



OFFICE OF THE CITY MANAGER

CITY HALL

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CITY COUNCIL STAFF REPORT

Meeting: February 7, 2016

Subject

Approval of Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement with Property Assessed Clean Energy (PACE) Providers and Adoption of Resolutions Authorizing Membership in the California Enterprise Development Authority, Golden State Finance Authority, Western Riverside Council of Governments, and the California Statewide Community Development Authorities and to participate in PACE Programs.

Recommended Action

Staff recommends that Council:

1. Adopt Resolutions to join the following joint power agencies and participate in their PACE programs:
 - a. California Enterprise Development Authority (Figtree PACE Program);
 - b. Golden State Finance Authority (Ygrene PACE Program);
 - c. Western Riverside Council of Governments (California HERO PACE Program);
 - and
 - d. California Statewide Communities Development Authority (Open PACE Program).
2. Authorize the City Manager to approve and sign the acknowledgement addendums of the Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement, as executed between ABAG and Residential PACE Providers, and execute any other document necessary to carry out the City's membership in each of the PACE Providers listed above.

Executive Summary

Property Assessed Clean Energy (PACE) programs allow local property owners to finance energy efficiency, water conservation, and renewable energy improvements on their property. Property owners borrow funds for the improvements and repay the loan via a special voluntary property tax assessment.

The intent of PACE is to provide an affordable and accessible means of financing energy upgrades to existing homes and businesses, ultimately making the City's existing building stock more sustainable and lowering greenhouse gas emissions. This allows the property owner to benefit from the energy and water savings for these improvements without having to make a large financial investment up front, and they can pay for the improvements overtime with 5-20 year terms.

To date there is one PACE program serving Cupertino, CaliforniaFIRST, which was approved by Council on January 19, 2010. Since then, several PACE lenders have approached the City in recent months requesting that the City take the necessary actions to allow them to also offer PACE loans in Cupertino. To help Cupertino and other cities to evaluate the requests, the Association of Bay Area Governments (ABAG) worked with PACE providers to develop and agree to follow a set of best practices, called an "Agreement for Collaborative Services for Property Energy Financing (Collaborative Services Agreement)", that will ensure that the programs meet certain basic quality and reporting standards.

The Sustainability Commission studied the issue of PACE in 2016, during its May, June, and December meetings. At the December 15th meeting the Sustainability Commission recommended that the Council approve PACE vendors that have signed onto ABAG's Collaborative Services Agreement, as this agreement held the vendors to a higher standard, ensure consistency among all PACE providers that serve the city, helps to mitigate risk, and provide for a unified voice among all Bay Area regional cities in negotiating key programmatic elements at one time.

Background:

PACE financing can be set up and administered under one of two different pieces of legislation, which enable PACE programs in California and several additional laws clarify and expand this legislation:

1. California AB 811 (July 21, 2008) amended the Improvement Act of 1911, part of the Streets and Highways Code, to include renewable energy sources and energy efficiency upgrades in the list of public improvements that can be financed through an assessment district. California AB 474 (January 1, 2010) and California SB 1340 (September 30, 2010) expanded AB 811 to include water efficiency improvements and the installation of charging stations for electric vehicles.
2. California SB 555 (October 5, 2011) amended the Mello-Roos Community Facilities Act of 1982 to allow for the creation of Community Facilities Districts (CFDs) for the purpose of financing or refinancing the acquisition, installation and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure. Individual properties can be annexed into the district and be subject to a

special tax that is imposed to repay project financing if the City Council adopts a resolution consenting to the inclusion of parcels in the incorporated areas of the City within the CFD and each participating owner provides its unanimous written approval for annexation of this property into the PACE CFD.

Both the AB 811 and SB 555 type of PACE programs, are voluntary contractual agreements for financing between an authorized entity and the property owner, they use available funding from any source including existing bond issuing statutes and attach the assessment for payment of the assessment to the property.

After PACE programs started gaining traction in California in 2009, residential programs soon encountered a significant hurdle. The Federal Housing Finance Agency (FHFA) was concerned that residential PACE assessments had a first priority lien status superior to that of existing mortgages underwritten by Fannie Mae and Freddie Mac. In 2010, Fannie Mae and Freddie Mac stated that they would no longer purchase mortgage loans secured by properties with outstanding PACE loans. This effectively stopped residential PACE programs, with the exception of a few pilot programs. In response, in 2013, Governor Brown signed SB 96, which directed the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to develop a \$10 million PACE Loss Reserve Program to mitigate the potential risk to mortgage lenders associated with residential PACE financing. While FHFA has not changed its position to date, the California PACE market has rapidly grown with the assurance of the state reserve. To date, CAEATFA has not received any claims on the loss reserve from any of the existing PACE programs enrolled.

Additionally in September 2016, Governor Brown signed AB2693, which provides additional consumer protections for property owners requiring that prior to entering into a PACE loan, a homeowner must be provided a financing estimate and disclosure document. This disclosure document will notify homeowners that they may not be able to sell or refinance their home unless the PACE loan is paid off in its entirety, as well as, annual percentage rates, product costs, closing costs, and fees. Overall, helping customers better understand the terms of PACE financing.

Analysis:

PACE programs provide an additional means of financing to make sustainable property improvements more affordable and accessible to property owners. It provides capital for renewable energy systems and a range of energy and water efficiency improvements to buildings. A few PACE programs also include seismic upgrades as an eligible improvement. PACE financing advantages include 100% financing for eligible improvements, a repayment period of up to twenty years, and the reliability of pre-approved contractors.

PACE can be seen as one of the many options that a property owner has to finance an energy/water improvement project. This offering differs from a traditional home equity line of

credit in that eligibility is based on property equity rather than the credit worthiness of the applicant. The repayment structure is also different than traditional financing. Debt obligations run with the property rather than the applicant, since the repayment is generated from the utility savings associated with the improvements. Thus, whoever owns the building is responsible for repayment per the conditions of the agreement with the program administrator. Terms vary by program, but are generally considered in line with market rate options for similar improvements. As with other forms of private lending all transactions are voluntary and no property owner is required to participate in any program.

Because the capital for the program is from private sources and transactions are between the program administrators and building owners, the City will incur no cost or risk associated with the program activities. The City will not provide administrative support or marketing for the programs, which are conducted by the programs administrators. Authorization by the City Council is necessary for the programs to conduct business in the City of Cupertino, per the requirements of AB811 and SB555.

As was directed by the Sustainability Commission, the Sustainability Division will make all the information about the various vendors is made available to the public on the Sustainability website, so residents and businesses can access the information they need to make an informed decision on the PACE providers and their financing options for home energy and water efficiency projects.

Benefits of PACE programs for City of Cupertino

Staff has identified the following benefits in allowing more than one PACE provider to serve Cupertino property owners:

- 100% voluntary program, residents utilize this source of financing if they want to.
- Creates competition in the marketplace and allows residents and business owners to have a choice in their PACE provider.
- Each provider has different interest rate and terms allowing owners to choose what works for them and their specific energy efficiency/water/ solar project and financial circumstances.
- Each provider covers a different range of energy, water and seismic upgrades- so more options means more types of projects can be eligible.
- Little, if any staff, time is needed to participate, all program assessment and administration is handled by the third party PACE service provider.
- Saving money: energy and water prices continue to rise, and allowing energy and water upgrades to existing buildings now saves money in the future.
- No down payment or credit checks needed- property owners pay for upgrades overtime when they pay their property tax bill and the interest can be tax deductible
- Helps us reach our climate goals and CAP implementation
 - Specifically CAP measure C-E-2 Retrofit Financing, which identifies PACE as a way of reducing GHG and achieving our retrofit goals in existing buildings.

PACE Program Comparison

As was recommended by the Sustainability Commission, the PACE providers to be authorized in the attached resolutions represent PACE programs operating in California that have signed onto the ABAG Regional Collaborative Services Agreement.

While the PACE providers are similar in nature, specific program has developed certain expertise in certain areas, which is why it is essential to allow more than one vendor to service our property owners. Each provider offers various interest rates, payback periods and terms, but all provide a similar service of lending capital for energy and water upgrades to existing buildings. Eligible products that can be financed with PACE may vary between individual PACE providers and administrators.

A brief overview of each of the proposed PACE programs follows:

			OPEN PACE		
	HERO	Ygrene	Alliance NRG	PACE Funding Group	Figtree
Administrator	Renovate America	Ygrene Energy Fund	Counter Point Energy Solutions	PACE Funding Group	Figtree Financing
JPA Sponsor	Western Riverside Council of Governments (WRCOG)	Golden State Finance Authority (formerly CA Home Finance Authority)	California Statewide Communities Development Authority (CSCDA)		California Enterprise Development Authority (CEDA)
Enrolled in CAEATFA PACE Loan Los Reserve Program	Yes	Yes	Yes	Yes	Yes
Legislative Orgin	AB 811	SB 555 & AB811	AB811	AB811	AB811
Year Started	2011	2010	2014	2015	2010

Cities in Santa Clara County that have adopted	In CA 383 cities including, San Jose, Morgan Hill, Campbell, Mountain View, Santa Clara & Gilroy	In CA 175 cities, including Campbell, San Jose and Santa Clara	In CA 40 cities have joined including Campbell and Gilroy	In CA, 149 cities and counties in CA including San Jose and Gilroy
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ABAG Regional Collaborative Services Agreement

To help with the process of evaluating all the different PACE providers and JPA models, the Association of Bay Area Governments (ABAG) has created a Regional Collaborative Services Agreement which is modeled after successful agreements in Sonoma and Marin Counties and is intended to ensure consistent application of key programmatic elements (“best practices”) considered to be critically important for local government partners. These elements include consumer protections and disclosures, local government risk mitigation and indemnification, co-marketing complementary energy efficiency programs, contractor and project quality assurance, and performance tracking, data, and reporting.

This will help the City of Cupertino ensure consistency among all PACE providers that serve the city, mitigate risk, and provide for a unified voice among all Bay Area regional cities in negotiating key programmatic elements at one time. To date, ABAG has signed agreements with five active PACE administrators which include; HERO, FigTree, Ygrene and Open PACE (which consolidates, Alliance NRG and PACE Funding). The Agreement for Collaborative Services requires that PACE providers are licensed, bonded, and maintain insurance, which minimizes risk to the City.

Sustainability Impact

The City’s 2010 GHG inventory identifies energy consumption as the largest contributor to greenhouse gas emissions in the City at 55%. Access to financing capital for property owners to complete energy upgrades is a critical component of Cupertino’s Climate Action Plan (CAP). CAP measure C-E-2 Retrofit Financing, specifically identifies Property Assessed Clean Energy (PACE) as a way of reducing GHG and achieving our retrofit goals.

CEQA

The City’s action is not a project under the California Environmental Quality Act (CEQA) because joining joint powers agencies is not an activity that is likely to cause a direct or reasonably foreseeable indirect change in the physical environment; or is exempt from CEQA because this action can be seen with reasonable certainty that there is no possibility that it will have a significant effect on the environment. [14. Cal. Code Regs. §15061(b)(3).] Moreover, the purpose

of the PACE programs is to benefit or protect the environment, and exempt from CEQA. . [14. Cal. Code Regs. §15308.]

Fiscal Impact

Participation in PACE programs does not impact the General Fund or any City funds. PACE programs use private sector capital to provide property owners with funding. Joining any of the existing PACE programs will not expose the City to financial liability.

Prepared by: Misty Mersich, Sustainability Manager

Reviewed by: Jaqui Guzmán, Deputy City Manager

Approved for Submission by: David Brandt, City Manager

Attachments:

- A- Draft Resolution Figtree Program
- B- Draft Resolution Ygrene for SB 555 & JPA Agreement
- C- Draft Resolution Ygrene for AB 811 & JPA Agreement
- D- Draft Resolution HERO Program & WRCOG JPA Agreement
- E- Draft Resolution CSCDA Open PACE
- F- Figtree Fully Executed RCSA Agreement
- G- ABAG Member Acknowledgement Form_ Figtree
- H- Ygrene Fully Executed RCSA
- I- ABAG Member Acknowledgement Form_ Ygrene
- J- WRCOG Fully Executed RCSA
- K- ABAG Member Acknowledgement Form_ WRCOG
- L- CounterPoint Energy Solutions (Alliance NRG) Fully Executed RCSA Agreement
- M- ABAG Member Acknowledgement Form_ CounterPoint Energy Solutions (Alliance NRG)
- N- PACE Funding Fully Executed RCSA Agreement
- O- ABAG Member Acknowledgement Form_ PACE Funding