

**REPORT REQUIRED BY TEXAS LOCAL GOVERNMENT CODE SECTION 399.009**

**FOR PROPOSED CITY OF CAMERON**

**PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM**

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

The City of Cameron and its constituents benefit when older existing buildings are modified with new technology and equipment that increases energy efficiency and reduces water consumption. As described in this Report, the City is establishing the commercial PACE Program to encourage 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 enacted in 2013, the PACE program is an innovative financing program that enables private sector owners of commercial, industrial, and multi-family residential properties with 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 provide up to 100% financing of all project costs, with little or no up-front out-of-pocket cost to the owner. The City has chosen to follow the administrative principles, program processes, and model documents of the uniform Texas “PACE in a Box” model program.<sup>1</sup>

Loans made under the PACE Program by independent lenders are secured by assessments on the property that are voluntarily imposed by local government at the request of the owner. Assessments may be amortized over the projected life of the improvements. The annual utility cost savings derived from improvements financed with PACE loans are expected to equal or exceed the amount of the annual assessment payments. In turn, these improvements can generate positive cash flow upon installation because the debt service will be less than the savings.

PACE assessments are 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 its period of ownership. When the property is sold, the payment obligation for the remaining balance of the assessment is transferred automatically to the next owner. As a result, the program will help property owners overcome market barriers that often discourage investment in energy efficiency and water conservation improvements.

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

## 1. Eligible Properties

The City PACE program is a strictly voluntary program. All private sector owners of Eligible Properties located within the City's PACE region may participate in PACE financing. The entire territory of the City is designated as the region in which the Program is available. ***“Eligible Properties”*** include commercial, industrial, and multi-family residential properties with five or more dwelling units. Government, residential<sup>2</sup>, and undeveloped property and property undergoing development at the time of the assessment are not Eligible Properties.

## 2. Qualified Improvements

PACE financing may be used to pay for Qualified Improvements to Eligible Properties. ***“Qualified Improvements”*** are permanent improvements intended to decrease water or energy consumption or demand, including 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 Qualified Improvements.

The following upgrades 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)
- High efficiency irrigation equipment

## 3. Benefits of PACE to Property Owners

The PACE program will enable owners of Eligible Properties to overcome traditional barriers to capital investments in energy efficiency and water conservation improvements, such as slow returns on investment, split incentives between landlords and tenants, and uncertainty of recouping the investment.

By financing Qualified Improvements through the program, property owners may achieve utility cost savings that exceed the amount of the assessment and reduce their exposure to utility price volatility. As a result, the value of the property will be enhanced. The owner will only be obligated to pay the assessment installments that accrue during its period of ownership. Property

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

owners may also qualify for various rebate, tax credit, and incentive programs offered by utility providers and state or federal governmental authorities to encourage investments in energy efficiency and water conservation.

#### **4. Benefits of PACE to the City**

The Pace Program benefits the whole community by improving our existing buildings, increasing property values, encouraging economic development, and saving energy and water, all without requiring any public funds.

Among other things, projects financed through PACE will:

- Enable property owners and occupants to save substantial amounts in utility costs,
- 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 manufacturers;
- Increase business retention and expansion region by enabling cost effective energy and water saving updates to existing property,
- Improve productivity through optimized energy usage, and
- Support the State’s water conservation plan and better enable the City to meet its water conservation goals.

Finally, through the reduction in energy consumption as a result of the PACE Program, there will be a decreased demand for power, resulting in lower emissions from power plants.

The PACE program requires minimal support from the City. It is designed to be self-sustaining and is administered by a non-profit third-party administrator, the Texas PACE Authority. Furthermore, because the PACE program is not tax supported, it achieves all of the listed benefits without imposing a burden on the City’s general fund.

Under the PACE Act, the establishment and operation of the program are governmental functions.<sup>3</sup> The PACE Act. The 84<sup>th</sup> Texas Legislature added a provision to the PACE Act that explicitly shields from liability a local government and its employees, members of a governing body and any third party who enter into a contract with a local government to provide administrative services for a PACE program. The 85<sup>th</sup> session of the Texas Legislature clarified that elected officials are afforded the same protections established by the 84<sup>th</sup> session of the legislature.

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

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<sup>3</sup> TX Local Gov’t Code §399.003(b)

PACE financing is attractive to lenders because it creates very secure investments. Like a property tax lien, the assessment lien securing the PACE financing has priority over other liens on the property. Therefore, the risk of loss from non-payment 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 but postponed equipment modernization. In order to protect the holders of existing mortgage loans on the property, the PACE Act requires their written consent to the PACE assessment as a condition to obtaining PACE financing.

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

The PACE Program provides an attractive source 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 unlock business opportunities for contractors, engineers, and manufacturers throughout the commercial and industrial sectors.

## **7. Administration of the PACE Program**

The PACE Act authorizes the City to enter into a contract with a third party to provide administrative services for the PACE program and act as the representative of the [City/ ] in executing the contracts with property owners and lenders (the “*Authorized Representative*”). City has chosen to delegate administration of the PACE program to a qualified, non-profit organization that can administer the program at no cost to the City.

The Authorized Representative serves as an extension of the local government staff to provide oversight of the Program to ensure best practices and consumer protections at the lowest possible cost to the property owner in a transparent and ethical manner and to provide public education and outreach.

The Authorized Representative will be funded by administrative fees paid by the property owners, charitable grants, or other authorized sources of revenue. The Authorized Representative will not receive compensation or reimbursement from the City.

Periodic updates to the standard form documents (described in Section 9) will be necessary as the program evolves, incorporating best practices and standardizing the PACE documents across various PACE programs. The Authorized Representative will be tasked with maintaining the form documents and making technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the Texas PACE Act.

## **8. Eligible Lenders**

The PACE Act does not set criteria for financial institutions or investors to be PACE lenders. The City will follow best practices of other PACE programs and the Texas “PACE in a Box” model program by requiring that 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 Investment Company;
- Any publicly traded entity;
- 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;
  - 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 financially stable entity with the ability to carry out, either directly or through a servicer, the obligations of the lender under the PACE Lender Contract may participate in the Program. The property owner, not the City or the Authorized Representative, selects the lender.

The Authorized Representative will not guarantee or imply that funding will automatically be provided from a third-party lender, imply or create any endorsement of, or responsibility for, any lender; or create any type of express or implied favoritism for any eligible lender.

## **9. Components of the PACE Program**

As required under Section 399.009 of the PACE Act, the following components describe the PACE Program:

- a. Map of Region. A map of the boundaries of the region included in the program is attached to this Report as Exhibit 1. The region encompasses the entire territory within the City limits.
- b. Form Contract with Owner. A form contract between the City and the record owner of Eligible Property is attached as Exhibit 2. It specifies the terms of the assessment under the PACE Program and the financing to be provided by an Eligible Lender of the property owner's choosing.
- c. Form Contract with Lender. A form contract between City and an Eligible Lender chosen by a property owner is attached to this Report as Exhibit 3. It specifies the terms of financing and servicing of the debt through assessments.
- d. Form Notice of Contractual Assessment Lien. A form Notice of Assessment Lien Pursuant to Property Assessed Clean Energy Act to be filed with the County Clerk for each Qualified Project is attached to this Report as Exhibit 4.

e. Qualified Improvements. The following types of projects are qualified improvements that may be subject to contractual assessments under the PACE program:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial or residential real property with five (5) or more dwelling units;<sup>4</sup> and (b) are intended to decrease energy or water consumption or demand by installing 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.<sup>5</sup>

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

The PACE program may not be used to finance improvements to undeveloped lots or lots undergoing development at the time of the assessment, or for the purchase or installation of products or devices not permanently fixed to real property.<sup>6</sup>

- f. Plans for Insuring Sufficient Capital<sup>7</sup>. Independent lenders will make advances to finance Qualified Improvements. Financing documents executed between owners and lenders will specify the terms of the financing. The lenders will ensure that property owners demonstrate the financial ability to fulfill the financial obligations to be repaid through contractual assessments.
- g. No Use of Bonds or Public Funds. The City does not intend to issue bonds or use any other public monies to fund PACE projects. Property owners will obtain all financing from the Eligible Lenders they choose.
- h. Limit on Length of Financing. The Texas PACE Act requires that the assessment payment period not exceed the useful life of the Qualified Improvement that is the basis for the assessment. As part of the application process, the property owners will submit an independent third-party review prepared by a licensed engineer showing the water or energy baseline conditions and the projected water or energy savings.
- i. Application Process. The Authorized Representative will accept applications from property owners seeking to finance Qualified Improvements under the

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<sup>4</sup> TX. Local Gov't Code §399.002(5).

<sup>5</sup> TX. Local Gov't Code §399.002(3).

<sup>6</sup> TX. Local Gov't Code §399.004.

<sup>7</sup> The Texas PACE Authority's website ([www.texaspaceauthority.org](http://www.texaspaceauthority.org)) offers a non-exhaustive list of interested and qualified lenders to assist property owners in funding PACE projects in Texas.

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,
- (2) A description of the specific real property to which the Qualified Improvements will be permanently fixed, and
- (3) The total amount of financing, including any transaction costs, to be repaid through assessments.

Based on this information, the Authorized Representative 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 initiate an independent third-party review of the project and submit the project to Eligible Lenders for approval of financing.

The property owner is expected to provide the following documentation to the Authorized Representative prior to closing of the PACE financing:

- (1) A Report conducted by a qualified, independent third-party reviewer, 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 Authorized Representative pursuant to the resolutions, orders, and ordinances of the City.

- j. Financial Eligibility Requirements. The Authorized Representative will determine whether the owner, the property and the improvements are eligible for financing under the Program. The Eligible Lender chosen by the owner has the responsibility to determine whether the owner has demonstrated the financial ability to repay the financial obligations to be collected through contractual assessments. The demonstration of financial ability must be 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 has determined that a ratio of 20% of loan to assessed value of the property is appropriate but acknowledges that in some circumstances a variance of this ratio may be

appropriate. The Authorized Representative will consider appropriate factors in a variance request, including:

- (a) The existing debt to assessed value of the property prior to closing the PACE financing,
- (b). The estimated fair market value of the property and how the value was determined (e.g., market appraisal, desktop appraisal, insurance valuation, etc.); and
- (c). The estimated post-renovation fair market value of the property (including an explanation on how this value was determined)

The City has determined that to be eligible for PACE financing, the projected savings derived from the Qualified Improvement should be greater than the cost of the PACE financing over the life of the assessment, i.e., the saving-to-investment ratio (SIR) should be greater than one,  $SIR > 1$ ). A lender or an owner may request a waiver in writing for a project with an  $SIR < 1$ . The Authorized Representative may grant a variance request after considering appropriate factors, including:

- (a). Whether there are other environmental benefits such as air or water quality or resiliency benefits that are not captured in the SIR analysis;
- (b) Whether the proposed Qualified Improvements generate marketable environmental credits that can be monetized;
- (c). The SIR over the useful life of the equipment, rather than the term of the assessment;
- (d). The impact of a variance request on any affected third parties; and
- (e) Any other information the owner and lender wish to submit regarding the impact of the Qualified Improvements on the community.

- k. Mortgage Holder Notice and Consent. As a condition to the execution of a contract imposing an assessment under the Program, the holder of any mortgage lien on the property must be given at least 30 days' notice of the owner's intention to participate in the Program and the owner must obtain the written consent of all mortgage holders.<sup>8</sup>
- l. Imposition of Assessment. The Authorized Representative may enter into a written contract with the owner of a Qualified Property to impose an assessment on the owner's property to repay the financing of Qualified Improvements, only after:

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<sup>8</sup> TX. Local Gov't Code §399.010.

- (1) The property owner delivers to the Authorized Representative written consent of all mortgage lien holders;
- (2) The Authorized Representative'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 Authorized Representative that the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

The Authorized Representative will file a Notice of Contractual Assessment Lien Pursuant to Property Assessed Clean Energy Act in substantially the form in Exhibit 4 in the Official Public Records of the County where the Eligible Property is located, as notice to the public of the assessment from the date of filing.

- m. Collection of Assessments. The written contract between the Authorized Representative and the property owner and the Notice of Contractual Assessment Lien will incorporate the terms of the financing documents executed between the property owner and the lender to repay the financing secured by the assessment. The lender will advance financing to the owner, and the terms for repayment will be such terms as agreed between the lender and the owner. Under the form lender contract attached as Exhibit 3, the lender or a designated servicer will service the debt secured by the assessment.<sup>9</sup>

With funds from the lender, the property owner will 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 advance progress payments to the property owner as the Qualified Improvements are installed.

The lender will collect the owner's installments to repay the debt and remit to the Authorized Representative any administrative fees due. The lender will have the right to assign or transfer the right to receive the installments of the debt secured by the assessment or to require the local government to enforce the lien securing the assessment in the event of a default, provided all of the following conditions are met:

- (1) The assignment or transfer is made to an Eligible Lender, as defined above;
- (2) The property owner and the Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of

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<sup>9</sup> The servicer will be responsible for maintaining payment records, account balances, and reporting to the Authorized Representative as required.

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 (3) The assignee or transferee executes an explicit written assumption according to the financing documents of all of the lender's obligations under the lender contract related to the receipt of the installments or the enforcement of the assessment lien.

n. Verification Review. After a Qualified Improvement is completed, the Authorized Representative will require the property owner to provide verification by a qualified independent third-party reviewer that the Qualified Improvement was properly completed and is operating as intended.<sup>10</sup> The verification report conclusively establishes that the improvement is a Qualified Improvement and the project is qualified under the PACE program.<sup>11</sup>

t. Marketing and Education Services. The Authorized Representative will provide service provider training workshops, provide outreach and education for all stakeholders and provide 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 that promote energy and water conservation and/or economic development to provide marketing and education services for the PACE program.

u. Quality Assurance and Antifraud Measures. The Authorized Representative will institute quality assurance and antifraud measures for the Program. The Authorized Representative will review each PACE application for completeness and supporting documents through independent review and verification procedures. Measures will be put in place to provide safeguards, including a review of the energy and 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. This review will include a site visit, report, and a letter from the ITPR certifying that he or she has no financial interest in the project. After the construction of the project is complete, an ITPR will conduct a final site inspection and determine whether the project was completed and is operating properly.

v. 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, 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 and the holder of any mortgage lien on the property a second notice of delinquency and demand for payment by both certified

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<sup>10</sup> TX Local Gov't Code §399.011.

<sup>11</sup> TX Local Government Code §399.011(a-1)



