

Public Meeting Notice

What: Public Hearing to review changes to Houston PACE Program Documents

When: Thursday, February 9, 2017; 4:00 PM

Where: Administration & Regulatory Affairs Department
Oak Conference Room – 13th Floor
611 Walker Street
Houston, TX 77002

The proposed document changes as well as information on the Houston PACE Program area available at www.greenhoustontx.gov/pace.

For more information, contact:

Charlene Heydinger, President,
Houston PACE Administrator
Texas PACE Authority
512-469-6184
Charlene.Heydinger@KeepPACE.org

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City of Houston
Administration & Regulatory Affairs Department
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City of Houston, Texas Ordinance No. _____

AN ORDINANCE AMENDING A PROGRAM UNDER THE TEXAS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) ACT OF 2013; AMENDING ORDINANCE NO. 2015-1040 TO AUTHORIZE THE DIRECTOR OF ADMINISTRATION AND REGULATORY AFFAIRS TO MAKE FUTURE AMENDMENTS; AND DECLARING AN EMERGENCY.

* * * *

WHEREAS, the City Council adopted Ordinance No. 2015-1040 establishing a Houston Property Assessed Clean Energy (“Houston PACE”) program on November 4, 2015, in accordance with Section 399.008(a)(3) of the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the “PACE Act”);

WHEREAS, the Final Report and its exhibits containing model contracts and notices were approved by City Council and incorporated into Ordinance No. 2015-1040;

WHEREAS, the Director of Administration and Regulatory Affairs Department (“Director”) now finds the need to amend the model contracts and notices, and anticipates the future need to make additional changes as circumstances require; and

WHEREAS, the Director held a public hearing on _____, February ____, 2017, at _____ p.m., at 611 Walker Street, 13th Floor, Houston, Texas 77002, at which the public could and did comment on the proposed amended model contracts and notices available for inspection.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby approves and adopts the revised model contracts and notices, which are attached hereto and incorporated herein by this reference, as exhibits to the Final Report on Houston PACE prepared in accordance with Tex. Local Gov’t Code Sec. 399.009 and amended in accordance with Tex. Local Gov’t Code Sec. 399.008. The Director shall make the amended Final Report available to the public on the City’s website.

Section 2. Section 9 of **Ordinance No. 2015-1040** is amended to read as follows:

The Director may amend any aspect of the model contracts and notices in consultation with the City Attorney’s Office so long as the changes are consistent with the ordinance and statute. The Director may amend any aspect of the Houston PACE program, including the model contracts and notices, after holding a public hearing, unless the change requires the expenditure of funds, in which case the City Council must approve the change and appropriate the funds.

Section 3. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage

and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this ____ day of _____, 20____.

APPROVED this ____ day of _____, 20____.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

(Prepared by Legal Dept. _____)
(JPC/jpc 01/27/2017) Senior Assistant City Attorney
(Requested by Tina Paez, Director, Administration and Regulatory Affairs Department)
(L.D. File No.: 037160019001)

pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment on the Property to repay the financing of such Qualified Improvements.

E. The financing of such Qualified Improvements will be provided to Property Owner by [REDACTED] (“**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**”). Lender will be responsible for all servicing duties other than those specifically undertaken by Local Government in the Lender Contract.

THEREFORE, Local Government hereby gives notice to the public pursuant to Section 399.013 of the PACE Act that it has imposed an assessment on the Property in the amount of \$ [REDACTED], as set forth on Exhibit C attached hereto, which together with 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**”) is herein referred to as the “**Assessment**”.

Pursuant to Section 399.014 of the PACE Act,

1. The Assessment, including interest and any penalties, costs, or fees accrued thereon,
 - (i) is a first and prior lien on the Property from the date that this Notice of Contractual Assessment Lien is recorded in the Official Public Records of [REDACTED] County, Texas, until such Assessment, interest, penalties, costs, and fees are paid in full; and
 - (ii) 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.
2. 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. Additionally, in the event of a sale or transfer of the Property by Property Owner (excluding a transfer as part of a foreclosure sale for a past due portion of the Assessment), the obligations under the Financing Documents, including, without limitation, any unpaid installments of the Assessment then due and owing and the portion of the Assessment that has not yet become due, will be transferred to the succeeding owner without recourse on Local Government or Authorized City Representative.
3. After this Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located as provided under Section 399.013 of the PACE Act, 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 and the PACE Program.

EXECUTED on _____, _____.

LOCAL GOVERNMENT:
CITY OF HOUSTON, TEXAS

By: _____

Name: _____

Title: _____

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

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This Notice of Contractual Assessment Lien pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, _____ by _____, _____ on behalf of _____, Texas.

(print name)

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT B

QUALIFIED IMPROVEMENTS

PACE LENDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) LENDER CONTRACT (the “**Lender Contract**”) is made as of the [REDACTED] day of [REDACTED], [REDACTED], by and between the City of Houston, Texas (“**Local Government**”) a home-rule municipality, and [REDACTED] (“**Lender**”).

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 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.

B. Local Government has established a program under the PACE Act pursuant to Ordinance No. 2015-1040 dated November 4, 2015, adopted by the Houston City Council (the “**PACE Program**”), and has designated the Texas Property Assessed Clean Energy Authority (“**Authorized City Representative**”) as the representative authorized to enter into the Assessment, Owner Contract and Lender Contract described herein, and has designated the entire territory within the City of Houston city-limits and its extra-territorial jurisdiction as a region (“**Region**”) within which the **Authorized City 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 Application number [REDACTED], [REDACTED] (“**Property Owner**”) has applied to Local Government to participate in the PACE Program with respect to certain real property located at [REDACTED], [REDACTED], 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**”).

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 “**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 [REDACTED] 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.

E. 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.

F. 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 lien holder to the Assessment was obtained prior to the date of the Owner Contract, as shown by the copy of such consent(s) attached as Exhibit B to the Owner Contract.

AGREEMENT

The parties agree as follows:

1. Maintenance and Enforcement of Assessment. Lender agrees to provide the Financing for the Project in the total amount of \$ [REDACTED], 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, any prepayment premium, additional penalties and interest imposed by the Lender under the Financing Documents 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. Local Government will not release the Assessment until which time Lender notifies Local Government that all amounts owing have been paid in full. Local Government shall not sell, assign or transfer the Assessment or the assessment lien against the Property to any third party without the prior written consent of the Lender. 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 in accordance with the provisions set forth in Section 6. Local Government shall have no obligation to repurchase the assessment and 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.

2. Installments. The Assessment, including the amount financed and contractual interest, is due and payable to Lender in installments as set forth in the Notice of Contractual Assessment Lien and Financing Documents. The Assessment shall include: (1) an application fee

paid by Property Owner to Authorized City Representative at loan closing, and (2) a recurring administration fee paid by Property Owner, collected by the Lender, and remitted to the Authorized City Representative within thirty (30) days of receipt by Lender. The amounts due to the Authorized City Representative are identified in Exhibit B hereto. As required by Section 399.009(a)(8) of the PACE Act, the period during which such installments are payable does not exceed the useful life of the Project. When the Assessment together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government's and the Lender's rights under this Lender Contract will cease and terminate, except for rights under Sections 17, 18, and 19. Upon notice from Lender that all amounts owing have been paid in full, Local Government will execute a release of the Assessment. Thereafter, the Authorized City Representative will record the release. Interest and penalties in the event of default are explicitly authorized by Section 399.014(d) of the PACE Act.

3. 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:

(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

(b) Property Owner and Authorized City 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

(c) 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 Authorized City 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 and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the installments of the Assessment that does not meet all of these conditions is void.

4. 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.

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

(a) 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. Statutory penalties and statutory interest payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be assessed by Lender and retained by Lender.

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

(1) is a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the Official Public Records of [REDACTED] County, as provided by Section 399.014 of the PACE Act, until the Assessment and any penalties and interest are 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) 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 without recourse on Local Government or the Authorized City Representative. Furthermore, recourse on selling or transferring Property Owner shall only be for any unpaid installments of the Assessment that became due during Property Owner's period of ownership. The new Property Owner takes the property subject to the lien, the Assessment and this Owner Contract and may not vary any of their terms.

(d) In the event of a default by Property Owner in payment of the installments called for by the Financing Documents, the lien created by the Assessment will be enforced by Local Government in the same manner according to Texas Tax Code Secs. 33.41 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 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. 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) After written notice of the Assessment is recorded in the real property records of the county in which the Property is located as provided under Section 399.013 of the PACE Act, 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 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.

Notices (Optional – only applies if checked). Local Government agrees to send an annual notice of assessment to the Property Owner with a utility bill each year there is an Assessment balance. This notification may be listed with other charges, or appear alone as a separate insert.

(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 Lender Contract.

(c) 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:

(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 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 the Authorized City Representative who will certify to the Local Government in writing of a default by the Property Owner, and upon receipt of such certification and after doing its own due diligence, Local Government 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.

(d) Final Payment and Release. When the Assessment has been satisfied and paid in full, together with all interest and prepayment premiums, if any, 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. Upon notice from Lender that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and the Owner Contract. Thereafter, the Authorized City Representative will record the Release.

(e) 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.

(f) 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.

(g) Costs. In order to comply with Article II, Section 19 and 19a of the City of Houston's Charter and Article XI, Section 5 of the Texas Constitution, 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.

7. 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:

(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 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 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 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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.

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

15. Counterparts. This Lender Contract may be executed in any number of counterparts, each counterpart may be delivered originally 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.

16. 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.

17. 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.

18. Release. LENDER AGREES TO AND SHALL RELEASE THE LOCAL GOVERNMENT, ITS AUTHORIZED CITY REPRESENTATIVE, AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS CONTRACT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY’S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

19. 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 any third-party who enters into a contract with the Local Government to provide administrative services for the PACE Program 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.

20. Inspection and Audits. To the extent allowed by laws applicable to Lender, City representatives may perform, or have performed, audits and inspections of Lender’s books and records related to compliance with this Lender Contract. Lender shall keep its books and records

available for this purpose for at least three (3) years after this Lender Contract terminates. This provision does not affect the applicable statute of limitations.

21. No Tax Debt. Lender agrees to comply with the No Debt Ordinance in Sections 15-121 et seq. of the Houston City Code of Ordinances. It is expressly understood for the purposes of this Lender Contract that the term “Debt”, as defined in Section 15-122, does not include any debt acquired through the process of foreclosure but is limited to property (1) owned by or registered to the Lender on the certified Harris County tax roll and (2) is used for transacting business of the Lender, its lessees, representatives or agents.

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

EXECUTED effective as of _____, 20__.

LENDER:



By: _____

Name: _____

Title: _____

Address: _____

LOCAL GOVERNMENT:

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

Name: _____

Title: _____

Address: _____

EXHIBIT 3

EXHIBIT A

OWNER CONTRACT

EXHIBIT C

CONSTRUCTION TERMS

[if applicable]

Date	Draw down Amount	Purpose

LENDER CONSENT TO PACE ASSESSMENT

Property Owner: _____
Mailing address: _____
Local Government: City of Houston, Texas
Mailing Address: _____
Lender: _____
Mailing Address: _____
Property: The Real Property located in _____ County, Texas, as more fully described in Exhibit A
Street Address of Property: _____
Maximum Amount of Assessment Authorized: _____

RECITALS

Lender has made one or more loans to Property Owner secured by that Deed of Trust or Security Agreement (the “**Deed of Trust**”) dated _____ recorded in Volume ____, Page ____, under Instrument No. _____ of the Real Property Records of _____ County, Texas, securing the indebtedness described therein. The Deed of Trust, the notes creating the debts secured by the Deed of Trust, and all other loan agreements and other documents relating to the debt and Deed of Trust are referred to as the “**Loan Documents**.”

Property Owner desires to enter into an agreement (the “**PACE Agreement**”) with the Local Government to impose an assessment (the “**Assessment**”) to repay the financing of a qualified project under Texas Local Government Code Chapter 399 (the “**PACE Act**”). The terms of the Assessment are set out in the PACE Agreement between the Local Government and Property Owner and are summarized in Exhibit B attached hereto and made a part hereof by reference. The Assessment will constitute a lien against the Property with the same priority status of any other ad valorem tax.

Texas Local Government Code Chapter 399 requires that the Lender: (i) be given notice of the Property Owner’s intention to participate in a program under the PACE Act on or before the 30th day before the date the PACE Assessment is executed, and (ii) provide written consent to the Assessment prior to the Property Owner and Local Government executing the PACE Agreement.

AGREEMENT

1. Lender hereby consents to the Assessment and the PACE Agreement and agrees that Property Owner shall not be in default under the Loan Documents because it enters into the PACE Agreement or the financing documents referenced therein, or because the Property is subject to the Assessment imposed against the Property pursuant to the PACE Agreement.
2. Lender hereby also agrees that, pursuant to Texas Local Government Code Section 399.014, the Assessment will constitute a lien against the Property from and after the date on which the notice of contractual assessment is recorded and that such lien will have the same priority status as a lien for any ad valorem tax. In no circumstances will the amount owing on the Assessment be accelerated on account of a payment default or for any other reason. Any proceeding to enforce the lien shall be limited to collection of the amount then currently due with respect to the Assessment, together with past-due interest, past-due fees and costs of collection as permitted under the PACE Act and Texas Tax Code, as they are amended from time-to-time.
3. Property Owner and Lender agree that the amount of the Assessment shall not exceed the Maximum Amount of Assessment Authorized, as specified above, without the consent of Lender.

EXECUTED effective as of _____, 20_____.

PROPERTY OWNER:

By: _____

Name: _____

Title: _____

STATE OF TEXAS
COUNTY OF _____

IF PERSON: Before me on this day personally appeared _____ (Property Owner), proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he / she executed the same for the purposes and consideration therein expressed. Given under my hand and seal of office this ____ day of _____, _____.

IF CORPORATION: This instrument was acknowledged before me on this ____ day of _____, _____ by _____ (Officer), _____ (Title) of _____ (Property Owner) a _____ (state of incorporation) entity, on behalf of said entity.

[SEAL]

Notary Public, State of Texas

LENDER:

By: _____

Name: _____

Title: _____

STATE OF TEXAS

COUNTY OF _____

This instrument was acknowledged before me on this _____ day of _____, _____
by _____ (Officer), _____ (Title) of
_____ (Lender) a _____ (state of incorporation) entity, on
behalf of said entity.

[SEAL]

Notary Public, State of Texas

PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) OWNER CONTRACT (“**Owner Contract**”) is made as of the [REDACTED] day of [REDACTED], [REDACTED], by and between the City of Houston, Texas (“**Local Government**”), a home-rule municipality, and [REDACTED] (“**Property Owner**”).

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 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.

B. Local Government has established a program under the PACE Act pursuant to Ordinance No. 2015-1040 dated November 4, 2015, adopted by the Houston City Council (the “**PACE Program**”), and has designated the Texas Property Assessed Clean Energy Authority (“**Authorized City Representative**”) as the representative authorized to enter into the Assessment, Owner Contract and Lender Contract described herein, and has designated the entire territory within the City of Houston city-limits and its extra-territorial jurisdiction as a region (“**Region**”) within which the **Authorized City Representative** and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Property Owner is the legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at [REDACTED], [REDACTED], Texas (the “**Property**”).

D. Pursuant to Application number [REDACTED], 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 Official Public Records of [REDACTED], County, Texas (the “**Notice of Contractual Assessment Lien**”), a copy of which is attached hereto as Exhibit A and made a part hereof, to repay the financing of such Qualified Improvements. The Property, Qualified Improvements and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. The financing of such Qualified Improvements will be provided to Property Owner by [REDACTED] (“**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.

F. 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:

1. Imposition of Assessment. In consideration for the financing advanced or to be advanced to Property Owner by Lender for the Project under the PACE Program pursuant to the Lender Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment in the amount of \$ [REDACTED], 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.

2. Maintenance and Enforcement of Assessment. In consideration for Lender’s agreement to advance financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Lender until the Assessment, including all interest, fees, penalties, costs, and other sums due under and/or authorized by the PACE Act, PACE Program and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government agrees to undertake reasonable efforts to enforce the Assessment

against the Property for the benefit of Lender in the event of a default by Property Owner. Interest and penalties in the event of default are explicitly authorized by Section 399.014(d) of the PACE Act.

- Notices (Optional – only applies if checked). Local Government agrees to send an annual notice of assessment to the Property Owner with a utility bill each year there is an Assessment balance. This notification may be listed with other charges, or appear alone as a separate insert.

3. 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 and the Financing Documents. The Assessment shall include: (1) an application fee paid by Property Owner to Authorized City Representative at loan closing, and (2) a recurring administration fee paid by Property Owner, collected by the Lender, and remitted to the **Authorized City Representative** within thirty (30) days of receipt by Lender. The amounts due to the Authorized City Representative are identified in Exhibit C hereto. As required by Section 399.009(a) (8) of the PACE Act, the period during which such installments are payable does not exceed the useful life of the Project. When the Assessment together with any prepayment premium, and default penalties and interest, if any, has been paid in full, Local Government's and the Owner's rights under this Owner Contract will cease and terminate, except for rights under Sections 17, 18, 19, 20 and 21. Upon notice from Lender that all amounts owing have been paid in full, Local Government will execute a release of the Assessment. Thereafter, the Authorized City Representative will record the release.

4. 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:

- (a) The assignment or transfer is made to a qualified lender as defined in the Lender Contract;
- (b) Property Owner and **Authorized City 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 Financing Documents; and
- (c) The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Lender's obligations under Lender Contract.

Upon written notice to Property Owner and **Authorized City 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 and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the installments that does not meet all of these conditions is void.

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

(a) Delinquent installments of the Assessment will incur 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. Statutory penalties and statutory interest payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be assessed by Lender and retained by Lender.

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

(1) is a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the Official Public Records of [REDACTED] 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

(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) 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 without recourse on Local Government. Furthermore, recourse on the selling or transferring Property Owner shall only be for any unpaid installments of the Assessment that became due during Property Owner's period of ownership. The new Property Owner takes the property subject to the lien, the Assessment and this Owner Contract and may not vary any of their terms.

(d) In the event of a default by Property Owner in payment of the installments called for by the Financing Documents, the lien created by the Assessment will be enforced by Local Government in the same manner according to Texas Tax Code Secs. 33.41 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 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. 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) After written notice of the Assessment is recorded in the real property records of the county in which the Property is located as provided under Section 399.013 of the PACE Act, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

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

7. Qualified Improvements. Property Owner agrees that all improvements purchased, constructed and/or installed through 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. Property Owner further agrees that all improvements shall comply with local construction and fire codes, and provide copies of all permits associated with or required by the improvements to the Authorized City Representative within 30 days of receipt.

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

9. 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.

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

11. 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.

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

13. 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.

14. 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.

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

16. 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.

17. Counterparts. This Owner Contract may be executed in any number of counterparts, each counterpart may be delivered originally 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.

18. Costs. In order to comply with Article II, Section 19 and 19a of the City of Houston’s Charter and Article XI, Section 5 of the Texas Constitution, no provisions of this Owner Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

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

20. Indemnification. TO THE MAXIMUM EXTENT ALLOWED BY LAW, PROPERTY OWNER SHALL INDEMNIFY AND HOLD LOCAL GOVERNMENT, AUTHORIZED CITY REPRESENTATIVE, AND THEIR RESPECTIVE AFFILIATES,

EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (EACH SUCH PERSON HEREIN REFERRED TO AS AN "INDEMNITEE") ABSOLUTELY HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES INCURRED BY OR IMPOSED UPON OR ALLEGED TO BE DUE OF INDEMNITEE IN CONNECTION WITH THE EXECUTION OR DELIVERY OF THIS CONTRACT, THE NOTICE OF CONTRACTUAL ASSESSMENT LIEN, THE FINANCING DOCUMENTS, AND ANY OTHER DOCUMENT OR ANY OTHER AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER, THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR, IN THE CASE OF ANY INDEMNITEE, THE ADMINISTRATION OF THIS CONTRACT AND ANY OTHER AGREEMENTS RELATED TO THE PROJECT.

21. No Personal Liability. Pursuant to Section 399.019 of the PACE Act, the Property Owner acknowledges that the members of the governing body and employees of the Local Government, and board members, executives, employees, and contractors of any third-party who enters into a contract with the Local Government to provide administrative services for the PACE Program 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.

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

23. No Tax Debt. THE PROPERTY OWNER AGREES TO COMPLY WITH THE NO DEBT ORDINANCE IN SECTIONS 15-121 ET SEQ. OF THE HOUSTON CITY CODE OF ORDINANCES DURING THE TERM OF THIS OWNER CONTRACT.

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

EXECUTED effective as of _____, 20__.

PROPERTY OWNER:



By: _____

Name: _____

Title: _____

Address: _____

LOCAL GOVERNMENT:

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

Name: _____

Title: _____

Address: _____

EXHIBIT A

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

EXHIBIT B

MORTGAGE HOLDER(S) CONSENT

EXHIBIT D

CONSTRUCTION TERMS

[if applicable]

Date	Draw down Amount	Purpose