

City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: September 25, 2012

FROM: OFFICE OF THE MAYOR ITEM NO: 27

WARDS: ALL

SUBJECT: SEIZING OUR DESTINY - AUTHORIZE AMENDMENT TO THE JOINT POWERS AGREEMENT OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS TO PERMIT THE PROVISION OF PACE SERVICES STATEWIDE

ISSUE:

Whether to authorize an amendment to the Joint Powers Agreement of the Western Riverside Council of Governments (WRCOG) to permit the provision of PACE services statewide.

RECOMMENDATIONS:

That the City Council approve the Amendment to the Joint Powers Agreement of the Western Riverside Council of Governments to Permit the Provision of PACE Services statewide.

BACKGROUND:

The Executive Committee of the Western Riverside Council of Governments (WRCOG) has directed staff to expand on the success of its HERO Program and implement a Statewide HERO Program by June 2013.

In April 2011, the City of Riverside adopted a Resolution of Participation and an Implementation Agreement that allowed for WRCOG to develop and implement a Property Assessed Clean Energy (PACE) Program (called the HERO Program in Western Riverside County) that allows for property owners in the City to finance energy efficiency, water conservation, and renewable energy projects and to pay that financing back through a voluntary assessment on the property owner's tax bill. The Program has both a residential and commercial component and more information can be found at www.beariversidehero.com.

Since its launch in late 2011, WRCOG's HERO Program has been very successful. Currently, WRCOG's HERO Program (residential component only) has approved nearly \$50 million in financing for projects. Because of the Program's success, WRCOG staff has been examining the possibility of creating a Statewide HERO Program that would allow other jurisdictions in the state to offer HERO to its property owners under a program that would be administered by WRCOG. Jurisdictions that elect to participate in WRCOG's Program would gain considerable benefit as they would avoid the costs and considerable time it takes to develop a program from scratch. WRCOG, by providing a turn-key administrative service, would benefit by receiving revenues for the services provided.

There are two options that WRCOG can pursue in meeting its objective to implement a statewide program which include 1) using WRCOG's current Joint Powers Agreement (JPA) or 2) create a new JPA with a member agency. WRCOG staff is in the process of examining both options and will be making further recommendations to the WRCOG Executive Committee regarding each option. Regardless of which option the WRCOG Executive Committee selects, the member jurisdictions need to take formal action to adopt the attached amendment to the JPA (attached).

As a result, on June 4, 2012, the WRCOG Executive Committee directed WRCOG staff to develop the constructs for a Statewide HERO Program.


On August 6, 2012, the WRCOG Executive Committee approved an Amendment to the Joint Powers Agreement of the Western Riverside Council of Governments to permit the provision of Property Assessed Clean Energy (PACE) services statewide.

Once the WRCOG JPA has been amended, WRCOG staff and its consulting team can begin marketing the Program to other agencies in the State for their consideration.

FISCAL IMPACT:

There is no fiscal impact to the General Fund by authorizing the Amendment to the Joint Powers Agreement of WRCOG to Permit the Provision of PACE Services statewide.

Prepared by:


RONALD O. LOVERIDGE
Mayor

Approved as to form: Gregory P. Priamos, City Attorney

Attachment:

Amendment to the Joint Powers Agreement of the Western Riverside Council of Governments to Permit the Provision of PACE Services statewide.

**AMENDMENT TO THE JOINT POWERS AGREEMENT OF
THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
TO PERMIT THE PROVISION OF PACE SERVICES**

This Amendment to the Joint Powers Agreement (“Amended Agreement”) is made and entered into on the ____ day of ____, 2012, by and between seventeen cities located within Western Riverside County and the County of Riverside (collectively the “Parties”).

RECITALS

WHEREAS, seventeen cities located within Western Riverside County and the County of Riverside have entered into a Joint Powers Agreement on April 1, 1991, and through subsequent amendments thereto (the “JPA”), to form the Western Riverside Council of Governments (“WRCOG”); and

WHEREAS, on July 21, 2008, Assembly Bill 811 (“AB 811”) was signed into law to amend Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code (“Chapter 29”) to authorize cities, counties, and cities and counties to establish voluntary contractual assessment programs to fund various renewable energy sources and energy efficiency improvements to property, commonly referred to as a Property Assessed Clean Energy (“PACE”) program; and

WHEREAS, the Legislative intent of AB 811 is to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property; and

WHEREAS, Chapter 29 was subsequently amended by the enactment of AB 474 effective January 1, 2010, to enable a PACE program established pursuant to Chapter 29 to finance the installation of water efficiency improvements in addition to the improvements authorized to be financed pursuant to AB 811;

WHEREAS, WRCOG is authorized to implement the purposes of Chapter 29 to establish a PACE program pursuant to the provisions of Government Code Section 6502; and

WHEREAS, WRCOG has determined that it is within the best interests of the communities that it serves, and the State of California, for WRCOG to provide a PACE program pursuant to Chapter 29 as now enacted or as such legislation may be amended hereafter, including the operation of a PACE financing program within Riverside County as well as outside Riverside County; and

WHEREAS, WRCOG desires to allow jurisdictions outside WRCOG’s jurisdictional boundaries to participate in WRCOG solely for the purpose of facilitating WRCOG’s implementation of PACE programs within their jurisdictional boundaries, but without providing

those local jurisdictions any of the rights common to the members within WRCOG's jurisdiction pursuant to the JPA; and

WHEREAS, pursuant to Government Code sections 6500 *et seq.*, the parties to the JPA desire to amend the JPA to allow for the provision of PACE services, including the operation of an PACE financing program within and outside Riverside County.

MUTUAL UNDERSTANDINGS

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

Section 1: The last sentence of Section 2.1 of the Agreement shall be amended to read as follows”

“Only the parties identified in this section and Associate Members approved under section 8.2 of this Agreement, if any, shall be considered contracting parties to this Agreement under Government code section 6502, provided that the rights of any Associate Member under this Agreement shall be limited solely those rights expressly set forth in a PACE Agreement authorized in section 8.2 of this Agreement.”

Section 2: The heading of Section VIII to the JPA is hereby amended to read as follows:

“PACE IMPLEMENTATION AND PARTICIPATION AGREEMENTS;
ASSOCIATE MEMBERSHIP”.

Section 3: Section 8.2 shall be added to the JPA and shall read as follows:

8.2 PACE Agreements; Associate Membership.

WRCOG shall be empowered to establish and operate one or more Property Assessed Clean Energy (“PACE”) programs pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code, and to enter into one or more agreements, including without limitation, participation agreements, implementation agreements and joint powers agreements and amendments thereto to fulfill such programs both within and outside the jurisdictional boundaries of WRCOG.

WRCOG, acting through its Executive Committee, shall be empowered to establish an “Associate Member” status that provides membership in WRCOG to local jurisdictions that are outside WRCOG’s jurisdictional boundaries but within whose boundaries a PACE program will be established and implemented by WRCOG. Said local jurisdictions shall become Associate Members of WRCOG by adopting one or more agreements (the “PACE Agreement”) on the terms and conditions established by the Executive Committee and consistent with the requirements of the Joint Exercise of Powers Act, being 5 of Division 7, Title 1 of the California Government Code (Sections 6500 et seq.) The

rights of Associate Members shall be limited solely to those terms and conditions expressly set forth in the PACE Agreement for the purposes of implementing the PACE program within their jurisdictional boundaries. Except as expressly provided for by the PACE Agreement, Associate Members shall not have any rights otherwise granted to WRCOG's members by this Agreement, including but not limited to the right to vote, right to amend this Agreement, and right to sit on committees or boards established under this Agreement or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee.

Section 4: This amendment is to become effective in accordance with Section 9.1 of the JPA.

Section 5: All other provisions and terms of the JPA are to remain unchanged.

Section 6: This Amendment may be executed in counterparts.

IN WITNESS WHEREOF, the Parties hereto have caused this Amended Agreement to be executed and attested by their officers thereunto duly authorized as of the date first above written.

[SIGNATURES ON FOLLOWING PAGES]

**SIGNATURE PAGE TO THE
AMENDMENT TO THE JOINT POWERS AGREEMENT OF
THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
TO PERMIT THE PROVISION OF PACE SERVICES**

ATTEST:

City Clerk
City of Banning

CITY OF BANNING

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Calimesa

CITY OF CALIMESA

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Canyon Lake

CITY OF CANYON LAKE

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Corona

CITY OF CORONA

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Eastvale

CITY OF EASTVALE

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Hemet

CITY OF HEMET

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Jurupa Valley

CITY OF JURUPA VALLEY

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Lake Elsinore

CITY OF LAKE ELSINORE

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Meniffee

CITY OF MENIFEE

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Moreno Valley

CITY OF MORENO VALLEY

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Murrieta

CITY OF MURRIETA

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Norco

CITY OF NORCO

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Perris

CITY OF PERRIS

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Riverside

CITY OF RIVERSIDE


By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of San Jacinto

APPROVED AS TO FORM

SUPERVISING DEPUTY CITY ATTORNEY
CITY OF SAN JACINTO

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Temecula

CITY OF TEMECULA

By: _____

By _____
Mayor

Dated: _____

ATTEST:

City Clerk
City of Wildomar

CITY OF WILDOMAR

By: _____

By _____
Mayor

Dated: _____

ATTEST:

County Clerk
County of Riverside

COUNTY OF RIVERSIDE

By: _____

By _____
Chairman

Dated: _____