

**CITY OF HOUSTON
PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM**

REPORT REQUIRED BY TEXAS LOCAL GOVERNMENT CODE SECTION 399.009

This Report is adopted by Houston City Council for the City of Houston Property Assessed Clean Energy Program (“**Houston PACE**”) 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).

Houston 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, Houston is establishing the Houston commercial PACE Program to encourage private sector investment in energy efficiency and water conservation. Houston PACE 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, Houston PACE is an innovative financing program that enables private sector owners of 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 2015 legislative session streamlined the process.

Loans made under the Houston 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 annual utility cost savings derived from improvements financed with PACE loans are expected to exceed the amount of the annual assessment payments. 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 payment obligation for the remaining balance of the assessment is transferred automatically to the next owner. As a result, Houston PACE will help property owners overcome market barriers which often discourage investment in energy efficiency and water conservation improvements.

1. Eligible Properties

Houston PACE is a strictly voluntary program. All private sector owners of Eligible Properties located within Houston’s city limits and its extra-territorial jurisdiction (“**ETJ**”) may participate in PACE financing. “**Eligible Properties**” include commercial, industrial, and multi-family residential properties with five or more dwelling units. Government, residential¹, and undeveloped property and property undergoing development at the time of the assessment are not Eligible Properties.

¹ This encompasses single family residential and any multi-family properties less than five units.

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 Houston PACE to Property Owners

Houston PACE 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 upon sale of the property.

By financing Qualified Improvements through Houston PACE, 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 Houston 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 City of Houston and Surrounding ETJ

Houston PACE offers multi-faceted economic and environmental benefits to the city and its various constituents, including those in the ETJ. Based on existing PACE activity across the United States and in

Texas, the City of Houston anticipates project investment of approximately \$110 million over the next three to five years. This level of investment has a potential of creating over 2,000 gross direct, indirect and induced jobs. Further, such investment has environmental benefits. It is estimated that energy consumption could be reduced by approximately 505,000 MMBtus, resulting in a greenhouse gas reduction of approximately 349 metric tons. This is equivalent to the removal of 73 passenger vehicles from Texas Highways.

Among other things, projects financed through PACE 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
- Support the city's Better Buildings Challenge
- Help achieve the city's water conservation goals
- 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 manufactures
- Improve productivity through optimized energy usage
- Support the State's water conservation plan
- Reduced water consumption will better enable the Public Utilities Division of the Public Works and Engineering Department to meet its water conservation goals

Finally, there are multiple regulatory schemes that are being promulgated by EPA that will have significant impacts on air quality in Texas. A significant one is the change in the National Ambient Air Quality Standards (NAAQS) to a new primary ozone standard. The Clean Air Scientific Advisory Committee (CASAC) proposed tightening the National Ambient Air Quality Standard for ozone to between 60-70 ppb, down from its current standard of 70 ppb². Adjusting the NAAQS to a lower standard will increase the difficulty of bringing the Houston area into attainment. Being non-attainment for priority pollutants in the Clean Air Act endangers federal transportation funding. 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.

Houston PACE requires minimal support from the City. It is designed to be self-sustaining. Furthermore, because Houston PACE is tax neutral, it achieves all of the benefits listed in this Report without imposing a burden on the City's general fund.

The 84th Texas Legislature added a provision that explicitly shields the City and its employees from liability resulting from administering a PACE program.³

5. Administration of Houston PACE

² [http://yosemite.epa.gov/sab/sabproduct.nsf/F08BEB48C1139E2A8525785E006909AC/\\$File/EPA-CASAC-11-004-unsigned+.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/F08BEB48C1139E2A8525785E006909AC/$File/EPA-CASAC-11-004-unsigned+.pdf)

³ Tx. Local Gov't Code §399.019.

Under the PACE Act, the establishment and operation of Houston PACE are considered to be governmental functions. The PACE Act further authorizes Houston to enter into a contract with a third party to provide administrative services for Houston PACE (the “*Authorized City Representative*”). Houston may delegate administration of Houston PACE to a qualified, non-profit organization that can administer Houston PACE at no cost to the City. Transaction fees paid to Houston’s Authorized City Representative by the parties to PACE loans and charitable grants are sufficient revenue streams to support the non-profit organization. The Mayor has the authority to enter into an agreement with an Authorized City Representative since the value of the contract is zero, i.e. less than \$50,000.

6. Eligible Lenders

PACE loans are attractive to lenders because they are very secure investments. Comparable to 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 very low compared to other types of loans. In order to protect the interests of holders of existing mortgage loans on the property, the PACE Act requires their prior written consent as a condition to participation by the property in Houston PACE.

The PACE Act does not set criteria for financial institutions or investors to be PACE lenders. Houston will adopt the best practices of other PACE programs by limiting lenders to include:

- Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- Any insurance company authorized to conduct business in one or more states;
- Any registered investment company, registered business development company, or a Small Business
- 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 Houston PACE 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 Houston or the Authorized City Representative, selects the lender.

7. Components of the Houston PACE Program

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

- a. Map of Region. A map of the boundaries of the region included in Houston PACE is attached to this Report as Exhibit 1. The region encompasses the Houston city limits and its extra-territorial jurisdiction.
- b. Form Contract With Owner. A form contract between Houston and the record owner of the Eligible Property is attached as Exhibit 2. It specifies the terms of the assessment under Houston PACE 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 Houston 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. Qualified Improvement. The following types of projects are qualified improvements that may be subject to contractual assessments under Houston PACE:

Projects that (a) 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;⁴ and (b) 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.⁵

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

Houston PACE may not be used to finance improvements to 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.⁶

- e. Authorized City Representative. HB 3187 was signed into law on June 16, 2015. It authorizes Houston to delegate administration of Houston PACE to a third-party "representative." Houston may delegate all official administrative responsibilities, like the execution of individual contracts with property owners and lenders, to an Authorized City Representative. This relationship will be monitored and maintained by the City of Houston's Administration and Regulatory Affairs Department.
- f. Plans for Insuring Sufficient Capital⁷. 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 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.

⁴ Tx. Local Gov't Code §399.002(5).

⁵ Tx. Local Gov't Code §399.002(3).

⁶ Tx. Local Gov't Code §399.004.

⁷ The Texas PACE Authority's website (www.texaspaceauthority.org) offers a non-exhaustive list of interested and qualified lenders to assist property owners in funding PACE projects in Texas.

- g. No Use of Bonds or Public Funds. Houston does not intend to issue bonds or use any other public monies to fund Houston PACE projects. Property owners will obtain all financing from the Eligible Lenders they choose. The Authorized City Representative will be funded by transaction fees paid by the parties to PACE loans and by charitable grants.
- h. Limit on Length of Loan. One of the criteria of a PACE loan is that the assessment payment period not exceed the useful life of the Qualified Improvements that is the basis for the loan and assessment. As part of the application process, the property owners will submit a third-party review showing the water or energy baseline conditions and the projected water or energy savings. This review will aid the Authorized City Representative in making a determination that the period of the requested assessment does not exceed the useful life of the Qualified Improvement.
- i. Application Process. The Authorized City Representative will accept applications from property owners seeking to finance Qualified Improvements under Houston PACE. 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 City Representative may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the proposed project appears to meet Houston PACE 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.

Once the above processes are completed, the property owner will submit the application to the Authorized City Representative to obtain preliminary approval. The property owner is expected to produce the following documentation prior to closing on the PACE loan:

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

A flow chart of this process is attached as Exhibit 4.

- j. Financial Eligibility Requirements. The Authorized City Representative will determine whether the owner, the property and the improvements are eligible for financing under Houston PACE. 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 statutory method⁸ for ensuring such a 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.

- k. Mortgage Holder Notice and Consent. As a condition to the execution of a written contract between the Authorized City Representative and the property owner imposing an assessment under Houston PACE, the holder of any mortgage lien on the property must be given notice of the owner's intention to participate in Houston PACE on or before the 30th day before the date the contract is executed, and the owner must obtain the written consent of all mortgage holders.⁹ The mortgage holder's written consent should be on a form substantially similar to the one in Exhibit 5.
- l. Imposition of Assessment. The Authorized City Representative will enter into a written contract with the property owner substantially similar to the one in Exhibit 2, only after:
 - (1) the property owner delivers to the Authorized City Representative written consent of all mortgage lien holders in a form substantially similar to the one in Exhibit 5;
 - (2) the Authorized City 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 City 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 Eligible Lender will file "A Notice of Contractual Assessment Lien," in substantially the form in Exhibit 6 in the Official Public Records of Harris, Fort Bend, Montgomery, Waller or Liberty County, depending on 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.

- m. Collection of Assessments. Upon the execution of the written contract between the Authorized City Representative and the property owner and recording of the Notice of Contractual Assessment Lien, the owner will be authorized to execute financing documents with the lender to repay the financing secured by the assessment. The third-party 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

⁸ Tx. Local Gov't Code §399.009(b).

⁹ Tx. Local Gov't Code §399.010.

contract attached as Exhibit 3, the lender or a designated servicer will agree to service the debt secured by the assessment.

With funds from the lender, the property owner can 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 flow charts in Exhibit 4 demonstrate the two approaches.

The lender will receive the owner's assessment payments to repay the debt and remit to the Authorized City Representative any administrative fees. The lender will have the right to assign or transfer the right to receive the installments of the debt secured by the assessment, provided all of the following conditions are met:

- (1) The assignment or transfer is made to an Eligible Lender, as defined above; and
- (2) The property owner and the Authorized City Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the schedule for repayment of the debt; and
- (3) The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of lender's obligations under the lender contract.

- n. Verification Review. After a Qualified Improvement is completed, the Authorized City 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.¹⁰ The verification report conclusively establishes that the improvement is a Qualified Improvement and the project is qualified under the Houston PACE program.
- o. Marketing and Education Services. Houston may subsequently enter into agreements with one or more other local governments or non-profit organizations that promote energy and water conservation, publicize economic development, provide marketing and participant education services for Houston PACE.
- p. Quality Assurance and Antifraud Measures. The Authorized City Representative will institute quality assurance and antifraud measures for the Program. The Authorized City Representative will review each Houston PACE application for completeness and verify the supporting documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the property owner, the property itself, and the proposed project all satisfy Houston PACE underwriting and technical standard requirements. The property owner or the owner's contractor will be required to provide copies of all required permits, releases of mechanics liens, and a statement that the project was constructed in accordance with Houston PACE program guidelines and has complied with all applicable local, state, and federal laws. Measures will be put in place to provide safeguards,

¹⁰ Tx. Local Gov't Code §399.011.

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.

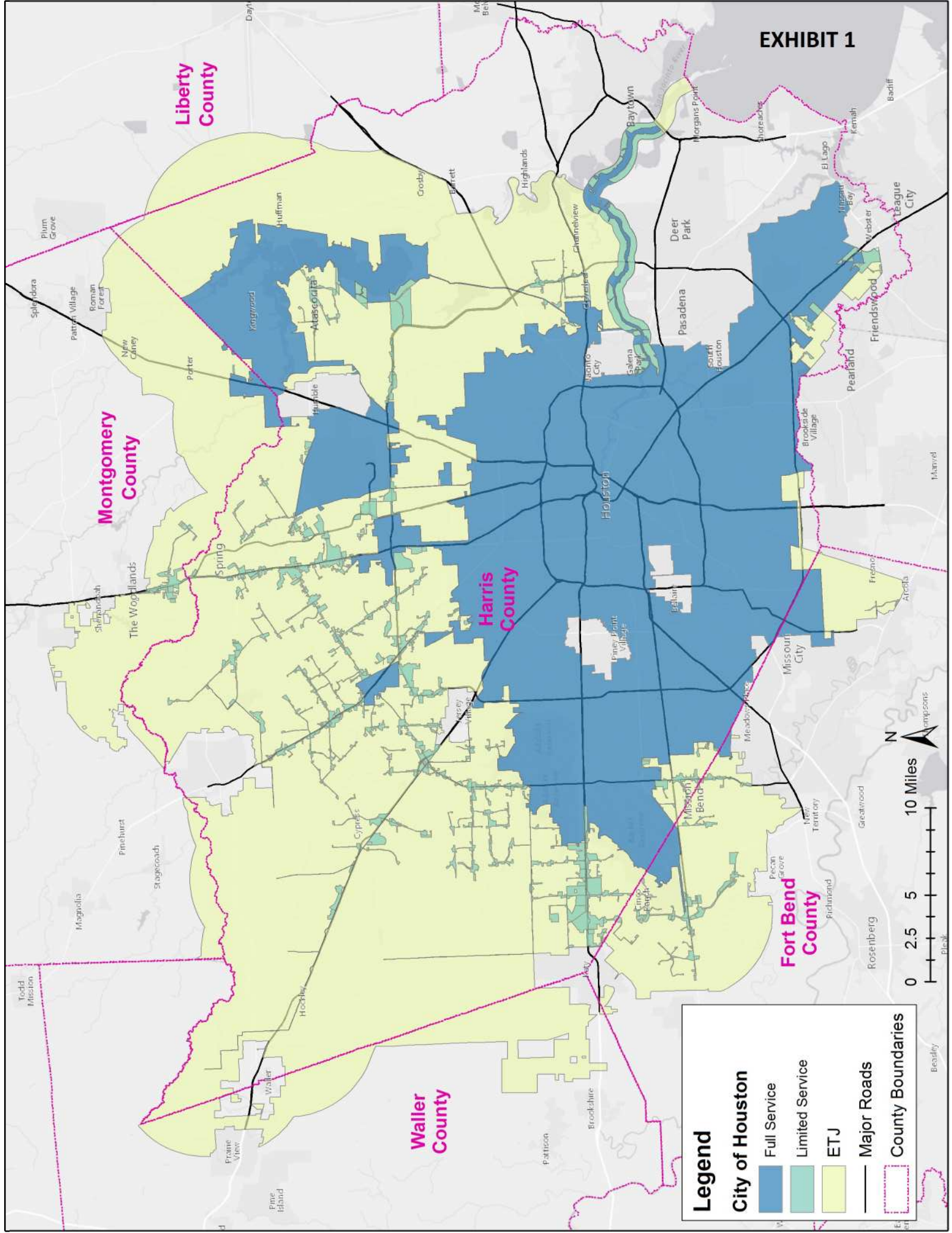
- q. Delinquency. Under the terms of the form lender contract attached as Exhibit 3, if a property owner fails to pay an agreed installment when due on the PACE assessment, the lender will agree to take at least the following steps to collect the delinquent installment:
- (1) Mail to the owner a written notice of delinquency and demand for payment by both certified mail (return receipt requested) and first class mail, and
 - (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 30 days after the date of the first notice if the delinquency is continuing.

If the owner fails to cure the delinquency within 30 days after mailing the second notice of delinquency, the lender may notify the Authorized City Representative of the owner's default. Pursuant to Texas Local Government Code Section 399.014(c), the Authorized City Representative will initiate steps for the City to enforce the assessment lien in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, of the Texas Constitution. 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 City of Houston to offset the cost of collection.

In no event will the total amount of interest on the Assessment, including statutory interest payable to the City of Houston and contractual interest payable to the 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 the City of Houston and the lender exceeds the usury limit, the interest payable to the City of Houston will be reduced, and any interest in excess of the usury limit will be credited to the amount payable to Houston or refunded. If the City of Houston files suit to enforce collection, the City may also recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner and at the same rate as in suit to collect a delinquent property tax. If a delinquent installment of an assessment is collected after the filing of a suit, the City of Houston will remit to the lender the net amount of the delinquent installments and contractual interest collected and remit to the Authorized City Representative the amount of any administrative fees collected but will retain any statutory penalties, interest, and attorney's fees collected.

EXHIBIT 1
MAP OF CITY OF HOUSTON AND
ITS EXTRA-TERRITORIAL JURISDICTION

EXHIBIT 1



Legend

- City of Houston**
 - Full Service
 - Limited Service
 - ETJ
- Major Roads
- County Boundaries

EXHIBIT 2

FORM OWNER CONTRACT

This Contract will also be an exhibit to the Lender's Contract in Exhibit 3.

EXHIBIT 2

PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY PROGRAM (“PACE”) OWNER CONTRACT (“**Owner Contract**”) is made as of the ____ day of _____, 20__, by and between the City of Houston, Texas (“**Local Government**”), a home-rule municipality, 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 under the PACE Act pursuant to Ordinance No. _____, dated _____ 20__, adopted by the Houston City Council (the “**PACE Program**”), and has designated _____ (“**Authorized City Representative**”) as the representative authorized to enter into and enforce the Assessment, Owner Contract and Lender Contract described herein, and has designated the entire territory within the City of Houston city-limits and its extra-territorial jurisdiction as a region (“**Region**”) within which the **Authorized City Representative** and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

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

EXHIBIT 2

impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the in the Official Public Records of _____ County, Texas (the “**Notice of Contractual Assessment Lien**”), a copy of which is attached hereto as Exhibit A and made a part hereof, to repay the financing of such Qualified Improvements. The Property, Qualified Improvements and Assessment are more fully described in the Notice of Contractual Assessment Lien.

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

F. As required by Section 399.010 of the PACE Act, Property Owner notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of this Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage holder to the Assessment was obtained prior to the date of this Owner Contract and is attached hereto as Exhibit B and made a part hereof.

AGREEMENT

The parties agree as follows:

1. **Imposition of Assessment.** In consideration for the financing advanced or to be advanced to Property Owner by Lender for the Project under the PACE Program pursuant to the Lender Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment as set forth in the Notice of Contractual Assessment Lien, including all interest, fees, penalties, costs, and other sums due under and/or authorized by the PACE Act, PACE Program and the financing documents between Property Owner and Lender (the “**Financing Documents**”) which are described or listed on Exhibit C attached hereto and made a part hereof by reference. Property Owner promises and agrees to pay such amount and interest to Local Government, in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to this Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to secure the payment of such amount, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

2. **Maintenance and Enforcement of Assessment.** In consideration for Lender’s agreement to advance financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Lender until the Assessment, including all interest, fees, penalties, costs, and

EXHIBIT 2

other sums due under and/or authorized by the PACE Act, PACE Program and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government agrees to undertake reasonable efforts to enforce the Assessment against the Property for the benefit of Lender in the event of a default by Property Owner.

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. As required by Section 399.009(a) (8) of the PACE Act, the period during which such installments are payable does not exceed the useful life of the Project. When the Assessment has been paid in full, Local Government's rights under this Owner Contract will cease and terminate, and upon notice from Lender, Local Government will execute a release of the Assessment and this Owner Contract and the **Authorized City Representative** will record the release.

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

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

(b) Property Owner and **Authorized City Representative** are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the payment schedule included in the Notice of Contractual Assessment Lien; and

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

Upon written notice to Property Owner and **Authorized City Representative** of an assignment or transfer of the right to receive the installments that meets all of these conditions, the assignor shall be released of all of the obligations of the Lender under such Lender Contract accruing after the date of the assignment assumed by and transferred to such assignee or transferee. 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

EXHIBIT 2

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 the Notice of Contractual Assessment Lien is filed in the Official Public Records of _____ County, as provided by Section 399.014 of the PACE Act, until the financing secured by the Assessment and any penalties and interest are paid; and

(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.

(d) In the event of a default by Property Owner in payment of the installments called for by the Financing Documents, the lien created by the Assessment will be enforced by Local Government in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

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

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 _____ County as notice of the contractual Assessment, in accordance with the requirements of Section 399.013 of the PACE Act.

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

8. Water or Energy Savings. For so long as the Assessment encumbers the Property, Property Owner agrees on or before January 31st of each year, to report to Authorized City

EXHIBIT 2

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

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

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

11. Notices. All notices and other communications required or permitted by this Owner Contract shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at its address shown below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

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

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

14. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this Owner Contract as may be reasonably necessary or required.

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

16. Counterparts. This Owner Contract may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

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. In order to comply with Article II, Section 19 and 19a of the City of Houston's Charter and Article XI, Section 5 of the Texas Constitution, no provisions of this

EXHIBIT 2

Owner Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

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

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

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

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

EXHIBIT 2

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

EXECUTED effective as of _____, 20__.

PROPERTY OWNER:

LOCAL GOVERNMENT:

By: _____

By: It's Authorized City Representative
Pursuant to Tx. Local Gov't Code §399.006(b)

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

EXHIBIT 2

EXHIBIT A

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

EXHIBIT 2

EXHIBIT B

MORTGAGE HOLDER(S) CONSENT

EXHIBIT 2

EXHIBIT C

FINANCING DOCUMENTS

EXHIBIT 3
FORM LENDER CONTRACT

EXHIBIT 3

PACE LENDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) LENDER CONTRACT (the “**Lender Contract**”) is made as of the ____ day of _____, 20__, by and between the City of Houston, Texas (“**Local Government**”) a home-rule municipality, 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 commercial, industrial, agricultural, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to Ordinance No. _____, dated _____ 20__, adopted by the Houston City Council (the “**PACE Program**”), and has designated _____ (“**Authorized City Representative**”) as the representative authorized to enter into and enforce the Assessment, Owner Contract and Lender Contract described herein, and has designated the entire territory within the City of Houston city-limits and its extra-territorial jurisdiction as a region (“**Region**”) within which the Authorized City Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Pursuant to Application number _____, _____ (“**Property Owner**”) has applied to Local Government to participate in the PACE Program with respect to certain real property located at _____, _____, Texas (the “**Property**”) by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (the “**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”).

EXHIBIT 3

D. Property Owner and Local Government have entered into a written contract as required by Section 399.005 of the PACE Act, a copy of which is attached hereto as Exhibit A and made a part hereof (the “**Owner Contract**”), in which Property Owner has requested that Local Government impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the in the Official Public Records of _____ County, Texas (the “**Notice of Contractual Assessment Lien**”), a copy of which is attached to the Owner Contract as Exhibit A, to repay the financing of such Qualified Improvements. The Property, Qualified Improvements and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (the “**Financing**”) will be provided to Property Owner by Lender in accordance with financing documents described in, or copies of which are included as, Exhibit B attached hereto and made a part hereof (the “**Financing Documents**”). Such Financing includes only those costs and fees for which an assessment may be imposed under the PACE Act. This Lender Contract is entered into between Local Government and Lender as required by Section 399.006(c) of the PACE Act to provide for repayment of the Financing secured by the Assessment.

F. As required by Section 399.010 of the PACE Act, Property Owner notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of the Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage lien holder to the Assessment was obtained prior to the date of the Owner Contract, as shown by the copy of such consent(s) attached as Exhibit B to the Owner Contract.

AGREEMENT

The parties agree as follows:

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

2. Installments. The Assessment, including the amount financed and contractual interest, is due and payable to Lender in installments as set forth in the Financing Documents. As required by Section 399.009(a)(8) of the PACE Act, the period during which such installments

EXHIBIT 3

are payable does not exceed the useful life of the Project. When the Assessment has been paid in full, Local Government's rights under the Owner Contract will cease and terminate, and upon notice from Lender, Local Government will execute a release of the Assessment and the Owner Contract, and the Authorized City Representative will record the release.

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

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

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

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

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

(4) Any publicly traded entity; or

(5) Any private entity that:

(i) Has a minimum net worth of \$5 million;

(ii) Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending;

(iii) Can provide independent certification as to availability of funds; and

(iv) Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

(b) Property Owner and Authorized City Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the payment schedule included in the Financing Documents; and

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

EXHIBIT 3

Upon written notice to Property Owner and Authorized City Representative of an assignment or transfer of the right to receive the installments that meets all of these conditions, the assignor shall be released of all of the obligations of the Lender under this Lender Contract accruing after the date of the assignment. Any attempt to assign or transfer the right to receive the installments of the Assessment that does not meet all of these conditions is void.

4. Financing Responsibility. Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set forth in the Financing Documents and performing Lender's obligations and responsibilities thereunder.

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

(a) Delinquent installments of the Assessment incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment incurs a penalty of 6% of the amount of the installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an installment delinquent on July 1 incurs a total penalty of 12% of the amount of the delinquent installment without regard to the number of months it has been delinquent. A delinquent installment also accrues interest at the rate of 1% for each month or portion of a month the installment remains unpaid. Subject to the limitation set out in paragraph 16 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 the Notice of Contractual Assessment Lien is filed in the Official Public Records of _____ County, as provided by Section 399.014 of the PACE Act, until the Assessment and any penalties and interest are paid; and

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

(c) The lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due is not eliminated by foreclosure of a property tax lien, according to Section 399.014(b) of the PACE Act. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner.

(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

EXHIBIT 3

government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

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

6. Servicing and Enforcement of Assessment.

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

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

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

(1) Mail a written notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first class mail; and

(2) Mail a second notice of delinquency to the Property Owner by both certified mail, return receipt requested, and first class mail at least 30 days after the date of the first notice if the delinquency is continuing.

If the Property Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, the Lender or its designated servicer may notify the Authorized City Representative who will certify to the Local Government in writing of a default by the Property Owner, and upon receipt of such certification and after doing its own due diligence, Local Government will enforce the assessment lien for the benefit of Lender pursuant to Tex. Local Gov't Code Sec. 399.014(c), in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

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

EXHIBIT 3

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

(f) Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this Lender Contract, and no implied duties on the part of Local Government are to be read into this Lender Contract. Local Government will not be deemed to have a fiduciary or other similar relationship with Lender. Local Government may request written instructions for action from Lender and refrain from taking action until it receives satisfactory written instructions. Local Government will have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting.

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

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

(a) Lender is a qualified lender under the PACE Program, as defined in paragraph 3(a) above, and is fully qualified under the PACE Program to enter into this Lender Contract and the Financing Documents;

(b) Lender has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and

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

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

9. Construction and Definitions. This Lender Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein, and not otherwise defined herein, shall have the meanings ascribed to them in: (1) the Notice of

EXHIBIT 3

Contractual Assessment Lien, (2) the Owner Contract, (3) the PACE Program, and/or (4) the PACE Act.

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

11. Notices. All notices and other communications required or permitted hereunder shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law. This 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 Lender Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.

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

15. Counterparts. This Lender Contract may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

16. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and contractual interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the "usury limit"). If the total amount of interest payable to Local Government and Lender exceeds the usury limit, interest payable to Local Government will be reduced and any interest in excess of the usury limit will be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this Lender Contract.

17. Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the date of this Lender Contract. Property Owner has represented to Lender and Local Government that the Project is a "qualified project" as defined in the PACE Program and Section 399.002 of the PACE Act. The Assessment has been imposed on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.

18. Release. LENDER AGREES TO AND SHALL RELEASE THE LOCAL GOVERNMENT, ITS AUTHORIZED CITY REPRESENTATIVE, AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM

EXHIBIT 3

ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS CONTRACT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

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

20. Inspection and Audits. To the extent allowed by laws applicable to Lender, City representatives may perform, or have performed, audits and inspections of Lender's books and records related to compliance with this Lender Contract. Lender shall keep its books and records available for this purpose for at least three (3) years after this Lender Contract terminates. This provision does not affect the applicable statute of limitations.

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

EXECUTED effective as of _____, 20__.

LENDER:

LOCAL GOVERNMENT:

By: _____

By: It's Authorized City Representative
Pursuant to Tx. Local Gov't Code §399.006(b)

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

EXHIBIT 3

EXHIBIT A

OWNER CONTRACT

EXHIBIT 3

EXHIBIT B

FINANCING DOCUMENTS

EXHIBIT 4
HOUSTON PACE PROJECT PROCESS
FLOWCHARTS

Houston PACE Project Process

-if funded during construction-



Houston PACE Project Process

-if funded before construction-



EXHIBIT 5

MORTGAGE LIEN HOLDER'S CONSENT

This Consent will also be an exhibit to the Owner's Contract in Exhibit 2.

EXHIBIT 5

LENDER CONSENT TO PACE ASSESSMENT

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

RECITALS

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

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

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

EXHIBIT 5

AGREEMENT

1. Lender hereby consents to the Assessment and the PACE Agreement and agrees that Property Owner shall not be in default under the Loan Documents because it enters into the PACE Agreement or the financing documents referenced therein, or because the Property is subject to the Assessment imposed against the Property pursuant to the PACE Agreement.

2. This Lender consent is granted subject to the following conditions and agreements:
 - a) Property Owner and Local Government agree that the amount of the Assessment shall not exceed the Maximum Amount of Assessment Authorized, as specified above, without the consent of Lender.

 - b) Local Government agrees that it shall give notice to Lender in the event of a default of the Property Owner under the PACE Agreement. The Lender shall have the right, but not the obligation, to cure any default on behalf of Property Owner under the PACE Agreement. Notice shall be given to Lender at the address above, or such other address as Lender may direct by written notice to Local Government. Notice shall be given by certified mail, return receipt requested.

EXECUTED effective as of _____, 20_____.

LOCAL GOVERNMENT, CITY OF HOUSTON, TEXAS:

By: _____

Name: _____

Title: _____

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on this _____ day of _____, _____ by _____ (Name) as the Authorized City Representative of the City of Houston, Texas.

[SEAL]

Notary Public, State of Texas

EXHIBIT 5

PROPERTY OWNER:

By: _____

Name: _____

Title: _____

STATE OF TEXAS
COUNTY OF _____

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

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

[SEAL]

Notary Public, State of Texas

LENDER:

By: _____

Name: _____

Title: _____

STATE OF TEXAS
COUNTY OF _____

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

[SEAL]

Notary Public, State of Texas

EXHIBIT 6

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

This Notice will also be an exhibit to the Owner's Contract in Exhibit 2.

EXHIBIT 6

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

STATE OF TEXAS §
 §
COUNTY OF _____ §

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. Unless otherwise expressly provided herein, all terms used herein have the same meanings ascribed to them in the PACE Act.

B. The City of Houston, Texas (“**Local Government**”) has established a program under the PACE Act pursuant to Ordinance No. _____, dated _____20____, adopted by the Houston City Council (the “**PACE Program**”), and has designated _____ (“**Authorized City Representative**”) as the representative authorized to enter into and enforce the Assessment, Owner Contract and Lender Contract described herein, and has designated the entire territory within the city-limits of the City of Houston and its extra-territorial jurisdiction as a region (“**Region**”) within which the Authorized City Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

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

D. 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. Property Owner has entered into a written contract (the “**Owner Contract**”) with Local Government

EXHIBIT 6

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

E. The financing of such Qualified Improvements will be provided to Property Owner by _____ (“**Lender**”), a lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 399.006(c) of the PACE Act and by the PACE Program (the “**Lender Contract**”).

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 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, the Assessment, including interest and any penalties, costs, or fees accrued thereon, is a first and prior lien on the Property from the date that this Notice of Contractual Assessment Lien is recorded in the Official Public Records of _____ County, Texas, until such Assessment, interest, penalties, costs, and fees are paid in full. Such lien has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act. The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of the Assessment that has not yet become due is not eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for any past due portion of the Assessment. In the event of a sale or transfer of the Property by Property Owner (including, without limitation, a foreclosure sale for a past due portion of the Assessment), the 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.

EXECUTED on _____, 20_____.

LOCAL GOVERNMENT:

By: _____
Name: _____
Title: _____

AUTHORIZED CITY REPRESENTATIVE
Pursuant to Tx. Local Gov’t Code §399.006(b)

EXHIBIT 6

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This Notice of Contractual Assessment Lien Pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, 20____ by _____, _____, on behalf of _____, Texas.

_____ (print name)

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT 6

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT 6

EXHIBIT B

QUALIFIED IMPROVEMENTS

EXHIBIT 6

EXHIBIT C

ASSESSMENT