Inspection and Audits. Local Government’s representatives may perform, or have performed, (a) audits of Property Owner’s documents, books and records, and (b) inspections of all places where Qualified Improvements are undertaken in connection with this PACE Owner Contract. Property Owner shall keep its documents, books and records available for this purpose for at least three (3) years after this PACE Owner Contract terminates. This provision does not affect the applicable statute of limitations.

20. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this PACE Owner Contract as may be reasonably necessary or required.

21. Release. PROPERTY OWNER AGREES TO AND SHALL RELEASE THE LOCAL GOVERNMENT, ITS AUTHORIZED REPRESENTATIVES, AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “RELEASED PERSONS”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS CONTRACT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE RELEASED PERSON’S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE RELEASED PERSON’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, AND EVEN IF THE INJURY, DEATH, DAMAGE OR LOSS IS CAUSED BY THE RELEASED PERSON’S WRONGFUL OR NEGLIGENT ENFORCEMENT OF THE ASSESSMENT OR FORECLOSURE, ACTION OR INACTION.

22. Indemnification. TO THE MAXIMUM EXTENT ALLOWED BY LAW, PROPERTY OWNER SHALL INDEMNIFY AND HOLD LOCAL GOVERNMENT, ITS

AUTHORIZED REPRESENTATIVES, AND THEIR RESPECTIVE AFFILIATES, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (EACH SUCH PERSON HEREIN REFERRED TO AS AN "INDEMNITEE") ABSOLUTELY HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES INCURRED BY OR IMPOSED UPON OR ALLEGED TO BE DUE OF INDEMNITEE IN CONNECTION WITH THE EXECUTION OR DELIVERY OF THIS PACE OWNER CONTRACT, THE NOTICE OF CONTRACTUAL ASSESSMENT LIEN, THE FINANCING DOCUMENTS, AND ANY OTHER DOCUMENT OR ANY OTHER AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER, THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR, IN THE CASE OF ANY INDEMNITEE, THE ADMINISTRATION OF THIS PACE OWNER CONTRACT AND ANY OTHER AGREEMENTS RELATED TO THE PROJECT. However, If HUD later acquires title to all or any portion of Property pursuant to a foreclosure, deed in lieu of foreclosure, or otherwise, then notwithstanding anything in this PACE Owner Contract to the contrary, HUD shall not be obligated to indemnify any Indemnatee or entity or be liable for, or to carry out, any indemnity.

23. No Personal Liability. Pursuant to Section 399.019 of the PACE Act, the Property Owner acknowledges that the members of the governing body of the Local Government, other elected officials of a local government, employees of a local government, and board members, executives, employees, and contractors of a third party who enter into a contract with a Local Government to provide administrative services for a program under this chapter are not personally liable as a result of exercising any rights or responsibilities under the PACE Program or any agreement in furtherance of the PACE Program.

24. Construction Terms. If the PACE Lender Contract includes requirements related to the construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final Project completion.

PROPERTY OWNER:

By: _____
Name: _____
Title: _____
Address: _____

STATE OF TEXAS §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, _____ by _____, _____, on behalf of _____.

NOTARY PUBLIC, STATE OF TEXAS

BRAZOS COUNTY, TEXAS

By: _____

Title: _____

Email Address: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, 20__ by _____ of _____, on behalf of said corporation and as Authorized Representative for the Local Government.

_____ (print name)

NOTARY PUBLIC, STATE OF TEXAS

OWNER CONTRACT EXHIBIT A
NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO
PROPERTY ASSESSED CLEAN ENERGY ACT

OWNER CONTRACT EXHIBIT B
MORTGAGE HOLDER(S) CONSENT

OWNER CONTRACT EXHIBIT C

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Frequency:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

Document Title	Parties	Date Executed

OWNER CONTRACT EXHIBIT D
CONSTRUCTION TERMS

Retainage or Liquidated Damages:

Lender will retain _____% of the Financing until a report of completion by a qualified Independent Third Party Reviewer ("ITPR") is provided to Authorized Representative.

OR

Property Owner will pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender will then provide the report of completion to Authorized Representative.

Additional Construction Terms

Date	Draw down Amount	Purpose

EXHIBIT 3
FORM PACE LENDER CONTRACT

FORM PACE LENDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY ("**PACE**") LENDER CONTRACT including the attached exhibit ("**PACE Lender Contract**") is made as of the _____ day of _____, _____, ("**Effective Date**") by and between Brazos County, Texas ("**Local Government**") and _____ ("**Lender**"). Local Government and Lender are hereafter referred to collectively as "the parties" or individually as "party."

RECITALS

A. The Property Assessed Clean Energy Act ("**PACE Act**"), Texas Local Government Code Chapter 399, authorizes the governing body of a Local Government to establish a program and designate a region within the local government's jurisdiction within which an authorized representative of the Local Government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated October 18, 2016, adopted by the Commissioners Court ("**PACE Program**"). Pursuant to a resolution dated _____ and adopted by the Commissioners Court, the Program was updated and designated _____ as the representative of Local Government ("**Authorized Representative**") authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein. Local Government has designated the entire territory within the boundaries of Brazos County, Texas jurisdiction as a region (the "**Region**") within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner's property pursuant to the PACE Program.

C. Pursuant to Project Application Number _____, _____ ("**Property Owner**"), the sole legal and record owner of the following qualified "real property," as defined in Section 399.002 of the PACE Act, within the Region has applied to Local Government to participate in the PACE Program with respect to certain real property located at _____, _____, Texas, _____ - _____ (the "**Property**") (the Property being more particularly described in the Notice of Contractual Assessment Lien, attached hereto as Exhibit A to the PACE Owner Contract which appears below as Exhibit A to this PACE Lender Contract) by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as "qualified improvements", as defined in Section 399.002 of the PACE Act ("**Qualified Improvements**"). The installation or modification of such Qualified Improvements

on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “Project”).

D. Property Owner and Local Government have entered into a written contract as required by Section 399.005 of the PACE Act, a copy of which is attached hereto as Exhibit A and made a part hereof (the “PACE Owner Contract”), in which Property Owner has requested that Local Government impose an assessment (the “Assessment”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in Official Public Records of Brazos County, Texas (the “Notice of Contractual Assessment Lien”), to repay the financing of such Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached as Exhibit A to the PACE Owner Contract which appears below as Exhibit A to this PACE Lender Contract and made a part hereof. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (the “Financing”) shall be provided to Property Owner by Lender in accordance with financing documents which are described in or copies of which are attached as Exhibit C to the PACE Owner Contract attached hereto as Exhibit A and made a part hereof (“Financing Documents”). Such Financing includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. This PACE Lender Contract is entered into between Local Government and Lender as required by Section 399.006(c) of the PACE Act to provide for repayment of the Financing secured by the Assessment.

F. As required by Section 399.010 of the PACE Act, Property Owner represents and warrants that they have notified the holder(s) of any mortgage lien(s) on the Property at least thirty (30) days prior to the effective date of the PACE Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage lien holder to the Assessment was obtained on or prior to the effective date of the PACE Owner Contract, as shown by the copy of such consent(s) attached as Exhibit B to the PACE Owner Contract which appears below as Exhibit A to this PACE Lender Contract (“Lender Consent(s)”).

AGREEMENT

The parties agree as follows:

1. **Maintenance and Enforcement of Assessment.** Lender agrees to provide Financing for the Project in the total principal amount of \$_____, according to the terms set out in the Financing Documents attached hereto as Exhibit C to the PACE Owner Contract attached as Exhibit A. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Authorized Representative on behalf of Local Government, Property Owner, and Lender agree to execute an amended PACE Owner Contract and PACE Lender Contract, and thereafter Authorized Representative shall record an amended Notice of Contractual Assessment Lien. In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this PACE Lender Contract, Local Government agrees to maintain and continue the Assessment for the benefit of Lender until the Assessment, all contractual interest (“Contractual Interest”), any prepayment penalty, and any penalties, interest, attorney’s fees,

and/or costs due under or authorized by the PACE Act and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment in full. Authorized Representative shall record release of the lien in the real property records of Brazos County. Local Government shall not release, sell, assign or transfer the Assessment or the lien securing it without the prior written consent of Lender. Upon written request of Lender, and with the written consent of Property Owner, Authorized Representative on behalf of Local Government may execute a partial release of the assessment lien and record the partial release. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner in accordance with the provisions set forth in paragraph 6 below as may be limited by applicable law. Local Government shall have no obligation to repurchase the Assessment and no liability to Lender should there be a default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

2. Installments. The Assessment and Contractual Interest thereon are due and payable to Lender in installments (“**Installments**”) according to the payment schedule set forth in the Financing Documents attached hereto as Exhibit C to the PACE Owner Contract attached as Exhibit A. To participate in the PACE Program, the Property Owner is required to pay (1) an application fee to Authorized Representative at the time of the application; (2) a closing fee (less the application fee) to Authorized Representative at the time of closing; and (3) a recurring administration fee to Authorized Representative until the Assessment is released. The recurring administration fee amount shall be collected by Lender and paid to Authorized Representative not later than thirty (30) days after receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of delinquency in the payment of any Installment, Lender shall, upon notice to Authorized Representative, withhold payment of any amounts due to Authorized Representative in connection with such Installment until the Installment is paid. Lender agrees that any such temporary withholding shall not reduce the amount of administration fees included in the Assessment or due to Authorized Representative. The amounts due to Authorized Representative are identified in Exhibit C to the PACE Owner Contract attached hereto as Exhibit A. As required by Section 399.009(a)(8) of the PACE Act, the period during which such Installments are payable does not exceed the useful life of the Project. When the Assessment together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government’s rights under this Lender Contract will cease and terminate, except for rights under Section 18, 19, 20 and 21. Upon notice from Lender that all amounts owing have been paid in full, Authorized Representative will execute a release of the Assessment and this Lender Contract. Thereafter, the Authorized Representative will record the release.

3. Assignment of Right to Receive Installments or Require Enforcement of Lien. Lender has the right, without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with the corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender, which may be one of the following:

(1) Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;

(2) Any insurance company authorized to conduct business in one or more states;

(3) Any registered investment company, registered business development company, or a Small Business Administration small business investment company;

(4) Any publicly traded entity; or

(5) Any private entity that:

(i) Has a minimum net worth of \$5 million;

(ii) Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending;

(iii) Can provide independent certification as to availability of funds; and

(iv) Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

(6) A financially stable entity, whether or not from the list above, with the ability to carry out, either directly or through a servicer, the obligations of this PACE Lender Contract related to the receipt and accounting of the Installments or the enforcement of the assessment lien.

(b) Lender shall notify Property Owner and Authorized Representative in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed not less than 30 days before the next Installment is due according to the payment schedule included in the Financing Documents. The Lender shall also notify the holder(s) of any mortgage lien at the mailing address in the Lender Consent(s), or a subsequent address provided by any mortgage lien holder and, if this is a US Department of Housing and Urban Development ("HUD") assisted or a Federal Housing Administration ("FHA") insured Project, at the address below or a subsequent address provided by HUD.

US Department of Housing and Urban Development
Fort Worth Regional Office
307 W. 7th St., Suite 1000
Fort Worth, Texas 76102

(c) The assignee or transferee shall execute a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under this PACE Lender Contract related to the receipt of the Installments or enforcement of the assessment lien and provide a copy of such assumption to Property Owner and Authorized Representative not later than 10 days after execution of the agreement. Such written agreement must contain a certification by the Lender and the assignee that all of the conditions in this Section 3 have been met. Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately.

Upon written notice of an assignment or transfer that complies with all of the foregoing conditions, the assignor shall be released of all of the rights and obligations of the Lender under this PACE Lender Contract accruing after the effective date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or to require enforcement of the assessment lien that does not comply with all of the foregoing conditions is void. Lender shall retain all of the rights and obligations of Lender under this PACE Lender Contract until such rights and obligations are assigned or transferred according to this section.

4. Financing Responsibility. Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing, advancing the funds as set forth in the Financing Documents and performing Lender's obligations and responsibilities thereunder. In the event the assessment lien on the Property is enforced by foreclosure as provided below, Lender shall have no further obligations to Property Owner with respect to the Installments that were the subject of the foreclosure, but Lender shall retain the rights to enforcement of the lien for any Installments that are not eliminated by the foreclosure, and the succeeding owner of the Property shall be subject to such lien.

5. Lien Priority and Enforcement. As provided in the PACE Owner Contract and Sections 399.014 and 399.015 of the PACE Act:

(a) Delinquent Installments of the Assessment incur penalties and accrue interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes. Statutory penalties and statutory interest payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be imposed and retained by Lender. To ensure that the collection of delinquent installments of Assessments is congruent with the collection of delinquent property taxes the following procedures will be followed:

(1) Any delinquent account on which two thirty (30) day notices of delinquency have been mailed as specified herein shall be enforced by means of Judicial Enforcement.

(2) Delinquent installments of Assessment(s) through November 30 of any year will incur penalties and accrue interest as specified in the Financing Documents.

(3) On or after February 1 of any year, the Authorized Representative will notify the County Tax Assessor/Collector and the entity that collects delinquent taxes for the County of the amount due as of January 31 of said year. The amount due on January 31 shall become the base amount of delinquency which will incur penalties and accrue interest and collection fees in the same manner and on the same schedule as delinquent property taxes.

(4) Installments of Assessment(s) becoming delinquent after November 30 of any year will incur penalties and accrue interest as specified in the Financing Documents but, notification of the County Tax Assessor/Collector and the entity that collects delinquent taxes for the County shall not occur until February 1 following delinquency. The amount due on January 31 following delinquency shall become the base amount of delinquency which will incur penalties and accrue interest and collection fees in the same manner and on the same schedule as delinquent property taxes.

(b) The Assessment and any interest and penalties thereon,

(1) are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is recorded in the real property records of Brazos County, as provided by Section 399.013 of the PACE Act, until the Assessment, interest, and penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act.

(c) Pursuant to Section 399.014(b) of the PACE Act, the lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due will not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. Accordingly, Installments may not be accelerated in the event of default. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents shall be transferred to the succeeding owner without recourse to Lender, Local Government or Authorized Representative.

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment shall be enforced by Local Government for the benefit of Lender according to paragraph 6(c) below in the same manner according to Texas Tax Code Secs. 33.41 through 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government shall be entitled to recover costs and expenses, including attorney's fees, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.

(f) Notwithstanding any other provisions in this PACE Lender Contract except Section 16 hereof, distribution of Proceeds of a foreclosure sale pursuant to a Judgment ordering foreclosure of Property Tax Lien(s) and delinquent installments(s) of an Assessment Lien shall be disbursed in the following order:

- (1) the payment of the costs of suit and sale;
- (2) the payment of ad valorem taxes, and associated penalties, interest, and attorney's fees due under the judgment; and
- (3) the payment of delinquent installment(s) of the Assessment, and associated penalties, interest, fees, costs, and attorney's fees due under the judgment.

(g) As provided in Section 399.014(a-1) of the PACE Act, after written notice of the Assessment is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a "qualified improvement" or the Project is not a "qualified project", as such terms are defined in Section 399.002 of the PACE Act.

6. Servicing and Enforcement of Assessment.

(a) Servicing. The Installments and other amounts due under the Financing Documents will be billed, collected, received, and disbursed in accordance with the procedures set out in the Financing Documents. Lender or its designee shall be responsible for all servicing duties other than those specifically undertaken by Local Government in this PACE Lender Contract. If this is a HUD assisted or FHA insured Project, then the Financing Documents (i) shall provide for Installments to be escrowed in a manner acceptable to HUD or FHA lender and paid to Lender, and (ii) not make Installments more frequent than semi-annually. Authorized Representative shall deliver an annual notice of assessment to Property Owner by first-class mail or electronic mail each year until the Assessment is released. Any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner shall not affect the Assessment or Property Owner's obligations under the PACE Owner Contract.

(b) Remittances. Each of the parties covenants and agrees to promptly remit to the other party any payments incorrectly received by such party with respect to the Assessment after the execution of this PACE Lender Contract.

(c) **Default and Enforcement.** In the event of a default in payment of any Installment according to the Financing Documents, Lender agrees to take at least the following steps to collect the delinquent Installment:

(1) Mail a written notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first-class mail. Lender shall mail a copy of the first notice of delinquency to the holder(s) of any mortgage lien on the Property, to HUD if this is a HUD assisted or FHA insured Project; and to Freddie Mac if the lien is held by Freddie Mac.

(2) Mail a second notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first-class mail at least 30 days after the date of the first notice if the delinquency is continuing; and Lender shall also mail a copy of the second notice of delinquency to the holder(s) of any mortgage lien on the Property, to HUD if this is a HUD assisted or FHA insured Project, and to Freddie Mac if the lien is held by Freddie Mac.

The holder(s) of any mortgage lien on the Property, HUD, if this is a HUD assisted or FHA insured Project, and Freddie Mac if the mortgage lien is held by Freddie Mac, shall have not less than a 60-day notice and right to cure the delinquency by paying the amount of the delinquent Installment.

If Property Owner or other parties with the right to cure under this contract fails to cure the delinquency on or before the 30th day after the mailing of the second notice of delinquency, Lender or its designee may notify Authorized Representative in writing of a default in payment by Property Owner. Upon receipt of such notice and after doing its own due diligence, Authorized Representative shall certify the default to Local Government, which shall then enforce the assessment lien for the benefit of Lender pursuant to Sec. 399.014(c) of the PACE Act, in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution. However, if a case under the U.S. Bankruptcy Code is filed by or against Property Owner or if the enforcement of the assessment lien is prevented by the order of a court, Local Government shall notify Authorized Representative and shall file a proof of claim for the balance of the Assessment, accrued interest and penalties, and all costs and expenses, including attorney's fees, as authorized by Section 399.014 of the PACE Act. Authorized Representative shall notify Lender of the filing of the proof of claim. Lender shall not be required to mail a notice of delinquency to Property Owner or a notice of default to Local Government. Lender shall reimburse Local Government for any costs and expenses, including attorney's fees, required to file and present the claim.

(d) **Priority.** Pursuant to Sec. 399.014(a)(2) of the PACE Act, if the assessment lien is enforced by foreclosure or collected through a bankruptcy or similar proceeding, the delinquent Installment(s) and any interest, costs, and penalties on them shall have the same priority status as a secured claim for any other ad valorem tax. The parties understand that the assessment lien is a statutory tax lien under Sec. 399.014 of the PACE Act.

(e) **Final Payment and Release.** When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, attorney fees, and costs due under

or authorized by the PACE Act or the Financing Documents have been paid in full, Local Government's rights under the PACE Owner Contract shall cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative on behalf of Local Government, shall execute a release of the Assessment and the PACE Owner Contract and record the release.

(f) Limitations on Local Government's Actions. Local Government shall not enter into any amendment or modification of or deviation from the PACE Owner Contract without the prior written consent of Lender. Local Government or Authorized Representative shall not institute any legal action with respect to the PACE Owner Contract, the Assessment, or the assessment lien without the prior written request of Lender.

(g) Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this PACE Lender Contract, and no implied duties on the part of Local Government are to be read into this PACE Lender Contract. Local Government shall not be deemed to have a fiduciary or other similar relationship with Lender. Local Government may request written instructions for action from Lender and refrain from taking action until it receives satisfactory written instructions. Local Government shall have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting.

(h) Costs. No provisions of this PACE Lender Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

7. Lender's Warranties and Representations. With respect to this PACE Lender Contract, Lender hereby warrants and represents that on the Effective Date of this PACE Lender Contract:

(a) Lender is a qualified lender under the PACE Program, as defined in paragraph 3(a) above, and is fully qualified under the PACE Program to enter into this PACE Lender Contract and the Financing Documents;

(b) Lender has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the PACE Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and

(c) Lender has not relied upon any investigation or analysis conducted by, advice or communication from, or any warranty or representation by Local Government, Authorized Representative, or any agent or employee of Local Government or Authorized Representative, express or implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.

8. Written Contract Required by the PACE Act. This PACE Lender Contract constitutes a written contract between Local Government and Lender, as required under Section 399.006(c) of the PACE Act.

9. Construction and Definitions. This PACE Lender Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the PACE Program, or the PACE Act.

10. Binding Effect. This PACE Lender Contract is binding upon and inures to the benefit of the parties hereto and their respective representatives, agents, successors, and assigns.

11. Notices. Unless otherwise specifically provided herein, all notices and other communications required or permitted hereunder shall be in writing and delivered by first-class mail return receipt requested or by electronic mail with written confirmation of receipt, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law and Venue. This PACE Lender Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas without regard to Texas' choice of law provisions. Venue for any disputes or suits between the parties arising from or related to this PACE Lender Contract shall be in a state court located in the Region, and the parties consent to the personal and subject matter jurisdiction of such state court.

13. Entire Agreement. This PACE Lender Contract, including its exhibit, constitutes the entire agreement between Local Government and Lender with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties. If this is a HUD assisted or FHA insured Project, then HUD or FHA must also consent in writing to any amendment or alteration of this PACE Lender Contract, for as long as the Project remains HUD assisted or FHA insured.

14. Further Assurances. Lender further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this PACE Lender Contract as may be reasonably necessary or required.

15. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

16. Counterparts. This PACE Lender Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

17. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum

amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the “**Usury Limit**”). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the Usury Limit, interest payable to Local Government shall be reduced and any interest in excess of the Usury Limit shall be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this PACE Lender Contract.

18. **Certification.** Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the Effective Date of this PACE Lender Contract. Property Owner has represented to Lender and Local Government that the Project is a “qualified project” as defined in the PACE Program and Section 399.002 of the PACE Act. The Assessment has been imposed on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.

19. **Costs.** No provision of this Lender Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

20. **Release.** LENDER AGREES TO AND SHALL RELEASE THE LOCAL GOVERNMENT, ITS AUTHORIZED REPRESENTATIVES, AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “RELEASED PERSONS”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS CONTRACT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE RELEASED PERSON’S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE RELEASED PERSON’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, AND EVEN IF THE INJURY, DEATH, DAMAGE OR LOSS IS CAUSED BY THE RELEASED PERSON’S WRONGFUL OR NEGLIGENT ENFORCEMENT OF THE ASSESSMENT OR FORECLOSURE. NOTWITHSTANDING THE FOREGOING, LOCAL GOVERNMENT AGREES THAT ITS OBLIGATION TO MAINTAIN, CONTINUE, AND ENFORCE THE ASSESSMENT AS WELL AS ITS OBLIGATION TO REMIT AMOUNTS IN ACCORDANCE WITH THIS AGREEMENT ARE MINISTERIAL ACTS, AND THE LENDER MAY BRING AN ACTION IN MANDAMUS, A CLAIM FOR SPECIFIC PERFORMANCE, OR ANY SIMILAR ACTION OR REMEDY (EXCEPT AN ACTION SEEKING MONETARY DAMAGES FROM THE LOCAL GOVERNMENT) AGAINST ANY NECESSARY PARTY TO ENSURE THE NECESSARY MINISTERIAL ACTS LISTED ABOVE ARE PERFORMED PURSUANT TO THIS AGREEMENT.

21. **Indemnification.** TO THE MAXIMUM EXTENT ALLOWED BY LAW, LENDER SHALL INDEMNIFY AND HOLD LOCAL GOVERNMENT, AUTHORIZED REPRESENTATIVES, AND THEIR RESPECTIVE AFFILIATES, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (EACH SUCH PERSON HEREIN REFERRED TO AS AN “INDEMNITEE”) ABSOLUTELY HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES INCURRED BY OR IMPOSED UPON OR ALLEGED TO BE DUE OF INDEMNITEE IN

CONNECTION WITH THE EXECUTION OR DELIVERY OF THIS CONTRACT, THE NOTICE OF CONTRACTUAL ASSESSMENT LIEN, THE FINANCING DOCUMENTS, AND ANY OTHER DOCUMENT OR ANY OTHER AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER, THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR, IN THE CASE OF ANY INDEMNITEE, THE ADMINISTRATION OF THIS CONTRACT AND ANY OTHER AGREEMENTS RELATED TO THE PROJECT. NOTWITHSTANDING THE FOREGOING OR ANYTHING CONTAINED HEREIN TO THE CONTRARY, LENDER SHALL HAVE NO OBLIGATION TO INDEMNIFY AND HOLD ANY INDEMNITEE HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES INCURRED BY OR IMPOSED UPON OR ALLEGED TO BE DUE OF AN INDEMNITEE IF SUCH CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES ARE CAUSED BY OR ARISE FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE RELATED TO THE FAILURE TO MAINTAIN, CONTINUE, AND ENFORCE THE ASSESSMENT AS WELL AS ITS OBLIGATION TO REMIT AMOUNTS IN ACCORDANCE WITH THIS AGREEMENT.

22. Inspection and Audits. Local Government's representatives may perform, or have performed, audits of Lender's documents, books and records. Lender shall keep its documents, books and records available for this purpose for at least three (3) years after this PACE Lender Contract terminates. This provision does not affect the applicable statute of limitations.

23. No Personal Liability. Pursuant to Section 399.019 of the PACE Act, the Lender acknowledges that the members of the governing body and employees of the Local Government, and board members, executives, employees, and contractors of the Authorized Representative are not personally liable as a result of exercising any rights or responsibilities under the PACE Program or any agreement in furtherance of the PACE Program.

24. Construction Terms. If the PACE Lender Contract includes requirements related to the construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final Project completion.

LENDER:

By: _____

Name: _____

Title: _____

Address: _____

Email Address: _____

ACKNOWLEDGEMENT

STATE OF _____ §

COUNTY OF _____ §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was
acknowledged before me on _____, _____ by _____,
_____, on behalf of _____.

_____(print name)

NOTARY PUBLIC, STATE OF _____

LOCAL GOVERNMENT:

BRAZOS COUNTY, TEXAS

By: _____

AUTHORIZED REPRESENTATIVE
Pursuant to Tex. Local Gov't Code §399.006(b)

By: _____

Name: _____

Title: _____

Address: _____

Email Address: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

 This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was
acknowledged before me on _____, 20__ by _____ of
_____, as Authorized Representative for the Local Government.

_____, (print name)

NOTARY PUBLIC, STATE OF TEXAS

PACE LENDER CONTRACT EXHIBIT A

PACE OWNER CONTRACT

EXHIBIT 4
FORM NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO PROPERTY ASSESSED CLEAN ENERGY ACT

**FORM NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO
PROPERTY ASSESSED CLEAN ENERGY ACT**

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand. Unless otherwise expressly provided herein, all terms used herein have the same meanings ascribed to them in the PACE Act.

B. Brazos County, Texas (“**Local Government**”) has established a program under the PACE Act pursuant to a resolution dated October 18, 2016, adopted by the Commissioners Court (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, as the representative of Local Government (“**Authorized Representative**”) authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the boundaries of Brazos County, Texas jurisdiction as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. _____ (“**Property Owner**”) is the sole legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at _____, _____, Texas _____-_____ and more fully described in Exhibit A attached hereto and made a part hereof (the “**Property**”).

D. Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements described in Exhibit B attached hereto and made a part hereof, which are intended to decrease water or energy consumption or demand and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has entered into a written contract (the “**PACE Owner Contract**”) with Local Government pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment on the Property to repay the financing of such Qualified Improvements.

E. The financing of such Qualified Improvements shall be provided to Property Owner by _____ (“**Lender**”), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by the PACE Program and Section 399.006(c) of the PACE Act (the “**PACE Lender Contract**”). Lender shall be responsible for all servicing duties other than those specifically undertaken by Local Government in the PACE Lender Contract.

THEREFORE, Local Government hereby gives notice to the public pursuant to Section 399.013 of the PACE Act that it has imposed an assessment on the Property in the principal amount of \$ _____ (the “**Assessment**”). The Assessment includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. In the event that the actual total of costs and fees for which an assessment may be imposed is different from the amount stated or any other term requires correction, Authorized Representative on behalf of Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and thereafter Authorized Representative shall record an amended Notice of Contractual Assessment Lien.

The Assessment and contractual interest thereon due to the Lender (“**Contractual Interest**”) are due and payable in installments (“**Installments**”) in accordance with the terms and payment schedule included in the financing documents executed between Property Owner and Lender that are described in or copies of which are attached hereto as Exhibit C (the “**Financing Documents**”).

Pursuant to Section 399.014 of the PACE Act,

1. The Assessment, including any interest, costs, fees, attorney fees, and penalties accrued thereon,
 - (i) are a first and prior lien against the Property from the date on which this Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, until the Assessment, interest, and penalty is paid; and
 - (ii) such lien, if enforced by foreclosure or collected through bankruptcy or similar proceeding, has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act.
2. Pursuant to Section 399.014(b) of the PACE Act, the lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due shall not be eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. Accordingly, Installments may not be accelerated in the event of default. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner’s obligations under the Financing Documents shall be transferred to the succeeding owner without recourse to Local Government, or Authorized Representative.
3. As provided in Section 399.014(a-1) of the PACE Act, after this Notice of Contractual Assessment Lien is recorded in the real property records of Brazos County, the lien created

by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the Project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

EXECUTED on _____, _____

BRAZOS COUNTY, TEXAS

By: _____

Name: _____

Title: _____

Address: _____

Email Address: _____

COUNTY OF _____ §

(print name)

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PACE NOTICE OF LIEN EXHIBIT A

PROPERTY DESCRIPTION

PACE NOTICE OF LIEN EXHIBIT B
QUALIFIED IMPROVEMENTS

PACE NOTICE OF LIEN EXHIBIT C

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Frequency:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

Document Title	Parties	Date Executed

INDEXING INSTRUCTION:

Grantor: _____, Property Owner
Grantees: BRAZOS COUNTY, TEXAS, Local Government
_____, Lender

After recording, return to: _____

