

## PROPOSED TRAVIS COUNTY PACE PROGRAM:

### REPORT REQUIRED BY TEX. LOCAL GOV'T CODE SEC. 399.009

This report is adopted by the Travis County Commissioners Court for the proposed Travis County Property Assessed Clean Energy (“Travis County PACE”) program (the “Program”), as required by Tex. Local Gov’t Code Sec. 399.009.

Travis County and its constituents benefit when privately owned commercial and industrial property and large multi-family residential property<sup>1</sup>, is retrofitted with equipment that reduces demand for electric power<sup>2</sup> and water.<sup>3</sup> To encourage private sector investment in water and energy conservation in Travis County, the creation of a voluntary program that requires no use of taxpayer funds or risk to the local treasury is being proposed.

The Travis County PACE program is an innovative financing program that enables owners of privately owned commercial and industrial properties and large multi-family residential property to obtain low-cost, long-term loans for water conservation, energy-efficiency improvements, and renewable retrofits.

Passed and signed into Texas state law during the 2013 legislative session, the PACE statute, SB 385 (now Tex. Local Gov’t Code Chap. 399), authorizes municipalities and counties in Texas to work with private sector lenders and property owners to finance qualified improvements using contractual assessments voluntarily imposed on the property by the owner.

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<sup>1</sup> The PACE statute may be used for residential properties with 5 or more dwelling units.

<sup>2</sup> 43% of Travis County (by area) is served by Austin Energy electric utility. Over 96% of Austin Energy’s service territory is within Travis County, with less than 4% in Williamson County and much less than 1% in Hays County (Source: <https://austinenergy.com/wps/portal/ae/about/company-profile/electric-system/service-area-map>). The City of Austin’s Climate Protection Plan sets forth goals for Austin Energy to promote energy efficiency and demand side management in the community. Offering PACE financing to building owners in Austin Energy’s service territory will add another tool to Austin Energy’s toolkit for incentivizing energy efficiency and demand side management. It will also complement the rebates Austin Energy currently offers to customers to reduce first-cost barriers. In addition to the environmental benefits (such as reduced carbon emissions) and the increased comfort of building tenants, these efforts help the entire Austin community save money by reducing the need to build costly new energy plants or buy electricity from the market at peak times.

<sup>3</sup> The majority of Travis County residents receive their water from the Highland Lakes in the Colorado River, via the City of Austin’s Water Utility Department. Long before the current drought began gripping the Central Texas region, the Austin Water Utility has had a strong water conservation program to extend our precious water supply and manage it as wisely as possible: <http://www.austintexas.gov/department/water-conservation>. A Travis County PACE program would be an excellent addition to the current options for financing water efficient retrofits. In addition to providing drinking water, the Austin Water Utility also provides high quality reclaimed water for many non-potable uses such as landscape watering, cooling towers, toilet flushing, and other purposes. Austin is actively expanding this infrastructure (mains and tanks) to make this alternative water supply available to more customers, at lower rates than those charged for potable water <http://www.austintexas.gov/department/water-reclamation>. PACE financing could be used to install the required “purple pipe” on the customer’s property, in order to connect to this sustainable and cost effective water source while reducing demands on our freshwater supply.

The term of an assessment may extend up to the projected life of the improvement, which can result in utility cost savings that exceed the amount of the assessment payment. As a result, improvements financed through a PACE program may generate positive cash flow upon completion without up-front, out-of-pocket cost to the property owner.

PACE enables property owners to overcome market barriers, such as lack of access to capital and the extended time period it takes for utility savings to pay back the cost of a retrofit, which discourage investment in energy efficiency and water conservation improvements. PACE provides the property owner with upfront financing for up to 100% of the cost of a qualified improvement and allows the property owner to amortize the debt over the useful life of the improvement.

If a property is sold before the full amount of the PACE loan is repaid, the remaining repayment obligation automatically transfers to the next owner because the lien securing the PACE assessment follows the title to the property without recourse for subsequent payments on the previous owner, the lender, the County, or the Program Administrator.

#### *What are the Benefits of PACE?*

The benefits of PACE are multi-faceted, leading to a win-win-win scenario for virtually all stakeholders. Improvements financed with PACE loans will enable commercial, industrial, agricultural, and large multifamily properties to achieve greater energy efficiency and conserve Texas's water resources.

Among other things, these improvements will:

- Save substantial amounts in utility costs;
- Promote local job creation;
- Reduce demand on the energy grid;
- Support the state's water plan;
- Enhance the value and efficiency of existing buildings, enabling some buildings to become LEED certified;
- Reduce greenhouse gas emissions;
- Mitigate split incentive issues between landlords and tenants related to investments in energy efficiency and water conservation improvements; and
- Establish significant business opportunities for engineers, energy and water conservation consultants, construction contractors, commercial lenders, and investors.

PACE is tax neutral and does not impose a burden on the local government's general fund. In the aggregate, PACE improvements will promote long-term economic development in Texas by helping the state obtain energy and water security.

#### *Who Can Participate in PACE?*

PACE is a voluntary program. Any owner of commercial, industrial, agricultural, or residential real property with five or more dwelling units located in Travis County will be eligible to participate in PACE financing. But PACE financing will not be available for facilities for undeveloped lots or lots undergoing development at the time of the assessment, products or devices not permanently fixed to real property, or undeveloped land in Travis County.

### *What Types of Improvements Qualify for PACE Financing?*

PACE financing may be used to pay for permanent improvements to privately owned commercial, industrial, agricultural, or large multi-family real property that are 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.

Typical examples of qualified improvements include:

- HVAC upgrades;
- High efficiency chillers, boilers, and furnaces;
- High efficiency water heating systems;
- Energy management systems and controls;
- Renewable energy systems; Mechanical system modernization;
- High efficiency lighting upgrades;
- Building enclosure/envelope improvements;
- Water conservation systems;
- Combustion and burner upgrades;
- Fuel switching;
- Heat recovery and steam traps;
- Wastewater recovery and reuse systems;
- Systems to capture and use alternate, on-site sources of water (A/C condensate, rainwater, reverse osmosis reject water, foundation drain water, etc.);
- On-site improvements to accommodate the use of municipally reclaimed water;
- Water management systems and controls (indoor and outdoor);
- Switching from water cooled systems to air or geothermal cooled systems; and
- High efficiency irrigation equipment

### *Who will Administer the Program?*

Travis County will contract with a qualified non-profit organization to be the third-party Program Administrator.

### *The Benefits of PACE to Property Owners*

PACE assessments enable property owners to overcome traditional barriers to capital investments in commercial, industrial, or multi-family real property. Until making capital investments to modernize real property infrastructure makes sense as a value proposition, property owners will continue to kick the problem of deferred maintenance down the road, waste operating expenditures on utility bills, and risk exposure to utility price increases. Owners who use PACE financing can instead capitalize the money previously spent on utilities; the utility cost savings achieved by a retrofit can help to pay for the retrofit itself. Property owners end up with more valuable property and access to recurring utility savings and pay only for the assessment installments that are due while they own the property.

### *The Benefits of PACE to Travis County*

By creating new investment opportunities, PACE will stimulate employment growth and economic development in Travis County. Improvements financed through PACE will reduce energy and water

consumption, thereby helping the Austin Water Utility, Austin Energy, other utility providers and their customers achieve critical energy and water conservation goals. For communities facing potential non-attainment levels under the Clean Air Act, PACE provides a very real opportunity to dramatically reduce building energy consumption and the emissions associated with energy generation. PACE programs will also improve the quality of the County's commercial and industrial building stock. The benefits of PACE for Travis County are magnified by the fact that PACE programs can be established with minimal support from the local government and, once established, can be self-sustaining.

#### *The Benefits of PACE to Lenders*

Simply put, PACE loans are attractive to lenders because they are very secure investments. Like a property tax lien, the assessment lien securing the PACE loan has priority over other liens on the property. Therefore, the risk of loss from non-payment of a PACE loan is low compared to most other types of loans. PACE assessments provide lenders with an attractive new product to assist existing and new customers in addressing an almost universal pent-up demand for needed commercial and industrial property equipment modernization. In order to protect the interests of holders of existing mortgage loans on the property, the PACE Act requires their prior written consent as a condition to participation in the PACE program.

#### *The Benefits of PACE to Contractors, Engineers, Consultants, and Manufacturers*

PACE loans provide attractive sources of financing for water and energy saving retrofits and upgrades, thereby encouraging property owners to make substantial investments in existing commercial and industrial buildings. As a result, PACE will open business opportunities for contractors, engineers, consultants, and manufacturers throughout the commercial and industrial sectors in Travis County.

### COMPONENTS OF THE PROGRAM

1. Map of Region. A map of the boundaries of the proposed region to be included in the Program is attached to this report as Exhibit 1. The region encompasses the entire territorial jurisdiction of Travis County.

2. Form Contract With Owner. A proposed form contract between Travis County and the record owner of qualified real property, specifying the terms of the assessment under the Program and the financing to be provided by a qualified third-party lender of the property owner's choosing, is attached to this report as Exhibit 2.

3. Form Contract with Lender. A proposed form contract between Travis County and a qualified third-party lender chosen by a property owner regarding providing the financing and servicing of the debt through assessments is attached to this report as Exhibit 3. Eligible third-party lenders may include:

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 Administration small business investment company;

Any publicly traded entity; or

Any private entity that:

- o Has a minimum net worth of \$5 million;

- 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;
- Can provide independent certification as to availability of funds; and
- Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

Any eligible lender can participate in the PACE program. Nothing in this section is intended to prohibit a property owner from identifying and selecting its own source of funding, whether or not from the eligible list, so long as the lender is a financially stable entity with the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

4. Qualified Projects. The following types of projects are qualified projects that may be subject to contractual assessments under the Program, as provided in the PACE Act, Tex. Local Gov't. Code Chapter 399:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial or industrial real property or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature. An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property.

Improvements that are not permanently fixed to real property and can be easily removed are not eligible for financing through the Program. Improvements to undeveloped land in Travis County are ineligible.

5. Authorized County Official. The Travis County official who will be authorized under the Program to enter into written contracts on behalf of Travis County with property owners and lenders is Bruce Elfant, Travis County Tax Assessor-Collector, or his successor or designee.

6. Plans for Insuring Sufficient Capital. Sufficient capital for third-party financing of qualified projects will be provided by third party capital providers. Such financing will be repaid by collections from property owners through financing documents executed between the owners and the lenders, enabling those capital providers to fund additional qualified projects. The Program Administrator's website will offer a list of interested qualified capital providers to assist property owners interested in funding PACE projects. The lenders will ensure that property owners requesting to participate in the PACE program demonstrate the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

7. No Use of Bonds or Public Funds. Travis County does not at this time intend to use bonds or other public funds to capitalize PACE projects. All financing will be provided to property owners by qualified lenders chosen by the property owners.

8. Application Process. The Program Administrator will accept written applications from property owners seeking to finance qualified projects to be repaid through contractual assessments under the Program. Each application must be accompanied by the required application fee and must include (1) a description of the specific qualified improvements to be installed or modified on the property, (2) a

description of the specific real property to which the qualified improvements will be permanently fixed, and (3) the total amount of financing to be repaid through assessments. Based on this information, the Program Administrator may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the proposed project appears to meet Program requirements. Based on this preliminary letter, the property owner may engage an independent third party review of the project under the PACE Technical Standards Manual and submit the project to third party capital providers for approval of financing. Once these processes are completed, the property owner may submit all of the required information to the Program Administrator as part of the closing verification review, including (1) the report conducted by a qualified independent third party of water or energy baseline conditions and the projected water or energy savings 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 Program Administrator.

9. Eligibility Requirements. The Program Administrator will determine from the written application of a property owner and such other information as may be requested from the owner or obtained from other sources whether the owner and the property are eligible for the financing of qualified improvements under the Program. The Program Administrator will determine on the basis of the report of a qualified independent third party reviewer whether the proposed improvements are reasonably likely to decrease energy or water consumption or demand and whether the period of the requested assessment does not exceed the useful life of the project. The lender chosen by the owner will determine whether the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments. The statutory method for ensuring such a demonstration of financial ability must be based on appropriate underwriting factors, including verification that the person requesting to participate in the program is the legal record owner of the benefitted property, is current on mortgage and property tax payments, and is not insolvent or in bankruptcy proceedings, that the title of the benefitted property is not in dispute, and that there is an appropriate ratio of the amount of the assessment to the assessed value of the property.

10. Mortgage Holder Notice and Consent. Before the Authorized County Official may enter into a written contract with the owner of real property to impose an assessment to repay the financing of a qualified project under the Program, the holder of any mortgage lien on the property must be given notice of the owner's intention to participate in the Program on or before the 30<sup>th</sup> day before the date the contract is executed and the written consent of the mortgage holder must be obtained by the owner.

11. Imposition of Assessment. Upon (a) notification to the Program Administrator of the written consent of any mortgage lien holder, (b) a determination by the Program Administrator 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 project, and (c) notification to the Program Administrator by the lender that the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments, the Authorized County Official will enter into a written contract with the owner on the form attached hereto as Exhibit 2, imposing a contractual assessment on the owner's property to repay the owner's financing of the qualified project. A Notice of Contractual Assessment Lien, in the form attached hereto as Exhibit 4, will be filed for recording in the Official Public Records of Travis County 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.

12. Collection of Assessments. Upon the execution of the written contract between the Authorized County Official and the property owner and recording of the Notice of Contractual Assessment Lien, the owner will be authorized to 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; and the owner will be authorized to execute financing documents with the lender to repay the financing secured by the assessment. The financing will be advanced by the third-party lender 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 hereto as Exhibit 3, the lender or a designated servicer will agree to service the debt secured by the assessment. The lender will retain the owner's payments to repay the debt and remit to the Program Administrator any administration fees. The lender will have the right to assign or transfer the right to receive the installments of the debt secured by the assessment, provided all of the following conditions are met:

- (a) The assignment or transfer is made to a qualified lender, as defined above; and
- (b) The property owner, Program Administrator, and Travis County 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 schedule for repayment of the debt; and
- (c) The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of lender's obligations under the lender contract.

13. Verification Review. After a qualified project is completed, the Program Administrator will require the property owner to provide verification by a qualified independent third party reviewer (ITPR) that the qualified project was properly completed and is operating as intended.

14. Marketing and Education Services. Marketing and participant education services for the Program will be provided under agreements that Travis County may subsequently enter into with the City of Austin or one or more other local governments or non-profit organizations that promote energy and water conservation or economic development.

15. Quality Assurance and Antifraud Measures. Quality assurance and antifraud measures will be instituted for the Program by the Program Administrator. The Program Administrator will review each PACE application for completeness and verify the supporting documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the property owner, the property itself, and the proposed project all satisfy Program underwriting and technical standards requirements. The property owner or the owner's contractor will be required to provide copies of all required permits and releases of lien and a statement that the project was constructed in accordance with the PACE Program guidelines and has complied with all applicable local, state, and federal laws. Measures will be put in place to provide safeguards, including a review of the energy/water savings baseline and certification of compliance with the Technical Standards Manual from an independent third party reviewer (ITPR) who must be a registered professional engineer, before the project can proceed. This review will include a site visit, report, and a letter from the ITPR certifying that he/she has no financial interest in the project and is an independent reviewer. After the construction of the project is complete, there will be a final site inspection by an ITPR who will determine whether the project was completed and is operating properly. The reviewer's certification will also include a statement that the reviewer/inspector is qualified and has no financial interest in the project.

16. Delinquency. Under the terms of the form lender contract attached hereto as Exhibit 3, if a property owner fails to pay an agreed installment to repay the financing secured by PACE assessments under the program, the lender will agree to take at least the following steps to collect the delinquent installment:

- (a) Mail a written notice of delinquency and demand for payment to the owner by both certified mail, return receipt requested, and first class mail and
- (b) Mail a second notice of delinquency to the owner 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.

If the owner fails to cure the delinquency under the promissory note or contract within 30 days after the mailing of the second notice of delinquency, the lender may notify the Authorized County Official of a default by the owner, and pursuant to Tex. Local Gov't Code Sec. 399.014(c), the Authorized County Official will enforce the assessment lien 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. Delinquent installments will incur penalties and interest in the same manner and at the same rate as delinquent property taxes, according to Tex. Local Gov't Code Sec. 399.014(d), and such statutory penalties and interest will be due to Travis County to offset the cost of collection. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Travis County 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 Travis County and Lender exceeds the usury limit, the interest payable to Travis County will be reduced and any interest in excess of the usury limit will be credited to the amount payable to Travis County or refunded. If a suit to enforce collection is filed, the Authorized County Official may also recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner and at the same rate as in suit to collect a delinquent property tax. If a delinquent installment of an assessment is collected after the filing of a suit, the Authorized County Official will remit to the lender the net amount of the delinquent installments and contractual interest collected and remit to the Project Administrator the amount of any administration fees collected and will retain any statutory penalties, interest, and attorney's fees collected.

**EXHIBIT 1**

**MAP OF TRAVIS COUNTY**

**EXHIBIT 2**  
**FORM OWNER CONTRACT**

**EXHIBIT 3**  
**FORM LENDER CONTRACT**

**EXHIBIT 4**

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