

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN FORT BEND COUNTY, TEXAS
AND LONE STAR PACE LLC**

THIS AGREEMENT is made and entered by and between Fort Bend County, Texas, hereinafter referred to as "County," and Lone Star PACE LLC, hereinafter referred to as "Services Provider" or "Lone Star PACE," to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the County desires to engage the services of an authorized representative ("Authorized Representative") to administer a Texas Property Assessed Clean Energy ("PACE") program for the County pursuant to the Property Assessed Clean Energy Act ("PACE Act"), Texas Local Government Code Chapter 399, hereinafter referred to as the "Program"; and

WHEREAS, Services Provider desires to render such services for the County upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. ENGAGEMENT

The County hereby agrees to retain Services Provider to serve as an administrator and Authorized Representative of the County's PACE program and Services Provider agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. SCOPE OF SERVICES

The parties agree that Services Provider shall perform such services as are further described in Exhibit A hereto (collectively "Scope of Services"). The parties understand and agree that deviations or modifications in the Scope of Services may be authorized from time to time by the County, but said authorization must be made in writing.

III. TERM OF AGREEMENT

The initial term of this Agreement shall commence upon the complete execution of the Agreement by County and Services Provider. Notwithstanding the termination of this Agreement, Services Provider shall be permitted to continue administration of any third-party agreements under the PACE program commenced prior to termination of this Agreement, and to recover any compensation due Services Provider for services performed in accordance with Section IV of this Agreement.

IV. COMPENSATION/EXPENSES

Services Provider shall be paid for performance of the Scope of Services described in Exhibit A in accordance with the compensation schedule set forth in Exhibit B.; however, County shall have no obligation to pay Services Provider for performance of the Scope of Services. All payments to Services Provider shall be made by participants in the PACE program in accordance with the PACE Act.

V. INSURANCE

Services Provider agrees to meet all insurance requirements, and to require all consultants who perform work of Services Provider to meet all insurance requirements, as set forth in Exhibit C to this Agreement.

VI. INDEMNIFICATION

SERVICES PROVIDER AGREES TO INDEMNIFY AND HOLD THE COUNTY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT FROM THE COUNTY TO THE EXTENT ARISING OUT OF OR OCCASIONED BY SERVICES PROVIDER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, VIOLATIONS OF LAW BY SERVICES PROVIDER, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE SERVICES PROVIDER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE SERVICES PROVIDER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT RESULTING FROM THE NEGLIGENCE OF THE COUNTY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE COUNTY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

VII. INDEPENDENT CONTRACTOR

Services Provider covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of Fort Bend County; that it shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between County and Services Provider its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between County and Services Provider.

VIII. ASSIGNMENT AND SUBLETTING

Services Provider agrees that this Agreement shall not be assigned without the prior written consent of the County, except to an Affiliate of Services Provider. Affiliate shall mean (1) any corporation or other entity controlling, controlled by, or under common control with (directly or indirectly) Services Provider, including, without limitation, any parent corporation controlling Services Provider or any subsidiary that Services Provider controls; (2) the surviving corporation resulting from the merger or consolidation of Services Provider; or (3) any person or entity which acquires all of the assets of Services Provider as a going concern. Services Provider shall be permitted to enter into subcontracts for performance of portions of the Scope of Services; however, Services Provider shall not subcontract the entirety of the Scope of Services to a single subcontractor without the County's consent. Services Provider further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of

this Agreement shall not relieve the Services Provider from its full obligations to the County as provided by this Agreement.

IX. AUDITS AND RECORDS

Services Provider agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Services Provider which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Services Provider agrees that County shall have access during normal working hours to all necessary Services Provider's facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. County shall give Services Provider reasonable advance notice of intended audits.

X. CONTRACT TERMINATION

The parties agree that County shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Services Provider. In the event of such termination, Services Provider shall deliver to County all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Services Provider in connection with this Agreement. In the event of termination by County, Services Provider shall be compensated in accordance with Section III of this Agreement with respect to any third-party agreements under administration by Services Provider at the time of termination.

XI. COMPLETE AGREEMENT

This Agreement, including Exhibits A through C constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

XII. AMENDMENTS

Amendments to this Agreement may be made at any time upon agreement by County and Services Provider.

XIII. MAILING OF NOTICES

Unless instructed otherwise in writing, Services Provider agrees that all notices or communications to County permitted or required under this Agreement shall be addressed to the County Judge at the following address:

Fort Bend County Commissioners Court
Attention: County Judge
401 Jackson Street
Richmond, Texas 77469

County agrees that all notices or communications to Services Provider permitted or required under this Agreement shall be addressed to Services Provider at the following address:

Lone Star PACE LLC
Attention: Program Administrator
6988 Lebanon Road Suite 103
Frisco, TX 75034

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XIV. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

XV. MISCELLANEOUS

A. Professional Services: This is a contract for the purchase of personal or professional services, and is therefore exempt from any competitive bidding requirements of Fort Bend County.

B. Paragraph Headings: The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

C. Agreement Interpretation: This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party.

D. Venue/Governing Law: The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Fort Bend County, Texas. Exclusive venue shall lie in Fort Bend County, Texas.

E. Successors and Assigns: County and Services Provider and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

F. Severability: In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

G. Effective Date: This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

Signed on the date indicated below.

LONE STAR PACE LLC

Signature

Printed Name: Lee A. McCormick
Title: President
Date: _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2020, by Lee A. McCormick (Authorized Representative), President, of LONE STAR PACE LLC, on behalf of said entity.

[SEAL]

Signature

NOTARY PUBLIC, STATE OF TEXAS

COUNTY OF FORT BEND, TEXAS

Signature

Printed Name: _____

Title: Fort Bend County Judge

Date: _____

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the _____ day of _____, 2020,
by _____, County Judge of Fort Bend County, Texas, a Texas
political subdivision, on behalf of said County.

[SEAL]

Signature

NOTARY PUBLIC, STATE OF TEXAS

Exhibit A

Scope of Services

The Services Provider will perform the following services in the administration of the Fort Bend County PACE Program (the "Program"):

Community Outreach

1. Maintain a Program website and database;
2. Promote owner participation in the Program;
3. Respond to inquiries from property owners, vendors, contractors, consultants, and the general public;
4. Publish the Technical Standards Manual modeled after PACE-in-a-Box on the Program website;
5. List interested, qualified capital providers on the Program website or link to another neutral directory of capital providers to enable property owners to identify potential sources of private third-party financing;
6. Arrange for training of contractors and independent third-party reviewers on how to apply for PACE financing and comply with the Technical Standards Manual modeled after PACE-in-a-Box; and
7. Establish quality assurance measures.

Application and Approval Process

1. Publish a Project Application Form modeled after PACE-in-a-Box on the Program website;
2. Review submitted Project Application forms for administrative completeness and notify the applicants of any missing information;
3. Maintain the confidentiality of confidential owner information;
4. Maintain the PACE application process, including:
 - Draft and distribute the PACE application, as well as accept and review the property owner's completed application;
 - If the Project meets eligibility requirements, provide written indication that the Project meets PACE standards at this stage (subject to verification of all requirements at closing).
 - Inform the property owner of his or her responsibilities in the process, including hiring a third-party reviewer, obtaining a qualified capital provider, determining final Project scope and completing and submitting a closing verification package.
 - Conduct a pre-closing verification, which will confirm the statutorily required eligibility requirements of the owner including that the property owner:
 - Is the legal property owner of the benefited property;
 - Is current on mortgage and tax payments;
 - Is not insolvent or the subject of bankruptcy proceedings;
 - Holds a title to the property to be subject to a PACE assessment that is not in dispute; and
 - Has consent of any pre-existing mortgagee to the proposed PACE assessment through a written contract.

5. Require independent third-party verification of expected energy or water savings resulting from a Project (provided by engineer or consultant retained by applicant), according a Technical Standards Manual modeled after PACE-in-a-Box; This review will include a:
 - Site visit,
 - Report stating the savings (energy, demand, and/or water) and expected Project life are reasonable and in compliance with Program guidelines; and
 - Letter from the ITPR certifying that he/she has no financial interest in the Project and is an independent reviewer.
6. Require independent third-party verification, according to the Technical Standards Manual modeled after PACE-in-a-Box, that the period of an assessment does not exceed the expected life of the improvements or thoroughly review waiver application and justification (provided by engineer or consultant retained by applicant);
7. Require capital provider to confirm in writing its determination, based on underwriting factors established by the capital provider, that the owner has demonstrated the financial ability to repay the financial obligations to be repaid through assessment.
8. Require the owner to notify the holder of any mortgage lien on the property of the owner's intention to participate in the Program and obtain the lienholder's written consent prior to the imposition of the PACE assessment;
9. Review and finalize the terms of every Owner Contract and Capital provider Contract prior to execution; The Contract must contain:
 - 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.
10. Collect and retain owner application fees as compensation for administrative services;
11. Perform closing verification reviews and schedule assessment transaction closings when all requirements are met; such closing verification must include:
 - The report conducted by a qualified independent third-party reviewer of water or energy baseline conditions and the projected water or energy savings attributable to the Project;
 - Such financial information about the owner and the property as the capital provider 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
 - All other information required by the Program Administrator. Coordinate and take part in assessment transaction closings;
12. Execute contracts under the Program as authorized on behalf of the County.
13. Arrange for recordation of a Notice of Contractual Assessment Lien for each approved Project in the Official Public Records of the county where the Project is located; The Notice must contain:
 - 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.

14. Require independent post-closing third-party verification (by engineer or consultant retained by Applicant) that each Project was properly completed and is operating as intended; and
15. Collect and retain administration fees collected by capital providers from owners that receive PACE financing.

Management and Reporting

1. Manage communications with qualified capital providers regarding assessment servicing, payment, and default;
2. Upon notification by a qualified capital provider of an owner's default in payment of an assessment and the qualified capital provider's compliance with the requirements of the Qualified Capital Provider Contract on collection after default, notify the Local Government to enforce the assessment lien in accordance with law and the agreements between the parties;
3. Receive and store property owner reports on energy and water savings;
4. Prepare annual notices of assessment to be issued by the county to the property owners, stating the total amount of the payments due on each assessment in the coming calendar year according to the Owner Contract and the financing documents;
5. Determine the amounts of the application and administration fees to be paid by property owners pursuant to Exhibit B;
6. Report annually to the County on Program usage and the resulting energy and water savings enabled through PACE assessments.

Exhibit B

Compensation and Fees

County specifically delegates its authority to collect fees as allowed under section 399.008(e) of the Texas Local Government Code to the Services Provider and retain those fees as consideration for services under this Agreement.

Lone Star PACE LLC shall determine the amounts of the fees to be paid by Property Owners participating in the Program. Such fees will not exceed those listed below:

1. An application fee of up to \$500 which will be applied towards Closing Fee; and
2. A Closing fee of up to 0.75% of the total amount of the Assessment, (less application fee.); and
3. An annual administration fee of 0.10% of the outstanding principal balance, which amount shall be collected by the qualified capital provider and remitted to Lone Star PACE LLC, the Authorized Representative, as provided in the Owner Assessment Contract and financing documents. This fee can also be capitalized and paid at closing. If paid under a negotiated regular schedule to the qualified capital provider by the property owner, the qualified capital provider shall pay this fee to Lone Star PACE at the time of each payment by the property owner in accordance with the financing documents.

No amounts shall be due by the County to Lone Star PACE LLC.

Exhibit C
Insurance Requirements

COVERAGE	LIMIT OF LIABILITY
Professional Liability	\$500,000 per occurrence
General Liability	Bodily Injury and Property Damage, Combined Limits of \$500,000 Each Occurrence, and \$1,000,000 Aggregate