



Presents



A toolkit for Texas counties and municipalities to create
uniform, user-friendly, scalable, and sustainable PACE programs throughout Texas.

Created by a diverse coalition of stakeholder volunteers led by
Keeping PACE in Texas

www.KeepingPACEinTexas.org

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I. ACKNOWLEDGMENTS

Rare is the opportunity to collaborate with large numbers of extraordinarily talented, selfless people to create economy and give it away. [PACE in a Box](#) would not be possible without these wonderful individuals and organizations:



The **Keeping PACE in Texas** board members envisioned what PACE will mean for Texas. Since mid-2011, they led the charge to make the PACE Act a reality in Texas:

Steve Block	KPT Board President and Of Counsel, Thompson & Knight, LLP
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Andy Mangan	Executive Director, US Business Council for Sustainable Development
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Thompson & Knight, LLP	

SB 385, Texas' Property Assessed Clean Energy Act, was sponsored in the Senate by **Chairman John Carona** and in the House by **Chairman Jim Keffer**. These legislators and their staffs – especially, **Lauren Emery**, policy analyst, Senate Committee on Business and Commerce, and **Bernice Espinosa-Torres**, clerk, House Committee on Energy Resources – shepherded the PACE Act throughout the 83rd session of the Texas Legislature. This new law also had a guardian angel to whom we owe much: The **Honorable Warren Chisum**, who championed PACE and helped us appreciate its value to rural Texas.

Shortly after **Governor Rick Perry**, signed the PACE Act, over 100 amazing stakeholders participated in five Working Groups to design [PACE in a Box](#). This effort is the equivalent of a modern day barn raising and the result of hundreds of donated hours. I am reminded of how fortunate we are to have had the opportunity to pursue this project in Texas. If something needs doing, Texans don't wait for someone else – we do it ourselves. We hope this model PACE program created by public and private sector volunteers can be easily replicated in other states.



We express deep gratitude to the chairs and members of these five working groups:

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Brandon Ray

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Cathy Redson

Cyrus Reed

Rick Rhodes

Ada Ryland

Ty Sanders

Russel Smith

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Scott Storment

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Member Organizations of Keeping PACE in Texas

PACE in a Box could not be possible without the generous financial contributions of these Platinum members of Keeping PACE in Texas:



Established in 1887, Thompson & Knight is a full-service law firm with a long and distinguished tradition of exemplary service to our clients and communities around the world.

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As the state energy office, SECO partners with Texas consumers, businesses, educators and local governments to reduce energy costs and maximize efficiency.

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The Meadows Foundation exists to assist people and institutions of Texas in improving the quality and circumstances of life for themselves and future generations.

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PACE experts from across the country selflessly shared their time, experiences, expertise, and enthusiasm. The PACE Act and the [PACE in a Box](#) project reflect the wisdom of these leaders.

It is a privilege to work alongside so many talented people to help make Texas a better place to live and work. It is an honor to share [PACE in a Box](#) with you and your community. May [PACE in a Box](#) bring you and your community outcomes that are both qualitatively and quantitatively bountiful.

Sincerely,
Charlene Heydinger
Executive Director
Keeping PACE in Texas

II. EXECUTIVE SUMMARY

Section 1 - About PACE

Property Assessed Clean Energy (PACE) is an innovative financing program that enables owners of commercial and industrial properties to obtain low-cost, long-term loans for 100% of the cost of energy-efficiency and water conservation improvements. PACE loans help property owners overcome financial barriers that typically discourage investment in water conservation and energy efficiency retrofits to existing properties. Improvements financed through PACE can generate positive cash flow upon completion with no up-front, out-of-pocket cost to property owners. The term of a PACE loan may extend up to 20 years, resulting in cost savings that exceed the amount of the assessment payment.

PACE loans are paid through and secured by a property assessment voluntarily imposed on the property by its owner with the consent of existing mortgage holders. PACE assessments attach to and follow title to the property, and they are not subject to acceleration upon default or foreclosure. If the property is sold before the PACE loan is fully repaid, the assessment remains in place and the repayment obligation is automatically transferred to the next owner. The senior lien status of PACE assessments substantially reduces the risk of non-payment, making PACE loans very secure and attractive to long-term, risk-averse lenders.

PACE financing enables owners of commercial and industrial properties to help conserve critical water and energy resources, while simultaneously reducing their utility costs and improving their bottom-line profitability. In a broader sense, the availability of PACE financing will help improve the quality and efficiency of our building stock, reduce harmful carbon emissions, and create numerous jobs in the manufacturing, construction and service sectors of our economy.

Section 2 - About PACE in Texas

Keeping PACE in Texas (KPT) is a non-partisan, non-profit organization that assembled the Texas coalition to help get the Property Assessed Clean Energy Act (the PACE Act) enacted in Texas on June 14, 2013. The PACE Act¹ authorizes municipalities and counties (local government) in Texas to work with private sector lenders and property owners to finance qualified improvements using contractual assessments voluntarily imposed on the property by its owner. After the legislation was enacted, the coalition led by KPT set out to design “**PACE in a Box**” – a uniform, user-friendly, sustainable and scalable turnkey program to assist local governments in establishing and implementing PACE programs. The serious resource challenges in Texas, combined with the passion of the volunteers, provided a unique opportunity for Texas to create a new PACE paradigm. The coalition of volunteers grew to include over 100 members, and the product of their design effort is this document, **PACE in a Box**.

While the largest cities in Texas had already expressed desire to establish PACE programs, the new coalition understood that Texas’ water and energy challenges called for something more – the availability of uniform, accessible PACE programs throughout Texas. To reach industry, agriculture, historic buildings, small towns, non-profit properties and others across the state, the coalition worked together to create a comprehensive model PACE program that would enable urban and rural local governments throughout Texas to work together on a regional basis to quickly establish programs that would make it easy and affordable for private property owning businesses to conserve energy and water.

Instinctively, the group knew that to reach this goal, it needed to make establishing PACE programs easy and affordable for local governments, too. **PACE in a Box** is designed to be a turnkey program with best practices accompanied by model documents and contracts – everything a community needs to establish a sound PACE program. In addition, **PACE in a Box**, the first program of its kind developed from the start by a diverse group of volunteers, with input from businesses and local governments, identified several tasks better suited to the marketplace than to local government. Efficiencies have been identified that minimize a local government’s administrative responsibilities and burdens. These efficiencies should lead to strong PACE programs that can be easily adopted and sustained throughout Texas.

¹ SB 385, The Property Assessed Clean Energy Act (PACE Act), sponsored in the Senate by Chairman John Carona and in the House by Chairman Jim Keffer and signed into law on June 14, 2013 by Governor Perry, creates a new chapter 399 in the Texas Local Government Code.

In its first meeting, the group reviewed PACE trends in other states and focused on how to jump start PACE in Texas by taking advantage of two emerging national PACE market trends – the consolidation of local programs that lowered administrative costs and increased economies of scale and the effort to increase private lender acceptance of and participation in PACE financing.

The group noted a California trend in which hundreds of early adaptor local governments were opting into one or more state-wide competing administrative programs each providing an exclusive or favored funding mechanism that relies on privately or publicly funded municipal bonds. Although this consolidation enables these local governments to share program administration, over eighty local governments in California have authorized more than one PACE program within their jurisdictions. The competition among these government-selected program administrators and the number of differing program requirements can be confusing and expensive.

The case for a single state-wide, uniform program model was made last year by Connecticut's new PACE statute, the only one that creates a single governmental agency to administer PACE programs on a state-wide basis on behalf of local governments. In its first eight months of operation, Connecticut accounted for one-half of all commercial PACE financing in the U.S. in 2013.

Although a state-administered PACE program is not an option in Texas, the coalition recognized the value of uniform programs covering large areas that could provide economies of scale. Standardization became the first essential principal driving development of the coalition's model program.

The trend toward private financing of PACE loans was readily evident in Texas. Bankers and other private lenders are key participants in the coalition. **PACE in a Box** reflects the increasing lender interest in participating in PACE financing in the emerging Texas market because their business interests and concerns have been taken into account.² Although the statute permits the use of non-general revenue (non-general obligation) bonds for PACE financing, the coalition encourages developing a competitive market for capital as the initial and preferred source for PACE funding.³

The Texas preference for private sector solutions also drove a process that assigns responsibility for PACE financing negotiations to the property owners. The coalition recognized early on that property owners will want to select their own lenders, contractors, equipment manufacturers, and others in a competitive marketplace. This recognition informed the coalition's second overarching principle – to drive PACE decision-making to the marketplace and to limit the role of local governments, as much as possible, to providing the mechanism that lies at the heart of PACE financing – the assessment on the property.

The coalition divided into five working groups and set to work designing a model program to provide at no charge to municipalities and counties. The working groups started by researching best practices in the early adopter commercial programs in other states and "Texified" them – adapted them to the unique requirements of the Texas marketplace.

Section 3 – Introduction

Section 3 lays out the background of the PACE concept, the new Texas law, Keeping PACE in Texas and the goals underpinning the recommendations contained in **PACE in a Box**. The five working groups in the coalition designed this model program to be uniform, user-friendly, sustainable, and scalable. The design is intended to drive the creation of larger, regional programs in which many counties and municipalities share program administration with significant economies of scale that minimize transaction and overhead costs.

PACE in a Box is designed in a way to impose the costs of the PACE program on its users so that no taxpayer dollars are required to support the ongoing administration of the program. While non-general revenue bonds can be a source of funding under the PACE Act, the **PACE in a Box** design focuses primarily on private sector

² Like Connecticut's PACE law, the Texas PACE Act requires the consent of a mortgagee as a precondition to participating in a PACE program.

³ During the 2013 legislative session, the Texas Comptroller released a report on local government debt that initiated much discussion and concern among legislators and the public regarding the amount of local debt and the potential negative impact of bond funding on the Texas economy. See, *Your Money and Local Debt* at <http://www.window.state.tx.us/news2012/120926-Debt.html>.

lenders as the less costly program preference of both business and local government stakeholders. Lean, effective regional programs with large numbers of participants are key to program sustainability over the long term.

The model created here is available to communities in other states as well and can help establish the nation-wide uniformity needed to standardize PACE financing and support the creation of a secondary market for commercial and industrial PACE assessments.

Section 4 – A Guide to Initiating a PACE Program

Every issue and task a local government must consider and do to establish a PACE program under the PACE Act is set forth in Section 4. Preliminary questions to be resolved are highlighted and recommendations made for matters including: identifying key local officials and staff, designating the geographic scope of the PACE region, consideration of joining other jurisdictions to scale the program to a regional size, determining administrative roles and responsibilities, establishing costs and fees, establishing quality assurance and anti-fraud measures and ensuring sufficient capital for third-party financing.

To establish a PACE program under the PACE Act, a municipality or county must first prepare a report and make it available for public review. The report requirements in the PACE Act drive and reflect the extensive preliminary review of program decisions that the local government must address at the start of the program consideration process. The final version of [PACE in a Box](#) will include a model report.

When the decisions are made and the report completed, the governing body of the local government is ready to adopt a resolution of intent to create a local program that is accompanied by the report. The final version of [PACE in a Box](#) will include a model resolution of intent. The next step in the process is to hold a public hearing. Local governments working together to create a joint or regional program are authorized to hold a joint hearing. The final version of [PACE in a Box](#) will include a model hearing agenda.

The last statutory step in creating a PACE program is the adoption of a resolution establishing a local PACE program. The resolution may incorporate the report or an amended version of the report, and the final version of [PACE in a Box](#) will include a model resolution establishing a local PACE program.

Section 5 – Guide to Administering a PACE in a Box Program

The first decision requiring a local government's focus is the manner in which the program will be administered. A local government can choose to administer the program in-house using local government resources or acquire the assistance of a third-party administrator for all or part of the administrative duties. This path includes several options.

If local governments join together to create a joint or regional program, one of the partnering local governments could administer the joint program, or the local governments could ask a regional council of government to administer the program for them. These cooperative arrangements among governments will require interlocal government agreements. If these local governments or a regional council of government administering a regional program on behalf of participating local governments reaches out to private third-party administrations, the selection of the private administrator for all or some of the PACE administrative functions will be accomplished through a request for proposal (RFP) process.

Once the administration of a PACE program is established, the program can begin accepting applications, and Section 5 briefly discusses the process a property owner completes before filing an application for PACE financing with the PACE administrator. The PACE administrator is required to establish a program application and a process flow from the application receipt through closing, including the recording of the lien with the appropriate county clerk, which is required for the lien to take effect. All of the documents required at closing will be provided in the final version of [PACE in a Box](#).

The manner in which the direct assessments on the property are to be collected must also be determined. Because of restrictions in the Texas tax laws on what can be included on a tax bill and flexibility provided in the PACE Act regarding the manner of servicing, the coalition determined several market-friendly servicing options that could reduce the burden of servicing on the PACE administrator.

The **PACE in a Box** final draft lays out the benefits and challenges of three servicing options. A PACE administrator can enter into an interlocal government agreement with a county tax assessor-collector so long as the county tax assessor-collector is willing to do the servicing and is reimbursed for costs. Another option is for the PACE administrator to provide servicing by sending the assessments directly or by selecting a third-party servicer to send the assessments on behalf of the PACE program. Finally, nothing in the PACE Act prevents a PACE administrator from delegating the servicing function to the lender. In all of these options, it is critical that the assessment bill be clearly marked and labeled as a local government direct PACE assessment on the property. The PACE administrator must have appropriate reporting in place to know the current status of each PACE assessment payment history. Finally, to properly administer the PACE program, a local government must establish annual appropriate program reporting and analysis and annual review of the administration of the PACE program. Ongoing feedback and improvement with coordination among Texas PACE programs is essential to ensure the vibrant success of PACE programs up to date with current best practices.

Section 5 also includes recommendations and documents designed to support active marketing and education efforts to support PACE programs throughout Texas.

Section 6 – Guide to PACE Project Underwriting and Technical Standards

Section 6 is the heart of the **PACE in a Box** plan to insure successful projects by laying out the requirements for participation in PACE programs. This section reflects the six-month dedicated investment by the working groups to establish best practices for PACE participants in Texas.

To qualify for PACE, properties must be privately owned (the PACE Act does not apply to government owned buildings) and located within the boundaries established by the local government for the PACE program. The property can be commercial real property (including non-profit real property such as private schools, private medical facilities, religious property, etc.), industrial property (including agricultural property), and residential real property with five or more dwelling units. If there is an existing mortgage lien on the property, the mortgagee must be given thirty days advance notice and must provide written consent prior to including the property in the PACE program. **PACE in a Box** recommends that the application for PACE participation include a checklist of additional information to be provided to the PACE administrator.

To be eligible for PACE financing, the proposed project must be permanently fixed to the real property and have a demonstrated capacity to decrease water consumption and/or energy consumption or demand, including energy efficiency, renewables and distributed generation. In addition, the term of the PACE assessment cannot exceed the projected useful life of the project. The PACE application will include a checklist of items to verify that the statutory and program requirements are met for the proposed project.

The property owners are solely responsible for the selection of their contractors and the contract provisions to ensure satisfaction with the measures installed on their property. Section 8 includes a best PACE practices guide to assist property owners in making wise decisions.

PACE in a Box recommends that, to qualify for PACE financing, a project have a projected savings-to-investment ratio (SIR) greater than one (i.e., the utility savings resulting from the project are greater than the costs incorporated into the assessment). However, a for-profit property owner and the lender can together request a waiver of this general rule by demonstrating that they have carefully evaluated and fully understand the risk and uncertainties associated with allowing a SIR of less than one and address the interests of tenants and future property owners.

The PACE Act also requires a local government to establish an appropriate ratio of PACE assessment cost to the assessed property value. **PACE in a Box** recommends that the total amount of the assessment not exceed 20% of the property's assessed value. However, a property owner and its lender can request a waiver to exceed the 20% cap under certain circumstances.

The PACE Act allows the following expenses to be included in the assessment: the cost of materials and labor necessary for the installation or modification of a qualified improvement, permit fees, inspection fees, lender's fees, program application and administrative fees, project development and engineering fees, Independent Third Party Reviewer (ITPR) fees, and any other fees and costs that may be incurred by a property owner incidental to

the installation, modification, or improvement. For this last category, **PACE in a Box** recommends that legal, consulting or other similar fees be included on an actual cost basis. Changes to the property that are incidental to the installation of a qualified improvement (but not necessary) may be covered on a pro rata basis not to exceed 20% of the overall project cost.

Applicable rebates and other upfront cost reductions should be applied as credit against the total project cost for purposes of calculating the amount of the assessment.

To protect consumers, the PACE Act requires the review of a baseline study and projected savings by an ITPR. Once the project is complete, an ITPR report that the project was properly installed and is functioning as intended is also required. The ITPR will be contracted by the property owner, apply the technical standards, certify to the PACE Administrator that the project complies with the PACE technical standards, stamp the certification with his/her engineering stamp and deliver it to the PACE administrator.

A Technical Standards Manual is included in Section 8. It is important that the same technical standards be implemented in the same manner throughout Texas. The technical methodology incorporated into the review process relies primarily upon the Investor Confidence Project (ICP) Energy Performance Protocols (EPP) for Standard and large commercial Facilities.⁴ The **PACE in a Box** Technical Standards Manual relies on EPP because the EPP are the result of a nationwide effort to standardize the technical review of energy efficiency projects to bring uniformity and reliability on a national scale, and can help ensure standardization in Texas.

Technical standards for water conservation are not as well developed, and PACE technical standards will need to be updated as advancements are made for water measurement and verification.

Section 6 details the requirements for individual PACE projects – the underwriting qualifications for property owners, the property itself and the proposed projects, and the technical standards for measuring current use, projecting future savings, and measuring and verifying the project work once it is completed. The policies in **PACE in a Box** reflect statutory requirements and best practices. These program elements are designed to reduce risk to all parties and to function smoothly within the marketplace today to be user friendly and to promote widespread use of **PACE in a Box**.

Section 7 – PACE in a Box Guide to Third-Party Financing

Section 7 details the methods for financing PACE projects using third-party lenders. It also briefly identifies PACE bond requirements for communities interested in bond funding. The PACE Act authorizes two sources for financing PACE assessments – third-party financing (third-party lenders) and public financing (bonds). **PACE in a Box** recommends that Texas PACE programs utilize an open-market - third-party lender model to minimize local government risk and burdens.

The PACE Act requires local PACE programs to use contracts to establish PACE financing and property assessment terms with the property owner and a private lender. The contract between the PACE program and the property owner is required to impose a PACE assessment on the property to repay the owner's financing of a PACE project, and to place a senior lien on the assessment. The quality of this contract and the uniformity with which it is utilized throughout Texas will determine the speed of development and the strength of a secondary market for PACE financing in Texas. If financing is provided by a third-party lender, the local PACE program must also enter into a written contract with the lender to service the debt on the PACE program through assessments.

A PACE lien placed on the property is a first and prior lien against the property itself. The lien does not take effect until recorded in the property records and runs until the assessment, interest and any penalty are paid in full. The PACE lien has the same priority status as a lien for any ad valorem tax. The lien runs with the land (the unpaid portion transfers to a new owner upon sale) and is not eliminated by foreclosure on the property.

The PACE Act requires local governments to have a plan for ensuring sufficient capital for third-party financing. By establishing uniform processes and documents, **PACE in a Box** helps establish attractive markets with economies of scale to foster third-party lender participation. Property owners are guided to select appropriate lenders, and program websites will list lenders interested in participating in PACE so that property owners can readily identify them.

⁴ <http://www.eepperformance.org>

PACE in a Box third-party lending documents consist of a model owner contract between the local government and the property owner setting forth the assessment payment and imposing an assessment lien on the property, the model certificate from the local government to the third-party lender certifying that the financing is for a qualified project and the assessment is authorized under the PACE Act, a model lender contract between the local government and the third-party lender, and a model notice of assessment lien that will be filed in the real property records.

The interest rate, financing terms and repayment terms will be negotiated between the third-party lender and a property owner and incorporated into the lender contract. The term of the financing may not exceed the projected life expectancy of the qualified improvement.

As a condition to participating in a PACE program, the holder of a mortgage on the property must be given thirty days written notice of the proposed PACE financing and the consent of the mortgagee must be obtained.

If public financing is utilized, it cannot be a general obligation of the local government. Section 7 lists several statutory requirements and establishes a public purpose for bond funding.

The section also establishes three options for servicing the loans – through a county tax assessor-collector, by the local PACE program itself or its third-party servicer and by delegating the servicing back to the lender. The benefits and challenges of each of these options are outlined. A PACE lien is enforced in the name of the local government in a judicial process like a property tax lien foreclosure.

Section 8 – Model PACE in a Box Documents, Forms and Contracts

Section 8 is the library of all model documents required to establish and administer a PACE program.

III. INTRODUCTION TO PACE IN TEXAS

PACE – What it is and Why it is Good for Texas

PACE (“Property-Assessed Clean Energy”) is an innovative method for financing water conservation, energy-efficiency improvements, and both renewable and distributed energy installations on existing commercial and industrial property.

The key to PACE is the creation of a county or municipal property assessment to secure the financing. This assessment is voluntarily placed on the land by the property owner and assures the lender that the loan will be repaid through an assessment that enjoys the same legal status as a property tax lien.

The benefits of PACE are multi-faceted, which is why over 31 states and the District of Columbia have recently enacted PACE legislation, and another seven are considering it. In Texas, properly designed and implemented PACE programs will provide winning scenarios for virtually all stakeholders.

Why PACE is Good for Texas

Texas faces significant challenges in ensuring that it has the infrastructure to meet the needs of a rapidly growing economy. This is particularly well illustrated by the challenges in reliability of electrical power and water supplies. Both are essential if Texas is to remain attractive to capital investment and job opportunities. Meeting these challenges will require significant financial investments and the Texas legislature and Governor Perry are to be congratulated for addressing the state’s infrastructure needs. By far, however, the most affordable and readily available supply of energy and water we find will be the existing supply that we can reallocate because we conserved these resources and used them more efficiently.

The new Texas PACE law represents an innovative and creative financing tool that is particularly appealing to the business community – an option that is consistent with free market principles, completely voluntary and puts no public funds at risk. The key to the PACE program is a cooperative arrangement between private property owners, lenders and local governments that enables property owners to make valuable improvements to property that reduce demands for energy and water in a way that benefits all parties to the arrangement.⁵

Why PACE is Attractive to Property Owners

PACE enables property owners to obtain low-cost, long-term loans for up to 100% of all costs associated with the design and installation of water conservation, energy efficiency, renewable and distributed generation retrofits. These improvements can be structured to generate positive cash flow to the property owner because the cost savings derived from them exceeds the amount of the PACE assessment payment. In addition, PACE enables the property owner to amortize the cost of the improvements over their useful life.

In as much as PACE loans are secured by assessments on the property, they are automatically transferred to successive owners when the property is sold. Consequently, each owner of the property pays only that portion of the assessment that accrues during its period of ownership. And importantly for property owners leasing their property to tenants, PACE assessments can be passed to tenants under the typical commercial office lease.

These attributes of PACE loans enable property owners to overcome traditional barriers to making capital investments in property. Without PACE, property owners will continue tossing the delayed maintenance problem like a hot potato to the next owner. Until committing capital to modernize real property infrastructure makes sense as a value proposition, property owners will continue to waste operating expenditures on utility bills and risk exposure to utility price increases. Instead, PACE users capitalize money previously spent on utilities; the utility cost savings achieved by a retrofit pay for the retrofit itself. Property owners end up with more valuable property and access to recurring utility savings and pay only for the assessments that accrue while they own the property.

Why PACE is Attractive to Lenders

Simply put, PACE loans are attractive to lenders because they are very secure investments. The entire value of the property secures the loan. Like a property tax lien, the assessment lien securing the PACE loan has priority over

⁵ See [Written testimony](#) submitted by Steve Minick, Vice President for Government Affairs, Texas Association of Business to The Honorable Juan “Chui” Hinojosa, Chairman, Senate Committee on Intergovernmental Relations, Texas Senate on February 27, 2013.

other liens on the property. Therefore, the risk of loss from non-payment of a PACE loan is insignificant compared to most other types of loans. PACE assessments provide lenders with an attractive new product to help existing and new customers address pent-up demand for needed commercial and industrial property equipment modernization. In order to protect the interests of holders of existing mortgage loans on the property, the PACE Act requires their written consent to the PACE assessment as a condition to obtaining a PACE loan.

Why PACE is Attractive to Contractors, Engineers, and Manufacturers

PACE loans provide attractive sources of financing for water and energy saving retrofits and upgrades, thereby encouraging property owners to make substantial investments in existing commercial and industrial buildings. Until now, the energy services sector has been unable to establish a customer base in the private sector except when equipment reaches the end of its life and there is no alternative but to replace it. Potential business customers have been unable to overcome the long returns on investment necessary to replace outdated equipment or to install other upgrades to achieve utility savings. PACE enables these customers to engage in property modernization without having to compete with growth or commit capital to projects that would not otherwise return on an investment for many years. As a result, PACE will unlock business opportunities for contractors, engineers and manufacturers throughout the commercial and industrial sectors in Texas.

The Benefits of PACE for Texas' Municipalities and Counties

By creating new investment opportunities, PACE will stimulate employment growth and economic development in municipalities and counties (local governments) throughout Texas. Improvements financed through PACE will reduce energy and water consumption, helping local communities achieve critical energy and water conservation goals. For communities facing potential non-attainment levels under the Clean Air Act, PACE provides a very real opportunity to dramatically reduce building energy consumption and the emissions associated with energy generation. PACE programs will also improve the quality of a community's commercial and industrial building stock. The benefits of PACE for municipalities and counties are magnified by the fact that PACE programs can be established with minimal financial and administrative assistance from local governments and once established can be self-sustaining.

The New Texas PACE Law

The Property Assessed Clean Energy Act, (the “PACE Act”),⁶ enacted during the 2013 Texas legislative session, authorizes local governments to implement PACE programs within their jurisdictions. While the PACE Act creates the statutory framework for PACE programs, local governments have broad discretion in designing the specific attributes of their PACE programs. No public funds are required for PACE financing.



Keeping PACE in Texas and PACE in a Box Maximize PACE Benefits for Communities Throughout Texas

Keeping PACE in Texas (KPT) is a non-profit business association organized for the purpose of promoting PACE financing programs throughout the state of Texas. KPT's initial goal – the enactment of PACE enabling legislation – was accomplished on June 14, 2013, with the signing of the PACE Act.



After passage of the PACE Act, KPT organized a group of more than 100 stakeholders – property owners, lenders, energy service companies, industry trade associations, local governmental authorities, and others – in a collaboration to create uniform standards, documentation, and best practices for PACE financing programs in Texas. That effort resulted in the publication of this toolkit, known as “**PACE in a Box**.” The toolkit contains the materials local governments need to design, create and establish effective PACE programs. The goal of **PACE in a Box** is to accelerate the implementation of PACE programs throughout Texas by creating uniform PACE standards, systems and documentation. This flexible uniformity greatly simplifies the development and administration burden on local governments and also assures they will be part of a larger, more attractive market of well-defined projects for potential lenders.

The decision whether and how to establish a PACE program rests exclusively with local governments. The **PACE in a Box** toolkit is offered at no cost. It contains a model PACE program based on current standards and best practices obtained from studying PACE programs established in other states and modified for the Texas marketplace. By utilizing the **PACE in a Box** toolkit, local governments can minimize start-up costs and move quickly to the implementation phase of an up-to-date, robust PACE program.

PACE in a Box Design Principles

KPT stakeholders believe that several key principles should guide the design of programs. These principles envision the development of common elements of PACE programs in Texas that are uniform, user-friendly, sustainable and scalable.

Uniform Standardization of policies, procedures, and documentation will create a cost-effective, competitive environment for PACE financing in Texas. The **PACE in a Box** toolkit provides a standardized system for implementing PACE programs to:

- Avoid the inconsistencies, complexities, cost and confusion that impeded the growth of early adaptor PACE programs in other jurisdictions;
- Reduce government overhead costs and avoid duplication of efforts around the State;
- Attract lenders to Texas PACE programs;
- Minimize programmatic risk and cost;

⁶ Texas Local Government Code Chapter 399 can be found at the following web address <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=83R&Bill=SB385>. The Texas Legislature previously passed PACE-related legislation during the 2009 session (Texas Local Government Code Chapter 376). The authority granted in new Chapter 399 is in addition to the powers in Chapter 376. PACE implementation by local communities in Texas under Chapter 376 has been hampered by potential legal issues implicit in the 2009 bill text as well as by national concerns surrounding the senior lien status associated with residential PACE loans. To address these issues, the PACE Act, passed during the 2013 session, does not apply to residential properties with four or fewer units and requires the written permission of the mortgagee of any commercial property with a pre-existing mortgage.

- Provide consistent standards to measure and verify energy and water savings financed by PACE; and
- Accelerate the implementation of consistent and predictable PACE financing on a state-wide basis.

User-Friendly

The process for determining eligibility and participation in a PACE program must be straightforward, cost-effective, easy to understand and easy to use. Several elements of **PACE in a Box** serve to make the program user-friendly:

Emphasis on the Private Sector Marketplace – The **PACE in a Box** toolkit is designed to enable property owners to negotiate their own agreements with lenders and contractors of their choosing. As a result, with **PACE in a Box**, local governments perform only those functions that are necessary to ensure a sustainable, high quality program and to address matters that cannot be resolved within the context of private sector negotiations.

PACE Project Flexibility – Texas is vast and diverse in climate, water resources, industry and local governments. While the PACE policy, process and documentation must be uniform throughout the State in order for Texas to take full advantage of the PACE opportunity, the **PACE in a Box** toolkit recognizes that each project will be unique and is flexible enough to accommodate the diverse needs and interests of:

- Local governments in both rural and metropolitan communities;
- Communities with differing climates and water resources;
- Large and small scale projects, including multifamily residential housing, agricultural, industrial and commercial properties and properties owned by nonprofit organizations;
- Local and regional banks, large and small scale capital sources and governmental bond issuers; and
- Diverse projects ranging from single-measure upgrades to holistic retrofits.

Transparency – Program reporting will provide a clear picture of PACE-related activity, costs and benefits. Standardized record keeping included in the **PACE in a Box** toolkit will permit objective analysis and promote an ongoing cycle of review and improvement and provide Texas with objective measurement of its value and impact on the Texas economy.

Sustainable

The PACE Act allows administrative costs of the PACE program to be included in the property assessments. Therefore, these costs will be paid by users of the program and need not burden local treasuries. **PACE in a Box** is designed to ensure that PACE programs provide access to the property assessment without requiring local governments to perform services more effectively and efficiently provided by the private sector. Providing **PACE in a Box** to communities at no charge is designed to greatly reduce the startup costs of creating this program

Scalable

While urban areas will likely be early adopters of PACE programs, the KPT stakeholders believe that regional administration of PACE will prove to be the best way to achieve the full benefits of PACE for all communities. Scaling local programs to joint programs with regional administration reduces implementation time and transaction costs, minimizes administrative overhead, and promotes widespread utilization of PACE financing. This is especially important in Texas, which has 254 counties and over 1,200 municipalities. In order to achieve the full benefits of PACE in Texas, **PACE in a Box** must be available to the industrial sector (which consumes 50% of the energy used in Texas), its agricultural industry (which faces significant water conservation challenges), small towns and rural areas. Including all of these areas and sectors under the umbrella of regional programs enables Texas to receive the full benefits of the PACE Act.

Phases of Program Development

The following sections describe how the **PACE in a Box** toolkit is structured to meet these design principles. There are three main phases involved in implementing a local PACE program in Texas.

Initiation – The first phase is initiation of a PACE program by a local government. After designing the program, a local government must publish a report about the program, adopt a resolution of intent to create the program,

conduct a public hearing, and adopt a resolution to create the program. [PACE in a Box](#) provides recommendations and templates to help with each of these steps in Section 4 of this guide.

Administration – Administration requires a plan for program administration and applicable fees; contracts with regional program administrators; documents setting forth the criteria for properties, property owners and projects that are eligible to participate in the program; identification of funding sources and the underwriting requirements; establishment of an application process; and assignment of responsibility for reporting, marketing and education efforts. These elements of the program administration (Section 5) and project qualifications (Section 6) must be thoroughly considered prior to, and largely resolved within the context of, initiating a PACE program (Section 4).

Review and Adaptation – After a program has been successfully implemented, its effectiveness must be measured and, where necessary, changes may be proposed, assessed and incorporated into the program. Section 5 sets forth recommendations for administrative structures and processes to be used in the adoption of changes to the program.

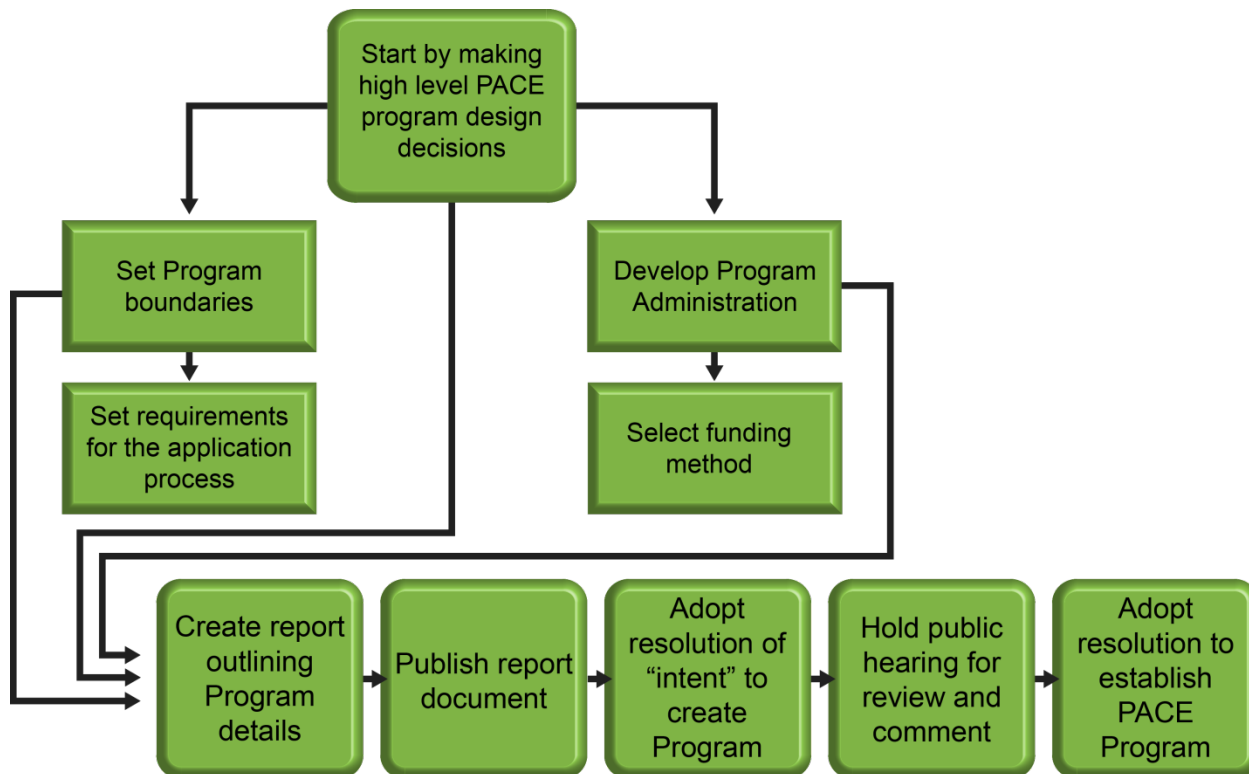
[PACE in a Box](#) provides templates for the necessary documents for these three main phases.

IV. GUIDE TO INITIATING A PACE IN A BOX PROGRAM

The PACE Act requires a county or municipality (local government) to take four steps in a prescribed order to establish a PACE program. Briefly, they are:

- A. Publish a Report and Make it Available for Public Inspections;
- B. Adopt a Resolution of Intent to Create a Program;
- C. Hold a Public Hearing; and
- D. Adopt a Resolution Establishing the Program.

The discussion below provides detailed information on the critical decisions and actions a local government must take to fulfill legal requirements in each stage of initiating a **PACE in a Box** program. This flow chart maps the process:



Preliminary Organization

A local government that determines "it is convenient and advantageous to establish" a PACE program under the PACE Act must address a number of preliminary questions before undertaking the four statutorily required steps. This preliminary development will provide much of the content for the public report. Although the **PACE in a Box** toolkit provides uniform policies, procedures, and documents, there remain some matters best addressed by each local government. These include:

Determine Which Local Officials and Staff Need to be Involved in the Implementation of the PACE Program.

As with the implementation of any new program, a local government needs to establish a team that has the necessary leadership, programmatic, and outreach skills necessary to successfully implement **PACE in a Box** and ensure that the program will meet the needs of the community in a cost effective and efficient manner.

Members of the implementation team should include (but are not necessarily limited to):

- Senior staff from the Mayor/City Manager/County Judge/County Administrator's office;
- Legal counsel;
- Budget and finance staff;
- Auditor;

- Purchasing staff;
- Tax assessor-collector (if applicable);
- County Clerk (if applicable);
- Sustainability office (If applicable);
- Economic Development office (if applicable);
- Local water/energy utilities (if public/municipal);
- Low income housing officials (if applicable);
- Municipal or county governing boards, including a resolution sponsor;
- Other local leaders involved in program implementation and community outreach; and
- Bond counsel (if public financing is anticipated to be included in the program).

The PACE Act requires the local government to:

- Determine which official(s) will be authorized to enter into PACE assessment contracts on behalf of the local government; and
- Identify the appropriate local official and the appropriate assessor-collector for purposes of consulting regarding the collection of assessments along with property taxes imposed on the assessed property. The statute does not provide guidance on who may or may not be the authorized official, but local governments should take care to ensure the authorized official clearly understands and has access to all relevant assessment and collection processes.

Designate a PACE Region

A local government establishing a PACE program must designate the geographic area (the “region”) in which PACE assessments may be placed. The region:

- May include the jurisdictional boundaries of the entire local government; and
- Must be located wholly within the local government’s jurisdiction (including a municipality’s extraterritorial jurisdiction).

The PACE Act also gives a local government the ability to create multiple PACE regions within its boundaries, which can be separate, overlapping, or coterminous.

Determine Whether to Establish or Join a Regional PACE Program

The PACE Act authorizes the joint implementation and administration of PACE programs in Texas.

Cooperating local governments may jointly implement one program serving all participating local governments so that their PACE programs are implemented together and administered as one program. Section 399.017 provides that:

- If two or more local governments implement a program jointly, a single, joint public hearing by the cooperating governments will satisfy the statute’s hearing requirement; and
- The cooperating governments may contract with a third-party, including another one of the cooperating local governments to administer PACE.

Regional programs offer significant benefits over multiple local programs covering the same geographic area.⁷ Local governments are encouraged to convene affected local governments, local business organizations, and other interest groups on a regional basis to determine the best manner in which a regional PACE program can be successfully implemented.

One potential third party administrator could be a Regional Council of Government (COG.) A COG could administer regional **PACE in a Box** programs for any participating counties and municipalities in its region. Texas COGs have preexisting relationships with their local government members and experience in running loan and economic development programs. Any COG volunteering to coordinate a regional PACE program could administer a program using in house resources, third party administrators, or a combination of both. If a COG offers to administer **PACE in a Box** throughout the region, it could operate the PACE program where ever local governments established a PACE programs (see Section 3) and entered into an interlocal government agreement with the COG to administer the program.

⁷ See, the regional PACE program discussion in Section 3 of this document.

Having shared regional administration in place will make it much easier for rural counties and smaller local governments to offer PACE financing than it would be if these communities were required to create a PACE program on their own. The **PACE in a Box** coalition encourages local governments to create regional programs designed to be easily joined by other local governments at a later date. Inviting surrounding local governments to join existing regional programs will foster expanded access to PACE. A local government seeking to join an existing regional program would enter into an interlocal government agreement with the existing regional program. The required report and resolutions to authorize the PACE program (see Section 3) would reflect the proposal to join an existing regional program and the terms of the interlocal government agreement.

In some areas, several COGs might work jointly to administer programs to cover even more territory to insure necessary economies of scale. Large multi-county areas will be essential to making PACE financing available in rural Texas.

Determine Roles and Responsibilities of the Local Government and Third-Party Administrator

The PACE Act gives a local government authority to hire and set the compensation of a program administrator and program staff or to contract for the professional services necessary to administer a program at the local or regional level. Third-party administrators can be another governmental body, private sector entities, or a collaboration of several entities. If the local government selects another governmental unit to administer the program, then an interlocal government agreement will be negotiated. If the local government intends on using non-governmental entities as third-party administrators, the local government will issue a request for proposal (RFP). In order to obtain the goals of uniformity and other **PACE in a Box** benefits, these negotiations must require the third-party administrators to faithfully administer the **PACE in a Box** model program.

Determine How the Local PACE Program Will Be Funded

The PACE Act permits the local government to impose fees to offset the costs of administering the program. The local government determines the amount of the fees that may be assessed as:

- A program application fee paid by a property owner requesting to participate in the program;
- A component of the interest rate on the assessment in the written contract between the local government and the property owner; or
- A combination of application fees and interest rates.

Program application and administrative fees may be included in the total amount financed through the assessments.

Property owners using the **PACE in a Box** program will pay for the program as they are the direct beneficiaries. The more property owners there are in a program, the less the percentage of overall cost each property owner will be required to pay. Thus, property owners participating in vibrant PACE programs with large economies of scale will incur a smaller percentage of cost on a per-project basis.

While using the **PACE in a Box** toolkit will greatly reduce a local government's startup costs, they need to identify the remaining costs so that appropriate fees can be established to pass these costs through to the property owners voluntarily using the programs. Some local governments will be able to offset these costs by other means. Others will require assistance. Some third-party administrators may be competitive in their bids on their upfront costs since existing program administrators already have experience and know how to set up new programs. Foundations and other organizations committed to the advancement of environmental sustainability financing should be approached for grants to assist in the creation of **PACE in a Box** programs.

Nothing in the PACE Act prevents a local government from underwriting startup costs or part of the ongoing administration costs. Costs that may be associated with **PACE in a Box** programs include the following program design and development tasks:

- Interlocal government agreement and/or third party administrator RFP design and implementation (Model included in Section 8);
- Web-based materials, ongoing updates and on-line application administration;
- Application process development, implementation;
- Closing process development, implementation;
- Application review process for eligibility and verification for accuracy of submitted data;
- Contract negotiations upon application acceptance with property owners and third party lenders;

Closing costs

- Fees to cover placement, recording and ultimate release of lien (when paid off, either prepaid or at final term);
- Collection costs whether assessments are collected with property taxes or done through an alternative method, payment tracking, delinquency follow up, and foreclosure proceedings;
- Outreach, marketing and training for property owners, lenders, and contractors;
- Reporting on program results; and
- Internal review and improvement process.

Structuring the PACE program to rely primarily on third-party financing (as opposed to public financing) has the potential to steer many of the costs associated with creating lending transactions outside the PACE program itself, between building owners and lenders in the marketplace.

Application Fees

Application fees can cover the cost of reviewing that application and ensure that program resources are targeted to serious proposals. An appropriate application fee encourages complete and appropriate filings while discouraging incomplete and unsupported filings.

Contractor Training Fees

Local and regional PACE programs may consider training contractors on how to participate in **PACE in a Box** programs and charge a fee to cover the costs. Connecticut's Clean Energy Finance and Investment Authority identified its mandatory contractor PACE training program as an excellent way to ensure that applications are properly prepared and filed. Trained contractors become excellent promoters of PACE financing to their potential building owner customers and contractor training should also be considered as a key element of a marketing strategy.

Establish Internal Quality Assurance and Anti-fraud Measures

The PACE Act requires local governments creating PACE programs to describe the quality assurance and anti-fraud measures to be instituted for the program.

Application – The PACE Administrator will review the PACE application for accuracy and completeness and verify the applications documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the property owners, the property itself, and the proposed project all satisfy program underwriting and technical standards requirements. The contractor will be required to provide copies of permits, release of lien, and a statement the project was constructed in accordance with the PACE program guidelines and has complied with all applicable local, state, and federal laws.

Independent Third-Party Reviewer (ITPR) - Measures that will be put in place to provide safeguards include statutory requirements for an ITPR review of the energy/water savings baselines and approval from a registered professional engineer before the project can proceed. This review will include site visit and a letter from the engineer certifying that he/she has no financial interest in the project and is an independent reviewer. The engineer will attest in the review he/she believes the savings (energy, demand, water, and cost), expected project life, and cost are reasonable and in compliance with the PACE program guidelines and standard engineering practices.

After the construction of the project is complete there will be a site inspection by an ITPR who will determine whether the scope of the project was completed and is operating properly. The statement will also include a statement that the reviewer/inspector is qualified and has no financial interest in the project.

Lender and Contractor Documentation – As part of its underwriting process, the typical lender will, at its discretion, require an independent inspection and verification of qualifications, separate from the PACE program requirements.

Adopt a Plan for Ensuring Sufficient Capital for Third-Party Financing

The PACE Act requires the PACE program to ensure that property owners have access to third-party lenders with adequate funding for PACE projects. Section 7 makes suggestions for helping property owners identify interested lenders.

Statutory Steps for Creating a PACE Program

Once a local government has addressed preliminary matters and decided its course of action, it is ready to take the public actions required to create a PACE program.

Public PACE Report

A local government must prepare a public report describing its PACE program once the structure of a local PACE program has been defined. By statute, the report must include a significant number of program elements that will have been addressed in the preliminary determinations described above and in Sections 5 and 6. A model [PACE in a Box](#) report is included in Section 8.

The local government must make the report available for public inspection on the local government's website and at the office of the official designated to enter into written contracts on behalf of the local government under the program.

Resolution of Intent to Create a Local PACE Program

The PACE Act requires a local government to adopt a resolution of intent to create a local PACE program. The [PACE in a Box](#) model resolution is presented in Section 8 and includes the elements required under the PACE Act.

Public Hearing

The PACE Act requires a local government to hold a public hearing at which the public may comment on the proposed program, including the report for the proposed program. If two or more local governments implement a program jointly, a single public hearing is sufficient to satisfy this requirement. The PACE Act does not include requirements regarding the timing of the hearing other than the requirement that it follow the adoption of the initial resolution.

Resolution Establishing a Local PACE program

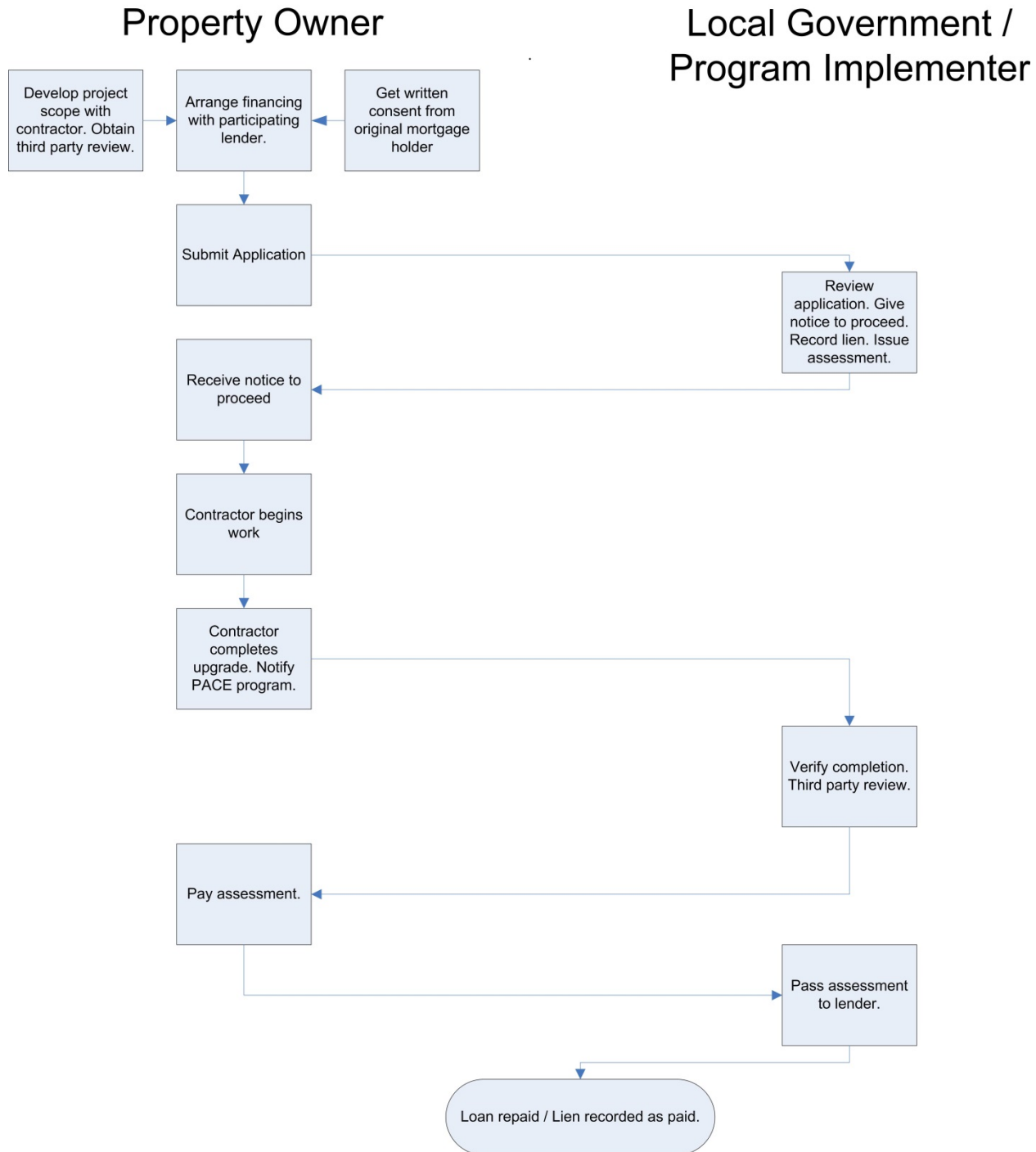
The final step for implementing a PACE program is the passage of a resolution establishing the program and its terms. The resolution must also:

- Incorporate each item included in the report for the proposed program; and
- Identify each aspect (if any) of the program that may be amended only after another public hearing is held.

The resolution may incorporate the report or the amended version of the report, as appropriate, by reference. The [PACE in a Box](#) model resolution establishing a PACE program is included in Section 8.

V. GUIDE TO ADMINISTERING A PACE IN A BOX PROGRAM

Example Project Path



Selecting an Administrative Model

Once the statutory steps for implementing PACE are complete, a local government selects an PACE administrator by:

- Joining or starting a regional PACE program by entering into an interlocal agreement with:
 - Other local governments wishing to collaborate on a joint PACE program;
 - Another governmental unit, such as a regional council of government (COG) to administer a local PACE program on behalf of the collaborating local governments; or
 - An existing regional program;
- Issuing an RFP to potential private third-party administrators and enter into a contract with the party(s) selected to administer the local PACE program;
- Setting up in-house PACE administration using local government personnel; and
- Defining program administrator roles and responsibilities.

Delegating administrative functions to a third-party is optional and can reduce local government responsibilities in establishing and administering PACE programs. The list of responsibilities to be assigned mirrors the list of program costs in Section 4. Because a local or regional program will have studied how each of these processes would be managed in order to establish a cost basis, most of the work required for this analysis will have already been completed. Local governments may consider doing a cost study to evaluate the administrative options. If a third-party administrator model⁸ is selected, the RFP process can begin or an interlocal government agreement can be established.

The Application Process

Energy Analysis and Project Scoping

Once the administration component is complete, the PACE program can begin considering projects for PACE financing. The process begins when a property owner and engineer or contractor study a proposed project's scope and potential water and/or energy savings. A pre-application check list and cost estimator would help owners avoid developing "dead on arrival" projects. Prior to the filing of a PACE application, each proposed project must be reviewed by an independent third-party reviewer (ITPR) to review an audit that includes the property's current water and/or energy baseline conditions and the projected water and/or energy savings expected after project implementation. ITPRs analyze the audits and conduct site visits to ensure that the projected savings identified in the audit are valid and reasonable.

An ITPR review letter is submitted directly to the PACE program as part of the application requirements. ITPRs - independent licensed Professional Engineers with the required engineering certifications - are not part of or guaranteed by the PACE program. The selection of an ITPR is the responsibility of the program participants, not the PACE program. Property Owners are encouraged to follow the guidance provided in the [PACE in a Box](#) Technical Standards Best Practices Manual in section 8.

[PACE in a Box](#) administrators may provide training opportunities on technical requirements and standards that must be met in ITPR reviews. PACE program websites could include a list of available ITPRs who meet requirements in the Technical Standards Manual to help potential applicants identify ITPRs in their areas. Guidelines and standards for calculating baseline and projected savings are provided in the [PACE in a Box](#) Technical Standards Manual included in Section 8.

Permitting

Property owners are required to obtain all necessary local building, electrical, plumbing and other permits, pass all required local inspections, and be in full compliance with applicable codes and standards. All work must be performed in accordance with all applicable federal, state, and local codes and standards. Copies of permits and other verification that plans are in compliance must be obtained and shared with the PACE administrator before or at the required time during construction.

⁸ If appropriate, multiple third-parties can be used to administer the program. This would require separate bid processes for each third-party.

Program Application

The PACE Act requires the local government to establish an application process. **PACE in a Box** recommends that the application be made and reviewed through a PACE website securely attached to an automated data base. A model application is included in Section 8. PACE administrators are encouraged to provide a web-based pre-application tool by which potential PACE applicants could test their proposed projects against application requirements to determine in advance whether the proposed project qualifies and if so, what additional information and tasks will be required for the application process. This tool could also assist property owners in estimating the non-project costs such as interest charges, application fees, interest, ITPR review, long-term Measurement and Verification, and all other related project costs to determine whether the proposed project has a Savings to Investment ratio greater than one.

Application Approval Process

PACE administrators need to establish a process flow from application approval through document preparation for closing an approved PACE project. Once the application is received and reviewed. The program administrator can provide a pre-qualification letter to a property owner or lender indicating that, pending submission of final documents, the project meets the requirements of a **PACE in a Box** program. A model is provided in Section 8.

Closing on a Project

A checklist of documents called a closing verification form will ensure that all necessary documents and certifications have been verified prior to closing. PACE financing is contingent on the signing of a contract between the PACE program and the property owner and, where third-party lending is involved, a separate contract between the PACE program and the third-party lender. A process for completing these documents must be established. Model contracts are included in Section 8.

Lien Recording and Assessment Recording

At closing, the PACE program must promptly file written notice of each contractual assessment with the county clerk in the county in which the property is located. The senior lien on the property that secures the assessment is not imposed until the assessment is recorded. The documents may be delivered by hand or electronically. The written notice must contain:

- The amount of the assessment;
- The legal description of the property;
- The name of each property owner; and
- A reference to the statutory assessment lien.

Section 8 includes a model Notice of Assessment Lien to be filed in the real property records in the appropriate county clerk's office.

Installation Verification

After a PACE project is completed, an independent third-party must verify that the project was completed and is operating as intended, and report these findings to the PACE administrator. Verification can be completed by any ITPR selected by the program participants, including the ITPR that initially reviewed the water and/or energy baseline conditions and projected water and/or energy savings expected after project implementation or a different ITPR.

Servicing The PACE Loan

The PACE program must determine the method of servicing the debt. Servicing of the PACE loan consists of billing, collecting and remitting payments to the financing source (third-party lender or bond holders). The servicer is also responsible for maintaining payment records, and account balances and otherwise interfacing between the local government, the third-party lender and the property owner.

As described more fully at the end of Section 7, the local government is the nominal agent for collection of payments and enforcement of the assessment. These functions may be managed by the PACE administrator, outsourced by the local government to a third-party servicer through an RFP process, or to another governmental body such as a county tax assessor-collector under an interlocal government agreement. Nothing in the PACE Act prohibits a lender from servicing the PACE loans it funds. Servicing can be a high cost center for administering a PACE program. Because of the statutory construction of PACE by contract, local governments have flexibility on delegating this function back to the private sector at potential significant savings in overhead and work load. If the

local government delegates the servicing of the loan to the lender, two items are critical to the successful delegation of servicing responsibility:

- Reporting back the project's payment history to the PACE administrator is essential so that future purchasers of property know where to find updated payment information on the PACE property assessment; and
- Assessments sent by third parties, rather than the traditional inclusion of the assessment in tax bills, must be clearly set forth in the invoice and documentation as a direct assessment on the property that is due and owing to the local government.

Reporting and Annual Review for Program Administrators

PACE programs will benefit from two kinds of review. First, every PACE program should undergo the normal review process that local governments use to determine whether they are receiving the highest quality service for the most efficient expense. Because administrative costs have been an issue in some PACE programs, **PACE in a Box** recommends that third-party administrator contracts and subcontracts be set for a limited amount of time and rebid through the RFP process on a regular basis.

In addition, establishing transparency is important. The systematic collection of data is essential. PACE program administrators should have the same reporting requirements regardless of whether a PACE program is administrated and serviced by a local government or a third-party. **PACE in a Box** encourages a state-wide compilation and review of PACE data from all Texas PACE programs. All program administrators are encouraged to work together to create uniform collection of data.

Below are suggested reporting elements to be collected by PACE project property owners for the first year of each PACE assessment using Portfolio Manager, where applicable, and forwarded to the PACE administrator, preferably through an online report associated with a secure data base, recorded and analyzed:

Basic Matrix for All Project Applications

- Number of applications (totals): submitted, withdrawn, approved, and funded;
- Funding mechanism: private or bond;
- Project type: water, energy efficiency, renewable, distributed generation, or comprehensive;
- Water: conservation/savings or collection using;
- Energy: electric, natural gas, propane, diesel, and/or solar;
- Total energy savings in kBtu, kWh, or kW reduction and or water savings in gallons;
- Savings to investment ratio (SIR);
- Funding request amount: project total(s);
- Financing details: term lengths, interest rate, closing costs and debt servicing;
- Project details: useful life of installed equipment (weighted average of multiple);
- Location: municipality, county, or PACE region/council of governments;
- Building(s) in project: totals and square feet;
- Property type(s): commercial, industrial/manufacturing, farming/ranching, multifamily, non-profit, or mixed use;
- Description of available and current use of service;
- Electric utility distribution and energy service providers impacted;
- Water service providers impacted;
- Incentives (type and amount): utility rebates, economic development Incentives, tax Incentives, federal, state, or local; and
- Economic Development impact: job creation, jobs saved, local companies incentivized not to move, new companies in area due to PACE financing.

Individual Project Details

- Project type: water, energy, or comprehensive;
- Energy type: electric, natural gas, propane, diesel, solar using EPA's Portfolio Manager;
- Savings to investment ratio (SIR);
- Useful life of installed equipment (weighted average of multiple);
- Project costs for financing: all allowable costs less incentives and rebates;
- Annual PACE assessment payment amount;

- Annual cost reduction projections:
 - Water consumption reduction: conservation or collection; and
 - Energy consumption reduction: efficiency, demand reduction, fuel change, or generation;
- Building property information;
- County;
- Taxing jurisdiction;
- Property ID(s);
- Construction: high-rise, mid-rise, or low-rise;
- Building or campus;
- Use: single or mixed;
- Property type:
 - Multifamily;
 - Industrial/farming;
 - Warehouse/storage/manufacturing;
 - Entertainment/public assembly;
 - Food sales/restaurant;
 - Historic;
 - Hospital/healthcare;
 - Hotel/lodging;
 - Nonprofit;
 - Office;
 - Religious worship;
 - Retail; and
 - Technology/data center/laboratory.

Basic Matrix for the PACE Assessments

- Ongoing payment information: current, over 30 days, over 90 days, or in default; and
- Actual return on investment: reduction in annual utility costs/annual PACE assessment.

Annual Review

Reporting data by the PACE program administrator should be made available to the local government for annual review with recommendations for regional and/or statewide policy or program improvements. Annual Reports should include aggregated program information, best practices, lessons learned, and recommendations for improvements to keep programs current and uniform.

- Savings estimates should be evaluated to actual water and energy savings; and
- Review of all eligible projects and technologies should be reviewed based on empirical data reported.

Empirical data should be used to evaluate the success of a PACE program. Reporting should be the simple task of communicating the information collected for the first year of a PACE project using EPA's Portfolio Manager. While local goals for PACE may vary from community to community, the core set of data points are defined here will standardize and clarify what basic information should be reported by each of the stakeholders. Some individual project details will be business proprietary information to be kept out of the hands of competitors. Confidentiality of such information and limitations of its use on an aggregate basis only should be built into program protocols.

PACE programs are encouraged to share data with each other to provide for statewide review and to report data to PACENow,⁹ a national organization compiling PACE statistics for analysis and public consumption.

PACE in a Box programs are encouraged to work together to establish self-evaluation protocols, to keep up with developing national best practices standards, and to incorporate improvements in a regular evaluation and improvement system.

⁹ <http://PACENow.org>

Marketing and Participant Education Services

This plan serves as a menu of marketing and education services provided under a model PACE program intended to complement a local government's own ideas, strategies and tactics to effectively market to and educate its region about PACE. This section makes available the tools, materials and services developed by KPT to be tailored as desired by the PACE administrator.

Marketing Plan

This marketing plan assumes that the primary responsibility of promoting a new PACE program will fall to the PACE administrator. The PACE administrator should review any other PACE marketing efforts in the vicinity/geographical territory, as this alignment will provide additional value. Local governments participating in a regional program will find greater value in working together and in support of a uniform regional marketing plan.

Branding & Recognition Consistency

Generally accepted marketing practices support consistency in branding. Each local or regional PACE program is encouraged to develop a logo and campaign that will appeal to that area. Community participation, and additional recognition, can be achieved through the skills of local marketing organizations, high school marketing, communications and arts teachers and students and higher education teachers and students.

Considerations in Developing the Regional Marketing Program

Marketing materials and educational services provided to help educate and promote PACE programs in a region should reflect the widespread benefits of the PACE Act. See materials provided within this plan to understand the full-range of benefits that PACE programs can provide. It is strongly suggested that the core message about PACE and its value, be centered on the economics (i.e., cost savings value). Any other benefits deemed relevant may be included.

Suggestions for Effective Marketing:

1. **Template Messages:** Each PACE Region will give consideration to the platform message(s) it believes will be most well received. Consider developing a core message regarding any one, or all, of areas such as:
 - a. Economic Development Impact
 - b. Energy Efficiency Impact
 - c. Increased Property Value
 - d. Regional/Local Goals (i.e., Ft. Worth's Better Buildings Challenges, local non-attainment air quality threats, etc.)
2. **Websites:** The PACE Region's website(s) should be leveraged for its value and include:
 - a. Links to macro-level PACE information which can be found at:
 - i. www.KeepingPACEinTexas.org
 - ii. www.PACENow.org
 - b. A local PACE phone number to make contact with an individual who is trained on PACE and able to assist;
 - c. A "Contact Us" section to include phone, address, name of contact(s), as well as provide the ability to email questions;
 - d. Case studies and lists of organizations that provide assistance in developing a program; and
 - e. Press releases, marketing brochures, PowerPoint presentations, etc.
3. **PowerPoint Presentations:** PowerPoint Presentations can be made available for any party that wants to educate itself or to use as a tool to educate others. PowerPoint Presentations can be customized by using

slides readily accessible from KPT (www.keepingpaceintexas.org). KPT's existing presentations can also be used and presented as needed.



PACE Master
Presentation - OCT 21

4. **Newsletters:** Newsletters (distributed via snail mail or email) can be used to amplify informational articles pulled from local and national press releases, case studies, pertinent information from renewable or energy conservation organizations, financial institutions, facility services organizations, and so forth.
5. **Notification to the Press:** Notification to all media of the local participation in PACE is recommended. This will have to be done repeatedly, as all will not pick up and present this story upon the Region's first attempt.
6. **Local Access Cable, Off Air TV Channels, Broadcasting and Radio:** A video can be developed of an interview on the topic of the Region's PACE program. TV and radio stations also generally offer a limited amount of broadcast time to public/non-profit organizations. This should be explored. Developing a video is merely a suggestion, and the cost varies substantially. One suggestion is to have this developed at very low cost (or free) by enlisting students in K-12 CTE programs, or local students studying communication, broadcasting, video production or other related fields.
7. **Speakers Circuit:** The PACE message can be delivered to various market segments, providers of conservation products/services, commercial property owners, financial institutions and the general public. Deliver the message also to local facility management organizations such as the Building Owners and Managers Association (BOMA), International Facility Management Association (IFMA), Association of Energy Engineers (AEE), the Texas Municipal League (TML), and others using the PowerPoint presentation above.
8. **Recruiting Local Interest for Increased Local Economic Development:** The Region should consider reaching out to all the local financial institutions (possible list of those organizations comes from the Chamber of Commerce) to gain their interest in the PACE program. The institutions that show interest should be encouraged to use their own efforts to market the Region's PACE program.
9. **Selectively Reaching Out to Promote PACE:** The Region can attain key commercial and industrial account lists to populate mailings (traditional or electronic). Prioritize the outreach based on overall square footage of facilities (to identify opportunities for energy savings). The county tax assessor-collector's office may be able to populate this listing by square footage. If a local municipal utility exists, it will most likely have a "key accounts" list as well.
10. **Public Announcements:** City councils and county commissions can repeatedly deliver the PACE message by making public announcements at its meetings, creating awards and awards ceremonies, etc. This commitment should also be obtained from the Economic Development office and local municipal utilities.
11. **Economic Development Offices:** PACE information can be included in economic development recruiting materials and used to leverage existing relationships within the commercial and industrial sectors.
12. **Community Workshop:** The Region can host workshops to educate stakeholders about PACE requirements and the process. Private sector stakeholders can also host workshops.
13. **Training Opportunities:** The Region can host training and educational sessions for contractors interested in PACE. These could be hosted for one region or several regions together. Additionally, contact the State Energy Conservation Office to find out if it is hosting or knows of any statewide training sessions. This method of promotion and education has proven largely successful in other states.
14. **Webcast/Webinar:** Webcasts can be fairly easily accomplished using many of the PowerPoint slides already developed. Create invitation lists from stakeholder groups identified in the marketing plan and Chamber of Commerce membership listings (generally broken down into class/categories).
15. **Launching and Showcasing the Program:** The Local government can select stakeholder companies to work with, hand in hand, to get the anchor project(s) going.

16. **Miscellaneous:** Regions can look for opportunities to coordinate marketing efforts across multiple departments/processes in order to optimize relationships with the private sector (i.e. historic preservation; development services such as planning, engineering, and building departments; environmental quality; community services; aviation/airports; housing; etc.)
17. **Ambassadors:** Regions can select multiple community leaders/ambassadors of the program to help educate and promote. This can include use of students at any local university who need/want experience in promoting programs such as this. Majors such as marketing, communications, and others may take an interest and help promote this program.
18. **PACENow Resources:** This national organization has already developed a variety of educational materials that can be adapted to **PACE in a Box** for regional use.
<http://pacenow.org/resources/#pace-marketing>
19. **Additional Resources:** Attached are additional documents for use in each county or municipality:



PACE Brochure
Outside



PACE Brochure
Inside

These documents can be customized for local and regional use:



12-Template-Comm-
r-PACE-FAQ.docx



10-Template-Progra
m-Overview.docx



09-Template-Launch-
Release.docx



03-Template-Progra
m-Handbook.docx



13-Template-Social-
Media-Toolkit.docx

Education Plan

An organized effort will take place to assist local governments with the education and utilization of **PACE in a Box**. SPEER, the South-central Partnership for Energy Efficiency as a Resource¹⁰ will take a multi-pronged approach to educating local governments on **PACE in a Box** programs. The first will be through a City Efficiency Leadership Council with representation from the largest six cities in the state. The Council will include sustainability managers and energy efficiency leaders who will either be catalysts themselves, or identify the catalysts within their cities, for PACE efforts. SPEER will also work directly with two councils of governments (COGs) with a goal of reaching large numbers of cities and counties to opt into regionally consistent, regionally run PACE programs using the **PACE in a Box** template.

To help achieve this goal, SPEER, SECO, US DOE, Houston Advanced Research Center (HARC), KPT and others will host a meeting focused on the details of establishing, administering, and implementing **PACE in a Box** regions and programs. The meeting will include training and identifying opportunities to fine-tune the program and additional tools local governments may need. The main audience will be local governments, but many stakeholders will also be involved.

These partners, will also hold two webinars in the second half of 2014 to reach a wider audience with key details needed to launch and implement PACE districts consistent with the **PACE in a Box** a toolkit. These webinars will build on a successful webinar co-hosted by SECO, KPT, and SPEER in 2013.

¹⁰ SPEER is a Texas based regional energy efficiency organization focused on advancing energy efficiency in Texas and Oklahoma.

VI. GUIDE TO PACE PROJECT UNDERWRITING AND TECHNICAL STANDARDS

Overview

This section sets forth the policies recommended by [PACE in a Box](#) for verifying that the subject property meets all statutory requirements, that any improvement to the property represents the potential for a sound investment, and that projected savings will justify the costs. These policies are based on the provisions of the PACE Act and best practices gleaned from PACE programs previously established in other states. They are designed to reduce risk to and protect the interests of all participants in the PACE financing program.

Underwriting Standards - Eligibility to Participate

The PACE program is an optional financing tool – a mechanism to enable owners of commercial and industrial property to gain access to funds for projects that will reduce water and energy utility costs under the most flexible and favorable terms. Although the program is designed to minimize risk by its very nature, it is still appropriate that all parties to a PACE agreement – local governments, lenders and property owners – understand where risks may arise and how they can be managed or mitigated.

The goal of establishing certain underwriting standards is to give all participants in a PACE agreement common factors to consider in evaluating proposed projects at a fundamental level before making an investment in detailed technical evaluations or engineering studies. The discussion of whether a proposed property improvement qualifies for PACE financing includes:

- Property Qualifications;
- Owner Qualifications;
- Property Improvement Qualifications;
- Lender Consent;
- Savings to Investment Ratio; and
- Costs Eligible for Inclusion in a PACE Assessment.

Eligibility requirements are incorporated in the [PACE in a Box](#) model documents and verified through the model application and administrative process.

Eligible Properties

The PACE Act permits a PACE assessment to be placed on privately-owned property that is:

- Commercial real property - including non-profit real property such as private schools, medical facilities, churches, etc.;
- Industrial real property - including privately owned agricultural real property; or
- Residential real property with five or more dwelling units.

Any of these properties must also:

- Be located within the jurisdiction of the PACE program;
- Have a title that is not in dispute; and
- Where there is a preexisting mortgage lien on the property:
 - The mortgagee must be given written notice of the owner's intention to participate in the PACE program thirty days prior the owner entering into a contract with the PACE program; and
 - The mortgagee must provide written consent to participation in the PACE program.

Properties that are statutorily *ineligible* for PACE assessments include:

- Undeveloped lots or lots undergoing development at the time of the assessment; and
- Government owned real property.

The **PACE in a Box** checklist of information to be reviewed for each project addresses both the spirit and the explicit requirements of the statute and assists in the administration of the PACE program by including the following verifications:

- Owner's name and contact information;
- Type of ownership (e.g., corporation, limited liability company, partnership, trust, non-profit, individual, etc.);
- Address of property;
- Property tax assessor-collector ID or reference number;
- Current assessed value, assessment basis and date of assessment;
- Cost of proposed property improvements;
- Assessed property value to assessed lien ratio;
- Total amount to be financed
- Description of property (acreage, type of use, improvements);
- Tenant or owner-occupied;
- Description of improvements (size, use, date of construction);
- Description of utility service available and current use of service;
- Identification of electric distribution and energy service providers;
- Identification of water service provider or source;
- Current mortgage holder(s), if any;
- Amount of debt or current outstanding mortgage loan balance(s) for any 1st or 2nd liens;
- Most recent financial statement for the property, if applicable;
- Owner is current with all taxes or assessments on the property;
- Owner is current on all debts secured by the property;
- Owner has clear title to the property with no encumbrances;
- Property is not subject to any outstanding tax liens or notices of default;
- The useful life of the existing property or improvements is equal to or greater than the anticipated life of the financed improvements;
- Copy of a survey of the property; and

Eligible Property Owners

The PACE Act requires that PACE programs ensure that property owners demonstrate the financial ability to pay the annual PACE assessments. That demonstration must be based on particular statutory underwriting factors, including verification that any participating owner:

- Is the legal property owner;
- Is current on mortgage and tax payments;
- Is not insolvent or bankrupt;
- Holds a title to the property to be subject to a PACE assessment that is not in dispute; and
- Has consent of any preexisting mortgagee to the proposed PACE assessment through a written contract.

Because PACE assessments are secured with a senior lien having the same status as a tax lien, the financial position of the property owners is, in theory, necessary only to ensure that the owners have the ability to pay the annual PACE assessments. However, underwriting information also provides local governments and lenders the assurances they need to confirm that PACE projects are high quality and successful in every respect.

The **PACE in a Box** Checklist to be reviewed for each PACE project addresses the statutory requirements and the spirit of the statute by incorporating the following verifications that the property owner:

- Has not been delinquent in the payment of its ad valorem taxes in the previous three years;
- Is in good financial standing:
 - Has not been the subject of bankruptcy proceedings in the previous five years;
 - Is not subject to any outstanding, unsatisfied final judgment;
 - Has not had any property sold at foreclosure in the previous five years;
 - Has provided a Certificate of Status from the Secretary of State of Texas; and
 - Has provided a Certificate of Account Status from the Texas Comptroller of Public Accounts;
- Has provided a current credit report or, if not available, a reasonable alternative;

- Has provided a current title report and verified that the property is not subject to any liens, including mechanics liens;
- Has provided notice to any preexisting mortgagee and has provided the written consent of the mortgagee; and
- Grants consent for the PACE program administrator to pull credit information.

Eligible Projects

The PACE Act authorizes PACE funding for the installation of Qualified Improvements. Qualified improvements must:

- Be permanently fixed to the real property;
- Have a demonstrated capacity to decrease –
 - Water consumption or demand; and/or
 - Energy consumption or demand (includes renewables and distributed generation products or devices on the customer's side of the meter that use energy technology to generate electricity, provide thermal energy, or regulate temperature); and
- Have a useful life that exceeds the term of the PACE financing agreement.

Ineligible Improvements – Improvements that are not permanently fixed to real property and can be easily removed are not eligible for financing through the program. For example, screw-in fluorescent light bulbs, removable low-flow showerheads, faucet aerators, and improvements that are not recognized as “energy efficient” according to standard engineering or scientific principles would be considered as ineligible.

Once a PACE assessment has been placed on a property, the financed qualified improvements are deemed permanently fixed to the property and **PACE in a Box** documents prevent parties by contract or otherwise from removing any qualified improvement regardless of how they are defined in real estate case law or other contracts, until the assessment has been fully paid and the lien removed from the property. This **PACE in a Box** assessment standard applies whether the qualified improvement is purchased or leased. All parties must be confident in the measures selected and their projected value to, for example, existing and future tenants and property owners. PACE is not well suited for conservation measures that are design or stylistically relevant to a specific tenant or design trend if such measures are likely to go out of vogue before their life expectancy or the term of the assessment.

Multiple Improvements in a Single Project; Establishing the Useful Life of a Multi-measure Project – PACE financing will enable some property owners to retrofit their property in a comprehensive manner with Qualified Improvements made up of a number of energy and/or water saving measures. This comprehensive approach is the most effective, cost-saving opportunity. To determine the useful life of a project made up of multiple measures with different projected life spans, the parties must determine the life of the project using a weighted average of the measures.

Length of Assessment Term – The PACE Act requires that the assessment term not exceed the useful life of the improvement. In a multi-measure project, the weighted average useful life of the improvements, the should be used.

Responsibility for Authorized Improvements – PACE is a financing program only. A participating local government is not recommending or warranting any particular improvements or affirming the performance or lack of performance of any measure. Neither a participating local program nor any agency assisting in coordinating any element of the program is responsible for the measures or their performance. The **PACE in a Box** coalition urges careful review of any measure that could jeopardize the ultimate success of a PACE project and by extension the PACE program. Ultimately, PACE programs look to lenders and commercial and industrial property owners who bear the ultimate responsibility to use solid business principles and common sense so as not to take undo risk to finance a questionable project. Property owners are solely responsible for the measures installed on their property. Should there be any unsatisfactory performance or other system-related issues that arise during or after installation, the property owner must address those directly with the responsible contractor and/or vendor according to the terms of any contract between the parties.

The **PACE in a Box** Checklist to be reviewed for each PACE project addresses the statutory requirements and the spirit of the statute by including the following verifications in the application. This information will most likely be included in a contractor's project bid and the energy and/or water audit:

- Whether the owner intends to use a contractor, engineer, energy service company or other energy consultant for the project, and if so, the name and contact information of the energy or water savings consultant/project developer;
- If the project involves a renewable energy system, was a feasibility study conducted? If so, when and by whom?;
- If the project involves energy conservation measures, was an energy audit conducted on the building? If so, when and by whom?;
- Description of the proposed energy conservation measures (ECMs) and the projected energy savings;
- ECM's projected first year total energy savings (in kBtu, kWh, or kW reduction);
- ECM's projected first year total energy savings in dollars (kBtu, kWh) and demand reduction savings, if applicable;
- Description of the proposed water conservation measures (WCMs) and projected water savings (in gallons or acre-feet);
- WCM's projected first year total water savings (in gallons or acre-feet);
- WCM's first year total water savings in dollars (in gallons or acre-feet);
- If the project involves WCMs, was a water efficiency audit conducted on the building? If so, when and by whom?;
- Estimates of rebates or incentives available and from whom (utility or federal, state or local government);
- Estimated total capital cost of equipment and installation (audit costs, contractor labor costs, contractor materials costs, equipment costs, survey costs, application costs, interest costs, ITPR review costs, long term M&V costs, costs for permits and all other related projects costs used to determine if the SIR for the owner and tenant is greater than 1); and
- Basis of cost estimate, e.g., recent and relevant project experience, published estimating guides (e.g., R.S. Means), bid process, etc.

Savings to Investment Ratio

PACE assessments create incentives for new investment and allow property owners to achieve energy and water savings above historical usage. The Savings to Investment Ratio (SIR) is the ratio of anticipated monetary utility savings to a participating property owner compared to the total cost invested in the property conservation improvements. The SIR is expressed as the estimated savings over the life of the assessment divided by the amount financed through the voluntary PACE assessment. As an underwriting standard, a positive SIR will provide a lender greater assurance that a participating owner/borrower will realize a positive cash flow under the terms of the project and can service the debt at presumably no net cost or impact to normal cash flow from operations.

The responsibility for achieving the projected savings lies with the property owner. One method owners may use in evaluating improvement measures is to calculate and compare the SIR for each conservation measure. To ensure a SIR > 1 over the life of the assessment, the PACE program and project participants may:

- Use energy auditing and modeling to identify measures that will yield a SIR > 1;
- Calculate SIR based on an entire project rather than on each individual measure; and
- Incorporate normal elements of generally accepted business calculations, such as depreciation and reasonable projections of changes in utility prices.

In Texas, however, there may be other factors that justify a PACE assessment in which the SIR <1. For example, industrial retrofits may be required to insure the facility adequate power or water in spite of storms, peak demand or drought. Measures to correct non-attainment findings or to address federally mandated retrofits may be essential to the business' success regardless of the SIR. If a third party lender and building owner are willing to provide a solid rationale for accepting an SIR <1, they can request a waiver of the **PACE in a Box** general rule:

General Rule - To be eligible for PACE financing, the projected savings derived from the improvement must be greater than the cost of the PACE assessment over the life of the assessment (i.e., the SIR should be greater than one, $SIR > 1$).

Waiver - A third-party lender and a for-profit-property owner may request a waiver in writing for a project with a $SIR < 1$ so long as their requested waiver certification provides a reasonable rationale for placing a PACE assessment on the property with a $SIR < 1$. The parties must demonstrate that they have carefully evaluated and fully understand the risks or uncertainties associated with allowing a $SIR < 1$, and address the interests of tenants and future property owners.

PACE Assessment Cost to Assessed Building Value Ratio

The PACE statute in Texas requires a PACE program to establish an appropriate threshold for the ratio of the amount of the PACE loan to the assessed value of the property as determined by the property appraisal district. The lower the ratio of new debt (the PACE assessment) to the value of the property, the less risk that the additional debt burden of a PACE assessment becomes a burden to the overall economic function of the property.

In some circumstances, there may be other reasons an investment greater than 20% of the assessed value would make good business sense to a property owner and private lender, particularly in the industrial sector where investment in modern, efficient equipment may turn a struggling business with water and/or energy intensive processes into a vibrant business that increases local employment. PACE assessments can enable businesses to save not just operating expenses through reduced utility use, but also to meet other challenges such as water and energy reliability in the face of storms and peak energy shortages. Similarly, the cost of any federally mandated changes in equipment that might otherwise force a stable business to close could be managed instead through PACE assessments. Finally, the new Texas Water Plan relies extensively on private sector conservation and [PACE in a Box](#), with careful flexibility can assist businesses toward this goal. In these circumstances, the property owner and lender can seek a waiver of the [PACE in a Box](#) general rule:

General Rule - The amount financed using a PACE assessment cannot exceed twenty percent (20%) of the assessed value of the property.

Waiver - If the PACE assessment is funded using a third-party lender, the for-profit property owner and lender may request a waiver to exceed the 20% cap. The justification for the exception must be reasonable, clearly understood by all parties, and address the interests of tenants and future property owners.

Eligible Expenses Included in PACE Assessments

A PACE assessment may include the following statutorily authorized expenses:

- The cost of materials and labor necessary for the installation or modification of a qualified improvement;
- Permit fees;
- Inspection fees;
- Lender's fees;
- Program application and administrative fees;
- Project development and engineering fees;
- ITPR fees, including verification fees; and
- Any other fees or costs that may be incurred by the property owner incidental to the installation, modification, or improvement:
 - Legal, consulting and other fees on an actual cost basis; and
 - Changes to the existing property that are incidental to the installation of the qualified improvement on a pro-rata basis not to exceed 20% of the overall project cost.

All applicable government, utility provider or manufacturer rebates, and other upfront cost reductions should be applied as a credit against the total project cost for purposes of calculating the amount of the PACE assessment.

Any applicable funding limits are per property per financing request. The total cost must also be consistent with the PACE program's savings to investment ratio (SIR) policy and the PACE program's PACE Assessment to Assessed

Building Value Ratio policy. Project lenders may impose additional minimum and maximum project funding requirements based on their own criteria and risk standards.

Energy/Water Savings Calculations by an Independent Third Party Reviewer (ITPR)

A project satisfying the underwriting requirements in [PACE in a Box](#) must also satisfy the Technical Standards required in the [PACE in a Box](#) Technical Standards manual in Section 8. Those standards establish protocols for ensuring that property owners, lenders and community leaders are able to confidently and objectively evaluate projected energy and water utility savings for proposed PACE projects. These protocols are also designed to ensure that the same technical standards are used and applied consistently throughout Texas.

The PACE Act requires an ITPR to:

- Review the baseline measurement of a property's existing water and energy consumption;
- Objectively measure the projected water and energy savings presented to a property owner; and
- Upon the completion of the project, verify that the work was completed and is operating as intended.

Project evaluation by an ITPR provides assurances to the property owner, the lender, and the local government that due diligence has been met and that a professional has validated the project using standardized engineering protocols.

VII. PACE IN A BOX GUIDE TO THIRD-PARTY FINANCING

Overview

The PACE Act authorizes two sources for financing PACE assessments secured by a property assessment lien – third-party financing (third-party lenders) and public financing (bonds). While early adopter PACE programs in other states relied on public financing, most of the early PACE programs began seeking ways to access additional funding sources by incorporating private lenders in PACE financing. The PACE Act allows PACE programs great flexibility in offering PACE assessments funded through private lenders and/or public financing. Although local governments have the option to issue bonds for PACE financing if they so choose, **PACE in a Box** recommends that Texas PACE programs utilize an open-market funding, third-party lender model. This model will minimize the local government's risks and burdens associated with PACE. Nonetheless, the **PACE in a Box** toolkit recommends standards for both options that promote flexibility in individual assessments while providing uniformity in process and documentation.

PACE by Contract

The PACE Act requires the local PACE program to use contracts to establish PACE financing and property assessment terms with the property owner and a private lender.

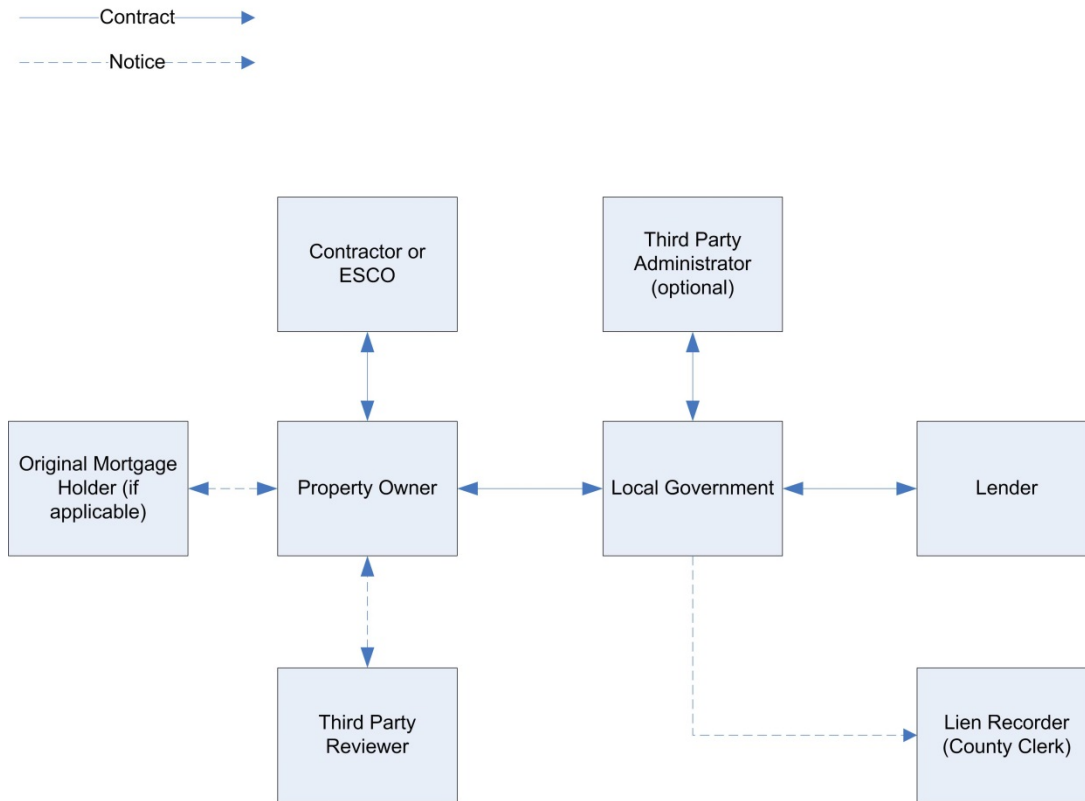
A written contract between the local PACE program and the property owner is required to impose a PACE assessment on a property to repay the owner's financing of a PACE project. This contract (Owner Contract) is the key document that creates the property assessment and the senior lien – the basis for the security that protects the PACE financing supplied by third-party lenders or public financing. The quality of this contract and the uniformity with which it is utilized throughout Texas will determine the speed of development and the strength of a secondary market for PACE financing in Texas. The model Owner Contract owner is included in Section 8.

If financing is provided by a third-party lender, the local PACE program must also enter into a written contract with the lender (Lender Contract) to service the debt on the PACE program through assessments. The Lender Contract is included in Section 8.

If the PACE program provides public financing (bonds), the Owner Contract must be a contract to finance the qualified project through assessments with a senior lien.

PACE financing for Qualified Improvements can be used for purchase of equipment and materials for a Qualified Improvement and for a contract, including through lease, power purchase agreement, or other service contract, for the installation or modification of a Qualified Improvement. Whether the equipment is purchased or installed and maintained by another person, all other requirements in the **PACE in a Box** model must be satisfied, including the requirement that the Qualified Improvements be permanently affixed to the property. The following flow chart lays out the flow of the contracts and communication:

Contractual PACE Relations



The PACE Lien

A PACE lien placed on the property to secure the PACE property assessment and any interest or penalties on the assessment is a first and prior lien against the real property on which the assessment is imposed. It does not take effect until recorded in the property records. The lien:

- Exists from the date on which the notice is recorded in the appropriate county and until the assessment, interest and any penalty are paid in full;
- Has the same priority status as a lien for any other ad valorem tax;
- Runs with the land (the unpaid portion transfers to a new owner upon sale); and
- Is not eliminated by foreclosure of a property tax lien.

Delinquent installments of the assessments incur the same interest and penalties in the same manner as delinquent property taxes. A local government may recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax. However, only the delinquent and owed assessments may be collected in this manner; assessments not yet due stay with the land and are to be paid when they become due (the loan does not accelerate).

Project Funding Sources

Third-Party Financing

To permit third-party lenders to supply the financing for a PACE project, the PACE Act requires the local government to:

- Develop a model Owner Contract (provided in Section 8);
- Develop a model Lender Contract (provided in Section 8); and
- Adopt a plan for ensuring sufficient capital for third-party financing.

Ensuring Sufficient Capital From Third-Party Lenders

The PACE Act creates an attractive, secure investment for third-party lenders and relies on the marketplace to determine whether and when PACE financing will be a useful tool for business. **PACE in a Box**'s uniform processes and documents foster lender participation by providing attractive markets with economies of scale and the standardized foundation required for the development of a secondary market. The toolkit also establishes requirements for qualified lenders and helps property owners identify qualified lenders interested in financing PACE projects.

In the **PACE in a Box** model, the property owner wishing to request a PACE assessment is responsible for identifying and selecting the lender of its choice. To help property owners identify lenders with the financial resources to meet their funding obligations, the **PACE in a Box** model establishes lender eligibility criteria and invites eligible lenders to be listed on the PACE program website so that property owners can readily identify these interested lenders.

Eligible third-party lenders may 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 Administration small business investment company;
- Any publicly traded entity; or
- Any private entity that:
 - Has a minimum net worth of \$5 million;
 - 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.

Every eligible lender can participate in the PACE program. Nothing in this section is intended to prohibit a property owner from identifying and selecting its own source of funding, whether or not from the eligible list.

To assist property owners in identifying eligible third-party lenders, a **PACE in a Box** program will provide an easily accessible list of eligible lenders that express an interest in providing PACE assessment funding. The list could be included on the PACE program website and should:

- Identify eligible PACE financing lenders;
- Provide contact information for the lenders;
- Provide additional information the local PACE program or lender may wish to include, such as:
 - Preferred project size for specific lenders;
 - Summaries of previously funded PACE projects in Texas; and
 - Links to any additional information lenders may wish to provide on their own websites.

Access to this information will enable interested property owners to contact and negotiate directly with the lender of their choice. In addition, the PACE website could include a feature that forwards to eligible lenders any property owner inquiry relating to PACE financing at the request of that property owner.

The public lists of eligible third-party lenders should not be exclusive and should include a statement that property owners are free to identify and do business with any other eligible lender, including their current lenders. Those lenders may choose to add their names to the publicly available eligible PACE lender list.

The eligible lender list will also provide for identification and listing of secondary market investors who express interest in purchasing PACE loans after the projects are completed and the PACE loan has been funded by a construction lender or mezzanine lender.

No local PACE program should:

- Guarantee or imply that funding will automatically be provided from a third-party lender;
- Imply or create any approval, endorsement or certification of, or responsibility for, any lender; or
- Create any type of express or implied favoritism of any eligible lenders.

The Local Government's **PACE in a Box** website and any publically available list of lenders must prominently indicate these disclaimers.

Underwriting Third-Party Financing

The **PACE in a Box** model looks to third-party lenders and property owners to communicate directly and provide financial information directly among themselves. The PACE underwriting criteria sets a minimum, uniform basis for ensuring quality PACE programs that serve the community and the participating parties. Many third-party lenders will elect to perform additional underwriting to determine the credit worthiness of a property owner. The PACE Owner Contract and Lender Contract have sections available for referencing additional terms reflecting the needs of the parties involved.

Structure of Third-Party Financing

PACE in a Box third-party financing consists of:

- Model Owner Contract between the local government and property owner setting forth the assessment payment and imposing an assessment lien on the property;
- Model certificate from the local government to the third-party lender certifying that the financing is for a qualified project and the assessment is authorized under the PACE Act;
- Model Lender Contract between the local government and third-party lender; and
- Model Notice of Assessment Lien that will be filed in the real property records.

These model documents are included in Section 8.

The Owner Contract

The Owner Contract creates the debt, grants the assessment lien and sets forth the terms of the assessment. Under the lender Contract, the local government assigns the assessments payable under the Owner Contract to the lender. Because the assessment lien can only be enforced by the local government, the Lender Contract makes the local government the nominal agent of the lender for collection of payments and enforcement of the assessment. These functions may be outsourced by the local government such as to the third-party administrator, a third-party servicer, or a county tax assessor-collector. Nothing in the PACE Act prohibits a lender from servicing the PACE loans it funds. Servicing is discussed in more detail at the end of this section.

Interest rate, Financing Terms, and Repayment Terms

The interest rate and repayment terms will be negotiated between the third-party lender and property owner and incorporated into the Lender Contract.

The term of the financing may be any length but may not exceed the useful life of the Qualified Improvements. In keeping with the intent of this provision of the PACE Act, PACE loans should be fully amortized by the scheduled maturity date and should not require balloon payments.

The repayment terms may provide for payment intervals agreed to by the property owner and third-party lender. Payments may be monthly, quarterly, semiannual or annual. Delinquent installments incur interest and late penalties in the same manner as delinquent property taxes.

Pre-payment of PACE assessment financing may not be prohibited. Some lenders may wish to provide for a prepayment penalty in the event a property owner wishes to prepay the PACE loan before maturity. Whether or not a PACE loan is subject to a prepayment penalty is a term to be negotiated between the third-party lender and the local government.

The Lender Contract

The Lender Contract constitutes a sale without recourse of the PACE loan by the local government to the third-party lender. Therefore, the sale does not create any obligations that would impose a debt or other

burden on the local government. In most cases, the third-party lender will acquire 100% ownership of the PACE loan. But it is also possible that some PACE loans may be sold to several lenders, with each lender acquiring a percentage interest in the loan. Such an arrangement would likely require modifications to the model Lender Contract and additional inter-creditor agreements among the participating lenders.

The Lender Contract should clearly and conspicuously states that it is:

- A sale of an interest in the PACE loan and not a debt of or loan to the local government; and
- The sale is without recourse as to the local government.

The Lender Contract:

- Prohibits any modification to the PACE loan documents without the consent of the third-party lender;
- States that payments on the assessment received by the local government will be held in trust by, and segregated from the general revenues of, the local government;
- Specifies deadlines for the local government to remit payments to the third-party lender;
- Sets forth procedures for enforcement of remedies for default under the PACE program adopted by the local government;
- Includes other provisions normally incorporated in a participation agreement for commercial loans; and
- Includes a section entitled “Additional Provisions: (insert here such additional provisions upon which the third-party lender and local government may agree).”

Construction Advances

PACE loans may provide financing for construction of a qualified project or may be used to finance a qualified project upon completion of construction. Where construction financing is provided, the Owner Contract and/or the Lender Contract may include provisions relating to the timing of and requirements for construction advances. In addition to the Owner Contract, PACE loans that provide construction financing may require agreements between the property owner and the third-party lender resembling the construction loan documents used by commercial lenders.

Notice of Assessment lien

The Notice of Assessment Lien must be filed in the real property records of each county where the property is located. The [PACE in a Box](#) toolkit includes a model Notice of Assessment Lien in Section 8. The lien takes effect when this notice is filed.

Existing Mortgage Lender Consent

Before a local government and a property owner execute an Owner contract, the PACE Act requires:

- Each holder of any mortgage lien on a property to be given 30 days written notice of the proposed PACE financing; and
- A written consent from the holder of each mortgage lien.

A model lender consent form has been included in Section 8.

Public Financing

Capital Market Bond Issuance by Local Government

The PACE Act authorizes local governments to issue public financing for PACE projects. Local governments have access to expert bond officials and advisors. The [PACE in a Box](#) toolkit provides guidance regarding the specific statutory PACE public financing provisions to assist public financing experts who are already in the best position to advise local governments deciding whether to take advantage of public financing opportunities for a local PACE program. Discussion with the Public Finance Division of the Office of the Attorney General should be undertaken prior to embarking on a proposed bond financing issued by a municipality or county.

The PACE Act prohibits a general obligation pledge of the full faith and credit of a local government. The PACE Act authorizes public financing funds from one or more of the following methods, all of which are secured with a senior lien on the property benefiting from a PACE assessment:

- Payments of contractual PACE assessments within the established PACE region;
- Reserves established by the local government from grants, bonds, or net proceeds or other lawfully available (non general revenue) funds;
- Municipal bond insurance, lines of credit, or public or private guarantees, standby bond purchase agreements, collateral assignments, mortgages, or any other available means of providing credit support or liquidity (not general revenue); or
- Any other non-general revenue funds lawfully available for these purposes.

The PACE Act requires a local government that chooses to offer public financing for its PACE program to establish:

- A maximum aggregate annual dollar amount for financing;
- A method of ranking requests in a priority order if requests appear to exceed the authorized amount; and
- A method for determining the interest rate, the term of the assessment, and the maximum amount of the assessment.

Local Jurisdiction Funding

Local governments can issue bonds either one at a time for individual projects, or on an aggregated project basis upon achievement of a certain dollar amount or timeframe. The challenge is to raise adequate upfront capital to issue bonds for smaller, individual projects so that these projects are not put on hold until there are enough to be aggregated into a total value for a bond sale.

Terms of the Property Owner PACE Loan for Local Government Funding

The financing documents between the local government and the property owner will be substantially the same Owner Contract as that adopted for the third-party lending option. The PACE Loan agreement with the property owner may provide for similar maturity, payment terms, default penalties, prepayment penalties and other provisions included or permitted for third-party lenders. Likewise, existing mortgage lenders must give consent, and the use of uniform property owner documents for both third-party financing and local government bond financing will facilitate existing mortgage lender consent.

Public Purpose

The PACE Act lays out the essential public and governmental purposes that are furthered by public financing for energy and water conservation retrofits to private property using PACE assessments as required under the Texas Constitution which include:

- Improvement of the reliability of the state electrical system;
- Conservation of state water resources consistent with the State Water Plan;
- Reduction of energy costs;
- Economic stimulation and development;
- Enhancement of property values;
- Enhancement of employment opportunities; and
- Reduction in greenhouse gas emissions.

Servicing and Enforcement

Servicing

Servicing of the PACE loan consists of billing, collecting and remitting payments to the financing source (third-party lender or bond holders). The servicer is also responsible for maintaining payment records, account balances, and otherwise interfacing between the local government, the financing provider, and the property owner.

The PACE Act authorizes a local government to contract with the governing body of another taxing unit, or other entity, including a county assessor-collector to collect PACE assessments. Some jurisdictions may choose to contract this function to the local tax assessor-collector or a regional council of governments using an interlocal government agreement. Other jurisdictions may choose to make this a function of the PACE third-party administrator who may delegate further to a servicing company. A number of companies, banks,

and other financial institutions have servicing capabilities, and a local government's PACE program can issue a RFP to solicit and obtain PACE loan servicing. The PACE Act does not prohibit a local government from delegating the servicing of a PACE loan to the lender.

Servicing by the County Tax Assessor-Collector

The traditional servicing method for early adopter PACE programs has been to add the PACE assessment to the local tax bill, making the county tax assessor-collector the servicer. The chief benefit of this mechanism is the high collection rate. In Texas, however, there is no obligation for the county tax assessor-collector to perform this function absent an interlocal government agreement in which the tax assessor-collector must be reimbursed for the cost of servicing. The issues related to altering county tax software to accommodate PACE assessments may be impracticable.

Texas' Truth in Taxation statute requires that tax bills are only for taxes. While it may be possible to have assessments added to a tax bill so long as they are clearly identified as non-tax charges, some counties may resist. The PACE assessment could go in the same envelope if not included on the tax bill itself, but this will be a matter of interlocal agreement negotiations for PACE programs wishing to utilize a county tax assessor-collector for servicing of PACE loans.

Yet another challenge is that in Texas, tax bills are sent only once a year. This does not synchronize with traditional lender payments which are more likely to be once a month. Higher interest rates for property owners could result when servicing is limited to an annual collection schedule.

Servicing by a PACE Administrator or Subcontracted to a Private Servicer

The PACE Act authorizes a local government to perform the servicing function in-house or to outsource it. Local governments should set these contracts for regular review and rebidding to maintain control of costs.

There are challenges to this option that must be carefully evaluated. First, the collection rate may be an issue since property owners may not equate the senior lien status of the PACE assessment if it is not sent as part of or along with a tax bill. Second, for commercial property owners intending these payments to be passed on to tenants under typical commercial real estate leases, these assessment bills must be clearly marked as an obligation to the local government as a result of a PACE assessment directly placed on the property. If sent by any office other than the county tax assessor-collector, these direct assessment invoices must be clearly identifiable as an obligation to the local government resulting from a direct assessment on the property.

Servicing by the Third-Party Lender

Because the PACE Act relies on contracts between the PACE program and third-party lenders, it provides an avenue for delegating responsibility for servicing the contracts to the lenders themselves. This delegation could remove a cost and work-load center from the PACE administrator's responsibility. While this new opportunity in PACE administration has not been tested, it appears to present market-based opportunities for the lending community that have not yet been available in a PACE structure such as:

- Lenders and property owners would have more flexibility to negotiate the payment schedule, which could reduce the interest rates charged for annual PACE payments;
- Servicing their own loans is what lenders do now, and with that experience and expertise it is hard to see how the government can be more efficient or cost effective; and
- Lenders would get paid immediately rather than having to wait for another to collect the assessment payments and forward them to the lender.

There are challenges to this option that must be carefully evaluated. First, the collection rate may be an issue since property owners may not recognize the senior lien status of the PACE assessment if it is not sent as part of or along with a tax bill. Second, for commercial property owners intending to treat these payments as local government assessments payable by tenants under the operating expense pass-through clauses of their leases, the assessment bills should clearly reflect that the payment is an obligation owing to the local government as an assessment on the property. This is especially important if the assessment bills are sent by anyone other than the county tax assessor-collector. Finally, a potential buyer of property with an existing PACE assessment must have a way to confirm that payments on the assessment are current. Any delegation

of servicing back to the lender should be accompanied by reporting requirements so that the local PACE program has current records of payment history.

Fees for Servicing

The local government must describe the procedures for collecting PACE assessments in its initial resolution to create a PACE program and in report on its proposed PACE program. The fees associated with servicing will reflect the servicing method established by the local government. The cost of servicing will be included in the assessment.

Enforcement

The enforcement and foreclosure of a PACE assessment lien must be done in the name of the local government. Foreclosure under the PACE Act is by judicial process just like a foreclosure of a property tax lien. Most local governments retain law firms that specialize in tax collections and foreclosures. PACE loans in default could be referred to these firms and foreclosure can be done in the same manner as the local government uses for its tax lien enforcement.

VIII. MODEL PACE IN A BOX DOCUMENTS, FORMS AND CONTRACTS

Section 8 is the library of all model documents required to establish and administer a PACE program.

Local Government *[PACE in a Box](#)* Implementation Outline

Model Local Government *[PACE in a Box](#)* Report

Model Resolution of Intent to Create a Local *[PACE in a Box](#)* Program

Model Resolution Establishing a Local *[PACE in a Box](#)* Program

Model *[PACE in a Box](#)* Project Application

Model *[PACE in a Box](#)* Pre-Qualification Letter to Property Owner

Model Program Guide for *[PACE in a Box](#)* Participants

[PACE in a Box](#) Frequently Asked Questions

[PACE in a Box](#) Technical Standards Manual

[PACE in a Box](#) Technical Standards - Best Practices Guide for Property Owners

Model *[PACE in a Box](#)* Lender Consent to PACE Assessment

Model *[PACE in a Box](#)* Owner Contract

Model *[PACE in a Box](#)* Lender Contract

Model *[PACE in a Box](#)* Notice of Assessment Lien to be filed in the Real Property Records



PACE in a Box

Local Government Implementation Outline

The Tasks and Decisions Required to Create a Successful PACE Program

To create a PACE program, a county or municipality (“local government”) must make a number of decisions:

1) How will the program be administered?

- a. A local government may:
 - i. **administer the program itself**; this involves hiring and setting the compensation of a program administrator and program staff, or contracting for the professional services necessary to administer the program, 12 Tex. Loc. Gov’t Code § 399.008(d);
 - ii. **jointly implement a regional program**; a local government may implement a program with any combination of other local governments, working with other local governments may help to promote uniform and sustainable programs, *see id.* at § 399.017; or
 - iii. **contract with a third party to administer the program**. Before contracting with a third party administrator, a local government should use a Request for Proposal (RFP) to judge the potential administrator’s qualifications, experience, and capabilities, *see id.* at § 399.008(d).

2) What will the boundaries for the program’s region be?

- a. A region’s boundaries can be separate, overlapping, or coterminous. *Id.* at § 399.007(d).
- b. A local government can designate one or multiple regions for implementing a program located within the local government’s jurisdiction (a municipality’s jurisdiction includes the municipality’s extraterritorial jurisdiction). *Id.* at § 399.007(b) – 399.007(d).

3) How will the local government finance eligible projects?

- a. A local government must develop a form contract between the local government and the property owner specifying the terms of assessment under the program and the terms of financing provided by a third party or local government. *Id.* at § 399.009(a)(2).
- b. If 3rd party financing:
 - i. develop a plan to ensure sufficient capital; and
 - ii. develop a form contract between the local governments and the third party regarding the servicing of the debt through assessments. *Id.* at §§ 399.009(a)(3), 399.009(a)(6).
- c. If the local government will finance the project, develop a plan to raise capital. *Id.* at § 399.009(a)(6).
- d. If bonds will be issued to provide capital to finance qualified projects:

- i. decide what the maximum annual dollar amount for financing projects through contractual assessments provided by the local government will be, *id.* at § 399.009(a)(7)(A);
 - ii. determine a method for ranking requests from property owners for financing in priority order if requests appear likely to exceed the maximum amount, *id.* at § 399.009(a)(7)(B);
 - iii. develop a procedure for determining the interest rate and period during which contracting owners would pay an assessment, *id.* at § 399.009(a)(8); and
 - iv. develop a procedure for determining the maximum amount of an assessment, *id.* at § 399.009(a)(7)(C).
- e. Develop a method for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations. *Id.* at § 399.009(a)(10)
 - f. Develop a method for ensuring that the period of a contractual assessment does not exceed the useful life of the project that is the basis of the assessment. *Id.* at § 399.009(a)(8).
 - g. Develop procedures for collecting the proposed contractual assessments. *Id.* at § 399.009(a)(16).

4) Based on the above information, what will the application process and eligibility requirements for the program will be?

A local government must:

- a. decide what kinds of qualified projects will be subject to contractual assessments, *id.* at § 399.009(a)(4);
- b. develop quality assurance and anti-fraud measures for the program, *id.* at § 399.009(a)(15); and
- c. decide what marketing and/or participant education services will be provided for the program, *id.* at § 399.009(a)(14). *Id.* at § 399.009(a)(9).

After a local government has answered the questions above, a local government must complete the following tasks to create the program:

1) Publish a report for the proposed program including:

- a. a map showing the boundaries of the proposed region;
- b. a form contract between the local government and the property owner specifying the terms of assessment under the program; and the terms of financing provided;
- c. if the proposed program provides for third-party financing, a form contract between the local government and the third party regarding the servicing of the debt through assessments;
- d. a description of types of qualified projects that may be subject to contractual assessments;
- e. a statement identifying a local government official authorized to enter into written contracts on behalf of the local government;
- f. a plan for ensuring sufficient capital for third-party financing and, if appropriate, raising capital for local government financing for qualified projects;
- g. if bonds will be issued to provide capital to finance qualified projects as part of the program:

- i. the maximum aggregate dollar amount for financing through contractual assessments to be provided by the local government;
 - ii. a method for ranking requests from property owners for financing in priority order if requests appear likely to exceed the maximum authorized amount
 - iii. a method for determining: the interest rate and period during which contracting owners would pay an assessment; and
 - iv. a method for determining the maximum amount of an assessment;
- h. a method for ensuring that the period of the contractual assessment does not exceed the useful life of the project that is the basis for the assessment;
- i. a description of the application process and eligibility requirements for financing qualified projects;
- j. a method for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations;
- k. a statement explaining the manner in which property will be assessed and assessments will be collected;
- l. a statement explaining that a property owner must obtain written consent from the holder of a mortgage lien, if applicable before, before participating in a PACE program, *see id.* at § 399.010;
- m. a statement explaining that a review of baseline water or energy conditions and projected water or energy savings is required for each project, as well as verification that the qualified project was completed as intended (any review must be conducted by an independent third party), *see id.* at § 399.011;
- n. a description of the marketing and participant education services to be provided for the program;
- o. a description of the quality-assurance and anti-fraud measures to be instituted for the program; and
- p. the procedures for collecting the contractual assessments. *Id.* at § 399.009(a).

2) Make the report available for public inspection:

- a. on the local government's website; and
- b. at the office of the official designated to enter into written contracts on behalf of the local government. *Id.* at 399.009(c).

3) Adopt a resolution of intent to create a program.

Include:

- a. a finding, if appropriate, that financed projects will serve a valid public purpose;
- b. a statement that the local government intends to make contractual assessments to repay financing;

- c. a description of the types of qualified projects;
- d. a description of the boundaries of the region;
- e. a description of any proposed arrangements for third-party financing;
- f. a description of local government debt servicing procedures if the program uses third-party financing;
- g. a reference to the report for the proposed program and a statement identifying the location where the report is available for public inspection;
- h. a statement of the time and place for a public hearing on the proposed program; and
- i. a statement identifying the appropriate local official and the appropriate assessor-collector for purposes of consulting regarding collecting the proposed contractual assessments with property taxes imposed on the assessed property. *Id.* at § 399.008(a)(1).

4) Hold a public hearing at which the public may comment on the proposed program, including the report for the proposed program. *Id.* at § 399.008(a)(2).

- a. If two or more local governments implement a program jointly, a single public hearing is sufficient to satisfy this requirement. *Id.* at § 399.017(b).

5) Adopt a resolution establishing the program and the terms of the program that includes:

- a. each item included in the report for the proposed program—this resolution may incorporate the report, or the amended version of the report, by reference, *id.* at § 399.008(b); and
- b. a description of each aspect of the program that may be amended only after another public hearing is held. *Id.* at § 399.008(a)(3).



PACE in a Box

Model Report for Proposed PACE Program

REPORT REQUIRED BY TEXAS LOCAL GOVERNMENT CODE SECTION 399.009

FOR PROPOSED [MUNICIPALITY OR COUNTY]

PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM

This Report is adopted by [NAME City Council/County Commissioners Court] for the [The City of _____ or _____ County] Property Assessed Clean Energy (PACE) Program (**the “program”**) in accordance with the requirements of the Property Assessed Clean Energy Act (**the “PACE Act”**) as set forth in Texas Local Government Code Chapter 399.

[City/County] 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, City/County is establishing the commercial PACE Program to encourage private sector investment in energy efficiency and water conservation. The PACE program will be offered to property owners on a strictly voluntary basis and will not require the use of any public funds or resources.

Authorized under the PACE Act enacted in 2013, the PACE program is an innovative financing program that enables private sector owners of privately owned commercial, industrial, and multi-family residential properties with five or more dwelling units to obtain low-cost, long-term loans to pay for water conservation, energy-efficiency improvements, and renewable energy retrofits. PACE loans provide up to 100% financing of all project costs, with little or no up-front out-of-pocket cost to the owner. The 2015 legislative session streamlined the process.

Loans made under the PACE Program will be secured by assessments on the property that are voluntarily imposed by the owner. Assessments may be amortized over the projected life of the improvements. The 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, the program will help property owners overcome market barriers which often discourage investment in energy efficiency and water conservation improvements.

1. Eligible Properties

The [City/County] PACE program is a strictly voluntary program. All private sector owners of Eligible Properties located within the [City/County] PACE region may participate in PACE financing. ***“Eligible Properties”*** include commercial, industrial, and multi-family residential properties with five or more dwelling units. Government, residential¹¹, and undeveloped property and property undergoing development at the time of the assessment are not Eligible Properties.

2. Qualified Improvements

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

The following items may constitute Qualified Improvements:

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

3. Benefits of PACE to Property Owners

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

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

¹¹

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

4. Benefits of PACE to the [City/County]

[Brief summary of local need for renovations of existing building stock, local conditions of commercial and industrial property and residential units with five or more residences and the community benefits of improving this property. Existing local goals, programs, and circumstances that would be enhanced by PACE can be highlighted here.]

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
- 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
- Increase business retention and expansion in the PACE region by enabling cost effective energy and water saving updates to existing property
- Improve productivity through optimized energy usage
- Support the State's water conservation plan
- Better enable the [City/County] to meet its water conservation goals

Finally, there are multiple regulatory schemes being promulgated by EPA that will have significant impacts on air quality in Texas. For example, adjusting the NAAQS to a lower standard will increase the difficulty for the [City/County] [to bring the area into attainment/maintain its attainment status]. 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.

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

The 84th Texas Legislature added a provision that explicitly shields the [City/County] and its employees from liability resulting from administering a PACE program.¹²

5. The Benefits of PACE to Lenders

PACE loans are attractive to lenders because they are very secure investments. Like a property tax lien, the assessment lien securing the PACE loan has priority over other liens on the property. Therefore, the risk of loss from non-payment of a PACE loan is low compared to most other types of loans. PACE assessments provide lenders with an attractive new product to assist existing and new customers in addressing an almost universal pent-up demand for needed commercial and industrial property equipment modernization. In order to protect the interests of holders of existing mortgage loans on the property, the PACE Act requires their written consent to the PACE assessment as a condition to obtaining a PACE loan.

¹² TX. Local Gov't Code §399.019.

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

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

7. Administration of the PACE Program

Under the PACE Act, the establishment and operation of the program are considered to be governmental functions. The PACE Act further authorizes the [City/County] to enter into a contract with a third party to provide administrative services for the PACE program (the “**Authorized Representative**”). [City/County] may delegate administration of the PACE program to a qualified, non-profit organization that can administer the program at no cost to the [City/County]. The Authorized Representative will be funded by transaction fees paid by the parties, charitable grants or other sources of revenue. The Authorized Representative will not receive compensation or reimbursement from the [City/County].

8. Eligible Lenders

The PACE Act does not set criteria for financial institutions or investors to be PACE lenders. The [City/County] will follow best practices of other PACE programs by recommending that lenders be:

- Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- Any insurance company authorized to conduct business in one or more states;
- Any registered investment company, registered business development company, or a Small Business
- 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
- All lenders 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.

Any lender can participate in the PACE program as long as it is a financially stable entity with the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts. The property owner, not the County or the Authorized Representative, selects the lender.

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

9. Components of the PACE Program

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

- a. Map of Region. A map of the boundaries of the region included in the program is attached to this Report as Exhibit 1. The region encompasses the [City/County] limits [and its extra-territorial jurisdiction].
- b. Form Contract With Owner. A form contract between [City/County] and the record owner of the Eligible Property is attached as Exhibit 2. It specifies the terms of the assessment under the PACE program and the financing to be provided by an Eligible Lender of the property owner's choosing.
- c. Form Contract with Lender. A form contract between [City/County] 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 the PACE program:

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;¹³ 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.¹⁴

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

The PACE program 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.¹⁵

- e. Authorized Representative. HB 3187 was signed into law on June 16, 2015. It authorizes [City/County] to delegate administration of the PACE program to a third-

¹³ TX. Local Gov't Code §399.002(5).

¹⁴ TX. Local Gov't Code §399.002(3).

¹⁵ TX. Local Gov't Code §399.004.

party “representative.” [City/County] may delegate all official administrative responsibilities, like the execution of individual contracts with property owners and lenders, to an Authorized Representative. This relationship will be monitored and maintained by the [City/County]’s [City Manager/County Judge] or his/her [designee or department].

[In the alternative, a City or County may administer the program entirely in-house or undertake some administrative aspects in house and delegate others to a third party representative]

- f. Plans for Insuring Sufficient Capital¹⁶. 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.
- g. No Use of Bonds or Public Funds. [City/County] does not intend to issue bonds or use any other public monies to fund PACE projects. Property owners will obtain all financing from the Eligible Lenders they choose.
- h. Limit on Length of Loan. One of the statutory criteria of a PACE loan is that the assessment payment period cannot exceed the useful life of the Qualified Improvement that is the basis for the loan and assessment. 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 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 Representative will accept applications from property owners seeking to finance Qualified Improvements under the program. Each application must be accompanied by the required application fee and must include:
 - (1) A description of the specific Qualified Improvements to be installed or modified on the property,
 - (2) A description of the specific real property to which the qualified improvements will be permanently fixed, and
 - (3) The total amount of financing, including any transaction costs, to be repaid through assessments.

[A copy of the Model PACE Application is under the Library Tab at www.KeepingPACEinTexas.org]

¹⁶ 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.

Based on this information, the Authorized Representative may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the proposed project appears to meet program requirements. Based on this preliminary letter, the property owner may initiate an independent third-party review of the project and submit the project to Eligible Lenders for approval of financing.

Once the above processes are completed, the property owner will submit the application to the Authorized 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 Representative.

- j. Financial Eligibility Requirements. The Authorized Representative will determine whether the owner, the property and the improvements are eligible for financing under the program. The Eligible Lender chosen by the owner will determine whether the owner has demonstrated the financial ability to repay the financial obligations to be collected through contractual assessments. The statutory method¹⁷ 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 Representative and the property owner imposing an assessment under the program, the holder of any mortgage lien on the property must be given notice of the owner's intention to participate in the program on or before the 30th day before the date the contract is executed, and the owner must obtain the written consent of all mortgage holders.¹⁸

[A copy of the Model Lender Consent form is available under the Library Tab at www.KeepingPACEinTexas.org]

¹⁷ TX. Local Gov't Code §399.009(b).

¹⁸ TX. Local Gov't Code §399.010.

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

The contract will impose a contractual assessment on the owner's Eligible Property to repay the lender's financing of the Qualified Improvements. The Eligible Lender will file "A Notice of Contractual Assessment Lien," in substantially the form in Exhibit 5 in the Official Public Records of [name] 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. The execution of the written contract between the Authorized Representative and the property owner and recording of the Notice of Contractual Assessment Lien incorporate the terms of the financing documents executed between the property owner and 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 contract attached as Exhibit 3, the lender or a designated servicer will agree to service the debt secured by the assessment.¹⁹

[PACE in a Box model, <http://www.keepingpaceintexas.org/pace-in-a-box>, also includes two additional servicing options: 1. The County Tax Assessor-Collector can add the non-tax assessments to the tax bill and forward payments to the lender; and 2. The Authorized Representative may perform the servicing duties itself or contract with a third party servicer to perform these duties.]

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

¹⁹ The servicer will be responsible for maintaining payment records, account balances, and reporting to the PACE administrator as required.

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 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 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.²⁰ The verification report conclusively establishes that the improvement is a Qualified Improvement and the project is qualified under the PACE program.
- o. Marketing and Education Services. [City/County] may subsequently enter into agreements with one or more other local governments or non-profit organizations that promote energy and water conservation and/or economic development to provide marketing and education services for the PACE program.

[A marketing and education services plan is included in section 5 of PACE in a Box, <http://www.keepingpaceintexas.org/pace-in-a-box>]

- p. Quality Assurance and Antifraud Measures. The Authorized Representative will institute quality assurance and antifraud measures for the Program. The Authorized Representative will review each PACE application for completeness and supporting documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the property owner, the property itself, and the proposed project all satisfy PACE program underwriting and technical standard requirements. Measures will be put in place to provide safeguards, including a review of the energy and water savings baseline and certification of compliance with the technical standards manual from an independent third-party reviewer (ITPR), who must be a registered professional engineer, before the project can proceed. This review will include a site visit, report, and a letter from the ITPR certifying that he or she has no financial interest in the project and is an independent reviewer. After the construction of the project is complete, an ITPR will conduct a final site inspection and determine whether the project was completed and is operating properly. The reviewer's certification will also include a statement that the reviewer is qualified and has no financial interest in the project.

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 Representative of the owner's default. Pursuant to Texas Local Government Code Section 399.014(c), the Authorized Representative will initiate steps for the [City/County] 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/County] 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/County] 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/County] and the lender exceeds the usury limit, the interest payable to the [City/County] will be reduced, and any interest in excess of the usury limit will be credited to the amount payable to [City/County] or refunded. If the [City/County] files suit to enforce collection, the [City/County] 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/County] will remit to the lender the net amount of the delinquent installments and contractual interest collected and remit to the Authorized 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/COUNTY PACE REGION

EXHIBIT 2

FORM OWNER CONTRACT

EXHIBIT 3

FORM LENDER CONTRACT

EXHIBIT 4

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



PACE in a Box

Model Resolution of Intent

**[NAME CITY COUNCIL/NAME COUNTY COMMISSIONERS COURT] RESOLUTION
OF INTENT
TO ESTABLISH A [CITY/COUNTY] PACE PROGRAM**

STATE OF TEXAS §
 §
[CITY OF NAME/ §
COUNTY OF NAME]

WHEREAS, The 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the “PACE Act”), which allows the governing body of a local government, including a [City/County], to designate an area of the territory of the local government as a region within which an authorized local government official and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease water or energy consumption or demand; and

WHEREAS, the installation or modification by property owners of qualified energy or water saving improvements to commercial, industrial, agricultural, and large multifamily residential real property in [City/County] will further the goals of energy and water conservation without cost to the public; and

WHEREAS, the [City Council/Commissioners Court] finds that financing energy and water conserving projects through contractual assessments (“PACE financing”) furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, and conserving water resources; and

WHEREAS, the [City Council/Commissioners Court], subject to the public hearing scheduled as provided below, at which the public may comment on the proposed program and the report issued contemporaneously with this resolution, finds that it is convenient and advantageous to establish a program under the PACE Act and designate the entire geographic area within the [City/County]’s jurisdiction as a region within which a designated [City/County] representative and the record owners of qualified real property may enter into PACE financing arrangements:

THEREFORE, be it resolved by the [City Council/Commissioners Court] of [City/ County] that:

1. The Recitals to this Resolution are true and correct and are incorporated into this Order for all purposes.
2. [City/ County] hereby adopts this Resolution of Intent and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose.

3. [City/County] intends to make contractual assessments to repay PACE financing for qualified energy or water conserving projects available to owners of commercial, industrial, agricultural, and large multifamily residential real property. The program is to be called [City/County] Property Assessed Clean Energy (“[City/County] PACE”).
4. The following types of projects are qualified projects for PACE financing that may be subject to such contractual assessments: Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, or agricultural real property or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including 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.

An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property.

5. The boundaries of the entire geographic area within [City/County]’s jurisdiction are the boundaries of the region where PACE financing and assessments can occur. [A City PACE program may include its ETJ].
6. Financing for qualified projects under the PACE program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with [City/County]’s representative to service the assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to contracts executed between the lenders and the owners. The lender contracts will provide that [City/County] will maintain and continue the assessments for the benefit of such lenders and enforce the assessment lien for the benefit of a lender in the event of a default by an owner. [City/County] will not, at this time, provide financing of any sort for the PACE program.
7. [City/County] will contract with a qualified non-profit organization to be the independent third-party Program Administrator.
8. The report on the proposed PACE program prepared as provided by Tex. Local Gov’t Code Sec. 399.009, is available for public inspection on the Internet website of [City/County] and in the office of the [City/County] at [address] and is incorporated in this resolution and made a part hereof for all purposes.
9. The [City Council/County Commissioners Court] will hold a public hearing on the proposed PACE program and report on [date] at _____.m. in the [City Council Room/County Commissioners Courtroom], [address].

Adopted this _____ day of _____, 201__.

[City Council/County Commissioners Court signatures]



PACE in a Box

Model Resolution Establishing a Program

[NAME] CITY COUNCIL/ [NAME] COUNTY COMMISSIONERS COURT
[ORDER/RESOLUTION] ESTABLISHING THE [NAME CITY/NAME COUNTY] PACE
PROGRAM

STATE OF TEXAS §
 §
[CITY OF NAME/ §
COUNTY OF NAME]

WHEREAS, the 83RD Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the “PACE Act”), which allows the governing body of a local government, including a county, to designate an area of the territory of the local government as a region within which an authorized local government official and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease energy or water consumption or demand;

WHEREAS, the installation or modification by property owners of qualified energy or water saving improvements to commercial, industrial, agricultural, and large multifamily residential real property in [City/County] will further the goals of energy and water conservation without cost to the public;

WHEREAS, the [City Council/Commissioners Court] finds that third-party financing of energy and water conserving projects through contractual assessments maintained by [City/ County] (“PACE financing”) furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, conserving water resources, and reducing greenhouse gas emissions;

WHEREAS, the [City Council/Commissioners Court] adopted a Resolution of Intent to establish a PACE program for [City/County] on [Date], including a reference to the report on the proposed program prepared as required by Section 399.009 of the PACE Act and made the report available to the public on the [City/County] website and for inspection in the [City/County] office;

WHEREAS, the public hearing required by Section 399.008(a)(2) at which the public could comment on the proposed program, including the report available for public inspection as mentioned above occurred [date and location] for [City/County]; and

WHEREAS, the [City Council/Commissioners Court] will delegate the administration of the [City/County] PACE program to a qualified, non-profit organization (the “authorized

Representative”) that can administer the program at no cost to the [City/County]. Transaction fees paid by the parties obtaining PACE loans and charitable grants are sufficient revenue streams to support the non-profit organization, and will enable the program to be administered without use of [City/County] resources, will assure the objectives of impartiality and confidentiality of owner information, and will be convenient and advantageous to [City/County];

[FOR CITY PROGRAM: WHEREAS, this Ordinance has the same force and effect as a “Resolution” establishing a PACE program as set forth in Section 399.008(3) of the PACE Act;]

NOW THEREFORE, be it resolved by the [City Council of NAME/Commissioners Court of NAME County] that:

1. Recitals. The recitals to this [Order/Resolution] are true and correct and are incorporated into this [Order/Resolution] for all purposes.
2. Establishment of Program. [City/County] hereby adopts this [Order/Resolution] Establishing the [City/County] PACE Program and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose and is convenient and advantageous to [City/County] and its citizens. The program will be called [City/County] Property Assessed Clean Energy ([City/County] PACE”) and is herein called “the Program.”
3. Contractual Assessments. [City/County] will, at the property owner’s request, impose contractual assessments on the property to repay PACE financing for qualified energy and water conserving projects available to owners of privately owned commercial, industrial, and large multifamily property.
4. Qualified Projects. The following types of projects are qualified projects for PACE financing that may be subject to such contractual assessments:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, or agricultural real property or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including 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.

An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property.

5. Region. The boundaries of the entire geographic area within [City/County]’s jurisdiction are included in the boundaries of the region where PACE financing and assessments can occur. [A City region can include its ETJ].
6. Third- Party Financing. Financing for qualified projects under the Program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the nonprofit administrator to service the debt

through assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to financing documents executed between the lenders and the owners. [City/County] will maintain and continue the assessments for the benefit of such lenders and will enforce the assessment lien for the benefit of a lender in the event of a default by an owner. [City/County] will not, at this time, provide financing of any sort for the PACE program.

7. Authorized Representative. A nonprofit organization will be designated as the authorized representative with authority to enter into written contracts with the record owners of real property in [City/County] to impose assessments pursuant to the PACE Act to repay the financing of qualified projects on the owners' property and enter into written contracts with the parties that provide third-party financing for such projects to service the debts through assessments. The [City Administrator/County Judge] or his/her designee will be the liaison with the authorized representative.
8. Enforcement. The [City/County] will enforce the collection of past due assessments and may contract with a qualified law firm to assist in collection efforts.
9. Report. The final report on the [City/County] PACE program, prepared in accordance with Section 399 of the PACE Act is attached and incorporated into this resolution. The [City/County] will post the report on the [City/County] website.
10. Amendment of Program. The [City Council/Commissioners Court] may amend the Program by resolution. However, another public hearing is required before the Program may be amended to provide for [City/County] financing of qualified improvements through assessments.

Adopted this _____ day of _____, 201_.

[City Council signatures/Commissioners Court signatures]

County Judge

Commissioner, Precinct One

Commissioner, Precinct Two

Commissioner, Precinct Three

Commissioner, Precinct Four

REPORT REQUIRED BY TEXAS LOCAL GOVERNMENT CODE SECTION 399.009

FOR [CITY/COUNTY]

PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM



PACE in a Box

Initial Project Application

PACE PROJECT APPLICATION

SECTION 1. APPLICANT INFORMATION

Applicant Primary Contact - Person to whom all communication will be directed

Name:	Title:	
Email:	Phone:	
Organization:		
Mailing Street Address:		
City	State:	Zip Code:
Relationship of Primary Contact to Property:		

Property Legal Owner Name(s) - As they appear on property title

Owner 1 Name:	Organization/Title:
Owner 2 Name:	Organization/Title:
Owner 3 Name:	Organization/Title:

Property Owner Type - Check one

☐ Corporation	☐ LLC	☐ 501(c)(3)
☐ Trust	☐ Partnership	☐ Other
☐ Individual(s)/Joint Tenants/Common Property (not in trust)		
IRS Tax ID Number:	Business Name:	
Legal Business Name (if different)		

SECTION 2. PROPERTY INFORMATION

Property Physical Address

Street Address:		County:
City	State:	Zip Code:
Property Tax Assessor-Collector ID or Reference Number:		

Property Type - Check one

☐ Commercial	☐ Multifamily (>5 units)	☐ Industrial
☐ Other		
Description:		

Property Characteristics

What is the current assessed value of the property?	\$	Date: _____
What is the most recent appraised value of the property?	\$	Date: _____
Is there currently a mortgage on the property?		☐ Yes ☐ No
If there is a mortgage, who currently holds it?		
What is the outstanding principal on the mortgage?	\$	
Which PACE program area is the property located in?		
What is the anticipated life of the proposed improvements?		

SECTION 3. OWNER INFORMATION

Please Confirm the Following:

Owner is not subject to any outstanding, unsatisfied judgment:	
Owner has not had any property sold at foreclosure in the previous 5 years:	
Owner grants consent for the PACE program administrator to pull credit information:	
Owner is current with all taxes and assessments on property and has been for 3 years:	
Owner is current on all debts secured by the property:	
Owner has clear title to the property with no encumbrances:	
Property is not subject to any outstanding tax liens or notices of default:	

Owner is able and willing to provide:

Certificate of Status from the Secretary of State of Texas:	
Certificate of Account Status from the Texas Comptroller of Public Accounts:	
Current Credit Report or if not available, a reasonable alternative:	
Current Title Report demonstrating property is free of all liens including mechanics liens:	
Written consent to PACE lien from property Mortgagee, if applicable:	

SECTION 4. PROPOSED PROJECT DETAILS

Project Development Status:

Beginning investigation, i.e. unsure of which property improvements to pursue:	☐ Yes ☐ No
Has a very specific set of desired property improvements:	☐ Yes ☐ No
Have had an energy audit conducted:	☐ Yes ☐ No
Have identified a contractor to implement the property improvements:	☐ Yes ☐ No
Have developed a detailed scope of work for the project:	☐ Yes ☐ No
Have identified what rebates or incentives are applicable to project:	☐ Yes ☐ No
Have approached existing mortgage holder to inquire about obtaining written acknowledgement for participation in the program:	☐ Yes ☐ No
Have identified which project investor will provide capital for the project:	☐ Yes ☐ No

Property Utility Information

What is the name of property's electric provider?
What is the name of property's water provider?
What is the name of property's natural gas provider?
Most recent year's total utility cost?

Project Details Table						
UCRM Info			Annual Savings			
Measure Name	Measure Cost (\$)	Useful Life (yrs)	Electricity (kWh/yr)	Water (kgal/yr)	Natural Gas (mmBTU/yr)	Rebates (\$)
Totals						

Utility Consumption Summary			
Utility	Use Before Project	Use After Project	Utility Cost
Electricity Consumption (kWh/yr)			
Electricity Sales (kWh/year)	N/A		
Electricity Demand			
Water Consumption (kgal/yr)			
Natural Gas Consumption (mmBTU/year)			
Steam Consumption (mmBTU/year)			
Chilled Water Consumption (mmBTU/year)			

SECTION 5. PROJECT FINANCIAL SUMMARY	
Total Project Cost	
Total Estimate Project Costs	\$
Less: Preliminary Estimate of Rebates/Incentives:	\$
Less: Property Owner Contribution:	\$
Total Estimated PACE Financing Amount:	\$



PACE in a Box

Model Pre-Qualification Letter to Property Owner

[Date]

[Property Owner and/or Potential Lender]

Dear _____:

As Administrator of the **PACE in a Box** program for the county/city of _____, one of our member jurisdictions, I am writing in reference to the proposed PACE project at [address of the proposed project]. We have reviewed the application for participation in this program as authorized by the Property Assessed Clean Energy Act, Section 399 of the Texas Local Government Code (The PACE Act). Pending submission of final documents at closing substantiating all relevant facts and obligations, the project as presented in the application appears to meet the requirements of the PACE Act and of this PACE program.

The proposed project is a qualified improvement under the PACE Act. The subject property is privately owned developed [commercial, industrial or multi-family housing with five or more units] with clear title located within the jurisdiction of this program. The record owner has satisfied the ownership requirements of the program. [There is a mortgage on the property and the mortgagee has agreed to provide written consent to the PACE project.] The savings to investment ratio is _____ to _____. The ratio between the proposed assessment and the value of the property is reasonable. The term of the proposed assessment does not exceed the useful life of the equipment involved.

This project will fulfill vital public purposes of the County/City of _____, including reducing the utility expenses for this property, upgrading the infrastructure of the property, promoting economic development and job creation, improving local building stock, and improving the environment.

Sincerely,

Name

Title

PACE program



PACE in a Box

Model Program Guide for Participants



**PACE-in-a-Box
Program Guidebook**

created by



Adopted by:

Travis County
Houston

Version 0.2, 2016-02-23

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1. Program Overview

1.a. Program Description

Property Assessed Clean Energy (PACE) is an innovative financing program available in some areas of Texas that enables owners of commercial and industrial properties to obtain low-cost, long-term loans for energy-efficiency and water conservation improvements. Local jurisdictions in Texas, such as cities and counties, have the authority to establish PACE programs and to cooperate with other nearby jurisdictions to offer PACE programs with regional scope. To find out if your property is in a jurisdiction which offers PACE, see [website URL].

PACE financing enables owners of commercial and industrial properties to help conserve critical water and energy resources, while simultaneously reducing their utility costs and improving their bottom-line profitability. PACE helps overcome financial barriers that typically discourage investment in water conservation and energy efficiency retrofits to existing properties. Improvements financed through PACE can generate positive cash flow upon completion with no up-front, out-of-pocket cost to property owners. The term of a PACE loan may extend up to 20 years, resulting in cost savings that exceed the amount of the assessment payment.

PACE loans are paid through and secured by a property assessment voluntarily imposed on the property by its owner with the consent of existing mortgage holders. PACE assessments attach to and follow title to the property, and they are not subject to acceleration upon default or foreclosure. If the property is sold before the PACE loan is fully repaid, the assessment remains in place and the repayment obligation is automatically transferred to the next owner. The senior lien status of PACE assessments substantially reduces the risk of non-payment, making PACE loans very secure and attractive to long-term, risk-averse lenders.

1.b. Program Management and Contacts

The PACE program in [jurisdiction or region] is authorized by Local Government Sponsors, and administered by a contracted Program Administrator. Most questions about PACE can be answered by the Program Administrator:

[Program Administrator contact info]

This contractor administers the PACE programs offered by these local PACE jurisdictions:

[Jurisdiction #1 contact info]

[Jurisdiction #2 contact info]

[Etc.]

1.c. Program Changes

This document is intended to provide a detailed and consistent reference on program design and implementation processes to participants, but does not address every possible situation or complication which may arise during program implementation. When instances requiring clarification are identified, the Program Administrator will attempt to provide guidance consistent with program intent as well as with other goals and priorities via the program website and other communication mechanisms.

The Local Government Sponsors and the Program Administrator may change certain program guidelines, processes, requirements, and other program details at any time without prior notice to market participants. However, the Program Administrator will strive to provide timely notice of such changes.

2. Eligibility to Participate

2.a. Properties and Property Types

A PACE assessment may be placed on privately-owned property that is:

- Commercial real property - including non-profit real property such as private schools, medical facilities, churches, etc.;
- Industrial real property - including privately owned agricultural real property; or
- Residential real property with five or more dwelling units.

Any of these properties must also:

- Be located within the jurisdiction of the PACE program;
- Have a title that is not in dispute; and
- Where there is a preexisting mortgage lien on the property:
 - The mortgagee must be given written notice of the owner's intention to participate in the PACE program thirty days prior the owner entering into a contract with the PACE program; and
 - The mortgagee must provide written consent to participation in the PACE program.

Properties that are statutorily *ineligible* for PACE assessments include:

- Undeveloped lots or lots undergoing development at the time of the assessment; and
- Government owned real property.

The PACE program application available on the program website contains a screening checklist which can be used to determine whether a particular property meets the eligibility requirements for participation in PACE.

2.b. Property Owners

The PACE Act requires that PACE programs ensure that property owners demonstrate the financial ability to pay the annual PACE assessments. That demonstration must be based on particular statutory underwriting factors, including verification that any participating owner:

- Is the legal property owner;
- Is current on mortgage and tax payments;
- Is not insolvent or bankrupt;
- Holds a title to the property to be subject to a PACE assessment that is not in dispute; and
- Has consent of any preexisting mortgagee to the proposed PACE assessment through a written contract.

Because PACE assessments are secured with a senior lien having the same status as a tax lien, the financial position of the property owners is, in theory, necessary only to ensure that the owners have the ability to pay the annual PACE assessments. However, underwriting information also provides local governments and lenders the assurances they need to confirm that PACE projects are high quality and successful in every respect. The PACE program application available on the program website contains a screening checklist which can be used to determine whether a particular property owner meets the eligibility requirements for participation in PACE.

2.c. Water and Energy Efficiency Service Providers

Property owners may work with any water and energy efficiency service provider of their choosing; however, all work and offers to perform work requiring licensure in Texas must be completed by properly licensed contractors, and all work must be completed in accordance with applicable federal, state and local requirements.

2.d. Independent Third Party Reviewers

Property owners may select any qualifying independent third party reviewer (ITPR).

ITPRs must be wholly independent from the property owner, water/energy efficiency service provider, and lender, and a Texas licensed Professional Engineer (PE) with appropriate professional experience must conduct the review for the ITPR.

The PACE Act requires an independent third party reviewer (ITPR) to:

- Review the baseline measurement of a property's existing water and energy consumption;
- Objectively measure the projected water and energy savings presented to a property owner; and ,
- Upon the completion of the project, verify that the work was completed and is operating as intended.

2.e. Lenders

Property owners may select any private lender and are wholly responsible for negotiating financing terms with the lender, such as fees, term, and interest rate. Eligibility to participate in PACE does not guarantee that financing will be available for any particular project.

In general, property owners, together with their selected energy/water efficiency service provider, apply to the PACE program only after having identified a lender and negotiated acceptable terms.

Lenders that meet PACE qualifications are listed on the PACE program website.

3. Water and Energy Efficiency Measures Eligible for PACE Financing

The PACE Act authorizes PACE funding for the installation of Qualified Improvements. Qualified improvements must:

- Be permanently fixed to the real property;
- Have a demonstrated capacity to decrease –
 - Water consumption or demand; and/or
 - Energy consumption or demand (includes renewables and distributed generation products or devices on the customer's side of the meter that use energy technology to generate electricity, provide thermal energy, or regulate temperature); and
- Have a useful life that exceeds the term of the PACE financing agreement.

Once a PACE assessment has been placed on a property, the financed qualified improvements are deemed permanently fixed to the property and PACE program documents prevent parties by contract or otherwise from removing any qualified improvement regardless of how they are defined in real estate case law or other contracts, until the assessment has been fully paid and the lien removed from the property. This standard applies whether the qualified improvement is purchased or leased. All parties must be confident in the measures selected and their projected value to, for example, existing and future tenants and property owners.

Ineligible Improvements

Improvements that are not permanently fixed to real property and can be easily removed are not eligible for financing through the program. For example, screw-in fluorescent light bulbs, removable low-flow showerheads, and faucet aerators, and improvements that are not recognized as "energy efficient" according to standard engineering or scientific principles would be considered as ineligible. PACE is not well suited for conservation measures that are design or stylistically relevant to a specific tenant or design trend if such measures are likely to go out of vogue before their life expectancy or the term of the assessment.

Multiple Improvements in a Single Project; Establishing the Useful Life of a Multi-measure Project

PACE financing will enable some property owners to retrofit their property in a comprehensive manner with Qualified Improvements made up of a number of energy and/or water saving measures. This comprehensive approach may be the most effective, cost-saving opportunity. To determine the useful life of a project made up of multiple measures with different projected life spans, the parties must determine the life of the project using a weighted average of the measures.

Length of Assessment Term

The PACE Act requires that the assessment term must be shorter than the useful life of the improvement or, in a multi-measure project, the weighted average useful life of the improvements.

Responsibility for Authorized Improvements

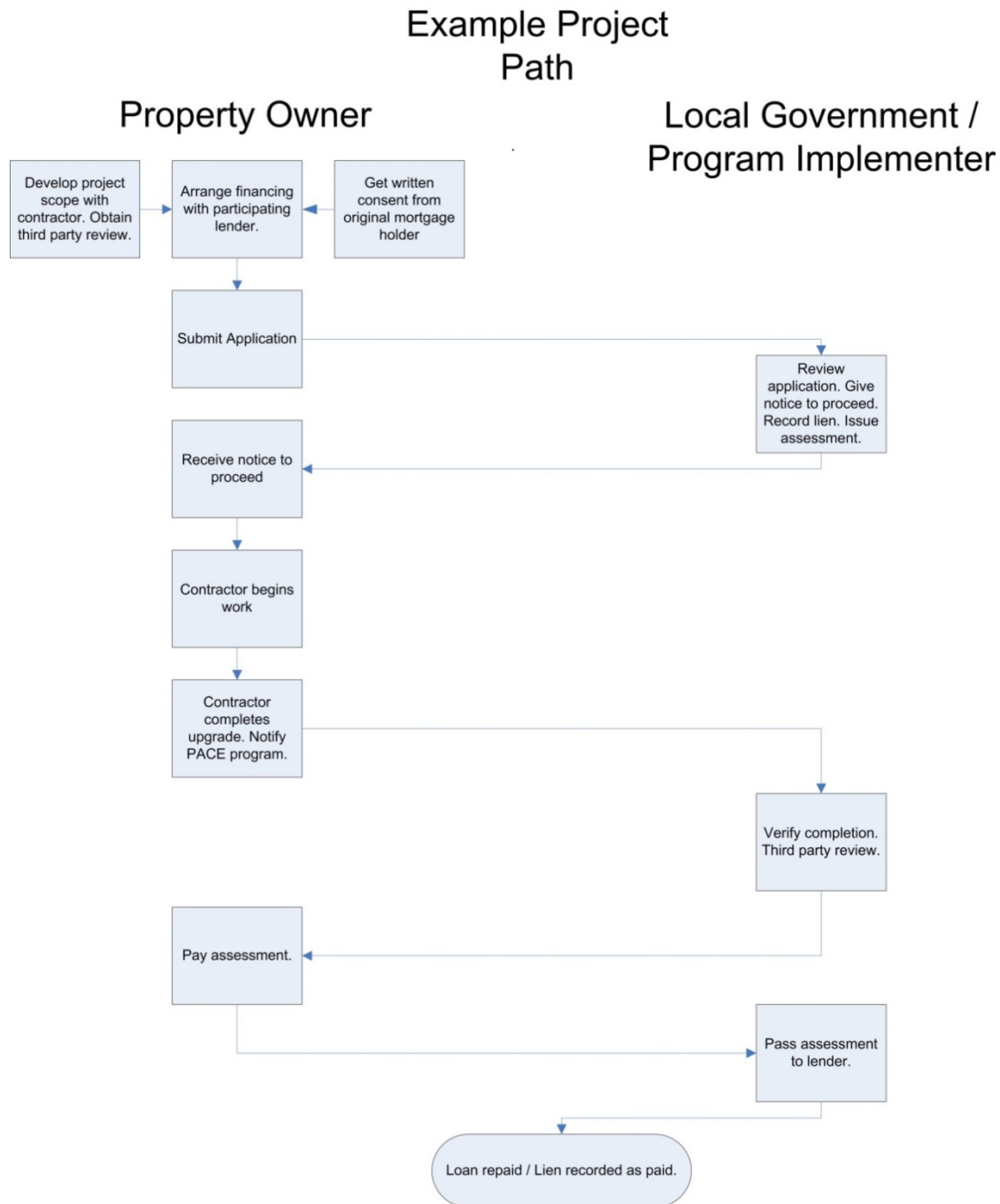
PACE is a financing program only. A participating local government does not recommend or warrant any particular improvements or affirm the performance or lack of performance of any measure. Neither a participating local program nor any agency assisting in coordinating any element of the program is responsible for the measures or their performance.

Ultimately, PACE programs look to lenders and commercial and industrial property owners who bear the ultimate responsibility to use solid business principles and common sense so as not to take undue risk to finance a questionable project.

Property owners are solely responsible for the measures installed on their property. Should there be any unsatisfactory performance or other system-related issues that arise during or after installation, the property owner must address those directly with the responsible contractor and/or vendor according to the terms of any contract between the parties.

4. Participation Process

4.a. Overview



4.b. Pre-Application

4.b.1. Determining Eligibility

A prospective PACE applicant should begin by affirming the eligibility of the property, property owner, lender, and local jurisdiction to participate in a PACE loan. Eligibility criteria may be found earlier in this guidebook.

4.b.2. Energy Analysis and Project Scoping

Once PACE eligibility has been determined, a property owner and engineer or contractor study a proposed project's scope and potential water and/or energy savings. Prior to the filing of a PACE application, each proposed project must be reviewed by an independent third-party reviewer (ITPR) to review an audit that includes the property's current water and/or energy baseline conditions and the projected water and/or energy savings expected after project implementation. ITPRs analyze the audits and conduct site visits to ensure that the projected savings identified in the audit are valid and reasonable.

An ITPR review letter is submitted directly to the PACE program as part of the application requirements. ITPRs - independent licensed Professional Engineers with the required engineering certifications - are not part of or guaranteed by the PACE program. The selection of an ITPR is the responsibility of the program participants, not the PACE program.

4.b.3. Identification of Local, State, Utility and other Permitting Requirements

Property owners are required to obtain all necessary local building, electrical, plumbing and other permits, pass all required local inspections, and be in full compliance with applicable codes and standards. All work must be performed in accordance with all applicable federal, state, and local codes and standards. Copies of permits and other verification that plans are in compliance must be obtained and shared with the PACE administrator before construction.

4.b.4. Lender Selection and Mortgagee Approval

Property owners must select a lender who is willing to enter into a PACE contract with the applicable local jurisdiction. A sample contract is available on the program website. If the property has an existing mortgage, the existing mortgagee must be willing to consent to the PACE contract using the consent form available on the program website.

4.b.5. Assistance during the Pre-Application Phase

The Program Administrator offers assistance to prospective property owners, energy/water efficiency service providers, and others during the pre-application phase. Please contact the Program Administrator prior to contacting the Local Government Sponsor to address questions.

4.c. Submitting a Program Application

The Program Administrators may provide a checklist on the program website in order to determine in advance whether the proposed project qualifies and if so, what additional information and tasks will be required for the application process. This checklist may also assist property owners in estimating the non-project costs such as interest charges, application fees, interest, ITPR review, long-term measurement and verification, and all other related project costs to determine the project's savings to investment ratio.

4.d. Application Review and Approval

The PACE administrator will review each application in a timely manner and, if complete and determined to qualify, recommend approval by the local government.

4.e. Construction

After a PACE application is reviewed and a written approval has been received, the property owner is clear to proceed with construction of the identified water and energy efficiency improvements.

4.f. Notification of Completion

When construction is complete and all applicable permits and inspections have been completed, the property owner shall notify the Program Administrator in writing of completion.

4.g. Installation Verification

After a PACE project is completed, an independent third-party must verify that the project was completed and is operating as intended, and report these findings to the Program Administrator. Verification can be completed by any ITPR selected by the program participants, including the ITPR that initially reviewed the water and/or energy baseline conditions and projected water and/or energy savings expected after project implementation or a different ITPR. It is the property owner's responsibility to obtain and report the installation verification to the Program Administrator.

Once the notification of completion and installation verification have been received by the Program Administrator, a closing will be scheduled.

4.h. Lien and Assessment Recording

At closing, the PACE Program Administrator will promptly file written notice of each contractual assessment with the county clerk in the county in which the property is located. The senior lien on the property that secures the assessment is not imposed until the assessment is recorded. The written notice must contain:

- The amount of the assessment;
- The legal description of the property;
- The name of each property owner; and
- A reference to the statutory assessment lien.

4.i. Assessment Servicing Phase

Servicing of the PACE loan consists of billing, collecting and remitting payments to the financing source (third-party lender or bond holders). The servicer is also responsible for maintaining payment records, and account balances and otherwise interfacing between the local government, the third-party lender and the property owner.

The local government is the nominal agent for collection of payments and enforcement of the assessment. These functions may be managed by the PACE administrator, outsourced by the local government to a third-party servicer, or to another governmental body such as a county tax assessor-collector under an interlocal government agreement.

4.j. Completion of the Assessment Period

At the close of the assessment period, the servicer notifies the property owner, lender, local government and PACE administrator.

5. Fees

All fees associated with participating in the PACE program are expected to be paid by the property owner, lender or contractor at the time of application and/or closing. PACE fees may be included in the amount financed by the PACE program.

5.a. Program Administration and Application Processing Fees

[To be determined by the PACE administrator.]

5.b. Local Government Fees

[To be determined by the local jurisdiction.]

5.c. Other Fees

Other fees may be imposed by lenders, the program administrator, or other project partners. These fees, if imposed by the program administrator, must be disclosed prior to the application process.

6. Marketing, Education and Technical Assistance

4.a. Program Marketing

[To be determined by the Program Administrator.]

4.b. Online Materials

[To be determined by the Program Administrator.]

4.c. Scheduled Webinars

[To be determined by the Program Administrator.]

4.d. Regional Events

[To be determined by the Program Administrator.]

7. Reporting

7.a. To Local Governments

Program administrators shall provide detailed reports of all applications in process and completed to local governments in a timely manner.

7.b. Public/Consolidated Reports

Program administrators shall provide consolidated reports of program activity on the program website to enable tracking of completed projects by jurisdiction, project type, and energy/water savings in a timely manner.



PACE in a Box

Frequently Asked Questions (FAQ)

General:

What is PACE?

The Property Assessed Clean Energy Act (PACE Act) SB 385 was adopted by the 83rd Session of the Texas Legislature and signed by Governor Perry in June 2013. PACE is an innovative program that enables owners of commercial and industrial properties to obtain low-cost, long-term loans for energy-efficiency and water conservation improvements. PACE loans help property owners overcome financial barriers that typically discourage investment in water conservation and energy efficiency retrofits to existing properties. Improvements financed using PACE can generate positive cash flow upon completion with no up-front, out-of-pocket cost to property owners. The term of a PACE loan may extend up to 20 years, resulting in cost savings that exceed the amount of the assessment payment.

What is *PACE in a Box*?

PACE in a Box is a uniform, user-friendly, sustainable and scalable turnkey program or toolkit to assist local governments in establishing and implementing PACE programs. The toolkit contains all of the design elements, documents and implementation steps necessary for a local government to establish an effective PACE program quickly and economically. *PACE in a Box* will standardize the design of PACE programs in Texas, resulting in uniformity and predictability of requirements for PACE financing among all participating local jurisdictions. As a result, the various stakeholders in PACE financing transactions – property owners, lenders, governmental agencies, energy service companies, manufacturers and others – will be able to accelerate the process of utilizing PACE financing in Texas.

Who is Keeping PACE in Texas?

Keeping PACE in Texas (KPT) is a non-partisan, non-profit organization that assembled the Texas coalition to help get the Property Assessed Clean Energy Act (the PACE Act) enacted in Texas on June 14, 2013. The PACE Act authorizes municipalities and counties in Texas to work with private sector lenders and property owners to finance qualified improvements using contractual assessments voluntarily imposed on the property by its owner. After the legislation was enacted, the coalition led by KPT set out to design *PACE in a Box* and is currently assisting with the implementation of this toolkit.

How are PACE projects funded?

The PACE Act authorizes two sources for financing PACE assessments secured by a property assessment lien – third-party financing (third-party lenders) and public financing (bonds). While early adopters of PACE programs in other states relied on public financing, most of the early PACE programs began seeking ways to access additional funding sources by incorporating private lenders in PACE financing. The PACE Act allows PACE programs great flexibility in offering PACE assessments funded through private lenders and/or public financing. Although local governments have the option to issue bonds for PACE financing if they so choose, *PACE in a Box* recommends that Texas PACE programs utilize an open-market funding, third-party lender model. This model will minimize the local government's risks and burdens associated with PACE.

Why / How is Texas' PACE program different than other states?

As KPT began researching best practices, it noted a California trend in which hundreds of early adaptor local governments were opting into one or more state-wide competing administrative programs with each providing an exclusive or favored funding mechanism that relies on privately or publicly funded municipal bonds. The competition among these government-selected program administrators and the differing program requirements can be confusing and expensive.

The case for a state-wide, uniform program model was made in 2013 by Connecticut's new PACE statute, which is the only one that created a single governmental state-wide agency to administer a PACE program on behalf of local governments. In its first eight months of operation, Connecticut accounted for one-half of all commercial PACE financing in the U.S. in 2013.

Although a state-administered PACE program is not an option in Texas, the KPT coalition recognized that uniform programs covering large areas provide economies of scale. This vision has created the *PACE in a Box* toolkit that will be utilized throughout the state, and can serve as a nationwide model.

Why was PACE passed?... What are the public benefits of PACE legislation?

In today's world of ever-increasing dependence on energy and water resources, the importance of energy efficiency and water conservation cannot be over emphasized. Commercial and industrial buildings in Texas consume approximately 63% of all energy consumed in the state. But market barriers – like extended payback periods and lack of access to capital – have discouraged building owners from investing in retrofits that would decrease their water or energy consumption. The PACE Act addresses the need for a financing mechanism to remove these barriers and to encourage building owners to make economically viable investments in energy efficiency and water conservation retrofits.

PACE financing enables owners of commercial and industrial properties to help conserve critical water and energy resources, while simultaneously reducing their utility costs and improving their bottom-line profitability. In a broader sense, the availability of PACE financing will help improve the quality and efficiency of our building stock, reduce harmful carbon emissions, and create numerous jobs in the manufacturing, construction and service sectors of our economy.

Does PACE include both water and energy efficiency improvements?

Yes, the Texas Legislature was very clear and intentional in its decision to include both water and energy improvements in the statute. This is a differentiating factor between Texas PACE programs and several other states. The inclusion of both will help Texas obtain energy and water security.

Can PACE projects qualify for rebates, tax incentives and other funding programs from governmental entities?

Yes, PACE projects can qualify and receive additional rebates and incentives. All applicable government, utility provider or manufacturer rebates, and other upfront cost reductions should be applied as a credit against the total project cost for purposes of calculating the amount of the PACE assessment.

Property Owners:

Why is PACE attractive to a property owner?

PACE enables property owners to obtain low-cost, long-term loans for up to 100% of all costs associated with the design and installation of water conservation, energy efficiency, renewable and distributed generation retrofits. These improvements can be structured to generate positive cash flow to the property owner because the cost savings derived from them exceeds the amount of the PACE assessment payment. In addition, PACE enables the property owner to amortize the cost of the improvements over their useful life. Since PACE loans are secured by assessments on the property, they are automatically transferred to successive owners when the property is sold. Consequently, each owner of the property pays only that portion of the assessment that accrues during its period of ownership. And importantly for property owners leasing their property to tenants, PACE assessments can be passed to tenants under the typical commercial office lease.

These attributes of PACE loans enable property owners to overcome traditional barriers to making capital investments in property. Without PACE, property owners will continue tossing the problem of delayed maintenance to a new owner like a hot potato. Until committing capital to modernize real property infrastructure makes sense as a value proposition, property owners will continue to waste operating expenditures on utility bills and risk exposure to utility price increases. Instead, PACE users capitalize money previously spent on utilities; the utility cost savings achieved by a retrofit pay for the retrofit itself. Property owners end up with more valuable property and access to recurring utility savings and pay only for the assessments that accrue while they own the property.

What types of properties qualify for PACE?

The PACE Act permits PACE assessments to be placed on property that is:

- Privately owned commercial real property - including not for profit real property such as private schools, medical facilities, churches, etc.;
- Privately owned industrial real property - including privately owned agricultural real property; or
- Privately owned residential real property with five or more dwelling units.

Any of these properties must also:

- Be located within the jurisdiction of the PACE program;
- Have a title that is not in dispute; and
- Where there is a preexisting mortgage lien on the property: the mortgagee must be given written notice of the owner's intention to participate in the PACE program at least 30 days before the owner enters into a contract with the PACE program; and, the mortgagee must provide written consent to participation in the PACE program.

Properties that are statutorily *ineligible* for PACE assessments include:

- Undeveloped lots or lots undergoing development at the time of the assessment; and
- Government owned real property.

What types of projects are eligible for PACE?

The PACE Act authorizes PACE funding for the installation of Qualified Improvements. Qualified improvements must:

- Be permanently fixed to the real property;
- Have a demonstrated capacity to decrease –
 - Water consumption or demand; and/or
 - Energy consumption or demand (Includes renewables and distributed generation products or devices on the customer's side of the meter that use energy technology to generate electricity, provide thermal energy, or regulate temperature); and
- Have a useful life that exceeds the term of the PACE financing agreement.

Ineligible Improvements

Improvements that are not permanently fixed to real property and can be easily removed are not eligible for financing through the program. For example, screw-in fluorescent light bulbs' removable low-flow showerheads and faucet aerators, and improvements that are not recognized as "energy efficient" according to standard engineering or scientific principles would be considered as ineligible.

Multiple Improvements in a Single Project; establishing the useful life of a multi-measure project PACE financing will enable some property owners to retrofit their property in a comprehensive manner with Qualified Improvements made up of a number of energy and/or water saving measures. This opportunity poses the most effective, cost saving opportunities.

To determine the useful life of a project made up of multiple measures with different projected life spans, the parties must determine the life of the project using a weighted average of the measures.

Length of Assessment term

The PACE Act requires that the weighted average useful life must be shorter than the assessment term.

What requirements are there for a property owner to utilize PACE?

The PACE Act requires PACE programs to ensure that property owners demonstrate the financial ability to pay the annual PACE assessments. That demonstration must be based on particular statutory underwriting factors, including verification that any participating owner:

- Is the legal property owner;
- Is current on mortgage and tax payments;
- Is not insolvent or bankrupt;
- Holds a title to the property to be subject to a PACE assessment that is not in dispute; and
- Has consent of any preexisting mortgagee to the proposed PACE assessment through a written contract.

Why is a lien placed on the property?

The senior lien status of PACE assessments substantially reduces the risk of non-payment, making PACE loans very secure and attractive to long-term, risk-averse lenders. This enables owners of commercial and industrial properties to obtain **low-cost, long-term** loans for energy-efficiency and water conservation improvements, overcoming financial barriers that typically discourage investment in water conservation and energy efficiency retrofits to existing properties.

What type of lien is it?

A PACE lien placed on the property is a first and prior lien against the property itself. The lien does not take effect until recorded in the property records and runs until the assessment, interest and any penalty are paid in full. The PACE lien has the same priority status as a lien for any other ad valorem tax. The lien runs with the land (the unpaid portion transfers to a new owner upon sale) and is not eliminated by foreclosure on the property.

What is the length of the assessment?

To fix the length of the assessment, the property owner first determines the total cost of the PACE project and the projected utility savings. The assessments term should be stretched long enough to ensure that the savings resulting from the project exceed the cost of the assessment.

The PACE Act requires that the assessment term must be shorter than the useful life of the improvement or, in a multi-measure project, the weighted average useful life of the improvements.

How does PACE add to the value of my property?

PACE users capitalize money previously spent on utilities; the utility cost savings achieved by a retrofit pay for the retrofit itself. Property owners end up with modern infrastructure and increased operating income through recurring utility savings. Thus pay only for the assessments that accrue while they own the property. PACE assessments can be structured to be cash flow positive.

Can the PACE assessment payments be passed through to tenants?

Yes, under most commercial operating leases, PACE assessments can be passed to tenants. Under the leases, tenants will enjoy the resulting decrease in utility bills that will place them in a cash flow positive position.

What is the mortgage holder consent process?

If there is an existing mortgage lien on the property, the mortgagee must be given thirty days advance notice and must provide written consent prior to including the property in the PACE program. A model lender consent form is included in Section 8 of [PACE in a Box](#).

What are the upfront fees?

Improvements financed through PACE can generate positive cash flow upon completion with no up-front, out-of-pocket cost to property owners.

The PACE Act allows the following expenses to be included in the assessment: the cost of materials and labor necessary for the installation or modification of a qualified improvement, permit fees, inspection fees, lender's fees, program application and administrative fees, project development and engineering fees, Independent Third Party Reviewer (ITPR) fees, and any other fees and costs that may be incurred by a property owner incidental to the installation, modification, or improvement.

Didn't the FHFA ban PACE?

The Federal Home Financing Agency (FHFA) prohibits Freddie Mac and Fannie Mae from purchasing any residential mortgage in the secondary market if the property is subject to a PACE assessment. In 2009, Texas passed House Bill 1937, establishing PACE districts. The bill included residential PACE programs and was quickly stalled by the FHFA. The PACE Act includes commercial and industrial PACE programs, excluding residential property with up to four units.

What type of properties do not qualify for PACE?

Properties that are statutorily *ineligible* for PACE assessments include:

- Undeveloped lots or lots undergoing development at the time of the assessment; and
- Government owned real property.

Why would a mortgage holder consent?

Any PACE proposal should be submitted to a mortgagee with an overview of PACE assessment and a solid business plan demonstrating improvement to the property value and a cash-flow positive position for the customer with improvement to the net operating income of the property.

Lenders benefit from PACE financing in multiple ways:

- Collateral is protected:
 - The property is protected from devaluation and income losses from delayed maintenance, end-of-life of infrastructure; and
 - PACE improvements modernize the property and increase value;
- Existing customers are better served because the cash-flow positive nature of PACE assessments improve the financial position of the customer over a traditional second mortgage and do not impair the net operating income of the mortgaged property
- PACE is a new product mortgagees can offer to attract new customers and increase the flow of capital into the market.

How can I find a PACE program available for my property?

Contact your county and municipality to inquire whether a PACE program exists in your area. If none yet exists, begin working with your local business organizations to advocate for one.

www.KeepingPACEinTexas.org will provide information on the creation of *PACE in a Box* programs throughout Texas.

If I own an apartment complex with a FNMA or FHLMC loan can I get PACE?

Nothing in law or regulation prohibits the use of PACE to finance improvements to multi-family housing with five or more units. The current FHFA ban on Freddie Mac and Fannie Mae ability to purchase a residential mortgage in the secondary market is limited to properties with four or fewer units.

There is a larger question regarding the logistics of obtaining the mortgagee's consent when the mortgage on a property has been sold into the secondary market. Property owners and lenders should begin working

together to incorporate language into first mortgage agreements to anticipate PACE financing for improvements to the collateral so that trustees in control of commercial property in the secondary market have clear authority and a process for granting consent.

Is PACE non-recourse financing?

Yes and no; PACE financing is limited recourse financing. There is no recourse for assessments that have not yet come due. Assessments in arrears are subject to the lender's enforcement terms in the loan documents as well as in the local government's enforcement authority in the statute.

Is PACE off-balance sheet financing?

This issue is unresolved until a major accounting firm rules whether a PACE assessment is off-balance sheet as a matter of generally acceptable accounting procedures. Please consult with your accountant.

Contractors/Engineers/Manufacturers:

How will PACE benefit contractors?

PACE will enable more private sector energy and water conservation projects to become a reality by bringing a state-wide funding mechanism that has many benefits for property owners. The traditional barriers are addressed in a PACE program, resulting in increased improvements and increased business. Furthermore, the standard, uniform approach will enable contractors and ESCOs to be familiar and comfortable with the standards, expectations and processes state-wide.

What technical requirements are necessary to qualify a project for the [PACE in a Box](#) program?

Once a project satisfies all underwriting requirements of [PACE in a Box](#), it must meet three technical requirements.

First, the property's current water and energy use is measured so that a *baseline* for comparison is established.

Second, each potential energy or water conserving measure is evaluated to determine projected savings compared to the baseline in a technically sound, consistent and transparent manner. Findings from these two steps together are compiled in a document referred to as an energy /water assessment report. PACE law requires that each report is evaluated by an *independent third party reviewer (ITPR)*.

Third, after the project retrofit activities are completed, the project must be reviewed by the ITPR to ensure that the project meets the intent of the energy/water assessment report, is properly completed, and is operating as intended. The purpose of performing *measurement and verification (M&V)* after installation is to validate that the measures are operating as expected and the energy/water savings are being realized. Project evaluation by an ITPR provides assurances to the property owner, the lender, and the local government that due diligence has been met and that a professional has validated the project using standardized engineering protocols.

What technical methodology is used for data collection, measurement and savings calculations?

The technical methodology incorporated into the PACE review process relies primarily upon the Investor Confidence Project (ICP) - Energy Performance Protocols (EPP) for Standard and Large Commercial Facilities.

The ICP EPP contains processes that form a framework for bringing together all aspects of project implementation from establishing a baseline and audit, through M&V. They have been created by a large stakeholder community of industry experts and are continuously reviewed and improved. [PACE in a Box](#) relies on the EPP because they are the result of a nationwide effort to standardize the technical review of energy efficiency projects to bring uniformity and reliability on a national scale. The EPP help ensure that conservation measures are evaluated consistently throughout the state and create a national standard for lender review of PACE projects.

What protocols are available to reference within [PACE in a Box](#)?

There are a number of protocols available to reference within the [PACE in a Box](#) Technical Standards Manual in Section 8. PACE. These protocols generally fall under the various sections within the following technical documents:

1. Investor Confidence Project (ICP) - Energy Performance Protocols (EPP) for Standard and Large Commercial Facilities
2. ***International Performance Measurement and Verification Protocol*** (IPMVP) Concepts and Options for Determining Energy and Water Savings Volume I, January 2012
3. IPMVP Concepts and Practices for Determining Energy Savings in Renewable Energy Technologies Applications
4. Federal Energy Management Program's M&V Guidelines: Measurement and Verification for Federal Energy Projects Version 2.2 (and version 3.0)

Are Independent Third-Party Reviewers recommended for PACE projects?

Yes. The Texas PACE law requires an independent third party review of a baseline water/energy assessment report for each proposed qualified project. It is the responsibility of the Independent Third Party Reviewer (ITPR) to validate projected future energy or water savings. Additionally, after a qualified project is completed, the ITPR must verify that the qualified project was properly completed and is operating as intended. This requirement provides assurances to the [PACE in a Box](#) program, the property owner, and the lender that due diligence has been executed, that a standard of consistency has been applied throughout the PACE process, and that a professional licensed engineer has validated the expected energy and water savings from the proposed project.

Is Measurement and Verification a requirement for PACE projects?

Yes. Property owners are encouraged to address M&V in their contracts with engineers and contractors. A Best Practices Guide can be found in Section 8. The PACE Act requires that an ITPR energy conservation measure and/or a water conservation measure is installed and operational and continues as contractually specified in the M&V portion of the contract between the property owner and the contractor. Determine whether the equipment is installed correctly and is operating as intended.

Local Governments:

What are the public benefits of PACE legislation?

Texas faces significant challenges in meeting the energy and water needs of a rapidly growing economy. By far, the most affordable and readily available supply of energy and water we find will be the existing supply that we can stretch because we conserved these resources and used them more efficiently. Meeting these challenges will require significant financial investments. PACE enables property owners to make valuable improvements to property that reduce demands for energy and water in a way that benefits all parties to the arrangement, is completely voluntary and puts no public funds at risk. The energy and water savings help make Texas businesses, industry and agriculture more competitive; and, by definition, every property improvement requires work to be done locally.

By creating new investment opportunities, PACE will stimulate employment growth and economic development in municipalities and counties throughout Texas in addition to helping local communities achieve critical energy and water conservation goals. And PACE projects will help local governments avoid the costs of purchasing additional power and water to meet growing demand and the costs of clean air nonattainment and other environmental costs.

How much flexibility does [PACE in a Box](#) provide? Do we have to implement PACE as it is outlined in the box?

Texas is vast and diverse in climate, water resources, industry and local governments. While the PACE policy, process and documentation must be uniform throughout the State in order for Texas to take full advantage of

the PACE opportunity, the [PACE in a Box](#) toolkit recognizes that each project will be unique and is flexible so as to accommodate the diverse needs and interests of:

- Local governments in both rural and metropolitan communities;
- Communities with differing climates and water resources;
- Large and small scale projects, including multifamily residential housing, agricultural, industrial and commercial properties and properties owned by nonprofit organizations;
- Local and regional banks, large and small scale capital sources and governmental bond issuers; and
- Diverse projects ranging from single-measure upgrades to holistic retrofits.

[PACE in a Box](#) contains a model PACE program based on current standards and best practices obtained from studying PACE programs established in other states and modified for the Texas marketplace. By utilizing the [PACE in a Box](#) toolkit, local governments can minimize start-up costs and move quickly to the implementation phase of an up-to-date, robust PACE program. This helps achieve the goal of implementing uniform, user-friendly, sustainable and scalable PACE programs throughout Texas. While [PACE in a Box](#) is only a recommendation, the benefits of uniformity and scale will be lost if governments follow a different path.

Can we join a regional program instead of creating our own program?

Yes. Scaling up local programs to joint programs with regional administration reduces implementation time and transaction costs, minimizes administrative overhead, and promotes widespread utilization of PACE financing. Having regional administration in place will make it much easier for rural counties and smaller local governments to offer PACE financing than it would be if these communities were required to create a PACE program on their own.

The KPT coalition encourages local governments to create regional programs designed to be easily joined by other local governments at a later date.

How much will this cost to implement?

[PACE in a Box](#) is designed to be a turnkey program with best practices accompanied by model documents and contracts – everything a community needs to establish a sound PACE program. The design is intended to drive the creation of larger, regional programs in which many counties and municipalities share program administration with significant economies of scale that minimize transaction and overhead costs. [PACE in a Box](#) is designed in a way to impose the costs of the PACE program on its users so that no taxpayer dollars are required to support the ongoing administration of the program. While non-general revenue bonds can be a source of funding under the PACE Act, the [PACE in a Box](#) design focuses primarily on private sector lenders as the less costly program preference of both business and local government stakeholders. Lean, effective regional programs with large numbers of participants are key to program sustainability over the long term.

What are our options for administration of this program?

The PACE Act gives a local government authority to hire and set the compensation of a program administrator and program staff or to contract for the professional services necessary to administer a program at the local or regional level. Third-party administrators can be another governmental body, private sector entities, or a collaboration of several entities. If the local government selects another governmental unit to administer the program, then an interlocal government agreement will be negotiated. If the local government intends on using non-governmental entities as third-party administrators, the local government will issue a request for proposal (RFP). In order to obtain the goals of uniformity and other [PACE in a Box](#) benefits, these negotiations must require the third-party administrators to faithfully administer the [PACE in a Box](#) model program.

Delegating administrative functions to a third-party is optional and can reduce local government responsibilities in establishing and administering PACE programs. Local governments may consider doing a cost study to evaluate the administrative options.

Is PACE a federal, state or local program?

PACE is local. State legislation created this local authority. The PACE Act authorizes local governments to implement PACE programs within their jurisdictions. The PACE Act gives local governments broad discretion in designing the specific attributes of their PACE programs. Regional cooperation among local governments on PACE can help minimize administrative costs and will attract more competitive lending to a larger market.

Is a local government required to establish a PACE district?

No. State law enables, but does not require jurisdictions to offer a PACE program. If a local government chooses to offer PACE, THEN the governing body is required to designate the specific geographic area (the “region”) in which PACE assessments may be placed. The region:

- may include the jurisdictional boundaries of the entire local government; and
- must be located wholly within the local government’s jurisdiction (including a municipality’s extraterritorial jurisdiction).

The PACE Act also gives a local government the ability to create multiple PACE regions within its boundaries, which can be separate, overlapping, or coterminous.

When a local government chooses to offer a PACE program, why should it consider using the [PACE in a Box](#) model?

[PACE in a Box](#) is a toolkit designed specifically to help local governments deliver PACE programs in Texas using best practices that comply with the enabling legislation, minimize expense and effort of implementation, and contribute to developing programs that are *uniform, user-friendly, sustainable and scalable*.

Uniform -- The [PACE in a Box](#) toolkit provides a standardized system for implementing PACE programs so as to:

- Avoid inconsistencies and unnecessary complexities in order to attract private lenders to Texas PACE programs
- Minimize programmatic risk and cost for local governments
- Provide consistent standards to measure and verify energy and water savings financed by PACE

User –Friendly -- The process for determining eligibility and participation in a PACE program should be straightforward, easy to understand and easy to use. Several elements of [PACE in a Box](#) make the program user-friendly:

- Emphasizes Private Sector Marketplace of actors and choices
 - creates an attractive, secure investment for third-party lenders and relies on the marketplace to determine whether and when PACE financing will be a useful tool for business
- Provides Project Flexibility
 - accommodates both rural and metropolitan communities
 - accommodates large and small scale projects, including multifamily residential housing, agricultural, industrial and commercial properties and properties owned by nonprofit organizations, and ranging from single-measure upgrades to holistic retrofits
 - workable for local and regional banks, large and small scale capital sources and governmental bond issuers
- Ensures Transparency
 - standardized record keeping included in the toolkit will permit objective analysis and promote an ongoing cycle of review and improvement

Sustainable -- The PACE Act allows administrative costs of the PACE program to be included in the property assessments so that these costs will be paid by users of the program and need not burden local treasuries.

Scalable – Many stakeholders have emphasized that being able to scale up the size of market being served is a key to attracting the highest quality service providers and most favorable, competitive prices and financing. Texas has 254 counties and over 1,200 municipalities. The toolkit allows local and regional programs across the state to have a similar look and feel for businesses trying to decide if the market is big enough to serve cost-effectively.

What are the main steps in starting a PACE program?

A local government that determines “it is convenient and advantageous to establish” a PACE program under the PACE Act must address a number of preliminary questions and then take four statutorily required steps to assure public accountability.

Preliminary Organization -- This preliminary development stage will determine the “big picture” decisions of program design and provide much of the content for the public report. Although the [PACE in a Box](#) toolkit provides uniform policies, procedures, and documents, there remain some matters best addressed by each local government. These include:

- Determine which local officials and staff need to be involved in the implementation of the PACE program
- Designate a PACE region
- Determine whether to establish or join a regional PACE program
- Determine roles and responsibilities of the local government and third-party administrator (Third-party administrators can be another governmental body, private sector entities, or a collaboration of several entities.)
- Determine how the local PACE program will be funded
- Establish internal quality assurance and anti-fraud measures
- Adopt a plan for ensuring sufficient capital for third-party financing

Statutory Steps for Creating a PACE Program -- The PACE Act requires a county or municipality (local government) to take four steps in a prescribed order to establish a PACE program. Briefly, they are:

1. Publish a report on the proposed program design and make it available for public inspections
2. Adopt a resolution of intent to create a program
3. Hold a public hearing
4. Adopt a resolution establishing the program

Funding:

Why is PACE attractive to private lending companies?

PACE loans are attractive to lenders because they are very secure investments. Like a property tax lien, the assessment lien securing the PACE loan has priority over other liens on the property. Therefore, the risk of loss from non-payment of a PACE loan is insignificant compared to most other types of loans. PACE assessments provide lenders with an attractive new product to assist existing and new customers in addressing an almost universal pent-up demand for needed commercial and industrial property equipment modernization. In order to protect the interests of holders of existing mortgage loans on the property, the PACE Act requires their written consent to the PACE assessment as a condition to obtaining a PACE loan.

What types of PACE requirements assist in the protection of the investment?

The following are some but not all requirements to assist in the protection of the investment:

- a) The PACE Act requires local governments creating PACE programs to describe the quality assurance and anti-fraud measures to be instituted for the program.
- b) Independent Third-Party Reviewer/engineer Reviewer (ITPR) with no financial interest in the project will attest in the review he/she believes the savings (energy, demand, water, and cost), expected project life, and cost are reasonable and in compliance with the PACE program guidelines and standard engineering

practices. After the construction of the project is complete there will be a site inspection by an ITPR who will determine whether the scope of the project was completed and is operating properly.

- c) The PACE Act requires the PACE program to ensure that property owners have access to third-party lenders with adequate funding for PACE projects.
- d) The property owners must demonstrate the financial ability to pay the annual PACE assessments based on particular statutory underwriting factors.
- e) To be eligible for PACE financing, the projected savings derived from the PACE improvement must be greater than the cost of the PACE assessment over the life of the assessment.
- f) The assessment is secured by a lien on the property itself (not the owner or the improvement).

What happens to the lien after a bankruptcy or if the building is unoccupied for a long period?

A PACE lien has the same priority status as a lien for any other ad valorem tax and runs with the land (the unpaid portion transfers to a new owner upon sale); and is not eliminated by foreclosure of a property tax lien.

Delinquent installments of the assessments incur the same interest and penalties in the same manner as delinquent property taxes. A local government may recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax.



PACE in a Box

Technical Standards Manual

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I. Overview

For any PACE program to succeed, its property owners, lenders, and community leaders must be able to confidently and objectively evaluate projected energy and water utility savings. The purpose of this technical standards manual is to outline the technical requirements necessary to qualify a project for the **PACE in a Box** program.

Once a project satisfies all underwriting requirements of **PACE in a Box**,²¹ it must meet three technical requirements outlined in this manual. First, the property's current water and energy use is measured so that a *baseline* for comparison is established. Second, each potential energy or water conserving measure is evaluated to determine projected savings compared to the baseline in a technically sound, consistent and transparent manner. Findings from these two steps together are compiled in a document referred to as an energy /water assessment report. PACE law requires that each report is evaluated by an *independent third party reviewer (ITPR)*. Third, after the project retrofit activities are completed, the project must be reviewed by the ITPR to ensure that the project meets the intent of the energy/water assessment report, is properly completed, and is operating as intended. The purpose of performing *measurement and verification (M&V)* after installation is to validate that the measures are operating as expected and the energy/water savings are being realized.

On their own initiative, property owners are encouraged to undertake additional measures to ensure they receive the ongoing and full benefit of the improvements over time. These best practices are discussed further in the PACE Technical Standards Best Practices Guide for Property Owners.²²



²¹ See **PACE in a Box** Section 6.

²² See **PACE in a Box** Section 8

Reference Materials

Accepted methods for data collection, measurement, and savings calculations should be used on proposed projects. This manual references several technical documents which will assist in determining pre-retrofit energy and water consumption, predicting retrofit energy and water savings, and measuring whether an installed measure or group of measures is performing as intended and saving energy and water resources as predicted.

The technical methodology incorporated into the review process relies primarily upon the Investor Confidence Project (ICP) - Energy Performance Protocols (EPP) for Standard and Large Commercial Facilities.²³

The ICP EPP contain processes that form a framework for bringing together all aspects of project implementation from establishing a baseline and audit, through M&V. They have been created by a large stakeholder community of industry experts and are continuously reviewed and improved. **PACE in a Box** relies on the EPP because they are the result of a nationwide effort to standardize the technical review of energy efficiency projects to bring uniformity and reliability on a national scale. The EPP help ensure that conservation measures are evaluated consistently throughout the state and create a national standard for lender review of PACE projects.

The EPP technical processes are based on nationally accepted standards. The technical standards in EPP relating to baseline determination/calculation, performing energy assessments, and guidelines for performance measurement and verification of energy and water conservation measures respectively are:

- American Society for Testing and Materials (ASTM) E2797-11, Building Energy Performance Assessment (BEPA) Standard (data collection and baseline calculations for the energy audit, building asset data);
- International Performance Measurement and Verification Protocol (IPMVP) (latest edition);
- American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) Z65.3-2009 (gross floor area measurement);
- ASHRAE Guideline 14-2002 (measurement of energy and demand savings);
- ASHRAE Procedures for Commercial Building Energy Audits (latest edition);
- National Institute of Standards and Technology (NIST) Life-Cycle Costing Manual, NIST Handbook 135 (latest edition);
- ASHRAE Standard 202, Commissioning Process for Buildings and Systems (latest edition);
- ASHRAE Guideline 4, Preparation of Operating and Maintenance Documentation for Building Systems (latest edition);
- ASHRAE Guideline 1.4, The Systems Manual for Facilities; (latest edition);
- ASHRAE Handbook-2011, Fundamentals, Chapter 39 (Codes and Standards); and
- ASHRAE Guideline 14, Whole Building Performance Path (2002 edition).

Other acknowledged resources that may be considered are:

- The Alliance for Water Efficiency (AWE) Conservation Tracking Tool; and
- EPA WaterSense Product Guide.

II. Independent Third Party Monitoring

The Texas PACE law requires an independent third party review of a baseline water/energy assessment report for each proposed qualified project. It is the responsibility of the Independent Third Party Reviewer (ITPR) to validate projected future energy or water savings. Additionally, after a qualified project is completed, the ITPR must verify that the qualified project was properly completed and is operating as intended.²⁴ This includes review and validation of all M&V reports. This requirement provides assurances to the **PACE in a Box** program, the property owner, and the lender that due diligence has been executed, that a standard of consistency has been applied throughout the PACE process, and that a professional licensed engineer has validated the expected energy and water savings from the proposed project.

²³ <http://www.eepformance.org>

²⁴ Texas Local Government Code Chapter 399.011

Third Party Review Process

Site Visit 1 / Reviewer's Certification

Once an engineer, contractor or installer has prepared an energy/water assessment report, a qualified ITPR selected by the property owner makes a site visit and reviews the energy/water assessment report using the EPP to determine if the report complies with **PACE in a Box** guidelines. When the project is deemed compliant with EPP guidelines, the ITPR prepares a Reviewer's Certification to the PACE program.

The Reviewer's Certification shall include:

- A statement that the ITPR has no financial interest in the project.
- A letter stating the savings (energy, demand, water, and cost) expected project life, and cost are reasonable and in compliance with **PACE in a Box** program guidelines.
- A Texas Professional Engineer signature and engineering seal.

An application for PACE financing will not be considered complete until Reviewer's Certification is submitted.

Site Visit 2 / Statement of Compliance

Once the project retrofit activities have been completed, the ITPR must revisit the site to confirm that the improvements were properly installed, meet EPP guidelines, and are operating as intended. The reviewer must submit a Statement of Compliance to the PACE program indicating that the project was properly completed and is operating in accordance with the **PACE in a Box** guidelines.

The Statement of Compliance shall include:

- A statement that the ITPR has no financial interest in the project;
- A project documentation review letter that covers the PACE Project Report, detailed engineering drawings, designs, and specifications, copies of mechanical, electrical, plumbing, and building permits, and copies of equipment test and balance commissioning reports as well as any change orders; and
- A Texas Professional Engineer signature and engineering seal.

Retainage funding for the qualified project will not be provided for progress beyond the construction phase, if applicable, until the Statement of Compliance is received by the PACE program.

The process described above is required by **PACE in a Box**. The PACE program does not guarantee projected savings, and it is the responsibility of the property owner to exercise best practices to protect his interests through a contract with the engineer, contractor or installer responsible for the project's success as recommended in the energy/water assessment report.²⁵

Independent Third Party Reviewer Qualifications

To be of value, the work of the ITPR must be both professionally qualified and without conflict or relationship to the project they are reviewing. An ITPR must be a licensed Professional Engineer with energy/water efficiency experience. Preferably, the Professional Engineer should have one of the following certifications:

- American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
 - Building Energy Assessment Professional (BEAP)
 - Building Energy Modeling Professional
- Association of Energy Engineers (AEE)
 - Certified Energy Manager (CEM)
 - Certified Measurement and Verification Professional (CMVP)
 - Certified Energy Auditor (CEA)

²⁵ See **PACE in a Box** Technical Best Practices Guide in Section 8

- Building Commissioning Association
 - Certified Commissioning Professional

Ideally, the same ITPR should follow a project from initial review to project completion.

III. FULL ASSESSMENT Protocol

A project satisfying the underwriting requirements in **PACE in a Box** must also satisfy the Technical Standards required in this manual. This section establishes the basic protocol for complying with **PACE in a Box** technical standards. A proposed project qualifying for a FAST TRACK Protocol established in Section IV, shall use the technical standards in that section.

The Full Assessment Protocol divides an energy/water conservation project into four basic tasks:

1. Establish energy and water baseline conditions (collecting utility provider information, consumption and cost data);
2. Create an Energy/Water Assessment Report (projecting savings of proposed projects when measured against the baseline data);
3. Implement the Project (installation of energy conservation measures (ECM) and/or water conservation measures (WCM)); and
4. Evaluate project performance (M&V).

Projects can range from installation of a single ECM or WCM, such as a new high efficiency boiler, installation of low-flow toilets, or a renewable energy system, to a whole building energy and water upgrade involving multiple, interactive ECMs and WCMs. Many projects will also achieve both energy and water savings, such as an energy efficiency measure that reduces heat load, thereby also reducing cooling tower water use.

Establishing a Baseline

A sound energy and water usage baseline consists of collecting the utility provider information and establishing the critical starting point for accurate projection of potential savings and measurement after implementing ECMs/WCMs. The baseline establishes how much fuel, electricity, and/or water a facility used over the previous 12-month period. It also factors in the impact of independent variables such as weather, occupancy, and operating hours on the property's energy/water use.

For the majority of energy projects, the requirements for establishing a baseline are outlined in the ICP EPP. These protocols currently target energy measures in commercial facilities, but are readily adapted to other projects including applicable areas of industrial and agricultural energy as well as water conservation. The EPP provide a roadmap for key elements in performing a successful energy/water retrofit project.

For water conservation projects, the requirements for establishing a baseline are outlined in Federal Energy Management Program's M&V Guidelines: *Measurement and Verification for Federal Energy Projects*, Version 2.2/3.0. The M&V Guidelines provide applied methodologies for baseline accomplishment. At this time, these protocols do not provide a high level of detail for baselining water efficiency projects. As future nationally recognized protocols are developed, the PACE Technical Standards will be updated for water projects.

The following table outlines which protocols should be used for establishing a baseline based on facility, project type, and scope.

Facility Type	Full Assessment Requirements
Standard Commercial / Multifamily	Energy: ICP EPP - Standard Commercial (Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data) Water: M&V Guidelines v2.2 (Sec VII, p203)*
Large Commercial / Multifamily	Energy: ICP EPP - Large Commercial (Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data) Water: M&V Guidelines v2.2 (Sec VII, p203)*

Industrial (Facility)	Energy: ICP EPP - Large Commercial (Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data) Water: ICP EPP - Large Commercial (Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data)
Agricultural (Facility)	Energy: ICP EPP - Standard Commercial , ICP EPP - Large Commercial (Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data) Water: ICP EPP - Standard Commercial , ICP EPP - Large Commercial (Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data)
Distributed Generation ²⁶	Energy: <i>IPMVP Concepts and Practices for Determining Energy Savings in Renewable Energy Technologies Applications</i> (Pages 4-6) Water: IPMVP Concepts and Options for Determining Energy and Water Savings , 2012 (Section 4)

*M&V Guidelines: Measurement and Verification for Federal Energy Projects Version 2.2; Sec VII M&V for Water Projects.

The protocols listed above are intended as minimum requirements for an energy and water assessment report to be considered for funding.

Energy and Water Audit

The EPP rely upon industry accepted ASHRAE Procedures for Commercial Building Energy Assessment as a technical reference. These procedures define the level of effort for energy audits and provide best practices for auditors and associated project deliverables. ASHRAE also provides necessary sample audit forms and templates for data collection during the audit process.

The level of audit selected is contingent on the complexity of the facility and its installed systems and components, as well as the number and types of anticipated energy and/or water saving opportunities. Information collected during the energy/water audit is integral in determining the facility energy/water baseline conditions. The auditor will also identify energy and water savings opportunities which meet threshold investment requirements and provide verifiable energy and water savings while conducting the audit.

Industrial and Agricultural Projects

For industrial and agricultural projects, an ECM/WCM may affect the facility, a process or equipment used within the facility, or a distinct area outside the facility. Depending on the project, a different protocol shall be used. See Exhibit A for Industrial Protocols and Exhibit B for Agricultural Protocols.

Distributed Generation (DG)

DG projects have no pre-retrofit conditions as typically encountered in an energy conservation project. Since DG delivers energy rather than conserves or reduces energy, establishing a pre-retrofit baseline is not a strict project requirement. Metering of delivered energy without a baseline is often recommended in the M&V approach. DG protocol requirements can be found in *IPMVP Concepts and Practices for Determining Energy Savings in Renewable Energy Technologies Applications Volume III; August 2003*. Other specific information relevant to DG measurement and verification can be found in *IPMVP Concepts and Options for Determining Energy and Water Savings Volume I, January 2012*.

Prior Audit

²⁶²⁶ For purposes of the [PACE in a Box](#) Technical Standards, the Term “Distributed Generation” includes energy generation technologies such as CHP, co-generation, small wind, solar, and biomass systems that generate electricity on the customer’s side of the retail electric meter and technologies such as solar water heating and geothermal heat pumps that utilize renewable energy resources to reduce electricity consumption and demand.

A prior ASHRAE Level II or Level III energy/water audit may be used provided that it was completed within the last three (3) years and that:

- Specific ECMs/WCMs were detailed in the audit and are still viable;
- Energy / water savings were projected for each proposed ECM/WCM;
- Any major facility renovations and/or building additions that occurred after the last audit do not negate relevant findings of the prior audit; and
- Changes in facility equipment and/or facility end-use do not negate findings of the prior audit.

The level of effort associated with updating the project baseline is dependent on the date of prior audit. If the audit is older than six months, additional energy/water use data will be available, and must be included in the updated audit.

In the case where a previous audit was completed in the last six months, savings calculations may be taken directly from the report if applicable. For older energy/water audits, still within the three year allowable time frame, the following items must be verified and accounted for in updated savings calculations:

- Any change in energy/water and/or demand rates or billing structure;
- Any change to existing facility, system, or project area that significantly affects savings; and
- Any change in building use and/or occupancy that significantly affects savings.

Projected Savings

EPP provide processes that should be used in projecting energy and water conservation savings. Models, spreadsheets, and similar tools must be based on “open book” methodology with sufficient explanation and documentation that savings calculations are transparent and results are readily verifiable. The use of “closed book” calculation methods or proprietary software is prohibited unless all methodologies associated with their use are well documented by transparent savings calculations and readily verifiable results.

The following table outlines the protocols that should be used to determine projected savings.

Facility Type	Full Assessment Requirements
Standard Commercial / Multifamily	Energy: ICP EPP - Standard Commercial (Savings Calculation) Water: M&V Guidelines v3.0 (Sec 11.6)*
Large Commercial / Multifamily	Energy: ICP EPP - Large Commercial (Savings Calculation) Water: M&V Guidelines v3.0 (Sec 11.6)*
Industrial (Facility)	Energy: ICP EPP - Large Commercial (Savings Calculation) Water: M&V Guidelines v3.0 (Sec 11.6)*
Agricultural (Facility)	Energy: ICP EPP - Standard Commercial , ICP EPP - Large Commercial Water: M&V Guidelines v3.0 (Sec 11.6)*
Distributed Generation	Energy: IPMVP Concepts and Practices for Determining Energy Savings in Renewable Energy Technologies Applications (Page 5, Examples pgs. 9-17) Water: IPMVP Concepts and Options for Determining Energy and Water Savings , 2012 (Section 4)

*M&V Guidelines: Measurement and Verification for Federal Energy Projects Version 3.0.

The protocols listed above are intended as minimum requirements for an energy assessment report to be considered for funding.

Verifying Completion and Operation

The Texas PACE law states, “After a qualified project is completed, the local government shall obtain verification that the qualified project was properly completed and is operating as intended.”²⁷ The following table outlines the protocols that should be used for verifying proper project completion and operation.

Facility Type	Full Assessment Requirements
Standard Commercial / Multifamily	Energy: ICP EPP - Standard Commercial (Operations, Maintenance, and Monitoring, Measurement and Verification) Water: M&V Guidelines v3.0 (Sec 11.6)*
Large Commercial / Multifamily	Energy: ICP EPP - Large Commercial (Operations, Maintenance, and Monitoring, Measurement and Verification) Water: M&V Guidelines v3.0 (Sec 11.6)*
Industrial (Facility)	Energy: ICP EPP - Large Commercial (Operations, Maintenance, and Monitoring, Measurement and Verification) Water: M&V Guidelines v3.0 (Sec 11.6)*
Agricultural (Facility)	Energy: ICP EPP - Standard Commercial (pgs. 19-22), ICP EPP - Large Commercial (Operations, Maintenance, and Monitoring, Measurement and Verification) Water: M&V Guidelines v3.0 (Sec 11.6)*
Distributed Generation	Energy: IPMVP Concepts and Practices for Determining Energy Savings in Renewable Energy Technologies Applications (Page 5, Examples pages 9-17) Water: IPMVP Concepts and Options for Determining Energy and Water Savings , 2012 (Section 4)

*M&V Guidelines: Measurement and Verification for Federal Energy Projects Version 3.0

Measurement and Verification (M&V)

M&V begins after an ECM/WCM is installed and operational (commissioned) and continues throughout the term of the assessment or as contractually specified in the M&V portion of the contract between the property owner and the contractor. Savings verification is performed post-retrofit to determine whether installed equipment is operating as designed and expected savings predictions are being realized.

EPP incorporate ASHRAE Guideline 14, Whole Building Performance Path and the International Performance Measurement and Verification Protocol (IPMVP) as guidance documents to define common practices for measuring, computing, and reporting savings achieved by energy or water efficiency projects. IPMVP Options include Option A (Retrofit Isolation: Key Parameter Measurement), Option B (Retrofit Isolation: All Parameter Measurement), Option C (Whole Facility Measurement), and Option D (Calibrated Simulation Measurement). IPMVP includes guidance for the development of a project specific M&V plan that is technically sound and which ensures both baseline and post-retrofit calculations can be used as an accurate determinant of project energy or water savings.

Reporting

The property owner is required to provide a post-construction Annual Savings Reports to the PACE administrator. The annual report shall be submitted during the term of the assessment or throughout the term of the M&V. To ensure the success of the PACE program, the Annual Savings Reports shall be completed by the contractor and reviewed and validated by the ITPR. Section 5 of [PACE in a Box](#) outlines the reporting requirements of individual PACE projects.

²⁷ Texas Local Government Code chapter §399.011(b)

FAST TRACK Approach

The FAST TRACK approach allows for faster implementation of projects. These projects must meet specific eligibility criteria in order to utilize the FAST TRACK process. The FAST TRACK approach reduces project expenses associated with audit costs and, in some cases, the time required to review the proposed project. The property owner and contractor must decide whether the project qualifies for the FAST TRACK approach and whether this approach is applicable. For those projects that do not qualify under the FAST TRACK eligibility criteria, the FULL ASSESSMENT protocols are required. The qualifications for an ITPR under the FAST TRACK approach are the same as qualifications for a FULL ASSESSMENT.

The FAST TRACK approach is deemed relevant and appropriate for the three (3) project types specified below. The required procedures and documentation are unique to each project.

Type 1 – Like-for-Like Replacement. The FAST TRACK approach may be used for a project that involves like-for-like replacement of energy/water inefficient equipment with more energy/water efficient equipment. Examples may include a lighting retrofit or A/C unit upgrade.

Type 2 – Single-Measure Efficiency Projects. The FAST TRACK approach may be used for projects that install single efficiency measures such as window film, additional insulation, or reflective roof coating.

Type 3 - Distributed Renewable Generation. The FAST TRACK approach may be used for a project that involves only the installation of an industry accepted renewable energy system such as solar photovoltaic (PV).

Projects that fall within the above criteria do not qualify for the FAST TRACK approach if the project requires energy modeling or IPMVP (Option C or D) measurement and verification, or if the project value to building appraisal ratio exceeds 0.10 (10%).

Establishing a Baseline

The following information is required to establish a baseline for a FAST TRACK approach project.

Site Visit

- Confirm building characteristics and major components
- Records collection (equipment, systems, utilities)
- Staff/occupant interviews
- Walk-through inspection (written and photo documentation)
- Verification of all collected information by a third party reviewer

Records/Data Collection

- Building construction data
- Equipment data – HVAC, etc.
- Building operating data
- Energy consumption data
- Water consumption data
- Weather data
- Previous audit reports

Note: Not all items listed will be applicable. Data collected is at the discretion of the professional performing the baseline work and subject to third party review.

Pertinent Interviews (optional)

- Concerning general building characteristics
- Operations of major building systems/components
- Past building operational history (service call logs)

Note: Verification of all collected information is required as part of the Site Visit to determine if there has been significant change; if verified, it is not necessary to conduct repeat interviews.

Review/Analysis of Collected Materials

- Data conversion and normalization
- Determine building energy and water consumption metrics
- Perform modeling and simulation as applicable
- Determine renewable energy system production as applicable

Preparation of Final Assessment Report

- Includes building energy/ water cost and performance
- Energy and use by area (HVAC, lighting), fuel (gas, electric), indoor v. outdoor water usage

If a unit of energy or water using equipment is beyond its useful service life, the work associated with the baseline analysis can be considerably reduced. Document the building's age, condition, operating parameters, and expected useful life based on manufacturer's warranty data or ASHRAE guidelines. If the project is a distributed renewable generation project, collect and document information on building structure and orientation relevant to installation, production and maintenance. For WCMs not all baseline data collection and analysis apply.

Projected Savings

The requirements in this section are derived in part from the EPP for commercial facilities and are applicable to multifamily units. For single component/system ECMs or WCMs, the contractor should provide appropriate annotations to assist in determining whether a listed requirement is necessary.

The following are considered the minimum requirements in determining savings from energy and water conservation measures under a FAST TRACK approach:

- Use of "open book" methodology, spreadsheet or software used in savings calculations;
- Detailed outline for savings calculation methodology; should be transparent and easily replicated by independent third party reviewer;
- Reasonable comparison of energy/water pre-retrofit estimates to historical end use data (for single measure/single component retrofits, use only necessary data set for calibration);
- Consideration of interactive effects of related loads or systems and potential for additional ECMs/WCMs which would affect the appropriate capacity or cost-effectiveness of equipment being replaced;
- Validation of return on investment (ROI) figures based on previous audit or newly incorporated data sets;
- Validation of ECM/WCM implementation costs including labor and materials estimates; and
- Validation of savings.

The following items are the minimum that must be verified and accounted for in savings calculations for projects that propose the installation of an industry accepted renewable energy system, e.g., solar photovoltaic (PV), approved for interconnection by local utility:

- Current energy and demand rates;
- Applicability of incentives, rebates, and local utility requirements;
- Current distributed renewable generation component pricing, including design and installation of systems;
- Current electrical and/or building code requirements; and

- Current zoning and emissions requirements as they impact the project.

Verifying Completion and Operation

The requirements in this section follow M&V as referenced in the EPP for standard and large commercial facilities in conjunction with *IPMVP Concepts and Options for Determining Energy and Water Savings Volume I, January 2012*. The requirements support projects with a single component replacement or multiple ECMs/WCMs or distributed renewable generation system, qualifying as a FAST TRACK project.

For [projects that incorporate multiple measures](#) or have identified interactive effects, and whose design, installation and operation are compatible with original audit findings and calculations, the following are considered the minimum requirements:

- Implementation of appropriate IPMVP protocols by a qualified third party M&V professional:
 - Following *IPMVP Concepts and Options for Determining Energy and Water Savings Volume I, January 2012 Section 4, Figure 4 Option Selection Process (Simplified)*, and *Table 3 Suggested Options – Marked by X*; and
 - Following *IPMVP Concepts and Options for Determining Energy and Water Savings Volume I, January 2012 Section 4.5 Savings Verifications* as applied to the established baseline and post-retrofit measures, i.e., routine and non-routine adjustments; and
- Use of Option A (*Retrofit Isolation: Key Parameter Measurement*) must indicate stipulated parameters or estimates compatible with those used in previous audit savings calculations.

For [single component/system conservation measures](#), the following are the minimum requirements in verifying completion and operation of installed measures under the FAST TRACK method:

- ITPR review of the installation of the required number and type of ECMs/WCMs as specified in the audit and project design/construction documents; and
- ITPR review of the proper installation and operation of all ECMs/WCMs as specified in the audit and project design/construction documents:
 - Ensure that operation and function meet design intent of the project;
 - Determine that installed ECMs/WCMs will provide savings as estimated in original audit findings and commensurate with baseline analysis; and
 - Determine that installed ECMs/WCMs will meet or exceed service life estimates based on observed operation.

For [distributed renewable generation projects](#), the following are the minimum requirements in verifying completion and operation of installed measures under the FAST TRACK method:

- ITPR review of the installation of the required number and type of system components as specified in the audit and project design/construction documents; and
- ITPR review of the proper installation and operation of all components as specified in the audit and project design/construction documents:
 - Ensure that operation and function meet design intent of the project;
 - Determine that the installed system will provide savings as estimated in original audit findings and commensurate with baseline analysis; and
 - Determine that the installed system will meet or exceed service life estimates based on observed operation.

Reporting

The property owner is required to provide a post-construction Annual Savings Reports to the PACE administrator. The annual report shall be submitted during the term of the assessment or throughout the term of the M&V. To ensure the success of the PACE program, the Annual Savings Reports shall be completed by the contractor and

reviewed and validated by the ITPR. Section 5 of **PACE in a Box** outlines the reporting requirements of individual PACE projects.

Exhibits A, B & C

Exhibit A INDUSTRIAL PROTOCOL

Industrial energy/water conservation projects can impact 1) the facility, 2) a process inside the facility, or 3) a combination of the facility and process inside the facility. It will be necessary to determine the affected area of the facility or the site before moving forward with the auditing and baseline determination process. This protocol serves as a general guideline for the facility owner.

Industrial Energy/Water Protocol (Facility)

For ECMs/WCMs considered to affect, conserve or reduce energy/water resources in the facility and are not directly linked to any process application, the EPP for Standard and Large Commercial will be followed as applicable. The sections below reference the appropriate EPP and indicate the minimum procedures and documentation required. Since all targeted measures or combination of measures are not known at this time, applicable portions of the EPP will be followed as necessary.

Establishing a Baseline

Document	Section Reference
ICP EPP Standard Commercial	Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data
ICP EPP Large Commercial	Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data

Savings Calculation

Document	Section Reference
ICP EPP Standard Commercial	Savings Calculation
ICP EPP Large Commercial	Savings Calculation

Verifying Completion and Operation

Document	Section Reference
ICP EPP Standard Commercial	Operations, Maintenance, and Monitoring, Measurement and Verification
ICP EPP Large Commercial	Operations, Maintenance, and Monitoring, Measurement and Verification

Industrial Energy/Water Protocol (Process)

For ECMs/WCMs considered to affect, conserve or reduce energy/water resources for a selected process in an industrial facility, it is expected that most measures will conform to appropriate *IPMVP Concepts and Options for Determining Energy and Water Savings Volume I, January 2012*. In particular, Option A – Retrofit Isolation: Key Parameter Measurement or Option B – Retrofit Isolation: All Parameter Measurement will provide the necessary requirements for savings verification, while other sections of the IPMVP document will be pertinent to establishing the baseline.

Establishing a Baseline

Document	Section Reference
ICP EPP Standard Commercial	Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data
ICP EPP Large Commercial	Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data

Savings Calculation

Document	Section Reference
ICP EPP Standard Commercial	Savings Calculation
ICP EPP Large Commercial	Savings Calculation

Verifying Completion and Operation

Document	Section Reference
ICP EPP Standard Commercial	Operations, Maintenance, and Monitoring, Measurement and Verification
ICP EPP Large Commercial	Operations, Maintenance, and Monitoring, Measurement and Verification

Measurement and Verification

Water-efficiency M&V is analogous to energy efficiency M&V; therefore, it uses similar techniques. It is necessary to define whether the water retrofit is a building-wide measure or specific to an industrial process within the building. For water-consuming equipment related to the facility (offices, break room, landscape irrigation systems, etc.), the building occupants and facility managers are normally in control, while for process equipment and manufacturing operations, the production manager is generally responsible.

Verifying Completion and Operation

M&V begins after an ECM/WCM is installed and operational (commissioned) and continues throughout the term of the assessment or as specified in the M&V plan established in the contract between the property owner and the contractor. Savings verification is performed post-retrofit to determine whether installed equipment is operating as designed and expected savings predictions were accurate. These “actual savings,” if substantially different from pre-retrofit estimates, affect the projects’ return on investment.

EPP incorporate ASHRAE Guideline 14, Whole Building Performance Path and the International Performance Measurement and Verification Protocol (IPMVP) as guidance documents describing common practice in measuring, computing, and reporting savings achieved by energy or water efficiency projects at end-user facilities. IPMVP Options include Option A (Retrofit Isolation, Key Parameter Measurement), Option B (Retrofit Isolation: All Parameter Measurement), Option C (Whole Facility measurement), and Option D (Calibrated Simulation measurement).

IPMVP includes guidance for the development of a project specific M&V plan that is technically sound and which ensures both baseline and post retrofit calculations can be used as an accurate determinant of project energy or water savings.

Reporting

The property owner is required to provide a post-construction Annual Savings Report to the PACE administrator. The annual report shall be submitted at least one year after the ITPR certifies that the project was properly installed and is operating correctly. To ensure the success of the PACE program, the Annual Savings Report shall be completed by the contractor. Section 5 of [PACE in a Box](#) outlines the reporting requirements of individual PACE projects.

Exhibit B AGRICULTURAL PROTOCOL

For agricultural conservation projects, it is necessary to determine the affected area of the facility, site, or property. In general, a proposed project for agricultural energy/water conservation may affect 1) a facility related to agricultural operations, 2) an isolated equipment component or system (pumps, motors, etc.), or 3) a distinct water use area (i.e., irrigation). This protocol serves as a general guideline to direct the facility owner towards actions which have a basis in proven engineering concepts.

Agricultural activities outside the facility differ from those normally encountered in commercial and/or industrial areas in that water use and the energy associated with delivery of water may account for a larger percentage of costs relative to the overall energy/water budget. This may be especially true in the farming sector including greenhouse operations.

Agricultural Energy Protocol (Facility)

For ECMs/WCMs considered to affect, conserve or reduce energy/water resources in an agricultural facility and that are not directly linked to agricultural irrigation or any process application outside the facility, the EPP for Standard and Large Commercial should be followed as applicable. The sections below reference the appropriate EPP and indicate the minimum required items as listed in the document. Since all targeted measures or combination of measures are not known at this time, applicable portions of the EPP should be followed as necessary.

Establishing a Baseline

Document	Section Reference
ICP EPP Standard Commercial	Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data
ICP EPP Large Commercial	Baselining – Core Requirements, Rate Analysis, Demand, Load Profile, Interval Data

Savings Calculation

Document	Section Reference
ICP EPP Standard Commercial	Savings Calculation
ICP EPP Large Commercial	Savings Calculation

Verifying Completion and Operation

Document	Section Reference
ICP EPP Standard Commercial	Operations, Maintenance, and Monitoring, Measurement and Verification

Agricultural Energy Protocol (Equipment/Systems)

Implementing water-efficiency in the agricultural sector where the majority of water and energy are consumed in irrigation most often use IPMVP Option A (Retrofit Isolation: Key Parameter Measurement) although Option B (Retrofit Isolation: All Parameter Measurement) is also viable depending on the specific measure and the affected equipment or system. The sections below reference the appropriate IPMVP protocols and indicate the minimum required items as listed in the document. Since all targeted measures or combination of measures are not known at this time, applicable portions of the IPMVP should be followed as necessary.

Establishing a Baseline

Document	Reference
IPMVP Concepts and Options for Determining Energy and Water Savings Volume I	Chapter 4 (as applicable); selection criteria Fig. 4 p. 33 and Table 3 p. 34

Savings Calculation

Document	Reference
IPMVP Concepts and Options for Determining Energy and Water Savings Volume I	Chapter 4 (as applicable); selection criteria Fig. 4 p. 33 and Table 3 p. 34

Verifying Completion and Operation

Document	Reference
IPMVP Concepts and Options for Determining Energy and Water Savings Volume I	Chapter 4 (as applicable); selection criteria Fig. 4 p. 33 and Table 3 p. 34

Agricultural Water Protocol

Water conservation projects are intended to provide savings through reduced water consumption as a result of improved performance of water consuming equipment, fixtures, or controls. Savings can also result from reduced water supply charges, sewer charges, and/or energy costs depending on the conservation measure implemented. Energy savings are commonly achieved from reduced water heating, and additional savings may be realized for facilities that use pumps to boost water pressure or to irrigate with groundwater, or at facilities with on-site water treatment systems. The performance of many common water conservation projects can be accounted for through short-term measurements and usage factors can be estimated, water savings are most often verified using IPMVP Option A (Retrofit Isolation: Key Parameter Measurement).

Key issues related to water conservation projects which should be observed are:

- Determining equipment inventory for baseline and post-installation;
- Establishing existing equipment performance for each type of device/system;
- Determining usage characteristics of each type of device/system;
- Determining post-installation equipment performance for each type of device/system; and
- Accounting for any known or observed interactive effects.

The sections below reference the appropriate IPMVP protocols and indicate the minimum required items as listed in the document. Since all targeted measures or combination of measures are not known at this time, applicable portions of the IPMVP should be followed as necessary.

Establishing a Baseline

Document	Reference
IPMVP Concepts and Options for Determining Energy and Water Savings Volume I	Chapter 4 (as applicable); selection criteria Fig. 4 p. 33 and Table 3 p. 34

Savings Calculation

Document	Reference
IPMVP Concepts and Options for Determining Energy and Water Savings Volume I	Chapter 4 (as applicable); selection criteria Fig 4 pp. and Table 3 p. 34

Verifying Completion and Operation

Document	Reference
IPMVP Concepts and Options for Determining Energy and Water Savings Volume I	Chapter 4 (as applicable); selection criteria Fig. 4 p. 33 and Table 3 p. 34

Verifying Completion and Operation

M&V begins after an ECM/WCM is installed and operational (commissioned) and continues throughout the term of the assessment or as specified in the M&V plan established in the contract between the property owner and the contractor. Savings verification is performed post-retrofit to determine whether installed equipment is operating as designed and expected savings predictions were accurate. These “actual savings”, if substantially different from pre-retrofit estimates, affect the projects’ return on investment.

EPP incorporate IPMVP as a guidance document describing common practice in measuring, computing, and reporting savings achieved by energy or water efficiency projects at end-user facilities. IPMVP Options include Option A (Retrofit Isolation, Key Parameter Measurement), Option B (Retrofit Isolation: All Parameter Measurement), Option C (Whole Facility measurement), and Option D (Calibrated Simulation measurement).

Measurement and Verification

Water conservation M&V in agricultural facilities is typically addressed in the same manner as energy conservation. In the case where multiple facility WCMs have been implemented, it is less difficult to invoke IPMVP Option C – Whole Facility approach since a “calibrated” utility service meter will generally provide sufficient resolution to identify overall savings. This is provided that pre and post facility activity has been normalized, operations have remained relatively constant, and that the useful meter does not serve outlying areas or non-facility related operations. In that case, sub-metering of the facility area is an option. Sub-metering may be necessary if whole facility measures were not implemented, but rather targeted areas or a select number of equipment items within the facility were retrofitted.

IPMVP includes guidance for the development of a project specific M&V plan that is technically sound and which ensures both baseline and post retrofit calculations can be used as an accurate determinant of project energy or water savings.

Reporting

The property owner is required to provide a post-construction Annual Savings Reports to the PACE administrator. The annual report shall be submitted during the term of the assessment or throughout the term of the M&V. To ensure the success of the PACE program, the Annual Savings Reports shall be completed by the contractor and reviewed and validated by the ITPR. Section 5 of [PACE in a Box](#) outlines the reporting requirements of individual PACE projects.

Exhibit C: INDEPENDENT THIRD PARTY CERTIFICATION

The undersigned certifies that the report has been conducted in accordance with the requirements of the **PACE in a Box** Technical Standards Manual by the independent third party reviewer's (ITPR).

By signing this document, I certify that:

- The data and the cost reduction estimates presented are factual, accurate, reasonable and in accordance with generally accepted engineering practices to the best of knowledge and that this knowledge is based on the on-site investigation of the facilities involved.
- There are no undisclosed, conflicting financial interests in the recommendations of this report.
- If a recommendation of this report is implemented, that no company or association that I own or have financial interest in, will provide products or construction for the project.
- I am a professionally qualified and licensed as a professional engineer with energy/water efficiency experience.

ITPR's Signature

Date

Title

Company/Firm

Email Address

Texas P.E. Registration No.



PACE in a Box

Model Lender Consent to PACE Assessment

Property Owner: _____

Mailing address: _____

Local Government: _____

Mailing Address: _____

Lender: _____

Mailing Address: _____

Property: the Real Property described in _____ County, Texas, more fully described in Exhibit A

Street Address of Property: _____

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 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 A attached hereto and made a part hereof by reference. The Assessment will constitute a lien against the Property with the same priority status of any other ad valorem tax.

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

AGREEMENT

1. Lender hereby consents to the Assessment and the PACE Agreement and agrees that Property Owner shall not be in default under the Loan Documents because it enters into the PACE Agreement or the financing documents referenced therein, or because the Property is subject to the Assessment imposed against the Property pursuant to the PACE Agreement.
2. [OPTIONAL 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 increase above the maximum amount 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.]
3. [OPTIONAL - Except for the express agreement of the Lender contained in this Consent, Lender is not waiving any other right under the Loan Documents. Nothing contained in this Consent shall be construed to modify or amend any of the provisions of the Loan Documents.]

[SIGNATURE LINES AND DATES FOR LENDER, PROPERTY OWNER, AND LOCAL GOVERNMENT]

[ACKNOWLEDGEMENT FORMS FOR LENDER, PROPERTY OWNER, AND LOCAL GOVERNMENT to permit recording in the real property records.]



PACE in a Box

Model Owner Contract & Notice for PACE Assessment Lien

PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) OWNER CONTRACT (“Owner Contract”) is made as of the _____ day of _____, _____, by and between _____, Texas (“Local Government”), and _____ (“Property Owner”).

RECITALS

- I. 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.
- II. Local Government has established a program under the PACE Act pursuant to a _____ dated _____, adopted by the _____ (the “**PACE Program**”), and has designated _____ (“**Authorized Representative**”) as the representative authorized to enter into the Assessment, Owner Contract and Lender Contract described herein, and has designated the entire territory within the _____ of _____ jurisdiction as a region (“**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.
- III. 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**”).
- IV. Pursuant to Application number _____, Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property

certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (the “**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has requested that Local Government enter into this Owner Contract pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the in the Official Public Records of _____, 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.

- V. 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.
- VI. 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:

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

Maintenance and Enforcement of Assessment. In consideration for Lender’s agreement to advance financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Lender until the Assessment, including all interest, fees, penalties, costs, and other sums due under and/or authorized by the PACE Act,

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

Installments. The Assessment, including the amount financed and contractual interest, is due and payable in installments as set forth in the Notice of Contractual Assessment Lien and the Financing Documents. The Assessment shall include: (1) an application fee paid by Property Owner to Authorized Representative at loan closing, and (2) a recurring administration fee paid by Property Owner to the Authorized Representative. The recurring administration fee amount shall be collected by Lender and paid to the Authorized Representative within thirty (30) days of receipt by Lender. The amounts due to the Authorized Representative are identified in Exhibit C hereto. As required by Section 399.009(a) (8) of the PACE Act, the period during which such installments are payable does not exceed the useful life of the Project. When the Assessment together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government's rights under this Owner Contract will cease and terminate. Upon notice from Lender that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and this Owner Contract. Thereafter, the Authorized Representative will record the release.

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:

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

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

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

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

Delinquent installments of the Assessment will incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment incurs a penalty of 6% of the amount of the installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an installment delinquent on July 1 incurs a total penalty of 12% of the amount of the delinquent installment without regard to the number of months it has been delinquent. A delinquent installment will also accrue interest at the rate of 1% for each month or portion of a month that the installment remains unpaid. Statutory penalties and statutory interest payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be assessed by Lender and retained by Lender.

The Assessment, together with any penalties and interest thereon,

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 _____ 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

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, 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 and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.

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.

In a suit to collect a delinquent installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total amount of the delinquent installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent installment of the Assessment.

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.

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

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.

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

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.

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

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.

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

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.

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.

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

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

Costs. No provisions of this Owner Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

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

EXECUTED effective as of _____, 20____.

PROPERTY OWNER:

By: _____

Name:

Title:

Address:

EXECUTED effective as of _____, 20____.

LOCAL GOVERNMENT:

By: _____

AUTHORIZED REPRESENTATIVE

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

Name:

Title:

Address:

EXHIBIT A

NOTICE OF CONTRACTUAL ASSESSMENT LIEN

PURSUANT TO

PROPERTY ASSESSED CLEAN ENERGY ACT

EXHIBIT B

MORTGAGE HOLDER(S) CONSENT

EXHIBIT C

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Schedule:

Project Completion Date:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

EXHIBIT D

CONSTRUCTION TERMS

[if applicable]

Date	Draw down Amount	Purpose



PACE in a Box

Model Lender Contract

PACE LENDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY ("PACE") LENDER CONTRACT (the "**Lender Contract**") is made as of the _____ day of _____, _____, by and between _____ ("**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 under the PACE Act pursuant to a _____ dated _____, adopted by the _____ (the "**PACE Program**"), and has designated _____ ("**Authorized Representative**") as the representative authorized to enter into the Assessment, Owner Contract and Lender Contract described herein, and has designated the entire territory within the _____ of _____ jurisdiction as a region ("**Region**") within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner's property pursuant to the PACE Program.

C. Pursuant to Application number _____, _____ ("**Property Owner**") 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**").

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 _____, 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:

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, any prepayment premium, additional penalties and interest imposed by the Lender under the Financing Documents according to the Financing Documents, and any statutory penalties, interest, attorney’s fees, or costs accrued in the event of default are paid in full. Local Government will not release the Assessment until which time Lender notifies Local Government that all amounts owing have been paid in full. Local Government shall not sell, assign or transfer the Assessment or the assessment lien against the Property to any third party without the prior written consent of the Lender. Promptly following written notice to Local Government from Lender, Local Government agrees to enforce the assessment lien against the Property for the benefit of Lender in the event of a default by Property Owner. Local Government shall have no obligation to repurchase the assessment and no liability to Lender should there be a default or an event of default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

Installments. The Assessment, including the amount financed and contractual interest, is due and payable to Lender in installments as set forth in the Notice of Contractual Assessment Lien and Financing Documents. The Assessment shall include: (1) an application fee paid by Property Owner to Authorized Representative at loan closing, and (2) a recurring administration fee paid by Property Owner to the Authorized Representative. The recurring administration fee amount shall be collected by Lender and paid to the Authorized Representative within thirty (30) days of receipt by Lender. The amounts due to the Authorized Representative are identified in Exhibit B hereto. As required by Section 399.009(a)(8) of the PACE Act, the period during which such installments are payable does not exceed the useful life of the Project. When the Assessment together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government’s rights under this Owner Contract will cease and terminate Upon notice from Lender that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and this Owner Contract. Thereafter, the Authorized Representative will record the release.

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:

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

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 Administration small business investment company;

Any publicly traded entity; or

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

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

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

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

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.

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

Delinquent installments of the Assessment incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment incurs a penalty of 6% of the amount of the installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an installment delinquent on July 1 incurs a total penalty of 12% of the amount of the delinquent installment without regard to the number of months it has been delinquent. A delinquent installment also accrues interest at the rate of 1% for each month or portion of a month the installment remains unpaid. Statutory penalties and statutory interest payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be assessed by Lender and retained by Lender.

The Assessment, together with any penalties and interest thereon,

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 _____, as provided by Section 399.014 of the PACE Act, until the Assessment and any penalties and interest are paid; and

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 any portion of the Assessment that has not yet become due is not eliminated by foreclosure of a property tax lien, according to Section 399.014(b) of the PACE

Act. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse on Local Government or the Authorized 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.

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.

In a suit to collect a delinquent installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total amount of the delinquent installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent installment of the Assessment.

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.

Servicing and Enforcement of Assessment.

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.

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.

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:

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

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 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, Authorized Representative 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.

Final Payment and Release. When the Assessment has been satisfied and paid in full, together with all interest and prepayment premiums, if any, provided under the Financing Documents and all costs, fees, penalties, and interest applicable under the PACE Act and payable to Lender or Local Government, Local Government's rights under the Owner Contract will cease and terminate. Upon notice from Lender that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and the Owner Contract. Thereafter, the Authorized Representative will record the Release.

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.

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.

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

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:

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;

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

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.

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.

Construction and Definitions. This Lender Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein, and not otherwise defined herein, shall have the meanings ascribed to them in: (1) the Notice of Contractual Assessment Lien, (2) the Owner Contract, (3) the PACE Program, and/or (4) the PACE Act.

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.

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.

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

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.

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

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

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.

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

EXECUTED effective as of _____, 20_____.

LENDER:

By: _____

Name:

Title:

Address:

EXECUTED effective as of _____, 20_____.

LOCAL GOVERNMENT:

By: _____

AUTHORIZED REPRESENTATIVE

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

Name:

Title:

Address:

EXHIBIT A

OWNER CONTRACT

EXHIBIT B

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Schedule:

Project Completion Date:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

EXHIBIT C

CONSTRUCTION TERMS

[if applicable]

Date	Draw down Amount	Purpose



PACE in a Box

**Model Notice of Assessment Lien to be Filed
in the Real Property Records**

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

STATE OF TEXAS §
 §
COUNTY OF _____ §
RECITALS

- I. 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.
- II. _____ (“**Local Government**”) has established a program under the PACE Act pursuant to a _____ dated _____, adopted by the _____ (the “**PACE Program**”), and has designated _____ (“**Authorized 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 _____ of _____ jurisdiction as a region (“**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.
- III. _____ (“**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**”).
- IV. 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 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.

V.

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**”). Lender will be responsible for all servicing duties other than those specifically undertaken by Local Government in the Lender Contract.

THEREFORE, Local Government hereby gives notice to the public pursuant to Section 399.013 of the PACE Act that it has imposed an assessment on the Property in the amount of \$ _____, as set forth on Exhibit C attached hereto, which together with all interest, fees, penalties, costs and other sums due under and/or authorized by the PACE Act, PACE Program and the financing documents between Property Owner and Lender (the “Financing Documents”) is herein referred to as the “Assessment”.

Pursuant to Section 399.014 of the PACE Act,

The Assessment, including interest and any penalties, costs, or fees accrued thereon,

(i) is a first and prior lien on the Property from the date that this Notice of Contractual Assessment Lien is recorded in the Official Public Records of _____, Texas, until such Assessment, interest, penalties, costs, and fees are paid in full; and

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

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 without recourse on Local Government or the Program 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.

After this Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located as provided under Section 399.013 of the PACE Act, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

EXECUTED on _____, _____.
LOCAL GOVERNMENT:

By: _____

Name: _____

Title: _____

AUTHORIZED REPRESENTATIVE

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

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

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

_____ (print name)

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B
QUALIFIED IMPROVEMENTS

EXHIBIT C
ASSESSMENT

Assessment Payment Schedule

Assessment Total:

Payment Schedule:

Project Completion Date:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance



PLATINUM MEMBERS

Thompson & Knight
ATTORNEYS AND COUNSELORS



Rockefeller
Brothers Fund

Philanthropy for an Interdependent World



State Energy Conservation Office



Finding the ways that work

GOLD MEMBERS

SIMON®



Keeping PACE in Texas

98 San Jacinto Blvd., Suite 1900

Austin, TX 78701

512.469.6184