



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** March 26, 2013
From: Joseph Moon, Special Projects Manager **Item No:** 8
Subject: APPROVE PARTICIPATION IN THE SANBAG PROPERTY ASSESSED
CLEAN ENERGY (PACE) PROGRAM

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

It is recommended that the Town Council execute a Memorandum of Understanding (MOU) with SANBAG to participate in the Property Assessed Clean Energy (PACE) Program.

SUMMARY:

On October 3, 2012, the SANBAG Board of Directors approved a Memorandum of Understanding (MOU) to allow the County and cities to be included in a County-wide Property Assessed Clean Energy (PACE) program in San Bernardino County. The PACE program allows interested property owners to enter into a contractual agreement with SANBAG to finance the installation of eligible renewable energy, energy efficiency, or water efficiency improvements that are permanently fixed to the property. SANBAG has obtained initial commitments from private investors for \$200 million dollars through the sale of bonds secured by property tax assessments and is encouraging participation in the Program from all County municipalities. The Town Council must approve a Memorandum of Understanding (MOU) with SANBAG in order for the residential and commercial property owners in Apple Valley to benefit from and participate in the PACE Program.

FISCAL IMPACT:

None

BACKGROUND:

The PACE Program proposed by SANBAG loans property owners funds for the energy related improvements. The amount of the loan plus a fixed interest amount is repaid through an assessment on the property tax bill for the property. Typically, the term of the loan is 20 years. The PACE program serves as a conduit to get millions of dollars in private investment circulating in the local economy and will help residential property owners lower their energy bills. In addition, commercial property owners and businesses benefit from lower energy and water cost. This private investment can help create jobs for contractors, installers, and suppliers of the materials used for these improvements. The economic benefit also directly benefits the environment by reducing greenhouse gas emissions, delaying construction of new power plants, helping the common goal of energy security, and conserving water.

The SANBAG PACE Program provides a regional approach by allowing a uniform application process for property owners regardless of what community they are in. As a result, contractors can include PACE as a funding option across city lines without having to learn multiple options. In addition, the PACE Program marketing efforts will be implemented on a regional basis which is more cost effective and reaches more people.

ATTACHMENTS:

PACE Contract MOU
PACE Fact Sheet
SANBAG PACE Introduction Letter

CONTRACT NO: C13066

By and Between

San Bernardino Associated Governments (SANBAG)

And

**CITIES OF ADELANTO, BARSTOW, BIG BEAR LAKE, CHINO, CHINO HILLS,
COLTON, FONTANA, GRAND TERRACE, HESPERIA, HIGHLAND, LOMA LINDA,
MONTCLAIR, NEEDLES, ONTARIO, RANCHO CUCAMONGA, REDLANDS, RIALTO,
SAN BERNARDINO, TWENTYNINE PALMS, UPLAND, VICTORVILLE, YUCAIPA, AND
THE TOWNS OF APPLE VALLEY AND YUCCA VALLEY, AND THE COUNTY OF
SAN BERNARDINO**

For

**Implementation of a Property Assessed Clean Energy Program (PACE)
To Finance the Installation of Distributed Generation Renewable Energy Sources, Energy
or Water Efficiency Improvements or Electric Vehicle Charging Infrastructure**

CONTRACT NO. C13066
MEMORANDUM OF UNDERSTANDING
BY AND AMONG THE SAN BERNARDINO ASSOCIATED GOVERNMENTS
AND
CITIES OF ADELANTO, BARSTOW, BIG BEAR LAKE, CHINO, CHINO HILLS,
COLTON, FONTANA, GRAND TERRACE, HESPERIA, HIGHLAND, LOMA LINDA,
MONTCLAIR, NEEDLES, ONTARIO, RANCHO CUCAMONGA, REDLANDS, RIALTO,
SAN BERNARDINO, TWENTYNINE PALMS, UPLAND, VICTORVILLE, YUCAIPA, AND
TOWNS OF APPLE VALLEY AND YUCCA VALLEY AND THE COUNTY OF
SAN BERNARDINO
FOR
IMPLEMENTATION OF
A PROPERTY ASSESSED CLEAN ENERGY PROGRAM (PACE)
TO FINANCE THE INSTALLATION OF
DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES,
ENERGY OR WATER EFFICIENCY IMPROVEMENTS OR
ELECTRIC VEHICLE CHARGING INFRASTRUCTURE

This Memorandum of Understanding (“MOU”) is nominally dated January 9, 2013 between the SAN BERNARDINO ASSOCIATED GOVERNMENTS (“SANBAG”), a joint powers authority formed under Government Code sections 6500 et seq., and the Participating Entities, each a general law or charter city, town or a county formed under the Constitution and the laws of the State of California. SANBAG and the Participating Entities are sometimes collectively referred to in this MOU as the “Parties” or individually as a “Party.” The Participating Entities include those cities, towns and county that have duly executed this MOU, as evidenced on the signature pages attached hereto.

RECITALS

WHEREAS, the County of San Bernardino and various cities within such county have entered into an “Amended Memorandum of Understanding for the Joint Exercise of Powers Relative to the San Bernardino Associated Governments” last amended October 17, 1975 (the “JPA”), to create SANBAG; and

WHEREAS, Participating Entities are each signatories to the JPA; and

WHEREAS, the purpose of the JPA is to improve and coordinate governmental services on a countywide, subregional and regional basis through the establishment of SANBAG as a cooperative association of governments; and

WHEREAS, Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (commencing with Section 5898.12) (“Chapter 29”) permits cities and counties to establish contractual assessment programs to finance the installation of distributed generation renewable energy sources, energy or water efficiency improvements or electric vehicle charging infrastructure that are permanently fixed to residential, commercial, industrial, agricultural, or other real property; and

WHEREAS, the parties to the JPA, as cities and counties, have the common power to implement and administer contractual assessment programs pursuant to Chapter 29 which programs are commonly referred to as a property assessed clean energy (the “PACE Program”) to finance installation of such improvements within their respective jurisdictions; and

WHEREAS, SANBAG and Participating Entities believe that the establishment by SANBAG of a single, countywide PACE Program would improve and coordinate the provision of such a PACE Program within the jurisdictions of Participating Entities and SANBAG and Participating Entities desire to enter into this MOU in order to authorize SANBAG to implement and administer such a PACE Program on behalf of Participating Entities.

NOW, THEREFORE, it is mutually understood and agreed by SANBAG and the Participating Entities as follows:

AGREEMENT

Section 1: Establishing the PACE Program

SANBAG will undertake proceedings pursuant to Chapter 29 to establish a PACE Program to make such contractual assessment financing available to eligible property owners within the jurisdictional boundaries of Participating Entities.

Section 2: Establishing Eligible Improvements

SANBAG shall identify the kinds of distributed generation renewable energy sources, energy or water efficiency improvements or electric vehicle charging infrastructure that may be financed (“Eligible Improvements”) under the PACE Program.

Section 3: Boundary of Program

SANBAG, in coordination with Participating Entities, shall describe the boundaries of the area within which contractual assessments under the PACE Program may be entered into, which may include the entire jurisdictional area of each of the Participating Entities or a lesser portion thereof.

Section 4: Financing the Installation of Eligible Improvements

SANBAG shall develop and implement a plan for the financing of the purchase and installation of the Eligible Improvements under the PACE Program.

Section 5: Ongoing Administration

SANBAG shall be responsible for the ongoing administration of the PACE Program, including but not limited to producing education plans to raise public awareness of the PACE Program, soliciting, reviewing and approving applications from property owners who freely and willingly consent to participate in the PACE Program, establishing assessment contracts for property owners participating in the PACE Program, establishing and collecting assessments due under the PACE Program, and providing reports as required by Chapter 29. The PACE Program will be administered in accordance with the JPA.

Section 6: Phased Implementation

The Parties recognize and agree that implementation of the PACE Program as a whole can and may be phased as other parties to the JPA elect to enter into the MOU. The Participating Entities entering into this MOU will obtain the benefits of and incur the obligations imposed by this MOU in its jurisdictional area, irrespective of whether other parties to the JPA enter into the MOU.

Section 7: Term

The term of this MOU shall be for twenty (20) years unless modified or extended pursuant to this MOU.

Section 8: Termination

Upon ninety (90) days written notice, a Participating Entity may terminate its participation in the PACE Program through this MOU.

Section 9: Environmental Review

SANBAG shall be the lead agency under the California Environmental Quality Act for any environmental review that may be required in implementing or administering the PACE Program under this MOU.

Section 10: Cooperative Effort

Participating Entities shall cooperate with SANBAG by providing information and other assistance in order for SANBAG to meet its obligations hereunder. Participating Entities recognize that one of their responsibilities related to the PACE Program will include any permitting or inspection requirements as established by the Participating Entities pertaining to the installation of Eligible Improvements within their respective jurisdictions.

Section 11: Miscellaneous Provisions

11.1 Notice. Any and all communications and/or notices in connection with this MOU shall be either hand-delivered or sent by United States first class mail, postage prepaid, and addressed to the respective Parties at the addresses set forth in Exhibit A attached hereto and incorporated herein by this reference:

11.2 Entire MOU. This MOU, together with the JPA, constitutes the entire agreement among the Parties regarding the subject matter of this MOU. This MOU supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

11.3 Successors and Assigns. This MOU and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. A Party may only assign or transfer its rights and obligations under this MOU with prior written approval of the other Parties, which approval shall not be unreasonably withheld.

11.4 Attorney's Fees. If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this MOU, each Party to the litigation shall bear its own attorney's fees and costs.

11.5 Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of California, as applicable.

11.6 No Third Party Beneficiaries. This MOU shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this MOU to maintain a suit for personal injuries or property damages under the provisions of this MOU. The duties, obligations, and responsibilities of the Parties to this MOU with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

11.7 Severability. In the event one or more of the provisions contained in this MOU is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this MOU and the remaining parts of this MOU shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this MOU.

11.8 Headings. The paragraph headings used in this MOU are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

11.9 Amendment. No amendment, modification, alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by the Parties hereto and no oral understanding or agreement pertaining to the subject matter of this MOU and not incorporated herein shall be binding on any of the Parties hereto.

(Signature pages to follow)

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this MOU to be effective on the date signed below by SANBAG.

SAN BERNARDINO ASSOCIATED GOVERNMENTS (“SANBAG”)

By: _____ Date: _____
Janice Rutherford
SANBAG President

APPROVED AS TO FORM:

By: _____ Date: _____
Eileen Monaghan Teichert
General Counsel

CONCURRENCE:

By: _____
Jeffery Hill
Contract Administrator

PARTICIPATING ENTITIES SIGNATURES ON THE FOLLOWING PAGES

Town of Apple Valley Signature Page

MEMORANDUM OF UNDERSTANDING Contract C13066

SAN BERNARDINO ASSOCIATED GOVERNMENTS

And

CITIES OF ADELANTO, BARSTOW, BIG BEAR LAKE, CHINO, CHINO HILLS, COLTON, FONTANA, GRAND TERRACE, HESPERIA, HIGHLAND, LOMA LINDA, MONTCLAIR, NEEDLES, ONTARIO, RANCHO CUCAMONGA, REDLANDS, RIALTO, SAN BERNARDINO, TWENTYNINE PALMS, UPLAND, VICTORVILLE, YUCAIPA, AND THE TOWNS OF APPLE VALLEY AND YUCCA VALLEY, AND THE COUNTY OF SAN BERNARDINO

For Implementation of a Property Assessed Clean Energy Program (PACE) to Finance the Installation of Distributed Generation Renewable Energy Sources, Energy of Water Efficiency Improvements or Electric Vehicle Charging Infrastructure.

IN WITNESS WHEREOF, the Participating Entity named below has executed this Agreement on the date written below:

TOWN OF APPLE VALLEY:

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Date: _____

EXHIBIT A
NOTICE ADDRESSES FOR THE PARTIES

C13066

Property Assessed Clean Energy Program (PACE)

Exhibit A - Page 1

Council Meeting Date: 03/26/2013

8-10

To SANBAG	Executive Director San Bernardino Associated Governments 1170 W. 3 rd Street, 2 nd Floor San Bernardino, CA 92410-1715
To City of Adelanto	James Hart City Manager P.O. Box 10 Adelanto, CA 92301
To Town of Apple Valley	Frank Robinson Town Manager Town of Apple Valley 14955 Dale Evans Parkway Apple Valley, CA 92307
To City of Barstow	Curt Mitchell City Manager City of Barstow 220 E. Mountain View Street, Suite A Barstow, CA 92311-2888
To City of Big Bear Lake	Jeff Mathieu City Manager City of Big Bear Lake P.O. Box 10000 Big Bear Lake, CA 92315-8900
To City of Chino	Miles Pruitt City Manager City of Chino P.O. Box 667 Chino, CA 91708-0667
To City of Chino Hills	Michael Fleager City Manager City of Chino Hills 14000 City Center Drive Chino Hills, CA 91709
To City of Colton	Rod Foster City Manager City of Colton 650 N. La Cadena Drive Colton, CA 92324
To City of Fontana	Ken Hunt City Manager City of Fontana 8353 Sierra Avenue Fontana, CA 92335

To City of Grand Terrace	Betsy Adams City Manager City of Grand Terrace 22795 Barton Road Grand Terrace, CA 92313
To City of Hesperia	Mike Podegracz, P.E. City Manager City of Hesperia 9700 Seventh Avenue Hesperia, CA 92345
To City of Highland	Joseph Hughes City Manager City of Highland 27215 Base Line Highland, CA 92346
To City of Loma Linda	Jarb Thaipejr, P.E. City Manager City of Loma Linda 25541 Barton Road Loma Linda, CA 92354
To City of Montclair	Edward Starr City Manager City of Montclair P.O. Box 2308 Montclair, CA 91763
To City of Needles	David Brownlee Jr. City Manager City of Needles 817 Third Street Needles, CA 92363
To City of Ontario	Christopher Hughes City Manager City of Ontario 303 East B Street Ontario, CA 91764
To City of Rancho Cucamonga	John Gillison City Manager City of Rancho Cucamonga P.O. Box 807 Rancho Cucamonga, CA 91729
To City of Redlands	N. Enrique Martinez City Manager City of Redlands P.O. Box 3005 Redlands, CA 92373-1505

To City of Rialto	Michael Story City Manager City of Rialto 150 South Palm Avenue Rialto, CA 92376
To City of San Bernardino	Andrea Travis-Miller City Manager City of San Bernardino 300 North "D" Street San Bernardino, CA 92418
To City of Twentynine Palms	Richard Warne City Manager City of Twentynine Palms 6136 Adobe Road Twentynine Palms, CA 92277
To City of Upland	Stephen Dunn City Manager City of Upland 460 N. Euclid Avenue P.O. Box 460 Upland, CA 91786
To City of Victorville	Doug Robertson City Manager City of Victorville P.O. Box 5001 Victorville, CA 92393-5001
To City of Yucaipa	Ray Casey City Manager City of Yucaipa 34272 Yucaipa Boulevard Yucaipa, CA 92399
To Town of Yucca Valley	Mark Nuaimi Town Manager Town of Yucca Valley 57090 29 Palms Highway Yucca Valley, CA 92284
To San Bernardino County	Mr. Gregory C. Devereaux Chief Executive Officer San Bernardino County Administrative Office 385 N. Arrowhead Avenue, 5 th Floor San Bernardino, CA 92415-0120

FACT SHEET

Property Assessed Clean Energy (PACE) Program in San Bernardino County

When AB 811 and AB 474 were passed in 2008 and 2009, the intent was to find ways to improve the energy and water efficiency of existing homes and businesses by providing loans to property owners that would be paid back over time through property assessments. This would provide an incentive for property owners to make improvements to their properties to reduce energy and water use, reduce utility costs, reduce greenhouse gas emissions and put contractors to work

How does a PACE program work?

A jurisdiction (SANBAG) and an interested property owner enter into a contractual agreement to finance the installation of eligible renewable energy, energy efficiency, or water efficiency improvements that are permanently fixed to the property. Examples of eligible improvements include:

- Air sealing and weatherization
- Insulation
- Cool roof systems
- Duct sealing
- High efficiency heat and air conditioning
- Attic fans and whole house fans
- High efficiency and tank-less water heaters
- Weatherized doors, windows and window film
- High efficiency pool pumps and heaters
- Solar photovoltaic systems
- Solar thermal water heating
- Small wind turbines
- High efficiency toilets and shower heads
- Weather based irrigation control systems
- Drip irrigation
- Gray water systems
- Commercial light fixture replacements
- Commercial boiler improvements
- Commercial refrigeration improvements

The jurisdiction (SANBAG) loans the property owner the funds for the improvement. The amount of the loan plus a fixed interest amount is repaid through an assessment on the property tax bill for the property. The term of the loan can be from 5 to 20 years.

The jurisdiction gets the funds to loan by selling bonds to private investors secured by the property tax assessments paid by the property owners. SANBAG has secured initial commitments from private investors for \$200 million.

What are the benefits of a PACE program?

There are two primary types of benefits from a PACE program. The first type of benefit is economic. Economic benefits include:

- Lower utility bills for property owners
- Increased property value due to improvements
- Investment of millions of dollars in local economy through contractors and suppliers
- Local jobs

The second type of benefit is environmental and the benefits include:

- Lower greenhouse gas emissions due to reduced energy use
- Reduce air pollution due to reduced energy use
- Conservation of water

The PACE program will serve as a conduit to get millions of dollars in private investment circulating in the local economy. The program will help residential property owners lower their energy bills. Commercial property owners and businesses benefit from lower energy and water costs which help make them more competitive. This private investment creates jobs for contractors, installers, and suppliers of the materials used for these improvements. All of these economic benefits also directly benefit our environment by reducing greenhouse gas emissions, delaying construction of new power plants, helping the common goal of energy security, and conserving water.

Why a regional PACE program makes sense.

Any individual agency can implement a PACE program. However, there are some real advantages to taking a regional approach. This approach allows agencies large and small to participate. This is a real benefit to smaller agencies that may not have the staff or volume of interested property owners to make sense for a stand-alone program. The regional Program provides a uniform application process for property owners regardless of what community they are in, thus empowering contractors to include PACE as a funding option across city lines without having to learn multiple options. Program marketing efforts will be implemented on a regional basis which is more cost effective and reaches more people. A regional program is able to attract more private capital because the larger market means larger investment opportunity.

How would a SANBAG PACE program be structured?

SANBAG has selected a team of firms that is providing a turnkey program from structuring and securing investment to developing program manuals, applications and providing application processing. The PACE Program Team is as follows:

- The PFM Group – Financial Advisor and Program Manager
- Best Best & Krieger LLP – Legal Advisor for program formation and operation
- Renovate America, Inc. – Daily administration and funding of the residential program
- Samas Capital, LLC – Daily administration and funding of the commercial program
- David Taussig & Associates, Inc. – Special Tax Consultant and Assessment Engineer
- Westhoff, Cone & Holmstedt – Placement Agent
- U.S. Bank, N.A. – Trustee

Cities and the County are being asked to take an action to opt into the program. After agencies have decided to opt in or not, a district, administered by SANBAG, would be formed encompassing the agencies that have opted in. The property owners in the district would be eligible to participate in the program. Day-to-day operation of the Program will be handled by Renovate America, Inc. for residential properties and by Samas Capital, LLC for commercial properties.

Residential property owners can access the system directly via an online application and a call center (see Western Riverside County Council of Governments PACE Program site for an example <http://wrcog.herofinancing.com/>) or through contractors. Renovate America provides contractors with tools to help them co-market and qualify homeowners. It is anticipated that most applications will come through contractors.

Contractor orientation workshops will be held. The workshops will train contractors on how PACE Program financing works, the application process, the funding process and other terms and conditions of participation. All licensed contractors who meet the requirements of the California State License Board are eligible to participate.

Once the homeowner has been qualified and the eligibility of the project has been approved, the contractor can begin work. When the job is done the contractor or the homeowner submits the Funding Request with the required attachments and the Closing Documents are then sent to the homeowner. The homeowner signs, notarizes and returns the Closing Documents and then payment is sent to the contractor and the assessment is placed on the tax rolls.

Processing for commercial properties is very similar, however, individual project and eligibility review includes acknowledgement of the assessment by any existing mortgage-holder.

Questions – Contact Duane Baker at SANBAG (909) 884-8276 or at dbaker@sanbag.ca.gov



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- San Bernardino County Transportation Commission
 - San Bernardino County Transportation Authority
 - San Bernardino County Congestion Management Agency
 - Service Authority for Freeway Emergencies
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October 15, 2012

Mr. Frank Robinson
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Dear Mr. Robinson:

The SANBAG Board of Directors has approved the creation of a Property Assessed Clean Energy (PACE) Program in San Bernardino County. In order for the residential and commercial property owners in your community to benefit from and participate in the PACE Program your Town Council needs to approve the enclosed Memorandum of Understanding with SANBAG.

PACE Programs were allowed in California under AB 811. The PACE Program allows SANBAG and an interested property owner to enter into a contractual agreement to finance the installation of eligible renewable energy, energy efficiency, or water efficiency improvements that are permanently fixed to the property. SANBAG loans the property owner the funds for the improvement. The funds are being provided by two private firms (Renovate America, Inc. and Samas Capital, LLC) that have pledged up to \$200 million for the program. The property owner repays the loan through an assessment on the property tax bill for the property. The term of the loan ranges from 5 to 20 years. Enclosed with this letter is a fact sheet on the program with more detailed information about the program.

The PACE Program can provide a tool that property owners can use to finance projects like solar panels and energy and water conservation improvements that will help them save money on their utility bills. The PACE Program can help reduce overall greenhouse gas emissions in our communities. Finally, the PACE Program provides a source of private investment into our communities for property improvements that will provide jobs to local contractors and suppliers.

Staff from SANBAG or from our PACE Program Team would be happy to answer any questions that you might have or to appear at your Town Council meeting. Please let me know whether or not you will be scheduling this item on an upcoming agenda. You may contact me at (909) 884-8276 or at dbaker@sanbag.ca.gov. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane A. Baker".

Duane A. Baker
Director of Management Services

cc: Rick Roelle, SANBAG Board Member

CM-PACE-121015-DAB

Attachments: MOU C13066: PACE Program Fact Sheet

Cities of: Adelanto, Barstow, Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Grand Terrace, Hesperia, Highland, Loma Linda, Montclair, Needles, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Twentynine Palms, Upland, Victorville, Yucaipa
Towns of: Apple Valley, Yucca Valley County of San Bernardino