

REPORT REQUIRED BY TEX. LOCAL GOV'T CODE SEC. 399.009
FOR PROPOSED WILLACY COUNTY PACE PROGRAM

This report is adopted by the Commissioners Court for the proposed Willacy County Property Assessed Clean Energy Willacy PACE”) program (the “Program”), as required by Tex. Local Gov’t Code Sec. 399.009.

Willacy County and its constituents benefit when privately owned commercial and industrial property and large multi-family residential property, are retrofitted with equipment that reduces demand for power and water. To encourage private sector investment in water and energy conservation in Willacy County, the creation of a voluntary program that requires no use of taxpayer funds or risk to the local treasury is proposed.

The Property Assessed Clean Energy Program

Property Assessed Clean Energy (PACE) is an innovative financing program that enables owners of commercial and industrial properties¹ and residential properties with five or more units to obtain low-cost, long-term loans for water conservation, energy-efficiency improvements, and renewable retrofits.

Passed and signed into Texas state law during the 2013 legislative session, the PACE statute, SB 385, authorizes municipalities and counties in Texas to work with private sector lenders and property owners to finance qualified improvements using an economic development tool available to counties and municipalities – the contractual property assessment. In exchange for funds provided by a private lender to pay for the improvement, the property owner voluntarily requests that the local government place an assessment secured with a senior lien on the property until the assessment is paid in full. The assessment is owed to the local government, which forwards the payments to the private lender.

The term of a PACE assessment may extend up to the projected life of the improvement, resulting in utility cost savings that exceed the amount of the assessment payment. As a result, improvements financed through PACE generate positive cash flow upon completion with no up-front, out-of-pocket cost to the property owner.

PACE enables property owners to overcome market barriers, such as extended payback periods and lack of access to capital, that discourage investment in energy efficiency and water conservation improvements. PACE provides the property owner with upfront financing for 100% of the cost of a qualified improvement, and allows the property owner to amortize the debt over the useful life of the improvement.

If the property is sold before the full amount of the PACE loan is repaid, the repayment obligation automatically transfers to the next owner because the lien securing the PACE assessment follows title to the property. Successive property owners assume the lien and continue to reap the utility savings enabled by the improvement.

What are the Benefits of PACE?

The benefits of PACE are multi-faceted, leading to a win-win-win scenario for virtually all stakeholders. Improvements financed with PACE loans will enable commercial and industrial properties to achieve greater energy efficiency and help conserve the state’s water resources.

¹ Including agricultural property.

Among other things, these improvements will:

- Save substantial amounts in utility costs;
- Promote local job creation;
- Reduce demand on the energy grid;
- Support the state's water plan;
- Enhance the value and efficiency of existing buildings, enabling some buildings to become LEED certified;
- Reduce greenhouse gas emissions;
- Mitigate split incentive issues between landlords and tenants related to investments in energy efficiency and water conservation improvements; and
- Establish significant business opportunities for engineers, construction contractors, commercial lenders, and investors.

PACE does not impose a burden on the local government's general fund because the property owners that voluntarily use the program bear the cost of the program. In the aggregate, PACE improvements will promote long-term economic development in Texas by helping the state obtain energy and water security.

Who Can Participate in PACE?

PACE is a voluntary program. Any owner of commercial, industrial or residential property with five or more dwelling units that is located within Willacy County is eligible to participate in PACE financing.

What Types of Improvements Qualify for PACE Financing?

PACE financing may be used to pay for permanent improvements to the property that are intended to decrease water or energy consumption or demand.

Typical examples of qualified improvements include:

- HVAC upgrades;
- High efficiency chillers, boilers, and furnaces;
- High efficiency water heating systems;
- Energy management systems and controls;
- Renewable energy systems;
- Mechanical system modernization;
- High efficiency lighting upgrades;
- Building enclosure/envelope improvements;
- Water conservation systems;
- Combustion and burner upgrades;
- Fuel switching;
- Heat recovery and steam traps;
- Wastewater recovery and reuse systems;
- Systems to capture and use alternate, on-site sources of water (A/C condensate, rainwater, reverse osmosis reject water, foundation drain water, etc.);
- On-site improvements to accommodate the use of municipally reclaimed water;
- Water management systems and controls (indoor and outdoor);
- Switching from water cooled systems to air or geothermal cooled systems; and
- High efficiency irrigation equipment.

The Benefits of PACE to Property Owners

PACE loans enable property owners to overcome traditional barriers to making capital investments in property. Until investing to improve real property infrastructure makes sense as a value proposition, property owners will continue to delay maintenance, waste operating expenditures on utility bills, and risk exposure to utility price increases. Instead, PACE users capitalize money previously spent on utilities; the utility cost savings achieved by a retrofit pay for the improvement itself. Property owners end up with more valuable property and access to recurring utility savings, and pay only for the assessments that accrue while they own the property.

The Benefits of PACE to Willacy County

By creating new investment opportunities, PACE will stimulate employment growth and economic development in municipalities and counties (local governments) throughout Texas. Improvements financed through PACE will reduce energy and water consumption, thereby helping local communities achieve critical energy and water conservation goals. For communities facing potential non-attainment levels under the Clean Air Act, PACE provides a very real opportunity to dramatically reduce building energy consumption and the emissions associated with energy generation. PACE programs will also improve the quality of the community's commercial and industrial building stock. The benefits of PACE for municipalities and counties are magnified by the fact that PACE programs can be established with minimal financial and administrative assistance from local governments and once established can be self-sustaining.

The Benefits of PACE to Lenders

Simply put, PACE loans are attractive to lenders because they are very 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 insignificant compared to most other types of loans. PACE assessments provide lenders with an attractive new product to assist existing and new customers in addressing an almost universal pent-up demand for needed commercial and industrial property equipment modernization. In order 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.

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 in Texas.

COMPONENTS OF THE PROGRAM

1. Map of Region. A map of the boundaries of the proposed region to be included in the Program is attached to this report as Exhibit 1. The region encompasses the entire territorial jurisdiction of Willacy County.

2. Form Contract With Owner. A proposed form contract between Willacy County and the record owner of qualified real property, specifying the terms of the assessment under the Program and the financing to be provided by a qualified third-party lender of the property owner's choosing, is attached to this report as Exhibit 2.

3. Form Contract with Lender. A proposed form contract between Willacy County and a qualified third-party lender chosen by a property owner regarding providing the financing and servicing of the debt through assessments is attached to this report as Exhibit 3. Eligible third-party lenders may include:

- Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- Any insurance company authorized to conduct business in one or more states;
- Any registered investment company, registered business development company, or a Small Business Administration small business investment company;
- Any publicly traded entity; or
- Any 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;
 - Can provide independent certification as to availability of funds; and
 - Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

Any eligible lender can participate in the PACE program. Nothing in this section is intended to prohibit a property owner from identifying and selecting its own source of funding, whether or not from the eligible list, so long as the lender is a financially stable entity with the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

4. Qualified Projects. The following types of projects are qualified projects that may be subject to contractual assessments under the Program, as provided in the PACE Act, Tex. Local Gov't. Code Chapter 399:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial or industrial real property 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.

Improvements that are not permanently fixed to real property and can be easily removed are not eligible for financing through the Program.

5. Authorized County Official. The Willacy County official who will be authorized under the Program to enter into written contracts on behalf of Willacy County with property owners and lenders is the County Judge or his successor or designee.

6. Plans for Insuring Sufficient Capital. Sufficient capital for third-party financing of qualified projects will be provided by third party capital providers. Such financing will be repaid by collections from property owners through financing documents executed between the owners and the lenders, enabling those capital providers to fund additional qualified projects. The Program Administrator's website will offer a list of interested qualified capital providers to assist property owners interested in funding PACE projects. The lenders will ensure that property owners requesting to participate in the PACE program demonstrate the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

7. No Use of Bonds or Public Funds. Willacy County does not at this time intend to use bonds or other public funds to capitalize PACE projects. All financing will be provided to property owners by qualified lenders chosen by the property owners.

8. Application Process. The Program Administrator will accept written applications from property owners seeking to finance qualified projects to be repaid through contractual assessments under the 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 to be repaid through assessments. Based on this information, the Program Administrator may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the proposed project appears to meet Program requirements. Based on this preliminary letter, the property owner may engage an independent third party review of the project under the PACE Technical Standards Manual and submit the project to third party capital providers for approval of financing. Once these processes are completed, the property owner may submit all of the required information to the Program Administrator as part of the closing verification review, including (1) the report conducted by a qualified independent third party of water or energy baseline conditions and the projected water or energy savings 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 Program Administrator.

9. Eligibility Requirements. The Program Administrator will determine from the written application of a property owner and such other information as may be requested from the owner or obtained from other sources whether the owner and the property are eligible for the financing of qualified improvements under the Program. The Program Administrator will determine on the basis of the report of a qualified independent third party reviewer whether the proposed improvements are reasonably likely to decrease energy or water consumption or demand and whether the period of the requested assessment does not exceed the useful life of the project. The lender chosen by the owner will determine whether the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments. The statutory method for ensuring such a demonstration of financial ability must be based on appropriate underwriting factors, including verification that the person requesting to participate in the program is the legal record owner of the benefitted property, is current on mortgage and

property tax payments, and is not insolvent or in bankruptcy proceedings, that the title of the benefitted property is not in dispute, and that there is an appropriate ratio of the amount of the assessment to the assessed value of the property.

10. Mortgage Holder Notice and Consent. Before the Authorized County Official may enter into a written contract with the owner of real property to impose an assessment to repay the financing of a qualified project under the Program, the holder of any mortgage lien on the property must be given notice of the owner's intention to participate in the Program on or before the 30th day before the date the contract is executed and the written consent of the mortgage holder must be obtained by the owner.

11. Imposition of Assessment. Upon (a) notification to the Program Administrator of the written consent of any mortgage lien holder, (b) a determination by the Program Administrator that the owner and the property are eligible to participate in the 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 project, and (c) notification to the Program Administrator by the lender that the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments, the Authorized County Official will enter into a written contract with the owner on the form attached hereto as Exhibit 2, imposing a contractual assessment on the owner's property to repay the owner's financing of the qualified project. A Notice of Contractual Assessment Lien, in the form attached hereto as Exhibit 4, will be filed for recording in the Official Public Records of Willacy County 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.

12. Collection of Assessments. Upon the execution of the written contract between the Authorized County Official and the property owner and recording of the Notice of Contractual Assessment Lien, the owner will be authorized to 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; and the owner will be authorized to execute financing documents with the lender to repay the financing secured by the assessment. The financing will be advanced by the third-party lender to the owner, and the terms for repayment will be such terms as are agreed between the lender and the owner. Under the form lender contract attached hereto as Exhibit 3, the lender or a designated servicer will agree to service the debt secured by the assessment. The lender will retain the owner's payments to repay the debt and remit to the Program Administrator any administration 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 of the following conditions are met:

- (a) The assignment or transfer is made to a qualified lender, as defined above; and

(b) The property owner, Program Administrator, and Willacy County are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the schedule for repayment of the debt; and

(c) The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of lender's obligations under the lender contract.

13. Verification Review. After a qualified project is completed, the Program Administrator will require the property owner to provide verification by a qualified independent third party reviewer (ITPR) that the qualified project was properly completed and is operating as intended.

14. Marketing and Education Services. Marketing and participant education services for the Program will be provided under agreements that Willacy County may subsequently enter into with one or more other local governments or non-profit organizations that promote energy and water conservation or economic development.

15. Quality Assurance and Antifraud Measures. Quality assurance and antifraud measures will be instituted for the Program by the Program Administrator. The Program Administrator will review each PACE application for completeness and verify the 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 Program underwriting and technical standards requirements. The property owner or the owner's contractor will be required to provide copies of all required permits and releases of lien and a statement that the project was constructed in accordance with the PACE Program guidelines and has complied with all applicable local, state, and federal laws. Measures will be put in place to provide safeguards, including a review of the energy/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 include a site visit, report, and a letter from the ITPR certifying that he/she has no financial interest in the project and is an independent reviewer. After the construction of the project is complete, there will be a final site inspection by an ITPR who will determine whether the project was completed and is operating properly. The reviewer's certification will also include a statement that the reviewer/inspector is qualified and has no financial interest in the project.

16. Delinquency. Under the terms of the form lender contract attached hereto as Exhibit 3, if a property owner fails to pay an agreed installment to repay the financing secured by PACE assessments under the program, the lender will agree to take at least the following steps to collect the delinquent installment:

- (a) Mail a written notice of delinquency and demand for payment to the owner by both certified mail, return receipt requested, and first class mail and
- (b) Mail a second notice of delinquency to the 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.

If the owner fails to cure the delinquency under the promissory note or contract within 30 days after the mailing of the second notice of delinquency, the lender may notify the Authorized County Official of a default by the owner, and pursuant to Tex. Local Gov't Code Sec. 399.014(c), the Authorized County Official will enforce the assessment lien 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. Delinquent installments will incur penalties and interest in the same manner and at the same

rate as delinquent property taxes, according to Tex. Local Gov't Code Sec. 399.014(d), and such statutory penalties and interest will be due to Willacy County to offset the cost of collection. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Willacy County 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 Willacy County and Lender exceeds the usury limit, the interest payable to Willacy County will be reduced and any interest in excess of the usury limit will be credited to the amount payable to Willacy County or refunded. If a suit to enforce collection is filed, the Authorized County Official may also recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner and at the same rate as in suit to collect a delinquent property tax. If a delinquent installment of an assessment is collected after the filing of a suit, the Authorized County Official will remit to the lender the net amount of the delinquent installments and contractual interest collected and remit to the Project Administrator the amount of any administration fees collected and will retain any statutory penalties, interest, and attorney's fees collected.

EXHIBIT 1

[Map of the PACE region]

EXHIBIT 2

PACE OWNER CONTRACT

THIS PACE OWNER CONTRACT (“**Owner Contract**”) is made as of the ____ day of _____, 20__, by and between Willacy County, Texas (“**Local Government**”) and _____ (“**Property Owner**”).

RECITALS

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 local government official may enter into written contracts with the record owners of commercial, industrial, agricultural, 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.

Local Government has established a program under the PACE Act pursuant to Ordinance/Resolution No. _____, dated _____ 20__, adopted by the _____ (the “**PACE Program**”), and has designated _____ (“**Representative**”) as the representative authorized to enter into and enforce the Assessment, Owner Contract and Lender Contract described herein, and has designated the entire territory within _____ jurisdiction as a region (“**Region**”) within which the 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.

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**”).

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 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 in the Official Public Records of _____ 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.

The financing of such Qualified Improvements 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 and by the PACE Program (the “**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 foreclose the lien securing the Assessment for the benefit of Lender upon notice from Lender of a default by Property Owner.

As required by Section 399.010 of the PACE Act, Property Owner notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of this 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 prior to the date of this Owner Contract and is attached hereto as Exhibit B and made a part hereof.

AGREEMENT

The parties agree as follows:

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 Lender Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment as set forth in the Notice of Contractual Assessment Lien, including all interest, fees, penalties, costs, and other sums 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 on Exhibit C attached hereto and made a part hereof by reference. Property Owner promises and agrees to 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 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.

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 the Assessment upon notice from Lender of such payment. Local Government agrees to enforce the Assessment against the Property for the benefit of Lender in the event of a default by Property Owner.

Installments. The Assessment, including the amount financed and contractual interest, is due and payable in installments as set forth in the Notice of Contractual Assessment Lien. 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 has been paid in full, Local Government's rights under this Owner Contract will cease and terminate, and upon notice from Lender, Local Government will execute and record a release of the Assessment and this Owner Contract.

Assignment of Right to Receive Installments. Lender will have the right to assign or transfer the right to receive the installments of the financing secured by the Assessment, provided all of the following conditions are met:

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

Property Owner and 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 30 days before the next installment is due according to the payment schedule included in the Notice of Contractual Assessment Lien; and

The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Lender's obligations under Lender Contract.

Upon written notice to Property Owner and 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 Lender Contract accruing after the date of the assignment assumed by and transferred to such assignee or transferee. Any attempt to assign or transfer the right to receive the installments that does not meet all of these conditions is void.

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

Delinquent installments of the Assessment will incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment incurs a penalty of 6% of the 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 amount of the delinquent installment without regard to the number of months it has been delinquent. A delinquent installment will also accrue interest at the rate of 1% for each month or portion of a month that the installment remains unpaid. [* Subject to the limitation set out in paragraph 13 below, penalties and interest payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. *]

The Assessment, together with any penalties and interest thereon,

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 _____ County, as provided by Section 399.014 of the PACE Act, until the financing secured by the Assessment and any penalties and interest are paid; and

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.

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

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 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.

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 in the amount of 15% of the total 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.

Written Contract Required by PACE Act. This 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 _____ County as notice of the contractual Assessment, in accordance with the requirements of Section 399.013 of the PACE Act.

Qualified Improvements. Property Owner agrees that all improvements purchased, constructed and/or installed through financing obtained pursuant to this Owner Contract shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of and sale or assignment of the Property.

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 Representative the water or energy savings realized through the Project in accordance with the reporting requirements established by the Local Government.

Construction and Definitions. This 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: (1) the PACE Program, and/or (2) the PACE Act.

Binding Effect. This Owner Contract inures to the benefit of Local Government and is binding upon Property Owner, its heirs, successors, and assigns.

Notices. All notices and other communications required or permitted by this Owner Contract shall be in writing and mailed by certified mail, return receipt requested, 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.

Governing Law. This Owner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas.

Entire Agreement. This Owner Contract 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.

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 Owner Contract as may be reasonably necessary or required.

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

Counterparts. This Owner Contract may be executed in any number of counterparts, 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.

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 Lender 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 Owner Contract.

Indemnification. TO THE MAXIMUM EXTENT ALLOWED BY LAW, PROPERTY OWNER SHALL INDEMNIFY AND HOLD LOCAL GOVERNMENT, REPRESENTATIVE, AND EITHER OF THEIR AFFILIATES, 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.

Special Provisions. *(To be added as necessary)*

EXECUTED effective as of _____, 20__.

PROPERTY OWNER:

LOCAL GOVERNMENT:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

EXHIBIT A

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

EXHIBIT B

MORTGAGE HOLDER(S) CONSENT

EXHIBIT 3

PACE LENDER CONTRACT

THIS PACE LENDER CONTRACT (the “**Lender Contract**”) is made as of the ____ day of _____, 20__, by and between Willacy County, Texas (“**Local Government**”) and _____ (“**Lender**”).

RECITALS

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 local government official may enter into written contracts with the record owners of commercial, industrial, agricultural, 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.

Local Government has established a program under the PACE Act pursuant to Ordinance/Resolution No. _____, dated _____ 20__, adopted by the _____ (the “**PACE Program**”), and has designated _____ (“**Representative**”) as the representative authorized to enter into and enforce the Assessment, Owner Contract and Lender Contract described herein, and has designated the entire territory within _____ jurisdiction as a region (“**Region**”) within which the 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.

Pursuant to Application number _____, _____ (“**Property Owner**”) has applied to Local Government to participate in the PACE Program with respect to certain real property located at _____, _____, Texas (the “**Property**”) 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 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 “**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 in the Official Public Records of _____ County, Texas (the “**Notice of Contractual Assessment Lien**”), a copy of which is attached to the Owner Contract as Exhibit

A, 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.

Financing for the Project (the “**Financing**”) will be provided to Property Owner by Lender in accordance with financing documents described in, or copies of which are included as, Exhibit B attached hereto and made a part hereof (the “**Financing Documents**”). Such Financing includes only those costs and fees for which an assessment may be imposed under the PACE Act. This 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.

As required by Section 399.010 of the PACE Act, Property Owner notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of the 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 prior to the date of the Owner Contract, as shown by the copy of such consent attached as Exhibit B to the Owner Contract.

AGREEMENT

The parties agree as follows:

Maintenance and Enforcement of Assessment. Lender agrees to provide the Financing for the Project in the total amount of \$ _____, according to the terms set out in the Financing Documents attached hereto as Exhibit B. In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this Lender Contract, Local Government agrees to maintain and continue the Assessment for the benefit of Lender until the Financing, all contractual interest according to the Financing Documents, and any statutory penalties, interest, attorney’s fees, or costs accrued in the event of default are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government agrees to enforce the assessment lien against the Property for the benefit of Lender in the event of a default by Property Owner and following written notice to Local Government from Lender. Local Government shall have no liability to Lender should there be a default or an event of default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

Installments. The Assessment, including the amount financed and contractual interest, is due and payable to Lender in installments as set forth in the Financing Documents and [*Notice of Contractual Assessment Lien*]. 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 has been paid in full, Local Government’s rights under the Owner Contract will cease and terminate, and upon notice from Lender, Local Government will execute and record a release of the Assessment and the Owner Contract.

Assignment of Right to Receive Installments. Lender will have the right to assign or transfer the right to receive the installments of the Assessment, provided all of the following conditions are met:

The assignment or transfer is made to a qualified lender, which may be one of the following: [*REFER TO APPLICABLE PACE PROGRAM FOR QUALIFIED LENDERS. BELOW IS AN EXAMPLE.]

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

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

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

Any publicly traded entity; or

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.

Property Owner and 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 30 days before the next installment is due according to the payment schedule included in the Financing Documents; and

The assignee or transferee of the right to receive the installments executes an explicit written assumption of all of Lender's obligations under this Lender Contract.

Upon written notice to Property Owner and 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 this Lender Contract accruing after the date of the assignment. Any attempt to assign or transfer the right to receive the installments of the Assessment that does not meet all of these conditions is void.

Financing Responsibility. Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set

forth in the Financing Documents and performing Lender's obligations and responsibilities thereunder.

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

Delinquent installments of the Assessment incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment incurs a penalty of 6% of the 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 amount of the delinquent installment without regard to the number of months it has been delinquent. A delinquent installment also accrues interest at the rate of 1% for each month or portion of a month the installment remains unpaid. [*Subject to the limitation set out in paragraph 10 below, penalties and interest payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment.]

The Assessment, together with any penalties and interest thereon,

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 _____ County, as provided by Section 399.014 of the PACE Act, until the Assessment and any penalties and interest are paid; and

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.

The lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due is not eliminated by foreclosure of a property tax lien, according to Section 399.014(b) of the PACE Act. 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.

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 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.

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 in the amount of 15% of the total 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.

Servicing and Enforcement of Assessment.

Servicing. The Assessment payments will be billed, collected, received, and disbursed in accordance with the procedures set out in the Financing Documents. Lender will be responsible for all servicing duties other than those specifically undertaken by Local Government in this Lender Contract.

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

Default and Enforcement. In the event of a default in payment of any installment of the Assessment as specified in the Financing Documents, Lender agrees to take at least the following steps to collect the delinquent installment:

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

Mail a second notice of delinquency 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.

If the Property Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, the Lender or its designated servicer may notify Local Government in writing of a default by the Property Owner, and upon receipt of such notice, Local Government agrees that _____ will enforce the assessment lien for the benefit of Lender pursuant to Tex. Local Gov't Code Sec. 399.014(c), 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.

Final Payment and Release. When the Assessment has been satisfied and paid in full, together with all interest provided under the Financing Documents and all costs, fees, penalties, and interest applicable under the PACE Act and payable to Lender or Local Government, Local Government's rights under the Owner Contract will cease and terminate, and upon notice of such payment from Lender, Local Government will execute and record a release of the Assessment and the Owner Contract.

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

Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this Lender Contract, and no implied duties on the part of Local Government are to be read into this Lender Contract. Local Government will 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 will have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting.

Costs. No provisions 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.

Lender's Warranties and Representations. With respect to this Lender Contract, Lender hereby warrants and represents that on the date on which Lender executes this Lender Contract:

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 Lender Contract and the Financing Documents;

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 Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents;

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

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

Construction and Definitions. This 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: (1) the Notice of Contractual Assessment Lien, (2) the Owner Contract, (3) the PACE Program, and/or (4) the PACE Act.

Binding Effect. This Lender Contract is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

Notices. All notices and other communications required or permitted hereunder shall be in writing and mailed by certified mail, return receipt requested, 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.

Governing Law. This Owner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas.

Entire Agreement. This Lender Contract constitutes the entire agreement between the parties 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.

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

Counterparts. This Lender Contract may be executed in any number of counterparts, 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.

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 Lender exceeds the usury limit, 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 Lender Contract.

Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the date of this 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.

Special Provisions. *(to be added as necessary)*

EXECUTED effective as of _____, 20__.

LENDER:

LOCAL GOVERNMENT:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

EXHIBIT A

OWNER CONTRACT

EXHIBIT B
FINANCING DOCUMENTS

Appendix A: PACE Statute Detailing Report Requirements.

Sec. 399.009. REPORT REGARDING ASSESSMENT.

(a) The report for a proposed program required by Section 399.008 must include:

- (1) A map showing the boundaries of the proposed region;
- (2) A form contract between the local government and the property owner specifying the terms of:

(A) Assessment under the program; and

(B) Financing provided by a third party or the local government, as appropriate;

- (3) If the proposed program provides for third-party financing, a form contract between the local government and the third party regarding the servicing of the debt through assessments;

(4) A description of types of qualified projects that may be subject to contractual assessments;

(5) A statement identifying a local government official authorized to enter into written contracts on behalf of the local government;

(6) A plan for ensuring sufficient capital for third-party financing and, if appropriate, raising capital for local government financing for qualified projects;

(7) If bonds will be issued to provide capital to finance qualified projects as part of the program as provided by Section 399.016:

(A) A maximum aggregate annual dollar amount for financing through contractual assessments to be provided by the local government under the program;

(B) a method for ranking requests from property owners for financing through contractual assessments in priority order if requests appear likely to exceed the authorization amount; and

(C) A method for determining:

(i) The interest rate and period during which contracting owners would pay an assessment; and

(ii) The maximum amount of an assessment;

(8) A method for ensuring that the period of the contractual assessment does not exceed the useful life of the qualified project that is the basis for the assessment;

(9) A description of the application process and eligibility requirements for financing qualified projects to be repaid through contractual assessments under the program;

(10) A method as prescribed by Subsection (b) for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations to be repaid through contractual assessments;

(11) A statement explaining the manner in which property will be assessed and assessments will be collected;

(12) A statement explaining the lender notice requirement provided by Section 399.010;

(13) A statement explaining the review requirement provided by Section 399.011;

(14) A description of marketing and participant education services to be provided for the program;

(15) A description of quality assurance and antifraud measures to be instituted for the program; and

(16) The procedures for collecting the proposed contractual assessments.

(b) The method for ensuring a demonstration of financial ability under Subsection (a)(10) must be based on appropriate underwriting factors, including:

(1) Providing for verification that:

(A) The property owner requesting to participate under the program:

- (i) am the legal owner of the benefited property;
 - (ii) is current on mortgage and property tax payments; and
 - (iii) is not insolvent or in bankruptcy proceedings; and
- (B) The title of the benefited property is not in dispute; and
- (2) Requiring an appropriate ratio of the amount of the assessment to the assessed value of the property.

- (c) The local government shall make the report available for public inspection:
- (1) On the local government's Internet website; and
 - (2) At the office of the official designated to enter into written contracts on behalf of the local government under the program.