

A RESOLUTION OF INTENT **2020-02-20-0024R**

**WHEREBY THE CITY OF SAN ANTONIO PROPOSES A RESOLUTION
OF INTENT TO ESTABLISH THE CITY OF SAN ANTONIO PROPERTY
ASSESSED CLEAN ENERGY PROGRAM**

* * * * *

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); and

WHEREAS, the PACE Act allows the governing body of a local government (including a city) to designate an area of the territory as a region where an authorized representative of a local government and record owner(s) of: commercial, industrial, non-profit, and large multifamily residential (five or more dwelling units) real property, may enter into written contracts; and

WHEREAS, these contracts impose assessments on the property, which will repay financing by the record owner(s) for permanent improvements fixed to the property, which are intended to decrease water or energy consumption or demand; and

WHEREAS, the installation or modification by the record owner(s) of qualified energy or water saving improvements to commercial, industrial, non-profit, and large multifamily residential real property in the City of San Antonio (COSA) will further the goals of energy and water conservation without cost to the public; and

WHEREAS, the City Council finds that third-party 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, conserving water resources, and reducing greenhouse gas emissions; and

WHEREAS, the City Council finds that it is convenient and advantageous to establish a program under the PACE Act and designate the entire geographic area within the City's jurisdiction as a region within which an authorized representative designated by the City, may enter into PACE financing arrangements with the record owner(s) of qualified real property; **NOW THEREFORE:**

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

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

SECTION 2. The City 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.

SECTION 3. The City intends to make contractual assessments to repay PACE financing for qualified energy or water conserving projects available to the record owner(s) of commercial, industrial, non-profit, and large multifamily residential real property. The City shall call the program the COSA PACE Program.

SECTION 4. The following projects qualify for PACE financing and may be subject to contractual assessments:

- (a) Projects involving the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, non-profit, or residential real property with five or more dwelling units; and
- (b) Projects intended to decrease energy consumption, water consumption or demand for energy or water. This may include a product, device, or interacting group of products or devices on the customer's side of the meter using energy technology to generate electricity, provide thermal energy, or regulate temperature.

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

SECTION 5. The boundaries of the entire geographic area within the City's jurisdiction are the boundaries of the region where PACE financing and assessments can occur.

SECTION 6. Under the PACE program, financing is provided by third-party lenders chosen by the record owner(s) for qualified projects. As required by the PACE Act, lenders execute written contracts with the City's authorized representative to service the assessments. The contract allows lenders to determine a record owner's financial ability to fulfill their financial obligation and repay through assessments. The contract advances funds to the record owner(s) for installation or modification of qualified projects, under terms agreed to between the lenders and the record owner(s). Servicing of the debt secured by assessments occurs directly or through a servicer. Collection of payments from the record owner(s) is pursuant to the contract executed between lenders and the record owner(s). The lender contract provides the City maintain and continue the assessments for the benefit of lenders and enforce the assessment lien in the event of a default by the record owner(s). The City will not, provide financing of any sort for the COSA PACE Program.

SECTION 7. The City will designate an authorized representative in accordance with the PACE Act and City Council adopted criteria.

SECTION 8. The City will consult with the County Tax Assessor/Collector for Bexar County.

SECTION 9. As provided by Tex. Local Gov't Code Sec. 399.009, a report on the proposed COSA PACE Program is available for public inspection at the COSA website and in the Economic Development Department Offices, at City Tower, 100 W. Houston St., Suite 1900, San Antonio,

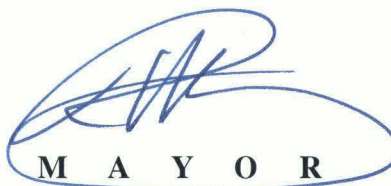
OR/DEF
02/20/2020
Item No. 26A

Texas 78205. The report is attached here as **Attachment I**, is incorporated and made a part of this Resolution of Intent for all purposes.

SECTION 10. A public hearing regarding the COSA PACE Program and report will be held on March 5, 2020, at 9:00 a.m. in City Council Chambers;

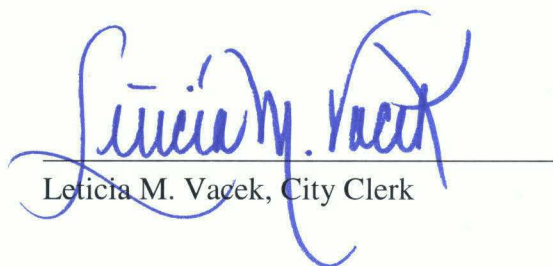
SECTION 11. This Resolution of Intent is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

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:



Fa! Andrew Segovia, City Attorney



City of San Antonio

City Council

February 20, 2020

Item: 26A

File Number: 20-1971

Enactment Number:

2020-02-20-0024R

Resolution of Intent to establish a Property Assessed Clean Energy (PACE) program within the City of San Antonio boundaries.

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
Item No. 26A

Attachment 1

**REPORT REQUIRED BY TEXAS LOCAL GOVERNMENT CODE SECTION 399.009
FOR PROPOSED MUNICIPAL
PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM**

This Report is adopted by the City Council for the City of San Antonio (COSA) Property Assessed Clean Energy (PACE) Program (**the COSA PACE 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.

Modification of older existing buildings with new technology and equipment that increases energy efficiency and reduces water consumption benefits the City and its constituents. By establishing the commercial PACE Program, the City encourages 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 and enacted in 2013, the PACE program is a financing program enabling private sector owners of privately owned commercial, industrial, non-profit and multi-family residential properties (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 may provide up to 100% project cost financing, with minimal or no up-front out-of-pocket cost to the owner. The City has selected to use the uniform Texas PACE in a Box model program to create the COSA PACE Program administrative principles, program processes, and documents.¹

Loans made under the PACE Program are secured by assessments on the property that are voluntarily imposed by the owner(s). Assessments amortize over the projected life of the improvements. The expected utility cost savings from improvements financed with PACE loans, equal or exceed the amount of the assessment, generating positive cash flow upon installation of improvements because the debt service is less than the savings.

PACE assessments remain 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 their period of ownership. When a property sells, the payment obligation for the remaining balance of the assessment transfers automatically to the new owner. The PACE program assists property owners overcome market barriers that would otherwise discourage investment in energy efficiency and water conservation improvements.

1. Eligible Properties

The COSA PACE Program is a voluntary program. All private sector owners of Eligible Properties located within the COSA PACE region may participate in PACE financing. **Eligible Properties** include commercial, industrial, non-profit and multi-family residential properties (five or more dwelling units). Government, residential², and undeveloped property or property undergoing development at the time of the assessment, are not Eligible Properties.

¹ <https://www.keepingpaceintexas.org/pace-in-a-box>

² This encompasses single-family residential and any multi-family properties with fewer than five units.

2. Qualified Improvements

PACE financing may 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); and
- High efficiency irrigation equipment.

3. Benefits of PACE to Property Owners

The COSA PACE Program will enable owners of Eligible Properties to overcome traditional barriers to capital investments in energy efficiency and water conservation improvements, such as minimal returns on investment, split incentives between property owners 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, potentially reducing the owner's exposure to utility price volatility. The resulting value of the property increases and the owner is obligated only to pay the assessment installments accruing during their period of ownership. Investing in energy efficiency and water conservation with PACE financing, may qualify property owners for various rebate, tax credit, and incentive programs offered by utility providers and state or federal governmental authorities further encouraging these types of investments.

4. Benefits of PACE to the City

Projects financed through PACE will:

- Enable property owners and occupants to save substantial amounts in utility cost;
- 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 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; and
- Enable the City to meet its water conservation goals.

EPA regulations have significant impacts on air quality standards locally and throughout Texas, especially recent adjustments. Lower standards of the National Ambient Air Quality Standards (NAAQS) has made the City’s goal of reaching attainment more difficult. Under the Clean Air Act, non-attainment of priority pollutants jeopardizes federal transportation funding. The PACE program supports the City’s goal of reaching attainment again, by allowing properties to reduce energy consumption and demand for power, which lowers overall emissions from power plants.

Designed to be self-sustaining, the COSA PACE Program requires minimal support from the City and is tax neutral. The COSA PACE Program achieves all benefits listed in this Report without imposing any additional burden on the City’s general fund.

The 84th Texas Legislature explicitly prohibits the City, its employees, members of the governing body of a local government, employees of a local government, as well as board members, executives, employees, and contractors of a third-party who enter into a contract with a local government, from providing administrative services for a program under this chapter.³

5. The Benefits of PACE to Lenders

PACE loans are attractive to lenders because they are priority liens, ensuring the risk of loss from non-payment of a PACE loan is minimal compared to other types of loans. PACE assessments, provide lenders with a new avenue where new and existing customers may address financial demand needed for commercial and industrial property equipment modernization. In order to protect the interests of holders of existing mortgage loans on a property, the PACE Act requires written consent to the PACE assessment from them as a condition to obtain a PACE loan.

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, encouraging property owners to make substantial investments in existing commercial and industrial buildings. PACE loans, create the potential to unlock business opportunities for contractors, engineers, and manufacturers throughout the commercial and industrial sectors.

³ TX. Local Gov’t Code §399.019. In the 85th legislature, HB 2654 clarified that the personal immunity provisions apply to all elected officials performing rights and duties under chapter 399 of the Local Government Code.

7. Administration of the COSA PACE Program

Under the PACE Act, the establishment and operation of the program are considered governmental functions.⁴ The PACE Act authorizes the City to enter into a contract with a third-party to provide administrative services for the PACE program (the **Authorized Representative or Third-Party Administrator**). Alamo Area Council of Governments (AACOG) will administer the program, in accordance with City Council adopted criteria and at no cost to the City.

AACOG will provide oversight of the program ensuring best practices and consumer protections at the lowest possible cost to the property owner, while also providing education and outreach in a transparent and ethical manner.

Administrative fees by property owners establishing a PACE project, charitable grants or other authorized sources of revenue provide funding for AACOG. AACOG will not receive compensation or reimbursement from the City.

8. Eligible Lenders

The PACE Act does not specify set criteria for financial institutions or investors to be considered PACE lenders. It is the property owner who select the lender not the City or AACOG; however, the City will follow best practices of other established PACE programs, as well as the Texas PACE in a Box model program, recommending 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.
- Additionally, all lenders must have the ability to carry out, 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 if it is a financially stable entity with the ability to carry out, directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

⁴ TX Local Government Code §399.003(b)

AACOG does not guarantee funding from a third-party lender, nor does AACOG imply or create any endorsement of or responsibility for any lender, or create any type of express or implied favoritism for an 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 indicating boundaries of the region in the program, attached as Exhibit 1. The region encompasses the San Antonio City limits.
- b. Form Contract with Owner: A form contract between the City and the record owner of the Eligible Property, attached as Exhibit 2. The document specifies terms of the assessment under the PACE program, and financing provided by an Eligible Lender, chosen by the property owner.
- c. Form Contract with Lender: A form contract between City and the Eligible Lender, chosen by the property owner, attached as Exhibit 3. The document specifies the financing and servicing of the debt through assessments.
- d. Form Notice of Contractual Assessment Lien: form Notice of Assessment Lien the City will file with the County Clerk, attached as Exhibit 4.
- e. Qualified Improvement: The following qualified improvements may be subject to contractual assessments under the PACE program:

Projects that: (a) involve the installation or modification of a permanent improvement that is fixed to privately owned commercial, industrial, non-profit or residential real property with five or more dwelling units;⁵ and (b) are intended to decrease energy, water consumption or demand, by installing a product, device, or interacting group of products or devices on the customer's side of the meter, which uses energy technology to generate electricity, provide thermal energy, or regulate temperature.⁶

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

The PACE program may not finance improvements to undeveloped lots or lots undergoing development at the time of the assessment. The PACE program may not finance the purchase or installation of products or devices that are not permanently fixed to real property.⁷

⁵ TX. Local Gov't Code §399.002(5).

⁶ TX. Local Gov't Code §399.002(3).

⁷ TX. Local Gov't Code §399.004.

- f. Authorized Representative or Third-Party Administrator: HB 3187, signed into law on June 16, 2015, authorizes the City to delegate administration of the PACE program to a Third-Party Administrator or Authorized Representative. The City may delegate official administrative responsibilities, such as the execution of individual contracts with property owners and lenders, to a Third-Party Administrator(s). The City Manager or their designee monitors and maintains this relationship.
- g. Project Review: Track and provide a public overview with savings metrics for all PACE projects
- h. Plans for Insuring Sufficient Capital⁸: 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 ensure property owners demonstrate the financial ability to fulfill their financial obligations to repay through contractual assessments.
- i. No Use of Bonds or Public Funds: The City does not anticipate issuing bonds or using other public monies to fund projects of the COSA PACE Program. Property owners obtain all financing from the Eligible Lenders they choose.
- j. Limit on Length of Loan: A statutory criteria of a PACE loan is the payment period associated with the loan cannot exceed the useful life of the Qualified Improvement, which was the basis for the loan and assessment originally. As part of the application process, property owners submit an independent third-party review prepared by a licensed engineer that demonstrates the water or energy baseline conditions as well as the projected water or energy savings. This review aids the Third-Party Administrator in their determination that the requested assessment period will not exceed the useful life of the Qualified Improvement.
- k. Application Process: The Third-Party Administrator accepts applications from property owners seeking to finance Qualified Improvements under the program. Each application must be accompanied by the required application fee and include:
 - (1) A description of specific Qualified Improvement installations or modifications on the property;
 - (2) A description of the specific real property where the Qualified Improvements are permanently fixed; and
 - (3) The total amount of financing, including transaction costs, requiring repayment through assessments.

Based on this information, the Third-Party Administrator may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the

⁸ 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.

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 processes outlined above are completed, the property owner submits the application to the Third-Party Administrator to obtain preliminary approval. The property owner must produce the following documentation prior to closing on the PACE loan:

- (1) A Report conducted by a qualified, independent third-party reviewer (ITPR), 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 Third-Party Administrator.

- I. Financial Eligibility Requirements: The Third-Party Administrator determines whether the owner, the property and the improvements are eligible for financing under the program. The Eligible Lender chosen by the owner determines whether the owner has demonstrated the financial ability to repay financial obligations through contractual assessment collection. The statutory method⁹ ensuring a demonstration of financial ability is 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. The City determines a 20% loan to an assessed value of the property is appropriate, and acknowledging a variance of this ratio may be appropriate in some circumstances. The Third-Party Administrator considers factors in a variance request, including:

- (a) What is the existing debt to assessed value of the property prior to closing the PACE loan?
- (b) What is the estimated fair market value of the property? How was the value determined (e.g., market appraisal, desktop appraisal, insurance valuation, etc.)?

⁹ TX. Local Gov't Code §399.009(b).

(c) What is the estimated post-renovation fair market value of the property (including an explanation on how this value was determined)?

The City determines eligibility for PACE financing, whether the projected savings derived from the Qualified Improvement are greater than the cost of the PACE assessment and lien over the life of the assessment (i.e., the Savings to Investment Ratio (SIR) is greater than one, $SIR > 1$). A third-party lender and for profit-property owner may request a waiver in writing for a project with an $SIR < 1$ and address the interests of tenants and future property owners. The Third-Party Administrator may consider factors in a variance request including:

- (a) Are there other environmental benefits such as air or water quality or resiliency not captured in the SIR analysis?
- (b) Will the proposed qualifying improvements generate monetized environmental marketable credits?
- (c) What is the SIR calculation for the project (how far below 1)?
- (d) If the SIR is < 1 over the term of the assessment, is the $SIR > 1$ over the useful life of the equipment?
- (e) What is the impact of a variance request on affected third parties?
- (f) Other information the owner and lender wish to submit regarding the impact of the qualified improvements on the company and the community.

m. Mortgage Holder Notice and Consent: A mortgage lien holder must be given notice, on or before the 30th day, a contract is executed, regarding the property owner's intention to participate in the program and impose an assessment providing the Third-Party Administrator a superior lien to the property. The property owner must obtain written consent from all mortgage holders.¹⁰

n. Imposition of Assessment: The Third-Party Administrator will enter into a written contract with the property owner, only after:

- (1) The property owner delivers to the Third-Party Administrator written consent of all mortgage lien holders;
- (2) The Third-Party Administrator'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 Third-Party Administrator that the owner has demonstrated financial ability to fulfill the financial obligations to repay through contractual assessments.

¹⁰ TX. Local Gov't Code §399.010.

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 4 in the Official Public Records of Bexar 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.

- o. Collection of Assessments: The execution of the written contract between the Third-Party Administrator 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 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.¹¹

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 during the installation of the Qualified Improvement.

The lender will receive the owner's assessment payments to repay the debt and remit any administrative fees to the Third-Party Administrator. The lender will have the right to assign or transfer the right to receive the installments of the debt secured by the assessment, provided the following conditions:

- (1) The assignment or transfer made to an Eligible Lender, as defined above;
- (2) The property owner and the Third-Party Administrator are notified in writing of the assignment or transfer and the address where payment of 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, by operation of the financing documents or other provided written evidence, assumes lender's obligations under the lender contract.

- p. Verification Review: After a Qualified Improvement is complete, the Third-Party Administrator requires the property owner provide verification by a qualified ITPR that the Qualified Improvement is properly completed and operating as

¹¹ The servicer will be responsible for maintaining payment records, account balances, and reporting to the Third-Party Administrator as required.

intended.¹² The verification report conclusively establishes that the improvement is a Qualified Improvement and the project is qualified under the PACE program.¹³

- q. Marketing and Education Services: The Program Administrator provides service provider training workshops for contractors, engineers, property managers and other stakeholders. The Program Administrator also provides outreach and education for all stakeholders including presentations, conference booths and individual meetings, as well as written and electronic materials, such as case studies, flyers, and webinars. The City may subsequently enter into agreements with one or more other local governments or non-profit organizations promoting energy and water conservation and/or economic development to provide marketing and education services for the PACE program.
- r. Quality Assurance and Antifraud Measures: The Third-Party Administrator institutes quality assurance and antifraud measures for the Program. The Third-Party Administrator reviews each PACE application for completeness and supporting documents through independent review and verification procedures. The application and required attachments 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 providing safeguards put in place prior to a project proceeding forward include a review of the energy and water savings baseline and certification of compliance with the technical standards manual by an ITPR, (a registered professional engineer). This review includes a site visit, report, and a letter from the ITPR certifying they are an independent reviewer with no financial interest in the project. Upon completion of the project, an ITPR conducts a final site inspection to determine whether the project is operating properly. The ITPR's certification includes a statement the ITPR is qualified and has no financial interest in the project.
- s. 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 agrees 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 continues.

¹² TX Local Gov't Code §399.011.

¹³ TX Local Government Code §399.011(a-1)

If the owner fails to cure the delinquency within 30 days after mailing the second notice of delinquency, the lender may notify the Third-Party Administrator of the owner's default. Pursuant to Texas Local Government Code Section 399.014(c), the Third-Party Administrator initiates steps for the City to enforce the assessment lien in the same manner a property tax lien against real property is enforced, to the extent the enforcement is consistent with Section 50, Article XVI, of the Texas Constitution. Delinquent installments 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 to offset the cost of collection.

Should the City file suit to enforce collection of delinquent assessment installments, the City shall recover any costs and expenses, including, but not limited to attorney's fees, in the same manner and at the same rate as in a suit to collect delinquent property taxes. The City will remit to the lender the net amount of the delinquent installments and contractual interest collected and remit to the Third-Party Administrator the amount of any administrative fees collected, but shall retain any statutory penalties, interest, and attorney's fees collected in the event a delinquent assessment installment is collected after a suit is filed.

MAP OF CITY OF SAN ANTONIO PACE REGION

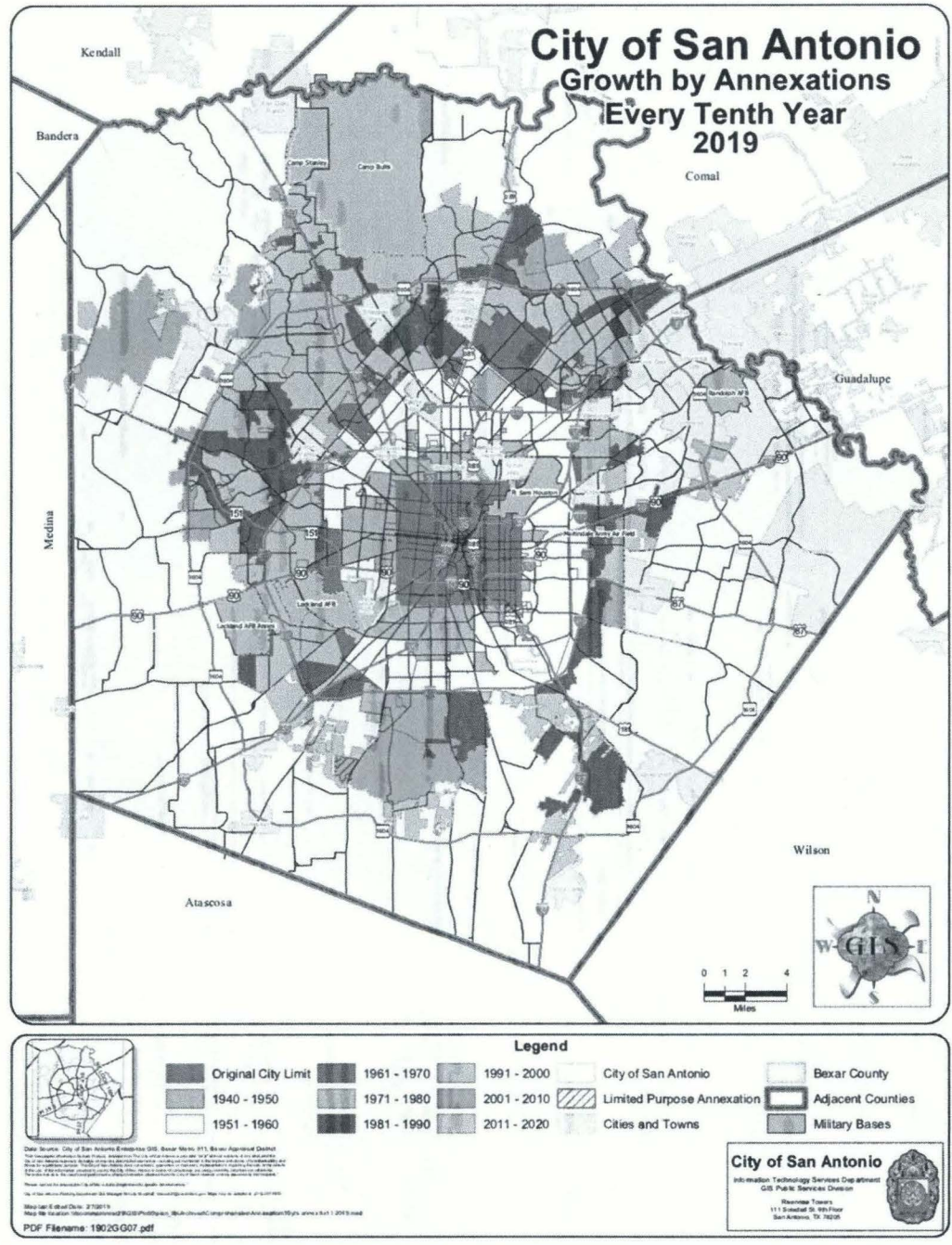


EXHIBIT 2
FORM OWNER CONTRACT

FORM PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (**PACE**) OWNER CONTRACT including the attached exhibits (**Owner Contract**) is made as of the _____ day of _____, _____ (**Effective Date**), by and between the City of San Antonio, Texas (**Local Government**), and _____ (**Property Owner**).

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 where an authorized representative of the local government may enter into written contracts with the record owners of privately owned property, including: commercial, industrial, or large multifamily residential (5 or more dwelling units) real property, so as to impose assessments on the property that will finance the cost of permanent improvements fixed to the property, which are intended to decrease water consumption, energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated _____, adopted by the City Council (**PACE Program**), and has designated Alamo Area Council of Governments, as the representative of Local Government (**Authorized Representative**) authorized to enter into the written contracts with the owners of such property and the providers of such financing described in this Contract, and has designated the entire territory within the City of San Antonio, Texas jurisdiction as a region (**the 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 owners’ property pursuant to the PACE Program.

C. Property Owner is/are the sole legal and record owner of the qualified real property, as defined in Section 399.002 of the PACE Act, within the Region located at _____, San Antonio, Texas ____ - ____ (the **Property**).

D. Pursuant to Application number _____, Property Owner has applied to participate in the Local Government PACE Program. **Qualified Improvements**, as defined in Section 399.002 of the PACE Act are installing or modifying certain permanent improvements which are or will be fixed to the Property, with the intention to decrease water consumption, energy consumption or demand for either. The installation or modification of such Qualified Improvements on the Property will be a qualified project, defined in Section 399.002 of the PACE Act (the **Project**). To repay the financing of these Qualified Improvements and pursuant to the PACE Act and the PACE Program, the Property Owner has requested that the Local Government enter into this Owner Contract, and that the 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, that will subsequently be filed in the real property records of Bexar, County, Texas (the **Notice of Contractual Assessment Lien**). A copy of the Notice of Contractual Assessment Lien is attached as Exhibit A and made a part of this Contract. The

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

E. Financing for the Project (**Financing**) will be provided to Property Owner by _____ (**Lender**), 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 (the **Lender Contract**). The financing will include only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. Local Government has agreed to maintain and continue the Assessment for the benefit of Lender until the Financing, all contractual interest due to Lender (**Contractual Interest**), any prepayment penalty, and any penalties, interest, fees, and costs due under or authorized by the PACE Act are paid in full and to release the Assessment upon notice from Lender of such payment, or to foreclose the lien securing the Assessment for the benefit of Lender upon notice from Lender of a default in payment by Property Owner.

F. As required by Section 399.010 of the PACE Act, Property Owner has notified the holder(s) of any mortgage liens on the Property at least 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 on or prior to the date of this Owner Contract and is attached as Exhibit B and made a part of this Contract.

AGREEMENT

The parties agree as follows:

1. 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 principal amount of \$_____, as set forth in the Notice of Contractual Assessment Lien. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien. The Assessment includes the application and administration fees authorized by the PACE Program and Section 399.006(e) of the PACE Act. Property Owner promises and agrees to pay the Assessment, Contractual Interest on, any prepayment penalty, and all penalties, interest, fees, and costs due under or authorized by the PACE Act and the financing documents executed between Property Owner and Lender (the **Financing Documents**) described in or copies of which are attached as Exhibit C and made a part of this Contract by reference. Property Owner will pay such amount in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to this Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to repay the Financing of the Project, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

2. 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, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, and costs, due under or authorized by the PACE Act and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner, in accordance with the provisions set forth in paragraph 5. Authorized Representative will deliver an annual notice of assessment to Property Owner by electronic mail each year until the Assessment is released. If requested by Property Owner by marking the box below, Local Government agrees to also deliver an annual notice of assessment to Property Owner by first-class mail in the envelope with the tax bill of the Property each year until the Assessment is released.

Property Owner requests an annual notice of assessment from Local Government.

Any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner will not affect the Assessment or Property Owner's obligations under this Owner Contract.

3. Installments. The Assessment and Contractual Interest are due and payable to Lender in installments (**Installments**), according to the payment schedule set forth in the Financing Documents attached as Exhibit C. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing, and (2) a recurring administration fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount will be collected by Lender and paid to Authorized Representative within 30 days of receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of a delinquency in the payment of any Installment, Lender will, upon notice to Authorized Representative, withhold payment of any administration fee due to Authorized Representative in connection with such Installment until the Installment is paid. Any such temporary withholding will not reduce the amount of the administration fees included in the Assessment. The amounts due to Authorized Representative are identified in Exhibit C. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, have been paid in full, Local Government's rights under this Owner Contract will cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative will execute a release of the Assessment and this Owner Contract and record the release. 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.

4. Assignment of Right to Receive Installments or Require Enforcement of Lien. Lender will have the right, with or without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with all corresponding obligations, provided all of the following conditions are met:

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

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed at least 30 days before the next Installment is due according to the payment schedule included in the Financing Documents, and

(c) The assignee or transferee executes a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under the Lender Contract related to the receipt of the Installments or the enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative within 10 days after execution of the agreement.

Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer that meets all of these conditions, the assignor will be released of all of the rights and obligations of the Lender under such Lender Contract accruing after the date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations will be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or require enforcement of the assessment lien that does not meet all of these conditions is void. Lender will retain all of the rights and obligations of Lender under the Lender Contract until such rights and obligations are assigned or transferred according to this paragraph.

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

(a) Delinquent Installments will incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, that is, a delinquent Installment incurs a penalty of 6% of the principal 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 principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment will also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the Installment remains unpaid. Subject to paragraph 16 below, penalties, interest, fees, and costs 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 that become due pursuant to the Financing Documents, may be imposed and retained by Lender.

(b) The Assessment and any interest or penalties thereon,

(1) are a first and prior lien against the Property from the date on

which the Notice of Contractual Assessment Lien is recorded in the real property records of Bexar County, Texas as provided by Section 399.013 of the PACE Act, until the Assessment, interest, or penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax.

(c) 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 will not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent installment 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 to Lender, Local Government, or Authorized Representative.

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment will be enforced by Local Government for the benefit of Lender, 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.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal 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 will 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.

(f) As provided in Section 399.014 (a-1) of the PACE Act, after the Notice of Contractual Assessment Lien is recorded in the real property records of the county where the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a qualified improvement or the project is not a qualified project, as such terms are defined in Section 399.002 of the PACE Act.

6. Written Contract Required by PACE Act. This Owner Contract constitutes a written contract for the Assessment between 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 real property records of Bexar County, Texas as public notice of the contractual Assessment, in accordance with the requirements of Section 399.013 of the PACE Act.

7. Qualified Improvements. Property Owner agrees that all improvements purchased, constructed, or installed through the Financing obtained pursuant to this Owner Contract will be permanently affixed to the Property and will transfer with the Property to the transferee in the event of a sale or transfer of the Property. Property Owner agrees to provide to Authorized

Representative within 30 days after the completion of the Project a verification by an independent third party reviewer (ITPR) that the project was properly completed and is operating as intended. Property Owner agrees that Lender may retain the final advance of Financing until such verification is submitted or require Property Owner to pay liquidated damages for a failure to do so, according to paragraph 19 below.

8. 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 Authorized Representative.

9. 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 in this Contract and not otherwise defined have the meanings ascribed to them in the PACE Program and/or the PACE Act.

10. Binding Effect. This Owner Contract is binding upon and inures to the benefit of the parties to this Contract and their respective heirs, representatives, successors, and assigns.

11. Notices. Unless otherwise specifically provided in this Contract, all notices and other communications required or permitted by this Owner Contract shall be in writing and delivered by first-class mail or by electronic mail, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

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

13. Entire Agreement. This Owner Contract constitutes the entire agreement between Local Government and Property Owner with respect to the subject matter of this Contract and may not be amended or altered in any manner except by a document in writing executed by both parties.

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

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

16. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the **usury limit**). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the usury limit, the interest payable to Local Government will be reduced and any interest in excess of the usury limit will be credited to the

amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this Owner Contract.

17. Costs. No provision 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 under this Contract.

18. 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.

19. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender will withhold _____% of the Financing until verification that the Project was properly completed and is operating as intended is provided to Authorized Representative by an Independent Third Party Reviewer (ITPR), or Property Owner will pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner within 30 days after completion of the Project, such verification shall be submitted by Lender. If the Lender Contract includes requirements related to the construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D attached to this Contract and incorporated in this Contract 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.

PROPERTY OWNER: _____

By: _____

Name: _____

Title: _____

Address: _____

E-mail: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF BEXAR §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was
was acknowledged before me on _____, _____ by
_____, _____, on behalf of
_____.

(Print name)

NOTARY PUBLIC, STATE OF TEXAS

LOCAL GOVERNMENT: CITY OF SAN ANTONIO, TEXAS

By: _____

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

By: _____

Name: _____

Title: _____

Address: _____

E-mail: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF BEXAR §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, 2020 by _____, _____, Alamo Area Council of Governments, on behalf of said corporation and as Authorized Representative for the Local Government.

(Print name)

NOTARY PUBLIC, STATE OF TEXAS

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 Frequency:

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

Financing Documents

Document Title	Parties	Date Executed

EXHIBIT D

CONSTRUCTION TERMS

Retainage or Liquidated Damages:

Lender will retain _____% of the Financing until a report of completion by a qualified Independent Third Party Reviewer (ITPR) is provided to Authorized Representative.

OR

Property Owner will pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender will then provide the report of completion to Authorized Representative.

Additional Construction Terms

Date	Draw down Amount	Purpose

EXHIBIT 3
FORM LENDER CONTRACT

FORM PACE LENDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (**PACE**) LENDER CONTRACT including the attached exhibits (**Lender Contract**) created this _____ day of _____, _____, (**Effective Date**) by and between the City of San Antonio, Texas (**Local Government**) and _____ (**Lender**).

RECITALS

A. Under the Texas Local Government Code Chapter 399, the Property Assessed Clean Energy Act (**PACE Act**), authorizes the governing body of a local government, here the City of San Antonio (**City**), to establish a program and designate a region within the local government's jurisdiction. An authorized representative of the City may enter into written contracts with the recorded property owners of privately owned commercial, industrial, and large multifamily residential (five or more dwelling units) real property, to imposing assessments on the property that will finance the cost of permanently affixed improvements intended to decrease water consumption, energy consumption or demand.

B. The City established a program under the PACE Act pursuant to a resolution dated _____, adopted by the City Council (**PACE Program**). In accordance with City Council adopted criteria regarding administration of the City's PACE program, the Alamo Area Council of Governments (AACOG) will act as the PACE program administrator (**Authorized Representative**). AACOG may authorize written contracts with property owners and providers of financing described in this contract, in areas within the jurisdiction of the City of San Antonio, Texas. AACOG 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 in territory known as a region (**the Region**).

C. Pursuant to Application number, _____, _____ (**Property Owner**), the sole legal and recorded property owner of the following qualified real property, as defined in Section 399.002 of the PACE Act, within the Region has/have applied to Local Government to participate in the PACE Program with respect to certain real property located at _____, San Antonio, Texas, _____-_____ (the **Property**) by installing or modifying the Property with certain permanent improvements intended to decrease water consumption, energy consumption or demand, and that are or will be fixed to the Property as qualified improvements, per Section 399.002 of the PACE Act (**Qualified Improvements**). The installation or modification of such Qualified Improvements on the Property will be a qualified project under Section 399.002 of the PACE Act (the **Project**).

D. Property Owner and the City entered into a written contract as required by Section 399.005 of the PACE Act, attached here as Exhibit A, and incorporated by reference (**Owner Contract**). The Property Owner requested that the City impose an assessment (**Assessment**) on the Property, as set out in the Notice of Contractual Assessment Lien, Pursuant To the Property Assessed Clean Energy Act, to be filed in the real property records of Bexar County, Texas (**Notice of Contractual Assessment Lien**), to repay financing of the Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached as Exhibit A to the Owner Contract and

incorporated by reference. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (**Financing**) will be provided to Property Owner by Lender in accordance with financing documents which are described in or copies of which are attached as Exhibit B and made a part of the Pace Lender contract (the **Financing Documents**). Such Financing will include only those costs and fees for which an assessment may be imposed under Section 399.006 (e) of 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 through the Assessment.

F. As required by Section 399.010 of the PACE Act, Property Owner has 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 on or 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:

1. Maintenance and Enforcement of Assessment. Lender agrees to provide Financing for the Project in the total principal amount of \$_____, according to the terms set out in the Financing Documents attached as Exhibit B. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien. 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 Assessment, all contractual interest due to Lender according to the Financing Documents (**Contractual Interest**), any prepayment penalty, and any penalties, interest, fees, or costs due under or authorized by the PACE Act and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government will not release, sell, assign or transfer the Assessment or the lien securing it without the prior written consent of Lender. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner in accordance with the provisions set forth in paragraph 6. Local Government shall have no obligation to repurchase the Assessment and no liability to Lender should there be a default in the payment or should there be any other loss or expense suffered by Lender or under any other circumstances.

2. Installments. The Assessment and Contractual Interest are due and payable to Lender in installments (**Installments**) according to the payment schedule set forth in the Financing Documents attached as Exhibit B. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing and (2) a recurring administration

fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount will be collected by Lender and paid to Authorized Representative within thirty (30) days of receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of delinquency in the payment of any Installment, Lender will, upon notice to Authorized Representative, withhold payment of any amounts due to Authorized Representative in connection with such Installment until the Installment is paid. Any such temporary withholding will not reduce the amount of administration fees included in the Assessment. The amounts due to Authorized Representative are identified in Exhibit B. 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.

3. Assignment of Right to Receive Installments or Require Enforcement of Lien. Lender will have the right, with or without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with the corresponding obligations, provided that all of the following conditions are met:

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

(1) Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;

(2) Any insurance company authorized to conduct business in one or more states;

(3) Any registered investment company, registered business development company, or a Small Business Administration small business investment company;

(4) Any publicly traded entity; or

(5) Any private entity that:

(i) Has a minimum net worth of \$5 million;

(ii) Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending;

(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

(6) A financially stable entity, whether or not from the list above, with the ability to carry out, either directly or through a servicer, the obligations of this Lender Contract related to the receipt and accounting of the Installments or the enforcement of the assessment lien.

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed at least 30 days before the next Installment is due according to the payment schedule included in the Financing Documents; and

(c) The assignee or transferee executes a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under this Lender Contract related to the receipt of the Installments or enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative within 10 days after execution of the agreement. Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer that meets all of these conditions, the assignor will be released of all of the rights and obligations of the Lender under this Lender Contract accruing after the date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations will be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or to require enforcement of the assessment lien that does not meet all of these conditions is void. Lender will retain all of the rights and obligations of Lender under this Lender Contract until such rights and obligations are assigned or transferred according to this paragraph.

4. Financing Responsibility. Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set forth in the Financing Documents and performing Lender's obligations and responsibilities under this Contract. In the event the assessment lien on the Property is enforced by foreclosure as provided below, Lender will have no further obligations to Property Owner with respect to the Installments that were the subject of the foreclosure, but Lender will retain the rights to enforcement of the lien for any Installments that are not eliminated by the foreclosure, and the succeeding owner of the Property will be subject to such lien.

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

(a) Delinquent Installments will incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, that is, a delinquent Installment incurs a penalty of 6% of the principal 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 principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment will also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the

Installment remains unpaid. Subject to paragraph 16 below, penalties, interest, fees, and costs 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 imposed and retained by Lender.

(b) The Assessment and any interest or penalties,

(1) are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is recorded in the real property records of Bexar County, Texas, as provided by Section 399.013 of the PACE Act, until the Assessment, interest, or penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax.

(c) 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 will not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent Installment 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 to Lender, Local Government or Authorized Representative.

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment will be enforced by Local Government for the benefit of Lender according to paragraph 6(c) below 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.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal 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 will 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.

(f) As provided in Section 399.014(a-1) of the PACE Act, after written notice of the Assessment is recorded in the real property records of the county where the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a qualified improvement or the project is not a qualified project, as such terms are defined in Section 399.002 of the PACE Act.

6. Servicing and Enforcement of Assessment.

(a) Servicing. The Installments and other amounts due under the Financing Documents will be billed, collected, received, and disbursed in accordance with the procedures set out in the Financing Documents. Lender or its designee will be responsible for all servicing duties other than those specifically undertaken by Local Government in this Lender Contract. Authorized Representative will deliver an annual notice of assessment to Property Owner by electronic mail each year until the Assessment is released. If requested by Property Owner in the Owner Contract, Local Government agrees to also send an annual notice of assessment to Property Owner by first class mail in the envelope with the tax bill of the Property each year until the Assessment is released. However, any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner will not affect the Assessment or Property Owner's obligations under the Owner Contract.

(b) Remittances. Each of the parties covenants and agrees to promptly remit to the other party any payments incorrectly received by such party with respect to the Assessment after the execution of this Lender Contract.

(c) Default and Enforcement. In the event of a default in payment of any Installment according to the Financing Documents, Lender agrees to take at least the following steps to collect the delinquent Installment:

(1) Mail a written notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first class mail; and

(2) Mail a second notice of delinquency to the Property Owner and the holder of any mortgage lien on the property 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.

The holder of any mortgage lien on the property will have not less than a 30-day right to cure the delinquency by paying the amount of the delinquent installment. If the Property Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, Lender or its designee may notify Authorized Representative in writing of a default in payment by Property Owner. Upon receipt of such notice and after doing its own due diligence, including delivering a notice of foreclosure to Freddie Mac not less than 30 days prior to the foreclosure if the mortgage lien is held by Freddie Mac, Authorized Representative will certify the default to Local Government, which will enforce the assessment lien for the benefit of Lender pursuant to Sec. 399.014(c) of the PACE Act, 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. However, if a case under the U.S. Bankruptcy Code is filed by or against Property Owner or if the enforcement of the assessment lien is prevented by the order of a court, Local Government will notify Authorized Representative and will file a proof of claim for the balance of the assessment, accrued interest and penalties, and all costs and expenses, including attorney's fees, as authorized by Section 399.014 of the PACE Act. Authorized Representative will notify

Lender of the filing of the proof of claim. Lender will not be required to mail a notice of delinquency to Property Owner or a notice of default to Local Government. Lender will reimburse Local Government for any costs and expenses, including attorney's fees, required to file and present the claim.

(d) Priority. If the assessment lien is enforced by foreclosure or collected through a bankruptcy or similar proceeding, the assessment balance and any interest or penalties on the assessment will have the same priority status as a lien for any other ad valorem tax, pursuant to Sec. 399.014(a)(2) of the PACE Act.

(e) Final Payment and Release. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, or costs due under or authorized by the PACE Act or the Financing Documents have been paid in full, Local Government's rights under the Owner Contract will cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative will execute a release of the Assessment and the Owner Contract and record the release.

(f) 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 or Authorized Representative 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.

(g) 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.

(h) 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 under this Contract.

7. 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:

(a) 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;

(b) Lender has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the Owner Contract, the Project, and

Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and

(c) Lender has not relied upon any investigation or analysis conducted by, advice or communication from, or any warranty or representation by Local Government, Authorized Representative, or any agent or employee of Local Government, express or implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.

8. Written Contract Required by the PACE Act. This Lender Contract constitutes a written contract between Local Government and Lender, as required under Section 399.006 (c) of the PACE Act.

9. Construction and Definitions. This 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 have the meanings ascribed to them in the PACE Program, and/or the PACE Act.

10. Binding Effect. This Lender Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

11. Notices. Unless otherwise specifically provided, all notices and other communications required or permitted under this Contract shall be in writing and delivered by first-class mail or by electronic mail, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

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

13. Entire Agreement. This Lender Contract constitutes the entire agreement between Local Government and Lender with respect to the subject matter and shall not be amended or altered in any manner except by a document in writing executed by both parties.

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

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

16. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the **usury limit**). If the total amount of interest payable to Local Government and

Contractual Interest payable to Lender exceeds the usury limit, interest payable to Local Government will be reduced and any interest in excess of the usury limit will be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this Lender Contract.

17. 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.

18. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender will withhold _____% of the Financing until verification that the Project was properly completed and is operating as intended is provided to Authorized Representative by an Independent Third Party Reviewer (ITPR), or Property Owner will pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner within 30 days after completion of the Project, such verification shall be submitted by Lender. If this Lender Contract includes any additional requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit C attached here and incorporated 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.

LENDER: _____

By: _____

Name: _____

Title: _____

Address: _____

E-mail: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF BEXAR §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, _____ by _____, _____, on behalf of _____.

(Print name)

NOTARY PUBLIC, STATE OF TEXAS

LOCAL GOVERNMENT: CITY OF SAN ANTONIO, TEXAS

By: _____

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

By: _____

Name: _____

Title: _____

Address: _____

E-mail: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF BEXAR §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on _____, 2020 by _____, _____, _____, a Texas _____, on behalf of said corporation and as Authorized Representative for the Local Government.

(Print name)

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A

OWNER CONTRACT

EXHIBIT B

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Frequency:

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

Financing Documents

Document Title	Parties	Date Executed

EXHIBIT C

CONSTRUCTION TERMS

Retainage or Liquidated Damages:

Lender will retain _____% of the Financing until a report of completion by a qualified Independent Third Party Reviewer (ITPR) is provided to Authorized Representative.

OR

Property Owner will pay liquidated damages to Lender of \$_____ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender will then provide the report of completion to Authorized Representative.

Date	Draw down Amount	Purpose

EXHIBIT 4

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

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

STATE OF TEXAS §
 §
CITY OF SAN ANTONIO §

RECITALS

A. Under the Texas Local Government Code Chapter 399, the Property Assessed Clean Energy Act (**PACE Act**), authorizes the governing body of a **Local Government**, here the City of San Antonio, Texas (**City**), to establish a program and designate a region within the City's jurisdiction. An authorized representative of the City may enter into written contracts with the recorded property owners of privately owned commercial, industrial, and large multifamily residential (five or more dwelling units) real property, imposing assessments on the property that will finance the cost of permanently affixed improvements that are intended to decrease water consumption, energy consumption and or demand. Unless otherwise expressly provided herein, all terms used in this document have the same meanings ascribed to them in the PACE Act.

B. The City established a program under the PACE Act (**PACE Program**) pursuant to a resolution dated _____, and adopted by the City Council. In accordance with City Council's adopted criteria, Alamo Area Council of Governments (AACOG) shall administrate the City's PACE program (**Authorized Representative**). AACOG will authorize contracts as well as enforce written contracts with property owners and providers of financing in areas within the jurisdiction of the City. AACOG may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owners' property pursuant to the PACE Program in territory know as a **Region**.

C. _____ (**Property Owner**) is/are the sole legal and record owner of the qualified real property, as defined in Section 399.002 of the PACE Act, within the Region located at _____, San Antonio, Texas _____-_____ and more fully described in Exhibit A attached hereto and made a part hereof (the **Property**).

D. Property Owner applied to participate in the PACE Program, agreeing to install and or modify the Property with permanent improvements described in Exhibit B (attached to and incorporated by reference to this document). The intent behind installing and or modifying the Property with permanent improvements is to decrease water and or energy consumption and or demand on the Property, which are or will be affixed to the Property as **Qualified Improvements**, as defined in Section 399.002 of the PACE Act. The installation and or modification of such Qualified Improvements on the Property will be classified as a qualified **Project**, defined in Section 399.002 of the PACE Act. Property Owner has entered into a written contract (**Owner Contract**) with the City pursuant to the PACE Act and PACE Program, and has requested the City impose an assessment on the Property to repay the financing for the Qualified Improvements.

E. The financing for the Qualified Improvements is provided to Property Owner by _____ (**Lender**), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and the City as required by Section 399.006(c) of the PACE Act (**Lender Contract**). Lender is responsible for all servicing duties other than those specifically undertaken by the City in the Lender Contract.

THEREFORE, the City 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 principal amount of \$_____ (**Assessment**). The Assessment includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. In the event that the actual total of costs and fees for which an assessment may be imposed is different from the amount stated or any other term requires correction, the City, Property Owner, and Lender will execute an amended Owner Contract, an amended Lender Contract, and the Authorized Representative will record an amended Notice of Contractual Assessment Lien.

The Assessment and contractual interest thereon due to the Lender (**Contractual Interest**) are due and payable in installments (**Installments**) in accordance with the terms and payment schedule included in the financing documents executed between Property Owner and Lender attached here as Exhibit C (**Financing Documents**) and incorporated by reference.

Pursuant to Section 399.014 of the PACE Act,

The Assessment and any interest or penalties thereon,

- (i) are a first and prior lien against the Property from the date when this Notice of Contractual Assessment Lien is recorded in the real property records of Bexar County, Texas, until the Assessment, interest, or penalty is paid; and
- (ii) such lien has the same priority status as a lien for any other ad valorem tax.

2. 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 will not be eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for a delinquent Installment 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 to Local Government, or Authorized Representative.

As provided in Section 399.014(a-1) of the PACE Act, after this Notice of Contractual Assessment Lien is recorded in the real property records of the county where the Property is located, 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: CITY OF SAN ANTONIO, TEXAS

By: _____

AUTHORIZED REPRESENTATIVE

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

By: _____

Name: _____

Title: _____

Address: _____

E-mail: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF BEXAR §

This Notice of Contractual Assessment Lien, Pursuant to the Property Assessed Clean Energy Act, was acknowledged before me on _____, 2020 by

_____, _____, _____, a

Texas _____, on behalf of said corporation and as Authorized Representative for the Local Government.

_____ (Print name)

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B

QUALIFIED IMPROVEMENTS

EXHIBIT C

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Frequency:

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

Financing Documents

Document Title	Parties	Date Executed

INDEXING INSTRUCTION:

Grantor: _____, Property Owner

Grantees: City of San Antonio, Texas, Local Government

_____, Lender

After recording, return to- _____

