

EL PASO COUNTY
PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) OWNER CONTRACT (“**County Owner Contract**”) is made as of the _____ day of _____, 20__, by and between El Paso 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 commercial, industrial, agricultural, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program, “**El Paso County PACE**,” under the PACE Act pursuant to a Resolution dated August 29, 2016, as adopted by its Commissioners Court; has designated Texas PACE Authority as its Authorized Representative authorized to administer the program and enter into the Assessment, County Owner Contract, and County Lender Contract described herein; and has also designated the entire territory within El Paso County’s jurisdiction as a region (“**Region**”) within which Authorized Representative and record owners of such real property may enter into written contracts to impose assessments to repay financing of qualified improvements on the owner’s property pursuant to this program, El Paso County PACE.

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

D. Pursuant to Application number _____, Property Owner has applied to Local Government to participate in El Paso County PACE by installing or modifying on the Property certain permanent improvements that should decrease water or energy consumption or demand and are or will be fixed to the Property as qualified improvements (“**Qualified Improvements**”) as defined in Section 399.002 of the PACE Act. The installation or modification of such Qualified Improvements on the Property will be a qualified project (“**Project**”) as defined in Section 399.002 of the PACE Act. Property Owner has requested that Local Government enter into this **County Owner Contract** pursuant to the PACE Act and El Paso County PACE program and has further requested Local Government impose an assessment (“**Assessment**”) on the Property to repay the financing of such Qualified Improvements, all as allowed by the PACE Act and set forth in the Notice of Contractual Assessment Lien to be filed in El Paso County’s official Public Records, copy of which Assessment is attached hereto as Exhibit A and made a part hereof

for all purposes. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. The financing of such Qualified Improvements will be provided to Property Owner by _____ (“**Lender**”), a qualified Eligible Lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government (“**County Lender Contract**”) as required by Section 399.006(c) of the PACE Act and by El Paso County PACE. The financing will include only those costs and fees for which an assessment may be imposed under the PACE Act. Local Government has agreed to maintain and continue the Assessment for the benefit of Lender until such financing is repaid in full and to release the Assessment upon notice from Lender of such payment, or foreclose the lien securing the Assessment for the benefit of Lender upon written 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 lien(s) on the Property of Property Owner’s intention to participate in El Paso County PACE and so notified at least thirty (30) days prior to execution of this County Owner Contract. Written consent of each mortgage holder to the Assessment was obtained prior to execution of this County Owner Contract and is attached hereto as Exhibit B and made a part hereof for all purposes.

AGREEMENT

The parties adopt the above recitals as part of their agreement and further 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 El Paso County PACE pursuant to the County Lender Contract, Property Owner hereby voluntarily requests and agrees to the imposition by Local Government of the Assessment in the amount of \$_____, as set forth in the Notice of Contractual Assessment Lien, including all interest, fees, penalties, costs, and other sums due under and/or authorized by the PACE Act, El Paso County PACE program and the financing documents between Property Owner and Lender (“**Financing Documents**”) which are described or listed on Exhibit C attached hereto and made a part hereof by this reference. Property Owner promises and agrees to pay such amount and interest to Local Government, in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to this County Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to secure the payment of such financing amount, in accordance with the requirements of El Paso County PACE program and 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, El Paso County PACE program, and the Financing Documents, is paid in full, and to release the Assessment upon notice from Lender of full payment. In the event of default by Property Owner and upon written notice of same by

Lender, Local Government agrees to undertake reasonable efforts to enforce the Assessment against the Property for the benefit of Lender.

3. Installments. The Assessment, including the amount financed and contractual interest, is due and payable in installments as set forth in the Notice of Contractual Assessment Lien and the Financing Documents. The Assessment shall include: (1) an application fee paid by Property Owner to Authorized Representative at loan closing, and (2) a recurring administration fee paid by Property Owner to Authorized Representative, which amount shall be collected by Lender and paid to Authorized Representative within thirty (30) days of receipt by Lender. The amounts due to Authorized Representative are identified in Exhibit C attached 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 has been paid in full, Local Government's rights under this County Owner Contract will cease and terminate, and upon notice from Lender, Local Government will execute a release of the Assessment and this County Owner Contract, and Authorized Representative will record the release.

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

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

(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 Notice of Contractual Assessment Lien and the Financing Documents; and

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

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 County Lender Contract accruing after the date of the assignment assumed by and transferred to such assignee or transferee and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the installments that does not meet all of these conditions is void.

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

(a) Delinquent installments of the Assessment will incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment incurs a penalty of 6% of the amount of the installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an installment delinquent on July 1 incurs a total penalty of 12% of the amount of the delinquent installment without regard to the number of months it has been

delinquent. A delinquent installment will also accrue interest at the rate of 1% for each month or portion of a month that the installment remains unpaid. Subject to the limitation set out in paragraph 17 below, penalties and interest payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment.

(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 Notice of Contractual Assessment Lien is filed in El Paso County's official Public Records as provided by Section 399.014 of the PACE Act, until the financing secured by the Assessment and any penalties and interest are paid; and

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

(c) The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of the Assessment that has not yet become due is not eliminated by foreclosure of: (i) a property tax lien or (ii) the lien for any past due portion of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse on Local Government or its 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 described 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 Sections 33.41 to 34.23, that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total amount of the delinquent installment, penalties, and interest due, in the same manner, according to Texas Tax Code Section 33.48, as in a suit to collect a delinquent property tax.

(f) After written notice of the Assessment is recorded in the real property records of the county in which the Property is located as provided under Section 399.013 of the PACE Act, the lien created by the Assessment may not be contested on the basis that the improvement is not a "qualified improvement" or the Project is not a "qualified project," as such terms are defined in Section 399.002 of the PACE Act.

6. Written Contract Required by PACE Act. This County 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 El Paso County official Public Records, as notice of the contractual Assessment, in accordance with the requirements of Section 399.013 PACE Act.

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

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

9. Construction and Definitions. This County Owner Contract is to be construed in accordance with and in reference to El Paso County PACE program and PACE Act. Terms used herein, and not otherwise defined herein, shall have the meanings ascribed to them in: (1) El Paso County PACE program and/or (2) the PACE Act.

10. Binding Effect. This County 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 County 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 County 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 County Owner Contract constitutes the entire agreement between Local Government and Property Owner with respect to the subject matter hereof and may not be amended or altered in any manner except by a document in writing executed by both parties.

14. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this County 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 County Owner Contract may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

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 (“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 County Owner Contract.

18. Costs. No provisions of this County 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. Construction Terms. If the County Lender Contract includes requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D attached hereto and incorporated herein by this reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final Project completion.

EXECUTED effective as of _____, 20__.

PROPERTY OWNER:

LOCAL GOVERNMENT:

El Paso County, Texas

By: _____

By: _____

AUTHORIZED REPRESENTATIVE

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

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

EXHIBIT A

NOTICE OF CONTRACTUAL ASSESSMENT LIEN
PURSUANT TO PACE ACT

EXHIBIT B

MORTGAGE HOLDER(S) CONSENT

EXHIBIT D

CONSTRUCTION TERMS

[if applicable]

Date	Draw down Amount	Purpose