

**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 \_\_\_\_\_, 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 \_\_\_\_\_, adopted by the \_\_\_\_\_ (“**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 \_\_\_\_\_, 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 the real property records of the county in which the Property is located (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 (“**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 has notified the holder(s) of any mortgage liens 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.

## **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, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and 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 due to Lender according to the Financing Documents (“**Contractual Interest**”), any prepayment penalty, and any penalties, interest, fees, attorney’s fees, and 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. Local

Government shall not release, sell, assign or transfer the Assessment or the lien securing it without the prior written consent of Lender. 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. 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. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing and (2) a recurring administration fee paid by Property Owner 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.

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) Property Owner and Authorized Representative 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 executes 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 provides a copy of such assumption to Property Owner and Authorized Representative not later than 10 days after execution of the agreement. 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 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 shall incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, pursuant to the statutes in effect at the time of default. Under the current statutes a delinquent Installment incurs a penalty of 6% of the principal amount of the Installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the Installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment shall also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the Installment remains unpaid. Subject to paragraph 17 below, penalties, interest, fees, and costs payable under this paragraph shall 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.

(b) The Assessment and any interest or 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 the county in which the Property is located, as provided by Section 399.013 of the PACE Act, until the Assessment, interest, or 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 shall not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent Installment 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 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 to 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 in the amount of 15% of the total principal amount of the delinquent Installment, 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) 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 shall 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. 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; and

(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. A

copy of the second notice of delinquency shall also be mailed to the holder of any mortgage lien on the property.

The holder of any mortgage lien on the Property shall have not less than a 30-day right to cure the delinquency by paying the amount of the delinquent Installment. If the Property Owner fails to cure the delinquency on or before the 30<sup>th</sup> 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, including delivering a notice of foreclosure to Freddie Mac not less than 30 days prior to the foreclosure if the mortgage lien is held by Freddie Mac, Authorized Representative shall certify the default to Local Government, which will 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 Assessment balance and any interest or penalties on the Assessment shall have the same priority status as a lien for any other ad valorem tax.

(e) Final Payment and Release. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, attorney fees, or 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 shall 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 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.

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. 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.

20. 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.

21. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender shall withhold \_\_\_\_\_% of the Financing until verification is provided to Authorized Representative by an Independent Third Party Reviewer (“ITPR”) that the Project was properly completed and is operating as intended, or Property Owner shall pay liquidated damages to Lender of \$\_\_\_\_\_ per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner on or before the 30<sup>th</sup> day after completion of the Project, such verification shall be submitted by Lender. If this PACE Lender Contract includes any additional requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D of the PACE Owner Contract attached hereto as Exhibit A 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.



**LOCAL GOVERNMENT:**

By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY  
dba TEXAS PACE AUTHORITY  
AUTHORIZED REPRESENTATIVE  
Pursuant to Tex. Local Gov't Code §399.006(b)

By: \_\_\_\_\_

Name: CHARLENE HEYDINGER

Title: PRESIDENT

Address: PO BOX 200368  
AUSTIN, TX 78720-0368

Email Address: admin@texaspaceauthority.org

**ACKNOWLEDGEMENT**

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on \_\_\_\_\_, 20\_\_ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation and as Authorized Representative for the Local Government.

\_\_\_\_\_  
\_\_\_\_\_  
(print name)

NOTARY PUBLIC, STATE OF TEXAS

**PACE LENDER CONTRACT EXHIBIT A**

**PACE OWNER CONTRACT**

SAMPLE