

ORDINANCE 2020-02-20-0116

AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE ALAMO AREA COUNCIL OF GOVERNMENTS (AACOG) TO ESTABLISH AACOG AS THE THIRD-PARTY ADMINISTRATOR FOR THE CITY OF SAN ANTONIO PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM.

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WHEREAS, the 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act (PACE), Texas Local Government Code Chapter 399 (the PACE Act) allowing the governing body of a local government (including a city) to designate an area of the territory as a region; and

WHEREAS, under the PACE Act, a designated authorized representative from a local government may enter into a written contract with the record owner of commercial, industrial, nonprofit, or large multifamily residential (five or more dwellings) real property, and impose contractual assessments (PACE financing) that finance improvements designed to decrease water and/or energy consumption or demand; and

WHEREAS, the City of San Antonio (COSA) PACE Program promotes economic development and sustainability efforts through investment, reduction of energy consumption, conservation of water resources and reduction of greenhouse gas emissions at no cost to the public; and

WHEREAS, the City Council finds it advantageous to designate the Alamo Area Council of Governments (AACOG) as the third-party administrator for the COSA PACE Program; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

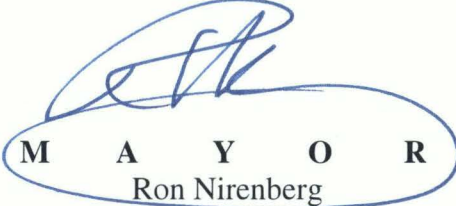
SECTION 1. The Recitals to this Ordinance are true and correct and incorporated into this Ordinance for all purposes.

SECTION 2. The City authorizes an Interlocal Agreement designating AACOG as the third-party administrator for the COSA PACE Program in accordance with City Council adopted criteria.

SECTION 3. Contingent on official adoption of a COSA PACE Program per the Texas PACE Act, this Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

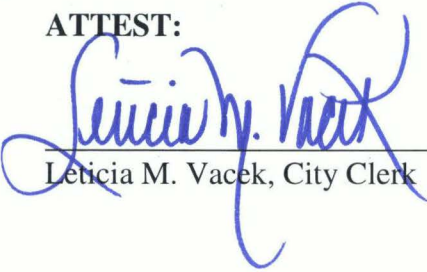
OR/DEF
02/20/2020
Item No. 26B

PASSED AND APPROVED this 20th day of February 2020.



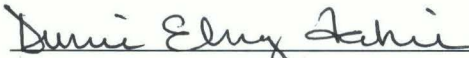
M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



For: Andrew Segovia, City Attorney



City of San Antonio

City Council

February 20, 2020

Item: 26B

File Number: 20-1972

Enactment Number:

2020-02-20-0116

Ordinance approving an Interlocal Agreement with Alamo Area Council of Governments to serve as the Third-Party Administrator of Property Assessed Clean Energy (PACE) Program contingent upon City Council formally establishing the City PACE Program.

Councilmember Ana E. Sandoval made a motion to approve. Councilmember Rebecca Viagran seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia, Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

OR/DEF
02/20/2020
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Attachment 1

STATE OF TEXAS § **INTERLOCAL AGREEMENT**
 § **BY AND BETWEEN**
 § **THE CITY OF SAN ANTONIO**
 § **AND**
 § **THE ALAMO AREA COUNCIL OF GOVERNMENTS**
 § **FOR**
COUNTY OF BEXAR § **THIRD-PARTY ADMINISTRATION OF THE CITY**
 § **OF SAN ANTONIO PROPERTY ASSESSED CLEAN**
 § **ENERGY PROGRAM**

This Interlocal Agreement entered into by and between the Local Government, City of San Antonio, Texas (City), a body politic and a political subdivision of the State of Texas, and the Alamo Area Council of Governments (AACOG), a regional Planning Commission and political subdivision of the State of Texas.

1. STATEMENT OF PURPOSE:

This purpose of this Interlocal Agreement is providing the third-party program administration services needed to implement and manage the Property Assessed Clean Energy (PACE) Program for the City.

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

To promote City sustainability and economic development efforts, AACOG agrees to administer the City PACE program where eligible property owners who are located within the San Antonio city limits will be able to take advantage of low-cost, long-term loans for 100% of the cost of energy-efficiency and water conservation improvements in accordance with the Texas PACE Act. The services performed under this agreement are as follows:

A. Community Outreach

1. Establish a San Antonio PACE Program information page on AACOG's website that includes information for property owners, vendors, contractors, engineers, consultants, and lenders to participate in the Program;
2. Ensure AACOG's, and contractor's, if appropriate, PACE fee structure is clearly stated on the website;
3. Develop an annual marketing plan to be submitted and approved by the Director or designee of the City's Economic Development Department (EDD) and market PACE financing to property owners, vendors, contractors, engineers, consultants, and lenders to participate in the Program. A marketing plan should be submitted to the City EDD staff within 30 days of execution of the ILA and on or before January 31st annually following the implementation of the City PACE Program. The annual marketing plan shall be executed in partnership between AACOG and the City and include specific efforts to (1) educate local commercial, non-profit, industrial, and large multi-family residential property

owners on the PACE program, especially those property owners located within EDD's Inclusive Growth Area; (2) engage with local minority, women, or veteran property owners, as well as the non-profit community to participate in the PACE program; (3) engage with local lenders to participate and administer loans as part of the PACE program; and (4) engage with local small, minority, women, and veteran-owned businesses to participate in the PACE program as vendors, contractors, and consultants to complete PACE projects; (5) attend at least six (6) EDD events to promote and host technical workshops regarding the City PACE program.

4. Respond to inquiries from property owners, vendors, contractors, consultants, lenders, and the general public;
5. Publish link to the Technical Standards Manual on AACOG's website;
6. List interested, qualified lenders on the San Antonio PACE Program website or link to another neutral, non-profit directory of lenders to aid property owners seeking to identify potential sources of private third-party financing;
7. Coordinate training of contractors, specifically local small, minority, women, and veteran-owned 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
8. 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, issuing preliminary letters to owners and lenders stipulating that 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 the applicant);
7. Confirm that based on underwriting factors established by the lender, the lender has determined, that the owner has demonstrated the financial ability to repay the financial obligations to be repaid through assessment;
8. Require the owner notify any and all holder(s) of a mortgage lien(s) on the property that the owner intends to participate in the Program, and require that the owner obtain written consent from all lienholders 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 when all requirements are met, schedule assessment transaction closing;
 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 City 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 that shall be issued by the City to the owners indicating the total monthly and annual amount due for each assessment in the upcoming calendar year per the Owner Contract and financing documents;
5. Determine the amounts of the application and administration fees paid by owners;
6. Provide semi-annual reports to the City's EDD Director or designee on or before January 31st and July 31st of each year of this agreement attesting to the following information for the preceding six (6) months of PACE activity: (1) property owner name, business name, demographics of the property owner (gender, race, ethnicity, veteran status), geography (address, City Council District, EDD Inclusive Growth Area and Tier, SA Tomorrow Regional Center, Opportunity Zone) for both those property owners interested in a PACE loan and those who close on a PACE loan; (2) loan terms, loan interest rates, and loan default rates for property owners who close on a PACE loan; (3) property usage (commercial, nonprofit, industrial, and large multi-family residential) immediately prior to and immediately after a PACE loan is closed; (4) energy and water savings secured through PACE Assessments that includes the estimated savings before construction begins and actual savings once construction is complete; (5) estimated job and investment figures as the result

of a closed PACE loan; (6) attainment toward an annual marketing plan executed in partnership between AACOG and the City to include specific efforts to (a) educate local commercial, non-profit, industrial, and large multi-family residential property owners on the PACE program, especially those property owners located within EDD's Inclusive Growth Area; (b) engage with local minority, women, or veteran property owners, as well as the non-profit community to participate in the PACE program; (c) engage with local lenders to participate and administer loans as part of the PACE program; and (d) engage with local small, minority, women, and veteran-owned businesses to participate in the PACE program as vendors, contractors, and consultants to complete PACE projects; (e) attend at least six (6) EDD events to promote and host technical workshops regarding the City PACE program; and (7) all monies received by AACOG and/or partner program administrator per loan closed and all loans collectively per reporting period.

D. REQUEST FOR PROPOSAL FOR PROGRAM ADMINISTRATION PARTNERSHIPS

As part of their Interlocal Agreement, if AACOG secures a partnership with another entity to assist in the administration of the City's PACE program, AACOG will perform the following:

1. Conduct a request for proposal (RFP) process to select a respondent who demonstrates the best qualifications, experience, and proposed plan to assist in the management of the City's PACE program.
2. Following the selection of a respondent, EDD will be provided marketing efforts to draw interest in the RFP, respondents proposals submitted, final ranking of respondents with justification for such ranking, and the contract/agreement executed between AACOG and the selected respondent.

3. PAYMENT FOR SERVICES:

It is agreed and understood that the City will not pay, nor is liable to AACOG for any services provided by AACOG or its agents, employees, subcontractors, lenders, or any other related entity Any and all expenses, application and servicing fees, or costs are paid by the Program applicants pursuant to an established fee structure. AACOG shall 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 may be included in the total amount financed through the assessments.

4. THE CITY RESPONSIBILITIES:

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

The City will collect and retain interest and penalties.

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 its officers, directors, employees, or the City with a specific need to know. AACOG agrees that it will not release, use, copy, or disclose information provided by Applicants unless specific prior written authorization is obtained from the Applicant. This provision does not restrict disclosure of information required by applicable law. AACOG shall promptly notify the City of any misuse or unauthorized disclosure of confidential information. This Program shall comply with all security policies and the City may seek an annual report detailing compliance. The parties agree and recognize 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 two (2) years and the City may seek renewal for an additional three (3), one (1) 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 made in writing and signed by both Parties upon final approval.

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 the City or AACOG 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 duly authorized officials of each respective party. Each person signing this Agreement 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 here have been obtained by or on behalf of that party.

EXECUTED and **AGREED** to as of the dates indicated below.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

ALAMO AREA COUNCIL OF GOVERNEMNTS

CITY OF SAN ANTONIO

By: _____

By: _____

Diane Rath

Erik Walsh

Executive Director

City Manager

Date: _____

Date: _____

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY