

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

**FOR PROPOSED WHEELER COUNTY**

**PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM**

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

The Local Government and its constituents benefit when older existing buildings are modified with new technology and equipment that increases energy efficiency and reduces water consumption. As described in this Report, the Local Government is establishing the commercial PACE Program to encourage private sector investment in energy efficiency and water conservation. The PACE Program will be offered to property owners on a strictly voluntary basis and will not require the use of any public funds or resources.

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

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

PACE assessments are tied to the property and follow title from one owner to the next. Each owner is responsible only for payment of the assessments accruing during its period of ownership. When the property is sold, the buyer and seller can decide if the payment obligation for the remaining balance of the assessment will be transferred automatically to the next owner or paid off as part of the sale. As a result, the program will help property owners overcome market barriers that often discourage investment in energy efficiency and water conservation improvements.

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

## 1. Eligible Properties

The Local Government PACE program is a strictly voluntary program. All private sector owners of Eligible Properties located within the Local Government PACE region may participate in PACE financing. The entire territory of the Local Government is designated as the region in which the Program is available. **“Eligible Properties”** include commercial, industrial, and multi-family residential properties with five or more dwelling units. Government, residential<sup>2</sup>, and facilities for undeveloped lots or lots undergoing development at the time of the assessment are not Eligible Properties.

## 2. Qualified Improvements

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

The following items may constitute Qualified Improvements:

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

## 3. Benefits of PACE to Property Owners

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

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

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

#### **4. Benefits of PACE to the Local Government**

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

Among other things, projects financed through PACE Program will:

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

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

The PACE program requires minimal support from the Local Government. It is designed to be self-sustaining and is typically administered by qualified third-party authorized representatives. Furthermore, because the PACE program is tax neutral, it achieves all of the benefits listed in this Report without imposing a burden on the Local Government's general fund.

The 84<sup>th</sup> Texas Legislature added a provision to the PACE Act that explicitly shields the Local Government and its employees, members of the governing body of a local government and any

board members, executives, employees, and contractors of a third party who enter into a contract with a local government to provide administrative services for a Program under this chapter.<sup>3</sup>

## **5. The Benefits of PACE to Lenders**

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 low compared to most other types of loans. PACE assessments provide lenders with an attractive new product to address an almost universal pent-up demand for implementing high efficiency commercial and industrial property equipment. 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.

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

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

## **7. Administration of the Local Government PACE Program**

Under the PACE Act, the establishment and operation of the program are considered to be governmental functions. The PACE Act further authorizes the Local Government to enter into a contract with one or more third parties (the “*Authorized Representative(s)*”) to provide administrative services for the PACE program and act as the representative of the Local Government in executing the contracts with property owners and lenders. The Local Government may delegate administration of the PACE program to one or more qualified third-party organizations that can administer the program at no cost to the Local Government.

Periodic updates to the standard form documents (described in Section 9) will be necessary as the program evolves, incorporating best practices and standardizing the PACE contracts across various PACE programs. The Authorized Representative will be tasked with maintaining the form contracts and making technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the statute.

The Authorized Representative’s role is to serve as an extension of the Local Government staff to provide oversight of the Program to ensure best practices and consumer protections at the lowest possible cost to the property owner in a transparent and ethical manner and to provide education and outreach. The Authorized Representatives will not receive compensation or reimbursement from the Local Government.

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<sup>3</sup> TX. Local Gov’t Code §399.019. In the 85th legislature, HB 2654 clarified that the personal immunity provisions apply to all elected officials performing rights and duties under chapter 399 of the Local Government Code.

The Authorized Representatives will be funded by administrative fees paid by the property owners establishing a PACE project or other source of revenue. The Authorized Representative may not impose any Program fees directly or indirectly not authorized in advance by the Local Government in writing. Authorized Representative must disclose in writing to Local Government any direct or indirect fee income, charitable grants, or donations not authorized in advance by the Local Government that are received from property owners, lenders, or contractors participating in the Program.

## **8. Eligible Lenders**

The PACE Act does not set criteria for financial institutions or investors to be PACE lenders. The Local Government will follow best practices of national PACE programs by requiring that lenders be:

- 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 investment company;
- Any publicly traded entity; or
- Any private entity that:
  - Has a minimum net worth of \$5 million; and
  - Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending; and
  - Can provide independent certification as to availability of funds; and
- 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 lender can participate in the PACE Program as long as it 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. The property owner, not the Local Government or the Authorized Representative, selects the lender.

The Authorized Representatives will not guarantee or imply that funding will automatically be provided from a third-party lender, imply or create any endorsement of, or responsibility for, any lender, or create any type of express or implied favoritism for any eligible lender.

## **9. Components of the PACE Program**

As required under Section 399.009 of the PACE Act, the following describes all aspects of the PACE Program:

- a. Map of Region. A map of the boundaries of the region included in the program is attached to this Report as Exhibit 1. The region encompasses the Local Government limits.
- b. Form Contract with Owner. A form contract between the Local Government and the record owner of the Eligible Property is attached as Exhibit 2. It specifies the terms of the assessment under the PACE Program and the financing to be provided by an Eligible Lender of the property owner's choosing.
- c. Form Contract with Lender. A form contract between the Local Government and the Eligible Lender chosen by a property owner is attached to this Report as Exhibit 3. It specifies the financing and servicing of the debt through assessments.
- d. Form Notice of Contractual Assessment Lien. A form Notice of Assessment Lien to be filed by the Authorized Representative, on behalf of the Local Government, with the County Clerk is attached to this Report as Exhibit 4.
- e. Qualified Improvements. The following types of projects are qualified improvements that may be subject to contractual assessments under the PACE program. Projects that:
  - (1) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, or residential real property with five (5) or more dwelling units;<sup>4</sup> and
  - (2) are intended to decrease energy or water consumption or demand by installing a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.<sup>5</sup>

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

The PACE Program may not be used to finance facilities for undeveloped lots or lots undergoing development at the time of the assessment, or for the purchase or installation of products or devices not permanently fixed to real property.<sup>6</sup>

- f. Authorized Representative. HB 3187 was signed into law on June 16, 2015. It authorizes a Local Government to delegate administration of the PACE program to a third-party "representative." Wheeler County intends to delegate all official administrative responsibilities, like the execution of individual contracts with property owners and lenders, to an Authorized Representative. This relationship will be monitored and maintained by the County Judge or his/her designee.

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<sup>4</sup> TX. Local Gov't Code §399.002(5).

<sup>5</sup> TX. Local Gov't Code §399.002(3).

<sup>6</sup> TX. Local Gov't Code §399.004.

- g. Plans for Ensuring Sufficient Capital. Lenders will extend loans to finance Qualified Improvements. Financing documents executed between owners and lenders will impose a contractual assessment on Eligible Property to repay the terms of the owner’s financing of the Qualified Improvements. The lenders will ensure that property owners demonstrate the financial ability to fulfill the financial obligations to be repaid through contractual assessments.
- h. No Use of Bonds or Public Funds. The Local Government does not intend to issue bonds or use any other public monies to fund PACE projects. Property owners will obtain all financing from the Eligible Lenders they choose.
- i. Limit on Length of Loan. One of the statutory criteria of a PACE loan is that the assessment payment period cannot exceed the useful life of the Qualified Improvement that is the basis for the loan and assessment.<sup>7</sup> As part of the application process, the property owners will submit an independent third-party review prepared by a licensed engineer showing water or energy baseline conditions and the projected water or energy savings. This review will aid the Authorized Representative in making a determination that the period of the requested assessment does not exceed the useful life of the Qualified Improvement.
- j. Application Process. The Authorized Representative will accept applications from property owners seeking to finance Qualified Improvements 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, including any transaction costs, to be repaid through assessments.

Based on this information, the Authorized Representative 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 initiate an independent third-party review of the project and submit the project to Eligible Lenders for approval of financing.

The property owner is expected to produce the following documentation to the Authorized Representative prior to closing of the PACE loan:

- (1) A Report conducted by a qualified, independent third-party reviewer, showing water or energy baseline conditions and the projected water or

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<sup>7</sup> Chapter 399 section 399.009(a)(8)

energy savings, or the amount of renewable energy generated attributable to the project;

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

k. Financial Eligibility Requirements. The Authorized Representative will determine whether the owner, the property and the improvements are eligible for financing under the Program. The Eligible Lender chosen by the owner will determine whether the owner has demonstrated the financial ability to repay the financial obligations to be collected through contractual assessments. The demonstration of financial ability must be based on appropriate underwriting factors, including the following:

- (1) verification that the person requesting to participate in the program is the legal record owner of the benefitted property;
- (2) the applicant is current on mortgage and property tax payments;
- (3) the applicant is not insolvent or in bankruptcy proceedings;
- (4) the title of the benefitted property is not in dispute; and
- (5) there is an appropriate ratio of the amount of the assessment to the assessed value of the property in accordance with the most current Texas PACE in a Box model program, and
- (6) The Local Government has determined that to be eligible for PACE financing, the projected savings derived from the Qualified Improvement should be greater than the cost of the PACE assessment and lien over the life of the assessment, i.e., the Saving-to-Investment Ratio (SIR) should be greater than one,  $SIR > 1$ , subject to the most current PACE in a Box requirements.

l. Mortgage Holder Notice and Consent. As a condition to the execution of a written contract between the Authorized Representative and the property owner imposing an assessment 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 30<sup>th</sup> day before the date the contract is executed, and the owner must obtain the written consent of all mortgage holders.

m. Imposition of Assessment. The Authorized Representative will enter into a written contract with the property owner only after:

- (1) The property owner delivers to the Authorized Representative written consent of all mortgage lien holders;
- (2) The Authorized Representative's determination that the owner and the property are eligible to participate in the program, that the proposed improvements are reasonably likely to decrease energy or water consumption or demand, and that the period of the requested assessment does not exceed the useful life of the Qualified Improvements; and
- (3) The Eligible Lender notifies the Authorized Representative that the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

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

- n. Collection of Assessments. The execution of the written contract between Authorized Representative and the property owner and recording of the Notice of Contractual Assessment Lien incorporate the terms of the financing documents executed between the property owner and the third-party lender to repay the financing secured by the assessment. The lender will advance financing to the owner, and the terms for repayment will be such terms as are agreed between the lender and the owner. Under the form Lender Contract attached as Exhibit 3, the lender or a designated servicer will agree to service the debt secured by the assessment.<sup>8</sup>

With funds from the lender, the property owner will purchase directly the equipment and materials for the Qualified Improvement and contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of the Qualified Improvements. Alternatively, the lender may make progress payments to the property owner as the Qualified Improvement is installed.

The lender will receive the owner's assessment payments to repay the debt and remit to the Authorized Representative any administrative fees. The lender will

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<sup>8</sup> The servicer will be responsible for maintaining payment records, account balances, and reporting to the Authorized Representative as required.

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:

- (1) The assignment or transfer is made to an Eligible Lender, as defined above;
  - (2) The property owner and the Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least thirty (30) days before the next installment is due according to the schedule for repayment of the debt; and
  - (3) The assignee or transferee, by operation of the financing documents or otherwise written evidence of which shall be provided, assumes lender's obligations under the lender contract.
- o. Verification Review. After a Qualified Improvement is completed, the Authorized Representative will require the property owner to provide verification by a qualified independent third-party reviewer that the Qualified Improvement was properly completed and is operating as intended.<sup>9</sup> The verification report conclusively establishes that the improvement is a Qualified Improvement and the project is qualified under the PACE Program.<sup>10</sup>
- p. Marketing and Education Services. The Local Government may subsequently enter into agreements with one or more other local governments or non-profit organizations that promote energy and water conservation and/or economic development to provide marketing and education services for the PACE program.
- q. Quality Assurance and Antifraud Measures. The Authorized Representative will institute quality assurance and antifraud measures for the Program. The Authorized Representative will review each PACE application for completeness and supporting documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the property owner, the property itself, and the proposed project all satisfy PACE program underwriting and technical standard requirements. Measures will be put in place to provide safeguards, including a review of the energy and water savings baseline and certification of compliance with the technical standards manual from an independent third-party reviewer (ITPR), who must be a registered professional engineer before the project can proceed. This review will include a site visit, report, and a letter from the ITPR certifying that he or she has no financial interest in the project and is an independent reviewer. After the construction of the project is complete, an ITPR will conduct a final site inspection and determine whether the project was completed and is operating properly. The reviewer's certification will also include a statement that the reviewer is qualified and has no financial interest in the project.

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<sup>9</sup> TX Local Gov't Code §399.011.

<sup>10</sup> TX Local Government Code §399.011(a-1)

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

- (1) Mail to the owner a written notice of delinquency and demand for payment by both certified mail (return receipt requested) and first-class mail. If this is a HUD-assisted or FHA-insured Project, Lender shall mail a copy of the first notice of delinquency to HUD.
- (2) Mail to the owner a second notice of delinquency and demand for payment by both certified mail (return receipt requested) and first-class mail at least thirty (30) days after the date of the first notice if the delinquency is continuing. If this is a HUD-assisted or FHA-insured Project, Lender shall mail a copy of the second notice of delinquency to HUD.

If this is a HUD-assisted or FHA-insured Project, HUD shall have not less than a sixty (60) day notice and right to cure the delinquency by paying the amount of the delinquent Installment. If the owner fails to cure the delinquency within 30 days after mailing the second notice of delinquency, the lender may notify the Authorized Representative of the owner's default. Pursuant to Texas Local Government Code Section 399.014(c), the Authorized Representative will initiate steps for the Local Government to enforce the assessment lien in the same manner as a property tax lien against real property may be enforced. Delinquent installments will incur penalties and interest in the same manner and at the same rate as delinquent property taxes, according to Texas Local Government Code Section 399.014(d), and such statutory penalties and interest will be due to the Local Government to offset the cost of collection.

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

- (1) Any delinquent account on which two thirty (30) day notices of delinquency have been mailed as specified herein shall be enforced by means of Judicial Enforcement.
- (2) Delinquent installments of Assessment(s) through November 30 of any year will incur penalties and accrue interest as specified in the Financing Documents.
- (3) On or after February 1 of any year, the Authorized Representative will notify the County Tax Assessor/Collector and the entity that collects delinquent taxes for the County of the amount due as of January 31 of said year. The amount due on January 31 shall become the base amount of delinquency which will incur penalties and accrue interest and collection

fees in the same manner and on the same schedule as delinquent property taxes.

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

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

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

## **10. Limitations**

The PACE Program shall not give rise to or create a charge against the general credit or taxing power of the Local Government or a debt or other obligation of the Local Government payable from any source. No Local Government funds, revenues, taxes, or income of any kind shall be used to pay a contractual assessment, filing fee, collection cost, litigation cost, or any other expense arising under the PACE Program. The PACE Program is created to provide a third-party financing mechanism for energy saving betterments; no alternate financing is approved through the approval of the PACE Program. The Local Government assumes no financial obligation whatsoever in the event of default or foreclosure of any kind. None of the Local Government or any of its elected or appointed officials or any of its officers or employees or Authorized Representatives shall incur

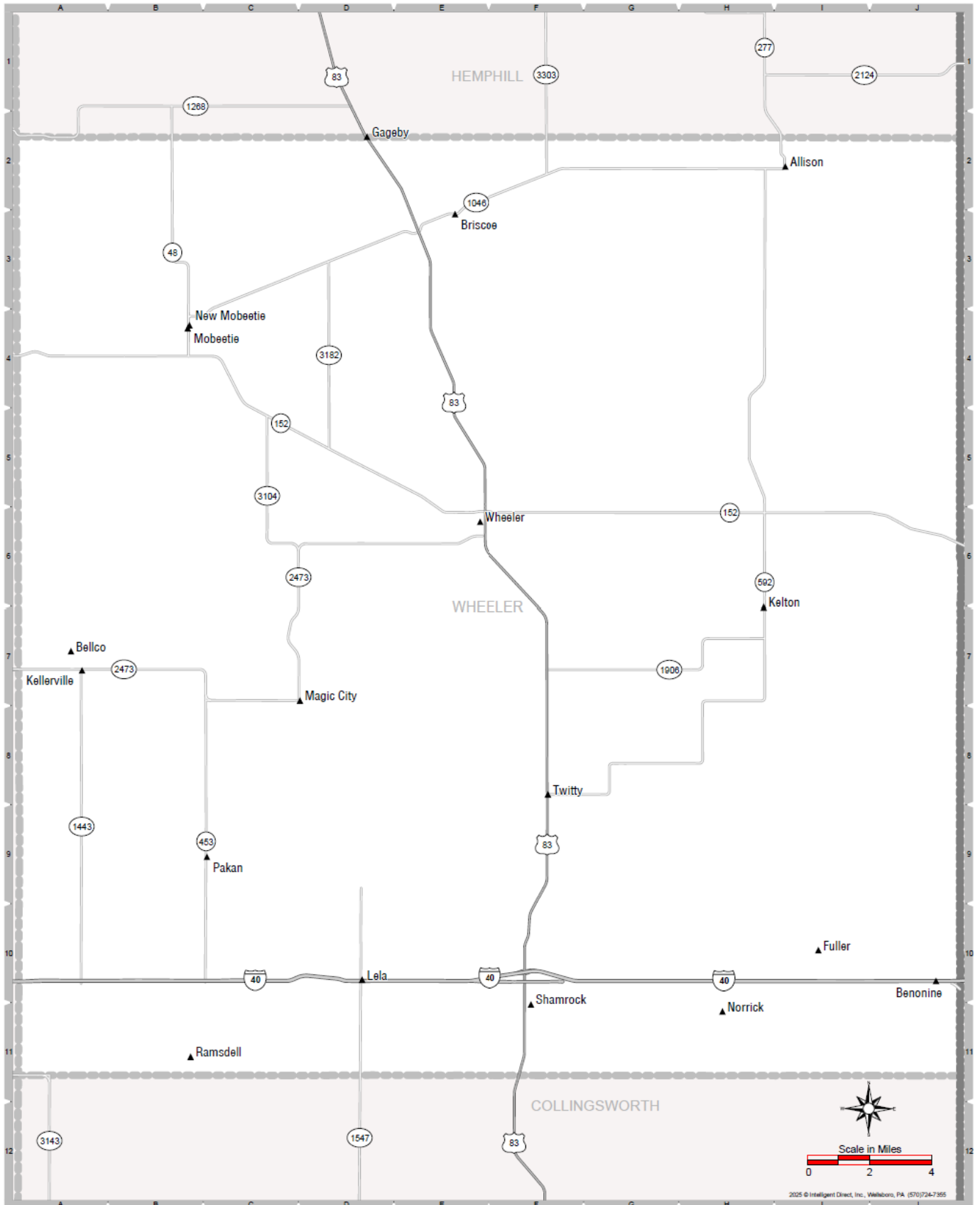
any liability hereunder to an owner, a lender, or any other party in their individual capacities by reason of the PACE Program or their acts or omissions under the PACE Program.

**EXHIBIT 1**

**MAP OF LOCAL GOVERNMENT PACE REGION**

(Wheeler County)

**EXHIBIT 1**  
**MAP OF WHEELER COUNTY PACE REGION**



**EXHIBIT 2**  
**FORM OWNER CONTRACT**

**FORM PACE OWNER CONTRACT**

THIS PROPERTY ASSESSED CLEAN ENERGY (“**PACE**”) OWNER CONTRACT including the attached exhibits (“**Owner Contract**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (“**Effective Date**”), by and between Wheeler County, Texas (“**Local Government**”), and \_\_\_\_\_ (“**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 privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

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

C. Property Owner is/are 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**”).

D. Pursuant to Application number \_\_\_\_\_, Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (the “**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has requested that Local Government enter into this 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 Wheeler, County, Texas (the “**Notice of Contractual Assessment Lien**”), a copy of which is attached hereto as Exhibit A and

made a part hereof, to repay the financing of such Qualified Improvements. The Property, Qualified Improvements and Assessment are more fully described in the Notice of Contractual Assessment Lien.

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

F. As required by Section 399.010 of the PACE Act, Property Owner 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 on or 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 principal amount of \$\_\_\_\_\_, as set forth in the Notice of Contractual Assessment Lien. The Assessment includes the application and administration fees authorized by the PACE Program and Section 399.006(e) of the PACE Act. Property Owner promises and agrees to pay the Assessment, Contractual Interest thereon, any prepayment penalty, and all penalties, interest, fees, and costs due under and/or authorized by the PACE Act, PACE Program and the financing documents between Property Owner and Lender (the “**Financing Documents**”) which are described or listed in Exhibit C attached hereto and made a part hereof by reference. Property Owner promises and agrees pay such amount and interest to Local Government, in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to this Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to secure the payment of such amount, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

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

process, agrees to undertake reasonable efforts to enforce the Assessment against the Property for the benefit of Lender in the event of a default by Property Owner. Authorized Representative agrees to send an annual notice of assessment to the Property Owner each year there is a PACE lien balance. However, any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner will not affect the Assessment or Property Owner's obligations under the Owner Contract.

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 to be paid by Property Owner to the Authorized Representative at the time of application, and (2) a closing fee (less application fee) paid to the Authorized Representative at the closing of the Financing. The Property Owner is further required to pay a recurring administration fee to Authorized Representative until the Assessment is released. The recurring administration fee amount shall be collected by Lender and paid to the Authorized Representative within thirty (30) days of receipt by Lender. The administration fee amounts due to Authorized Representative are identified in Exhibit C hereto. When the Assessment, together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government's rights under this Owner Contract will cease and terminate, except for rights under Section 18, 19, 20, and 21. Upon notice from Lender that all amounts due have been paid in full, Local Government will direct the Authorized Representative to execute a release of the Assessment and this Owner Contract and record the release. As required by Section 399.009(a) (8) of the PACE Act, the Property Owner represents to the Local Government that the period during which such Installments are payable does not exceed the useful life of the Project. If this is a US Department of Housing and Urban Development ("**HUD**") assisted or a Federal Housing Administration ("**FHA**") insured Project, then the Financing Documents shall provide for Installments to be escrowed in a manner acceptable to the HUD or FHA lender and paid to Lender.

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

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

(b) Property Owner and Authorized Representative, and HUD, if this is a HUD assisted or FHA insured Project, are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed 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 rights and obligations under the Lender Contract related to the receipt of the Installments or the enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative.

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

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

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

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

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

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

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

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

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

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

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

(d) In the event of a default by Property Owner in payment of the installments called for by the Financing Documents, the lien created by the Assessment will be enforced by Local Government, in the same manner according to Texas Tax Code Secs. 33.41 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, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.

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

(1) the payment of the costs of suit and sale;

(2) the payment of ad valorem taxes, penalties, interest, and attorney's fees due under the judgment; and

(3) the payment of delinquent installment(s) of the Assessment, penalties, interest, fees, costs, and attorney's fees due under the judgment.

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

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

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

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

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

10. Binding Effect. This 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. If this is a HUD assisted or FHA insured Project, then HUD or FHA must also consent in writing to any amendment or alteration of this Owner Contract, for as long as the Project remains HUD-assisted or FHA-insured.

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

17. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the “**usury limit**”). If the total amount of interest payable to Local Government 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.

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

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

AUTHORIZED REPRESENTATIVES, AND THEIR RESPECTIVE AFFILIATES, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (EACH SUCH PERSON HEREIN REFERRED TO AS AN "INDEMNITEE") ABSOLUTELY HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES INCURRED BY OR IMPOSED UPON OR ALLEGED TO BE DUE OF INDEMNITEE IN CONNECTION WITH THE EXECUTION OR DELIVERY OF THIS 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. HOWEVER, IF HUD LATER ACQUIRES TITLE TO ALL OR ANY PORTION OF THE PROPERTY PURSUANT TO A FORECLOSURE, DEED IN LIEU OF FORECLOSURE, OR OTHERWISE, THEN NOTWITHSTANDING ANYTHING IN THIS OWNER CONTRACT TO THE CONTRARY, HUD SHALL NOT BE OBLIGATED TO INDEMNIFY ANY INDEMNITEE OR ENTITY OR BE LIABLE FOR, OR TO CARRY OUT, ANY INDEMNITY.

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

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

**PROPERTY OWNER:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email address: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

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

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

NOTARY PUBLIC, STATE OF TEXAS

**LOCAL GOVERNMENT:**

WHEELER COUNTY, TEXAS

BY: Lone Star PACE LLC

ITS: Authorized Representative

\_\_\_\_\_  
BY: Lee A. McCormick

ITS: President

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

Address: 6988 Lebanon Road, Suite 103  
Frisco, TX 75034

Email Address: [lmccormick@lonestarpac.com](mailto:lmccormick@lonestarpac.com)

**ACKNOWLEDGEMENT**

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_, on behalf of \_\_\_\_\_, a Texas \_\_\_\_\_, as Authorized Representative for the Local Government.

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

NOTARY PUBLIC, STATE OF TEXAS

OWNER CONTRACT EXHIBIT A

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

OWNER CONTRACT EXHIBIT B

MORTGAGE HOLDER(S) CONSENT



OWNER CONTRACT EXHIBIT D

CONSTRUCTION TERMS

Retainage or Liquidated Damages:

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

OR

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

Additional Construction Terms

Date	Draw down Amount	Purpose

**EXHIBIT 3**  
**FORM LENDER CONTRACT**

**FORM PACE LENDER CONTRACT**

THIS PROPERTY ASSESSED CLEAN ENERGY (“**PACE**”) LENDER CONTRACT including the attached exhibits (“**Lender Contract**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (“**Effective Date**”) by and between Wheeler County, Texas (“**Local Government**”) and \_\_\_\_\_ (“**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 privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

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

C. Pursuant to Application number \_\_\_\_\_, \_\_\_\_\_ (“**Property Owner**”), the legal and record owner of the following qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region has/have 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 (“**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 Official Public Records of Wheeler County, Texas (the “**Notice of Contractual Assessment**”).

**Lien**”), to repay the financing of such Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached as Exhibit A to the Owner Contract and made a part hereof. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (the “**Financing**”) will be provided to Property Owner by Lender in accordance with financing documents which are described in or copies of which are attached as Exhibit B and made a part hereof (the “**Financing Documents**”). Such Financing will include 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 through the Assessment.

F. As required by Section 399.010 of the PACE Act, Property Owner has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of the Owner Contract of Property Owner’s intention to participate in the PACE Program. Pursuant to the requirements of the PACE Act, the written consent of each mortgage lien holder to the Assessment was obtained on or 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 Financing for the Project in the total principal 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 Assessment, all contractual interest (“**Contractual Interest**”), any prepayment penalty, and any penalties, interest, attorney’s fees, and/or costs due under or authorized by the PACE Act due to Lender according to the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. The Authorized Representative shall record a release of lien in the property records of the County. Local Government will not release, sell, assign or transfer the Assessment or the lien securing it without the prior written consent of Lender. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner in accordance with the provisions set forth in paragraph 6, as may be limited by applicable law. Local Government shall have no obligation to repurchase the Assessment and no liability to Lender should there be a default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

2. Installments. The Assessment and Contractual Interest thereon are due and payable to Lender in installments (“**Installments**”) according to the payment schedule set forth in the Financing Documents attached hereto as Exhibit B. To participate in the PACE Program, the Property Owner is required to pay (1) an application fee to be paid to the Authorized Representative at the time of application, and (2) a closing fee (less application fee) paid to the Authorized Representative at the closing of the Financing. The Property Owner is further required

to pay a recurring administration fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount will be collected by Lender and paid to Authorized Representative within thirty (30) days of receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of delinquency in the payment of any Installment, Lender will, upon notice to Authorized Representative, withhold payment of any amounts due to Authorized Representative in connection with such Installment until the Installment is paid. Any such temporary withholding will not reduce the amount of administration fees included in the Assessment. The amounts due to Authorized 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 rights under this Lender Contract will cease and terminate, except for rights under Section 18, 19, 20 and 21. Upon notice from Lender that all amounts owing have been paid in full, Authorized Representative will execute a release of the Assessment and this Lender Contract. Thereafter, the Authorized Representative will record the release.

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

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

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

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

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

(4) Any publicly traded entity;

(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; or

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

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed at least 30 days before the next Installment is due according to the payment schedule included in the Financing Documents. If this is a US Department of Housing and Urban Development (“HUD”) assisted or a Federal Housing Administration (“FHA”) insured Project, the Lender shall notify HUD at the address below or a subsequent address provided by HUD.

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

(c) The assignee or transferee executes a written assumption agreement according to the Financing Documents of all of Lender’s rights and obligations under this Lender Contract related to the receipt of the Installments or enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative within 10 days after execution of the agreement. Such written agreement must contain a certification by the Lender and the assignee that all of the conditions in this Section 3 have been met. Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer that meets all of these conditions, the assignor will be released of all of the rights and obligations of the Lender under this Lender Contract accruing after the date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations will be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or to require enforcement of the assessment lien that does not meet all of these conditions is void. Lender will retain all of the rights and obligations of Lender under this Lender Contract until such rights and obligations are assigned or transferred according to this paragraph.

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. In the event the assessment lien on the Property is enforced by foreclosure as provided below, Lender will have no further obligations to Property Owner with respect to the Installments that were the subject of the foreclosure, but Lender will retain the rights to enforcement of the lien for any Installments that are not eliminated by the foreclosure, and the succeeding owner of the Property will be subject to such lien.

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

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

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

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

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

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

(1) are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is recorded in the Official Public

Records of Wheeler County, Texas, as provided by Section 399.013 of the PACE Act, until the Assessment, interest, or penalty is paid; and

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

(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 will not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse to Lender, Local Government or Authorized Representative

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

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

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

(1) the payment of the costs of suit and sale;

(2) the payment of ad valorem taxes, and associated penalties, interest, and attorney's fees due under the judgment; and

(3) the payment of delinquent installment(s) of the Assessment, and associated penalties, interest, fees, costs, and attorney's fees due under the judgment.

(g) As provided in Section 399.014(a-1) of the PACE Act, after written notice of the Assessment is recorded in the Official Public Records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis

that the improvement is not a “qualified improvement” or the project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

6. Servicing and Enforcement of Assessment.

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

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

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

(1) Mail a written notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first class mail. If this is a HUD-assisted or FHA-insured Project, Lender shall mail a copy of the first notice of delinquency to HUD; 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 this is a HUD-assisted or FHA-insured Project, Lender shall mail a copy of the second notice of delinquency to HUD.

If this is a HUD-assisted or FHA-insured Project, HUD shall have not less than a sixty (60) day notice and right to cure the delinquency by paying the amount of the delinquent Installment. If the Property Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, Lender or its designee may notify Authorized Representative in writing of a default in payment by Property Owner. Upon receipt of such notice and after doing its own due diligence, Local Government will enforce the assessment lien for the benefit of Lender pursuant to Sec. 399.014(c) of the PACE Act, in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(d) Priority. If the assessment lien is enforced by foreclosure or collected through a bankruptcy or similar proceeding, the assessment balance and any interest or penalties on the assessment will have the same priority status as a lien for any other ad valorem tax, pursuant to Sec. 399.014(a)(2) of the PACE Act.

(e) Final Payment and Release. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, or costs due under or authorized by the PACE Act or the Financing Documents have been paid in full, Local Government's rights under the Owner Contract will cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative will execute a release of the Assessment and the Owner Contract and record the release.

(f) 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 or Authorized Representative 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.

(g) 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.

(h) 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.

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,

Authorized Representative, 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 have the meanings ascribed to them in the PACE Program, and/or the PACE Act.

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

11. Notices. Unless otherwise specifically provided herein, all notices and other communications required or permitted hereunder shall be in writing and delivered by first-class mail or by electronic mail, 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 Local Government and Lender with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties. If this is a HUD-assisted or FHA-insured Project, then HUD or FHA must also consent in writing to any amendment or alteration of this Lender Contract, for as long as the Project remains HUD-assisted or FHA-insured.

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, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together will constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

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

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

20. Indemnification. TO THE MAXIMUM EXTENT ALLOWED BY LAW, LENDER SHALL INDEMNIFY AND HOLD LOCAL GOVERNMENT, AUTHORIZED REPRESENTATIVES, AND THEIR RESPECTIVE AFFILIATES, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (EACH SUCH PERSON HEREIN REFERRED TO AS AN “INDEMNITEE”) ABSOLUTELY HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES INCURRED BY OR IMPOSED UPON OR ALLEGED TO BE DUE OF INDEMNITEE IN CONNECTION WITH THE EXECUTION OR DELIVERY OF THIS CONTRACT, THE NOTICE OF CONTRACTUAL ASSESSMENT LIEN, THE FINANCING DOCUMENTS, AND ANY OTHER DOCUMENT OR ANY OTHER AGREEMENT OR INSTRUMENT

CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER, THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR, IN THE CASE OF ANY INDEMNITEE, THE ADMINISTRATION OF THIS CONTRACT AND ANY OTHER AGREEMENTS RELATED TO THE PROJECT. NOTWITHSTANDING THE FOREGOING OR ANYTHING CONTAINED HEREIN TO THE CONTRARY, LENDER SHALL HAVE NO OBLIGATION TO INDEMNIFY AND HOLD ANY INDEMNITEE HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES INCURRED BY OR IMPOSED UPON OR ALLEGED TO BE DUE OF AN INDEMNITEE IF SUCH CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS OR RELATED EXPENSES ARE CAUSED BY OR ARISE FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE RELATED TO THE FAILURE TO MAINTAIN, CONTINUE, AND ENFORCE THE ASSESSMENT AS WELL AS ITS OBLIGATION TO REMIT AMOUNTS IN ACCORDANCE WITH THIS AGREEMENT. HOWEVER, IF HUD LATER ACQUIRES TITLE TO ALL OR ANY PORTION OF THE PROPERTY PURSUANT TO A FORECLOSURE, DEED IN LIEU OF FORECLOSURE, OR OTHERWISE, THEN NOTWITHSTANDING ANYTHING IN THIS LENDER CONTRACT TO THE CONTRARY, HUD SHALL NOT BE OBLIGATED TO INDEMNIFY ANY INDEMNITEE OR ENTITY OR BE LIABLE FOR, OR TO CARRY OUT, ANY INDEMNITY.

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

22. Construction Terms. If this Lender Contract includes any additional 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.



LOCAL GOVERNMENT:

WHEELER COUNTY, TEXAS

BY: Lone Star PACE LLC

ITS: Authorized Representative

\_\_\_\_\_  
BY: Lee A. McCormick  
ITS: President  
Pursuant to Tex. Local Gov't Code §399.006(b)

Address: 6988 Lebanon Road, Suite 103  
Frisco, TX 75034

Email Address: [lmccormick@lonestarpace.com](mailto:lmccormick@lonestarpace.com)

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_, on behalf of \_\_\_\_\_, a Texas \_\_\_\_\_, as Authorized Representative for the Local Government.

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

NOTARY PUBLIC, STATE OF TEXAS

LENDER CONTRACT EXHIBIT A

OWNER CONTRACT



LENDER CONTRACT EXHIBIT C

CONSTRUCTION TERMS

Retainage or Liquidated Damages:

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

OR

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

Date	Draw down Amount	Purpose

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

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

STATE OF TEXAS                   §  
  §  
COUNTY OF WHEELER       §

**RECITALS**

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

B. Wheeler County, Texas (“**Local Government**”) has established a program under the PACE Act (“**PACE Program**”) pursuant to a resolution dated \_\_\_\_\_ adopted by Local Government Commissioners Court.

C. Local Government has designated \_\_\_\_\_ as a representative of Local Government (“**Authorized Representative**”) authorized to enter into and enforce the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the Wheeler County jurisdiction as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owners’ property pursuant to the PACE Program.

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

E. Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements described in Exhibit B attached hereto and made a part hereof, which are intended to decrease water or energy consumption or demand and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (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 entered into a written contract (the “**Owner Contract**”) with Local Government

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

F. 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 (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 \$\_\_\_\_\_ 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 any interest and/or penalties, costs and fees accrued thereon,
  - (i) is a first and prior lien against the Property from the date on which this Notice of Contractual Assessment Lien is recorded in the Official Public Records of Wheeler County, Texas, until such Assessment, interest, penalties, costs, and fees are paid; and
  - (ii) such lien has the same priority status as a lien for any other ad valorem tax.
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 will not be 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 (including, without limitation, a foreclosure sale for a past due portion of the Assessment), the obligation for the Assessment and the Property Owner’s obligations under the Financing Documents (including, without limitation, the portion of the Assessment that has not yet become due) will be transferred to the succeeding owner without recourse to Local Government, or Authorized Representative and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.

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

EXECUTED on \_\_\_\_\_, \_\_\_\_\_.

LOCAL GOVERNMENT:  
WHEELER COUNTY, TEXAS  
BY: Lone Star PACE LLC  
ITS: Authorized Representative

\_\_\_\_\_  
BY: Lee A. McCormick  
ITS: President  
Pursuant to Tex. Local Gov't Code §399.006(b)

Address: 6988 Lebanon Road, Suite 103  
Frisco, TX 75034

Email Address: [lmccormick@lonestarpace.com](mailto:lmccormick@lonestarpace.com)

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 \_\_\_\_\_, a Texas \_\_\_\_\_, as Authorized Representative for the Local Government.

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

NOTARY PUBLIC, STATE OF TEXAS

NOTICE OF LIEN EXHIBIT A  
PROPERTY DESCRIPTION

NOTICE OF LIEN EXHIBIT B  
QUALIFIED IMPROVEMENTS



INDEXING INSTRUCTION:

Grantor: \_\_\_\_\_, Property Owner  
Grantees: \_\_\_\_\_, Local Government  
              \_\_\_\_\_, Lender

After recording, return to-

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_