

**PACE PROGRAM INTERLOCAL AGREEMENT
BY AND BETWEEN THE ALAMO AREA COUNCIL OF GOVERNMENTS
AND THE CITY OF BOERNE, TEXAS**

This Interlocal agreement is entered into between the Alamo Area Council of Governments ("AACOG"), a regional Planning Commission and political subdivision of the State of Texas and the City of Boerne, Texas (**Local Government**), a body politic and a political subdivision of the State of Texas.

1. STATEMENT OF PURPOSE:

This Interlocal agreement is for the purpose of providing the program administration services needed to implement and administer the Property Assessed Clean Energy (PACE) Program for Local Government.

2. STATEMENT OF SERVICES TO BE PERFORMED BY THE AACOG:

In recognition of the economic benefits for Local Government, AACOG agrees to administer these services in order to help the county create and/or retain jobs and to assist in the growth and stability of the business sector. Businesses in Local Government will be able to take advantage of low-cost, long-term loans for 100% of the cost of energy-efficiency and water conservation improvements. The services to be performed under this agreement are as follows:

A. Community Outreach

1. Establish a PACE Program information page on AACOG's website;
2. Develop a marketing plan and market PACE financing and promote owner participation in the Program;
3. Respond to inquiries from property owners, vendors, contractors, consultants, and the general public;
4. Publish link to the Technical Standards Manual on AACOG's website;
5. List interested, qualified lenders on the Program website or link to another neutral non-profit directory of lenders to enable property owners to identify potential sources of private third-party financing;
6. Coordinate training of contractors and independent third-party reviewers on how to apply for PACE financing and comply with the PACE-in-a-Box Technical Standards Manual; and
7. Establish quality assurance measures

B. Application and Approval Process

1. Publish a Project Application Form based on PACE-in-a-Box model application form on the Program website;
2. Review submitted Application forms for administrative completeness and notify the applicants of any missing information;
3. Maintain the confidentiality of owner information;
4. When Applications are complete, make a preliminary determination of eligibility for participation in the PACE Program and issue preliminary letters to owners and lenders indicating whether, subject to verification of all lender underwriting and closing requirements, the information submitted indicates that the proposed project meets Program requirements;
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 to the PACE-in-a-Box Technical Standards Manual;
6. Require independent third-party verification, according to the PACE-in-a-Box Technical Services Manual, 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. Confirm that the lender has determined, based on underwriting factors established by the lender, 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 Lender Contract prior to execution;
10. Collect and retain owner application fees as compensation for administrative services;
11. Perform closing verification reviews and schedule assessment transaction closing when all requirements are met;
12. Coordinate and take part in assessment transaction closings;

13. Arrange for recording of a Notice of Contractual Assessment Lien for each approved project in the official public records of the county where the project is located;
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 lenders from owners that receive PACE financing.

C. MANAGEMENT AND REPORTING:

1. Manage communications with lenders regarding assessment servicing, payment, and default;
2. Upon notification by a lender of an owner's default in payment of an assessment and the lender's compliance with the requirements of the Lender 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 owner reports on energy and water savings;
4. At the request of property owners, prepare annual notices of assessment to be issued by Local Government to the 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 owners; and
6. Report annually to Local Government on Program usage and the resulting energy and water savings enabled through PACE Assessments.

3. PAYMENT FOR SERVICES:

It is agreed and understood that Local Government will not pay nor be liable to AACOG for any services provided by AACOG or its agents, employees, subcontractors, lenders, or any other related entity. All expenses, application and servicing fees, or costs are paid by the Program applicants pursuant to an established fee structure. AACOG will collect and retain for its own use fees paid by Program applicants during the application process and the subsequent administration of the Program. These fees will be used primarily to offset the costs of administering the program.

Program application and administrative fees are allowed to be included in the total amount financed through the assessments.

4. COUNTY RESPONSIBILITIES:

The County will negotiate with its enforcement contractor to add PACE Loans to its enforcement policies. Reference Local Government Code, Section 399.014(c).

County will collect and retain interest and penalties as properly assessed.

5. CONFIDENTIALITY:

During the process of the loan and/or services to be provided under this agreement, AACOG will treat as confidential the information or knowledge that becomes known during the application process and shall disclose it only to its officers, directors, or employees with a specific need to know. It will not release, use, copy, or disclose such information and agrees not to share it with any third party or individual except with the specific prior written authorization of the loan applicant. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. AACOG shall promptly notify Local Government of any misuse or unauthorized disclosure of its confidential information. This Program will comply with all security policies that may apply. The parties agree and understand that AACOG is subject to the Texas Public Information Act and other applicable state and federal open records laws.

6. TERM OF AGREEMENT:

This contract shall begin upon the last date of execution by a party to this agreement for a term of one year and shall automatically renew for successive one year terms unless otherwise terminated as provided herein.

7. TERMINATION:

This contract may be terminated by either party for any reason, with or without cause, upon thirty (30) days written notice.

8. AMENDMENTS:

Amendments to this Interlocal Agreement shall be in writing and signed upon final approval by both Parties.

9. INDEMNIFICATION:

To the extent permitted by the Texas Constitution and Texas State Laws without the creation of sinking fund, each party shall indemnify and hold the other party, its affiliated entities, and their respective directors, officers, employees, agents, and representatives, harmless from and against any claims liabilities, damages and expenses arising out of the indemnifying party's act or omissions, or the acts omissions of the indemnifying party's employees, students, facility, staff, agents or representatives, under this Agreement excluding claims, liabilities, damages, expenses resulting from the negligence or willful misconduct of the other party, its employees, staff,

agents or representatives.

10. IMMUNITY:

No provision of this Agreement shall affect or waive any sovereign or governmental immunity available to LOCAL GOVERNMENT and/or its elected officials, officers, employees and agents under Federal or Texas law nor waive any defenses or remedies at law available to the County and/or its elected officials, officers, employees and agents under Federal or Texas law.

11. CHOICE OF LAW/VENUE:

This Agreement shall be construed and enforceable in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Exclusive venue shall be in a court of competent jurisdiction in Bexar County, Texas.

12. SEVERABILITY

If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

13. AUTHORIZATION:

This Agreement is entered into by the duly authorized officials of each respective party. Each person signing this Agreement on behalf of a party hereby confirms for the benefit of the other party to this Agreement that any requisite approvals from the governing body of such party have been obtained, and all prerequisites to the execution, delivery and performance hereof have been obtained by or on behalf of that party.

BOERNE, TEXAS

ALAMO AREA COUNCIL OF
GOVERNMENTS

By: _____

By: _____
Diane Rath,
Executive Director

Date: _____

Date: _____