

PACE INTERLOCAL AGREEMENT

FILED
AT 12:30 O'CLOCK P.M.
NOV 23 2016
ARTURO GUAJARDO, JR., COUNTY CLERK
HIDALGO COUNTY, TEXAS
DEPUTY

THIS First Amended Interlocal Cooperation Agreement, hereinafter referred to as "Agreement" is made on this the 15th day of November, 2016, by and between THE LOWER RIO GRANDE VALLEY DEVELOPMENT COUNCIL (LRGVDC), hereinafter referred to as "LRGVDC", and the COUNTY OF HIDALGO, TEXAS, hereinafter referred to as "County", pursuant to the authority granted and in compliance with the provisions of the Texas Interlocal Cooperation Act, (the "Act") Chapter 791, Texas Government Code, as follows:

WITNESSETH:

WHEREAS, the LRGVDC is a regional Planning Commission and political subdivision of the State of Texas and the County is defined as a local government and a political subdivision of the State of Texas under the Act; and

WHEREAS, the County is a "local government" as defined by the Act, and a political subdivision of the State of Texas; and

WHEREAS, the LRGVDC and the County are authorized to enter into this agreement pursuant to the Act, which authorizes local governmental agencies to contract with political subdivisions of the State to perform governmental functions and services under the terms of the Act; and

WHEREAS, both the LRGVDC and the County share a common interest in administering services in order to help create and/or retain jobs and to assist in the growth and stability of the business sector in Hidalgo County; and

WHEREAS, the County has established a Property Assessed Clean Energy (PACE) Program for Hidalgo County through which businesses in Hidalgo County will be able to take advantage of low-cost, long-term loans for 100% of the cost of energy-efficiency and water conservation improvements; and

WHEREAS, the LRGVDC recognizes the economic benefits the Hidalgo County PACE Program will provide to Hidalgo County and desires to provide support for the administration thereof;

NOW, THEREFORE, County and LRGVDC, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, as authorized by section 399.008 (d)(2) of the Local Government Code, County and LRGVDC agree as follows:

1. **Services Performed by the LRGVDC:** LRGVDC will provide the following administrative services for the benefit of the Hidalgo County PACE Program:

COMMUNITY OUTREACH:

- Establish a PACE Program website and database;

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

APPLICATION AND APPROVAL PROCESS:

- Coordinate contract(s) between the County and third party financing (hereinafter referred to as "Lender(s)") regarding the servicing of the debt through assessments, and the collection of assessments.
- Publish a Project Application Form based on PACE-in-a-Box model application form on the PACE Program website;
- Review submitted Application forms for administrative completeness and notifies the applicants of any missing information;
- Maintain the confidentiality of owner information;
- When Applications are complete, make a preliminary determination of eligibility for participation in the Pace Program and issue preliminary letters to owners and Lenders indicating whether, subject to verification of all Lenders underwriting and closing requirements, the information submitted indicates that the proposed project meets PACE Program requirements;
- Require independent third-party verification of expected energy or water savings resulting from a project (provided by engineer or consultant retained by applicant), according to the PACE-in-a-Box Technical Standards Manual;
- Require independent third-party verification, according to the PACE-in-a-Box Technical Services Manual, that the period of an assessment does not exceed the

expected life of the improvements or thoroughly review waiver application and justification (provided by engineer or consultant retained by applicant);

- Confirm that the Lender has determined, based on underwriting factors established by the Lender, that the owner has demonstrated the financial ability to repay the financial obligations to be repaid through assessment
- Require the owner to notify the holder of any mortgage lien on the property of the owner's intention to participate in the Program and obtain the lien holder's written consent prior to the imposition of the PACE assessment;
- Review and finalize the terms of every Owner Contract and Lender Contract prior to execution;
- Collect and retain owner application fees as compensation for administrative services;
- Perform closing verification reviews and schedule assessment transaction closings when all requirements are met;
- Coordinate and take part in assessment transaction closings;
- Arrange for recording of a Notice of Contractual Assessment Lien for each approved project in the Official Public Records of the county where the project is located;
- Require independent post-closing third-party verification (by engineer or consultant retained by Applicant) that each project was properly completed and is operating as intended; and
- Collect and retain administration fees collected by Lenders from owners that receive PACE financing.

MANAGEMENT AND REPORTING:

- Manage communications with Lenders regarding assessment servicing, payment, and default;
- Upon notification by a Lender of an owner's default in payment of an assessment and the Lender's compliance with the requirements of the Lender Contract on collection after default, notify the Local Government to enforce the assessment lien in accordance with law and the agreements between the parties;
- Receive and store owner reports on energy and water savings;
- At the request of property owners, prepare annual notices of assessment to be issued by Hidalgo County to the owners, stating the total amount of the payments due on each

assessment in the coming calendar year according to the owner contract and the financing documents;

- Determine the amounts of the application and administration fees to be paid by owners;
- Report annually to County on PACE Program usage and the resulting energy and water savings enabled through PACE Assessments.

2. **County Responsibilities.**

County may contract to enforce an assessment lien in the same manner that a property tax lien against real property may be enforced by the County, as authorized by section 399.014(c) of the Texas Local Government Code.

County will keep all penalties related to PACE loans as collected through its property tax enforcement procedures.

3. **Payment for Services.** County will not pay for services provided by LRGVDC as discussed in this Agreement.

LRGVDC will impose fees to PACE program applicants. These fees shall be used to offset the costs of administering the program. The applications fees to be assessed will include:

- Property owners interested in participating in the PACE Program will pay a \$500 Application Fee when an application is filed. No refunds will be available.
- A program application fee of 1% will then be paid by eligible property owners requesting to participate in the PACE Loan program. The application fee (listed above) will be included and credited in the full loan application process. Program application and administrative fees may be included in the total amount financed through the assessments.
- The Texas Pace Authority will be responsible for all of the loan servicing.

4. **Confidentiality.** During the processing of the loan and/or services to be provided under this agreement, the LRGVDC will treat as confidential the information or knowledge that becomes known during the application process as confidential and shall disclose it only to its officers, directors, or employees with a specific need to know the confidential information. It will not release, use, copy, or disclose such information and agrees not to share it with any third party or individual except with the specific prior written authorization of the loan applicant. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. The LRGVDC shall promptly notify County of any misuse or unauthorized disclosure of its confidential information. This Program will comply with all security policies that may apply.

5. **Term of Agreement.** This contract shall begin upon execution of this agreement.
6. **Termination.** Either party shall have the right to terminate this Agreement with or without cause upon sixty (60) days written notice.
7. **Amendment.** Amendments to this Agreement shall be in writing and signed upon final approval by both Parties.
8. **Indemnification.** To the extent permitted by the Texas Constitution and Texas State Laws, each party shall indemnify and hold the other party, its affiliated entities, and its respective directors, officers, employees, agents, and representatives, harmless from and against any claims liabilities, damages and expenses arising out of the indemnifying party's act or omissions, or the acts omissions of the indemnifying party's employees, students, facility, staff, agents or representatives, under this Agreement excluding claims, liabilities, damages, expenses resulting from the negligence or willful misconduct of the other party, its employees, staff, agents or representatives.
9. **Conflict of Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between and provision of this Agreement and any present or future law, ordinance, or administrative, executive, or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.
10. **No waiver.** No waiver by any party hereto of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.
11. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by County and LRGVDC, and not otherwise.
12. **TEXAS LAW TO APPLY.** THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS. THE PARTIES HEREBY CONSENT TO PERSONAL JURISDICTION IN HIDALGO COUNTY, TEXAS.
13. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at

the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

LRGVDC: LRGVDC Economic Development Department
c/o Terrie G. Salinas
301 W. Railroad Street
Weslaco, TX 78596

County: Hidalgo County Judge's Office
c/o Economic Development Director
100 E. Cano, Ste 201
Edinburg, TX 78539

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

14. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.
15. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.
16. **Assignment.** This Agreement shall not be assignable.
17. **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.
18. **Governmental Purpose.** Each party hereto is entering into this Agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.
19. **No Waiver of Governmental Immunity.** Neither County nor LRGVDC, via this Agreement, waive governmental immunity from suit, or from liability, except as expressly set forth by the Texas Legislature in the Texas Government Code. The fact that County and LRGVDC have entered into this agreement shall not in any way, constitute a deliberate waiver of immunity by either entity, which immunities are expressly reserved by both parties.
20. **Authorization.** This Agreement is entered into by the duly authorized officials of each respective party.

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

WITNESS THE HANDS OF THE PARTIES and effective as of the day and year first written above.

County of Hidalgo, Texas

**Lower Rio Grande Valley
Development Council**

By: Ramon Garcia
Ramon Garcia
Hidalgo County Judge

By: _____
Ron Garza
Executive Director

Date: _____

Date: _____

ATTEST

Arturo Guajardo, Jr.
Arturo Guajardo, Jr.
Hidalgo County - County Clerk



APPROVED BY
COMMISSIONERS' COURT
ON: 11/15/16