

**EL PASO COUNTY**  
**PACE LENDER CONTRACT**

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) LENDER CONTRACT (“**County Lender Contract**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between El Paso County, Texas (“**Local Government**”) and \_\_\_\_\_ (“**Lender**”).

**RECITALS**

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of 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, 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 further 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 El Paso County PACE program.

C. Pursuant to Application number \_\_\_\_\_, \_\_\_\_\_ (“**Property Owner**”) has applied to Local Government to participate in El Paso County PACE program with respect to certain real property located at \_\_\_\_\_, \_\_\_\_\_, Texas (the “**Property**”) 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.

D. Property Owner and Local Government have entered into a written contract (“**County Owner 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, in which Property Owner voluntarily requested that Local Government impose an assessment (“**Assessment**”) on the Property to repay the financing of such Qualified Improvements, all pursuant to the PACE Act and as 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 to the County Owner Contract as Exhibit A. The Property,

Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (“**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 (“**Financing Documents**”). Such Financing includes only those costs and fees for which an assessment may be imposed under the PACE Act. This County 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 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 the County Owner Contract. Written consent of each mortgage lien holder to the Assessment was obtained prior to execution of the Owner Contract, as shown by the copy of such consent(s) attached as Exhibit B to the County Owner Contract.

### **AGREEMENT**

The parties adopt the above recitals as part of their agreement and further 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 County 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. In the event of a default by Property Owner and after written notice to Local Government from Lender, Local Government agrees to enforce the assessment lien against the Property for the benefit of Lender. Local Government shall have no obligation to repurchase the Assessment and no liability to Lender should there be a default or an event of default in the payment thereof, or any other loss or expense suffered by Lender under this or any other circumstance.

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. 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 B hereto. As required by Section 399.009(a)(8) of the PACE Act, the period during which such installments are payable does not exceed the useful life of the Project. When the Assessment has been paid in full, Local Government’s rights under this County Lender Contract will cease and terminate. Upon notice from Lender, Local Government

will execute a release of the Assessment and this County Lender Contract, and the Authorized Representative will record the release.

3. Assignment of Right to Receive Installments. Lender will have the right to assign or transfer its 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 Eligible 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 an SBA 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; and

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

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

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

5. Lien Priority and Enforcement. As provided in the County 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 Notice of Contractual Assessment Lien is filed in El Paso County official Public Records, as provided by Section 399.014 of the PACE Act, until the Assessment and any penalties and interest are paid; and

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

(c) The lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due is not eliminated by foreclosure of a property tax lien, according to Section 399.014(b) of the PACE Act. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse on Local Government or 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. 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 County 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 County 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 continues.

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 Representative who will certify to the Local Government in writing of a default by the Property Owner. Upon receipt of such notification 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 Section 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 County 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 County Owner Contract and the Authorized Representative will record the release.

(e) Limitations on Local Government's Actions. Without the prior written consent of Lender, Local Government will not enter into any amendment or modification of or deviation from the County Owner Contract. Local Government will not institute any legal action with respect to the County 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 County Lender Contract, and no implied duties on the part of Local Government are to be read into this County 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. No provisions of this County 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 County Lender Contract, Lender hereby warrants and represents that on the date on which Lender executes this County Lender Contract:

(a) Lender is a qualified Eligible Lender under the PACE Program, as defined in paragraph 3(a) above, and is fully qualified under the PACE Program to enter into this County 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 County 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 County 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 County Lender Contract is to be construed in accordance with and with reference to El Paso County PACE program and the PACE Act. Terms used herein, and not otherwise defined herein, shall have the meanings ascribed to them in: (1) the Notice of Contractual Assessment Lien, (2) the County Owner Contract, (3) El Paso County PACE program, and/or (4) the PACE Act.

10. Binding Effect. This County 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 County Lender Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas.

13. Entire Agreement. This County 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 County 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 (“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 County Lender Contract.

17. Certification. Local Government certifies that El Paso County PACE program has been duly adopted and is in full force and effect on the date of this County Lender Contract. Property Owner has represented to Lender and Local Government that the Project is a “qualified project” as defined in El Paso County 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 County Owner

Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the County Owner Contract.

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

EXECUTED effective as of \_\_\_\_\_, 20 \_\_\_\_.

LENDER:

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**

**COUNTY OWNER CONTRACT**



**EXHIBIT C**

**CONSTRUCTION TERMS**

[if applicable]

<b>Date</b>	<b>Draw down Amount</b>	<b>Purpose</b>