



# **Western Riverside Council of Governments Administration & Finance Committee**

## **AGENDA**

**Wednesday, September 14, 2016  
12:00 p.m.**

**County of Riverside  
Administrative Center  
4080 Lemon Street  
5th Floor, Conference Room C  
Riverside, CA 92501**

In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if special assistance is needed to participate in the WRCOG Administration & Finance Committee meeting, please contact WRCOG at (951) 955-8320. Notification of at least 48 hours prior to meeting time will assist staff in assuring that reasonable arrangements can be made to provide accessibility at the meeting. In compliance with Government Code Section 54957.5, agenda materials distributed within 72 hours prior to the meeting which are public records relating to an open session agenda item will be available for inspection by members of the public prior to the meeting at 4080 Lemon Street, 3rd Floor, Riverside, CA, 92501.

The WRCOG Administration & Finance Committee may take any action on any item listed on the agenda, regardless of the Requested Action.

- 1. CALL TO ORDER (Ben Benoit, Chair)**
- 2. PUBLIC COMMENTS**

At this time members of the public can address the WRCOG Administration & Finance Committee regarding any items listed on this agenda. Members of the public will have an opportunity to speak on agenda items at the time the item is called for discussion. No action may be taken on items not listed on the agenda unless authorized by law. Whenever possible, lengthy testimony should be presented to the Committee in writing and only pertinent points presented orally.

- 3. CONSENT CALENDAR**

All items listed under the Consent Calendar are considered to be routine and may be enacted by one motion. Prior to the motion to consider any action by the Committee, any public comments on any of the Consent Items will be heard. There will be no separate action unless members of the Committee request specific items be removed from the Consent Calendar.

- A. Summary Minutes from the August 10, 2016, WRCOG Administration & Finance Committee special meeting are available for consideration. P. 1**
- Requested Action:** 1. *Approve Summary Minutes from the August 10, 2016, WRCOG Administration & Finance Committee special meeting.*
- B. WRCOG Finance Department Activities Update P. 9**
- Requested Action:** 1. *Receive and file.*
- C. WRCOG Financial Report Summary through July 2016 P. 11**
- Requested Action:** 1. *Receive and file.*
- D. HERO Program Activities Update P. 17**
- Requested Actions:** 1. *Recommend to the WRCOG Executive Committee to defer the judicial foreclosure proceeding and to assign WRCOG's collection rights to Renovate America for 198 delinquent parcels totaling \$503,876.22.*
2. *Recommend to the WRCOG Executive Committee to change the minimum amount required for financing from \$5,000 to \$2,500 for a maximum term of 5-years.*
3. *Recommend to the WRCOG Executive Committee to authorize the WRCOG Executive Director to execute a professional services contract with Baker Tilly for operational analysis / audit of Renovate America, in an amount not to exceed \$165,000.*
- E. WRCOG Transportation Department Activities Update P. 57**
- Requested Action:** 1. *Receive and file.*
- F. WRCOG Transportation Department On-Call Engineering Consultants P. 59**
- Requested Action:** 1. *Recommend that the WRCOG Executive Committee direct and authorize the WRCOG Executive Director to enter into agreements for on-call engineering services with WGZE, TEP, WSP Parsons Brinckerhoff, and Kimley-Horn.*
- G. Amendment to WRCOG Bylaws P. 149**
- Requested Action:** 1. *Recommend that the WRCOG Executive Committee Adopt WRCOG Resolution Number 35-16; A Resolution of the Executive Committee of the Western Riverside Council of Governments Amending its Bylaws to Recognize the March Joint Powers Authority as a voting member on the WRCOG Technical Advisory Committee and making other technical changes.*

H. **Amendment to the Appendix of the WRCOG Conflict of Interest Code** **P. 175**  
**Requested Action:** 1. *Recommend that the WRCOG Executive Committee Adopt WRCOG Resolution Number 32-16; A Resolution of the Executive Committee of the Western Riverside Council of Governments Amending the Conflict of Interest Code pursuant to the Political Reform Act of 1974, to include additional WRCOG Titles and Committee name changes.*

I. **Agency Comparisons of Salaries and Benefits** **P. 193**  
**Requested Action:** 1. *Receive and file.*

J. **Agency Carryover Ad Hoc Committee Update** **P. 199**  
**Requested Action:** 1. *Receive and file.*

K. **Alternative Compliance Framework Introduction** **P. 201**  
**Requested Action:** 1. *Receive and file.*

#### 4. **REPORTS/DISCUSSION**

A. **Community Choice Aggregation Program Activities Update** **P. 205**  
**Requested Action:** 1. *Recommend to the WRCOG Executive Committee to direct staff to move forward with the development and implementation of a Community Choice Aggregation Program and to return to the Committee with additional information and recommendations on selection of governance and operational structures.*

B. **Administration of Additional Property Assessed Clean Energy Programs in the WRCOG subregion** **P. 291**  
**Requested Action:** 1. *Consider the Ad Hoc Committee recommendation regarding Spruce under WRCOG's PACE umbrella.*

C. **Regional Sustainability Demonstration Center Proposal** **P. 293**  
**Requested Action:** 1. *Receive and file.*

D. **City of Calimesa TUMF Request** **P. 295**  
**Requested Action:** 1. *Discuss and provide direction.*

#### 5. **ITEMS FOR FUTURE AGENDAS** **Members**

Members are invited to suggest additional items to be brought forward for discussion at future WRCOG Administration & Finance Committee meetings.

#### 6. **GENERAL ANNOUNCEMENTS** **Members**

Members are invited to announce items / activities which may be of general interest to the WRCOG Administration & Finance Committee.

**7. CLOSED SESSION**

**A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

- Initiation of litigation pursuant to Section 54956.9(d)(2): 1 potential case

**B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO SECTION 54956.9(d)(1)**

- Western Riverside Council of Governments vs. City of Lake Elsinore Arbitration – REF# 1120012917 [AALRR – Cerritos.066243.00005]

**C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO SECTION 54956.9(d)(1)**

- Case Number RIC1211222
- Case Number 30-2010-00357976

**8. NEXT MEETING:** The next WRCOG Administration & Finance Committee meeting is scheduled for Wednesday, October 12, 2016, at 12:00 p.m., in the County of Riverside Administrative Center, 5th Floor, Conference Room C.

**9. ADJOURNMENT**

**Administration & Finance Committee  
August 10, 2016  
Summary Minutes**

**Item 3.A**

**1. CALL TO ORDER**

The Special meeting of the WRCOG Administration & Finance Committee (Committee) was called to order at 12:03 p.m. by Chair Ben Benoit, at the County of Riverside Administrative Center, 5th Floor, Conference Room C.

**Members present:**

Debbie Franklin, City of Banning  
Eugene Montanez, City of Corona  
Bonnie Wright, City of Hemet  
Laura Roughton, City of Jurupa Valley  
Randon Lane, City of Murrieta (12:05 p.m. arrival)  
Ben Benoit, City of Wildomar (Chair)  
Brenda Dennstedt, Western Municipal Water District

**Staff present:**

Steve DeBaun, Legal Counsel, Best Best & Krieger  
Rick Bishop, Executive Director  
Ernie Reyna, Chief Financial Officer  
Barbara Spoonhour, Director of Energy and Environmental Programs  
Jennifer Ward, Director of Government Relations  
Christopher Gray, Director of Transportation  
Tyler Masters, Program Manager  
Michael Wasgatt, Program Manager  
Andrea Howard, Staff Analyst  
Janis Leonard, Executive Assistant

**Guests present:**

Warren Diven, Best Best & Krieger  
Laura Franke, Public Financial Management  
Dr. Matt Rahn, CalState San Marcos

**2. PUBLIC COMMENTS**

There were no public comments.

**3. CONSENT CALENDAR** – *(Montanez/Franklin) 6 yes; 0 no; 0 abstain. Items 3.A through 3.E were approved by a unanimous vote of those members present. The Western Municipal Water District abstained from item 3.B only. The Cities of Lake Elsinore, Murrieta, and Temecula, and the County of Riverside Districts 3 and 5 were not present. Item 3.E was pulled for discussion.*

**A. Summary Minutes from the June 8, 2016, WRCOG Administration & Finance Committee meeting are available for consideration.**

**Action:** 1. *Approved Summary Minutes of the June 8, 2016, WRCOG Administration & Finance Committee meeting.*

**B. Summary Minutes from the July 11, 2016, WRCOG Administration & Finance Committee meeting are available for consideration.**

**Action:** 1. *Approved Summary Minutes of the July 11, 2016, WRCOG Administration & Finance Committee meeting.*

**C. WRCOG Finance Department Activities Update**

**Action:** 1. *Received report.*

**D. WRCOG Financial Report Summary through June 2016**

**Action:** 1. *Received report.*

**E. CEQA Cases in the WRCOG Subregion**

This item was pulled for discussion by Christopher Gray. There are approximately 20 ongoing CEQA cases in the WRCOG subregion, many of which relate to one project. There are at least four ongoing cases in which one jurisdiction is suing another jurisdiction. There are also a number of cases coming from private individuals / companies. A recent study determined that a number of cases are directed at approximately 14,000 housing units in Los Angeles.

**Action:** 1. *Received report.*

*(Dennstedt/Montanez) 6 yes; 0 no; 0 abstain. Item 3.E was approved by a unanimous vote of those members present. The Cities of Lake Elsinore, Murrieta, and Temecula, and the County of Riverside Districts 3 and 5 were not present.*

**4. REPORTS/DISCUSSION**

**A. Administration of Additional Property Assessed Clean Energy Programs in the WRCOG Subregion**

Barbara Spoonhour reported that in June, the WRCOG Executive Committee created an Ad Hoc Committee to view the vetting process and make recommendations to the Executive Committee.

Staff distributed a solicitation to PACE providers throughout the state, providing an opportunity for those interested to operate their program under the WRCOG PACE umbrella. Three companies responded: CaliforniaFirst, Spruce Finance, and PACE Funding. Staff and the Ad Hoc Committee met with these providers in August.

Ms. Spoonhour shared Program cost comparisons for each provider against the HERO Program.

WRCOG staff visited CaliforniaFirst, which has been operational since 2009, but temporarily suspended their Program when the Federal Housing Finance Agency released their statement. CaliforniaFirst relaunched its Program in 2014. CaliforniaFirst is based in Oakland, and has three call centers. CaliforniaFirst offers both residential and commercial PACE Programs, levied approximately 5,000 last year, and anticipates levying over 15,000 this year. CaliforniaFirst has over 200 employees.

Spruce Finance is new and is expected to launch in the fall of 2016. Spruce Finance is based out of San Francisco, and has an underwriting facility in Anaheim. Spruce Finance has a residential PACE Program only, and has offered consumer financing for over 40 years in the State of California. Spruce Finance has over 200 employees. Staff is scheduled to visit Spruce Finance next week in its Anaheim office.

PACE Funding is also new to PACE. Its first project was funded in April 2016. PACE Funding is based in Los Gatos, and offers a residential PACE Program only. PACE Funding has 10 employees and works with an exclusive set of contractors. PACE Funding has completed 10 projects, and staff is scheduled to visit PACE Funding next week.

The Ad Hoc Committee was impressed with CaliforniaFirst, was concerned with PACE Funding's newness to PACE, as well as its exclusive contractor interaction and call center capabilities. The Ad Hoc Committee was also concerned with Spruce Finance's newness; however, the Ad Hoc Committee was comfortable with Spruce Finance in general due to its consumer lending experience.

Once staff visits PACE Funding and Spruce Finance, another Ad Hoc Committee meeting will be scheduled to review those findings.

**Action:** 1. *Supported the Ad Hoc Committee recommendation to request that the WRCOG Executive Committee direct and authorize the WRCOG Executive Director to enter into contract negotiations and execution of any necessary documents to include CaliforniaFIRST under WRCOG's PACE umbrella.*

*(Montanez/Roughton) 7 yes; 0 no; 0 abstain. Item 4.A was approved by a unanimous vote of those members present. The Cities of Lake Elsinore and Temecula, and the County of Riverside Districts 3 and 5 were not present.*

## **B. Regional Streetlight Program Activities Update**

Tyler Masters reported that this Program will assist member jurisdictions with the streetlight acquisition process, will retrofit 63,000 lamps to LED, thereby providing \$6M annually in utility savings, identify and facilitate financing, operate and manage operations / maintenance, and support a Smart-City future.

Laura Franke reported that Public Financial Management (PFM), consultant on this Program, have met with member jurisdictions to discuss cash flow feasibility, and Lighting District review processes have been initiated.

PFM will be working with the lender to develop a structure which will allow each member jurisdictions to close on financing simultaneous to the exit from the California Public Utilities Commission (CPUC) process.

The Cash Flow Model uses valuation data from Southern California Edison (SCE) in addition to a variety of variables such as current utility costs, LED retrofit energy savings, and re-lamp reserve to name a few. An abridged model is available for individual jurisdictional use to determine the impact on cash flow under a variety of assumptions.

Warren Diven reported that most jurisdictions primarily pay for their streetlights through special financing districts. The ability to utilize that revenue going forward is key to the success of this Program. Best Best & Krieger (BB&K), in partnership with PFM, is conducting a survey of member jurisdictions' special districts. Survey findings will most likely require an opinion by each jurisdiction's City / County Attorney.

Committee member Laura Roughton indicated that the City of Jurupa Valley is unique with its special districts, and asked if BB&K and PFM will be dealing directly with those.

Mr. Diven responded that yes, they will.

Ms. Franke indicated that in establishing a financing lender, sample financing solicitation loans were distributed. Cities can borrow tax exempt; however, in this case, if a jurisdiction borrows on a tax exempt basis, it is limited on the amount of proceeds that can be supporting a facility that will provide private use. There is a 5% private use exemption for the tax exemption. Therefore, it makes more sense to borrow on a taxable basis in order to generate revenue down the road.

Several financing options were considered. PFM is recommending a direct placement lease to ensure the lender is established and will remain so for the duration of the Program. A solicitation was provided to 56 firms; four written responses were received, and four indications of interest should the Program proceed.

PFM is recommending Bank of America, as it is the most experienced and offers the best credit, pricing, and flexibility.

The WRCOG Executive Committee is scheduled to receive this presentation at its September meeting, after which a notice of award will be issued. Member jurisdiction approval is anticipated to begin in October.

Committee member Eugene Montanez asked how any one City's lack of credit affect another City's credit worthiness?

Ms. Franke responded that each jurisdiction will stand on its own credit.

Committee member Montanez asked how much discussion has occurred within WRCOG's Committee structure.

Rick Bishop responded that this item has been presented to the Finance Directors' Committee, and the Technical Advisory Committee will be receiving this presentation next week.

Committee member Montanez indicated that it would be helpful for those representatives to speak to their respective elected officials to ensure everyone is aware of this Program and how it is proceeding.

Mr. Bishop responded that presentations are structured for presentation to nearly every Committee so that by the time it reached the Executive Committee, it has been thoroughly vetted.

Committee member Randon Lane asked if there are any concerns or push-backs on this Program?

Mr. Bishop responded that staff have not.

Committee member Montanez asked if the sourcing of the various types of LEDs has been determined, and what the number of lamp heads are per jurisdiction.

Mr. Masters responded that LEDs from 11 different manufactures will be installed in the various demonstration areas. Upon conclusion of the demonstration areas, a selection recommendation will be provided, based upon public opinion and surveys. Mr. Masters indicated that he can email the number of lamp heads per jurisdiction to Committee members.

**Action:**        1.        *Recommend, for those jurisdictions interested in using financing for the acquisition and retrofitting of streetlights, that they utilize Bank of America Public Capital Corporation (which was deemed the most responsive during the bid process by WRCOG staff and its Financial Advisor, Public Financial Management, for being able to provide the most competitive financing for the Regional Streetlight Program).*

*(Lane/Montanez) 7 yes; 0 no; 0 abstain. Item 4.B was approved by a unanimous vote of those members present. The Cities of Lake Elsinore and Temecula, and the County of Riverside Districts 3 and 5 were not present.*

**C. WRCOG Representation on the Environmental Leadership Institute Advisory Council**

Jennifer Ward reported that the Environmental Leadership Institute (ELI) is based at CalState San Marcos in the City of Temecula. ELI serves as a forum for regional leaders and visionaries to discuss issues related to the quality of life within the Inland Empire and southern California. ELI encompasses an educational program, an Advisory Board, and provides professional services.

The Educational Program, the Environmental Leadership Academy (ELA), is a four-month long Program that engages individuals in critical thinking around environmental issues affecting quality of life. This closely aligns with WRCOG priorities in addressing quality of life in Western Riverside County. Membership in the ELI will better establish relationships between WRCOG and higher learning institutions in southwest Riverside County.

Tuition for the ELA is \$450 per person; however, WRCOG would be provided with two complimentary ELA registrations as a member of ELI's Advisory Board. As an Executive Committee member on the ELI's Advisory Board, WRCOG would be able to participate in these regional discussions, and elevate WRCOGs priorities. WRCOG would be the only governmental entity on ELI's Advisory Board.

Committee member Randon Lane indicated that he has been through the ELA, and it is a very informational and educational program. Partnering in the ELI would be very beneficial for WRCOG.

Dr. Matt Rahn indicated that the ELA began seven years ago to provide networking and training in the environmental industry. The ELI was created two years ago to provide independent, unbiased support for agencies such as WRCOG. ELI's Advisory Board will be working on an Air Summit for the first quarter of 2017.

Committee member Debbie Franklin indicated that it does not appear that the ELI Advisory Board deals with transportation or water issues.

Dr. Rahn responded that the Metropolitan Water District will be joining in the near future, and ELI is reaching out to members in the transportation sector. It is important that members fit into the character of ELI.

Committee member Franklin asked what the time commitment is for both the ELI and ELA.

Dr. Rahn responded that the ELA is two full days per month (Thursday and Friday), for the months of September through December. Venue locations vary; one is in the desert, one in the southern area of the County, one in the mountains, and one in the Riverside area. Speakers and topics are location-based. The ELI Advisory Board meets quarterly, and those meetings last approximately four hours.

Committee member Franklin asked what the membership due is used for.

Dr. Rahn responded that a portion of it supports the basic function of ELI, a portion pays for the ELA, and a portion covers access to a state-wide network / clearing-house of information.

Committee member Laura Roughton indicated that if this is approved, she would like a report-back at the end of the one-year membership. Committee member Roughton asked how this item came to WRCOG.

Mr. Bishop responded that he was a speaker at one of the ELA sessions, and saw membership as an opportunity to expand its leadership role in this arena. Membership will provide a lot of economic benefits, and networking with the private sector.

- Actions:**
1. *Authorized the WRCOG Executive Director to allocate \$15,000 for WRCOG to serve as an Executive Committee Member on the Environmental Leadership Institute Advisory Board for a period of one year.*
  2. *Appointed the Executive Director as WRCOG's representative to the Environmental Leadership Institute Advisory Board.*

*(Franklin/Montanez) 7 yes; 0 no; 0 abstain. Item 4.C was approved by a unanimous vote of those members present. The Cities of Lake Elsinore and Temecula, and the County of Riverside Districts 3 and 5 were not present.*

#### **D. WRCOG Transportation Department Activities Update**

Christopher Gray reported that SCAG's growth forecast from the 2016 RTP/SCS has been incorporated into the TUMF Nexus Study. Economic & Planning Systems has been retained to perform a comprehensive fee analysis. The WRCOG Executive Committee created an Ad Hoc Committee to develop an option(s) in preparation of the 2016 TUMF Nexus Study.

A schedule for preparing the Nexus Study has been prepared, and meetings will occur each month through February 2017. If there is a fee update, it will take place approximately four to six months after approval by the Executive Committee. Once the Executive Committee approves, member jurisdictions will be required to adopt TUMF Ordinances.

Committee member Laura Roughton asked if there is available funding for finished projects currently listed on the Network, even though those projects will not be listed in the updated Nexus Study.

Mr. Gray responded that WRCOG has a long-term agreement with one of its member jurisdictions. The jurisdiction used a large amount of money for its own project because the TUMF Program did not have that amount of money at that time. WRCOG entered into a reimbursement agreement with that jurisdiction to pay it back as money became available, up to the amount the Zone allocates. That project was left in the Network so that it was part of the cost of the fee allocation. The Building Industry Association reviewed the Network and indicated that they felt the fee was too high because it included completed projects.

Staff determined that there was enough money in the bank to pay those commitments, because fees are collected on a continuous basis, and all the money collected last year was not spent. Because of the perception of collecting a fee for something that is already built, staff decided to pull the projects off the Network. The reimbursement agreement guarantees the member jurisdiction that, even though the project will not be included in the updated Nexus, the member jurisdiction will still be paid. It is up to the Zone if the agreed upon reimbursement continues over time, or, if money allows, is paid in full sooner.

Committee member Eugene Montanez indicated that if a project is not in the Network, it will not receive funding until the Nexus Study is approved.

Committee member Roughton asked for clarification that these types of specials occasions are in a written agreement.

Mr. Gray responded that the TUMF Program has a standard reimbursement agreement that is entered into by WRCOG and the jurisdiction when construction on a project begins. The agreement indicates that in exchange for the jurisdiction building the project it said it would, WRCOG will reimburse the jurisdiction up to a certain amount identified in the agreement.

Committee member Randon Lane indicated that if the project being discussed had not been paid off by the jurisdiction, the project would still be collecting fees. Is the Program losing dollars because of that?

Mr. Gray responded that there is always a rolling period in which money is collected for old projects, and new projects are being paid off. So no, staff does not believe the Program is losing money.

Committee member Montanez suggested that this matter be discussed by the Ad Hoc Committee, specifically his concerns with the various options. The developers need to be informed that they are getting a bye until the Nexus Study is updated, and they should not expect any special privileges once the Nexus Study is complete. If there are any projects in the pipe, they need to begin.

Mr. Gray indicated that the fee must be based upon a specific list of projects.

Steve DeBaun indicated that there is no legal prohibition with collection on a project, even after it is built, as long it is built with the anticipation that fees will be collected. There may be a way to note within the Nexus Study that any particular project has already been built and only has "X" number of dollars to be paid on it.

Rick Bishop indicated that staff will further review whether or not funds are being lost.

Committee member Roughton indicated that even if the project is not being physically lost, it is still being taken out of the picture. There must be a way it can be documented.

Mr. Bishop indicated that there will always be this issue because there will always be changing Nexus Studies.

Mr. Gray indicated that the comprehensive fee analysis is being presented to the WRCOG Public Works Committee tomorrow. A review of all regional development fees has been completed, as well as fees in the surrounding jurisdictions. Mr. Gray also indicated that staff have been regularly communicating with developers, providing the fee schedule. A workshop has been held for residential community members, and a workshop for non-residential community members is being scheduled for late September.

**Action:** 1. *Received and filed.*

#### **E. 25th Annual General Assembly & Leadership Address Update**

Jennifer Ward reported that a preliminary budget was presented at this Committee's last meeting. Final numbers are in and the Agency came in in the black by approximately \$7k. New sponsors were brought in this year, and that number is anticipated to continue growing.

**Action:** 1. *Received and filed.*

#### **5. ITEMS FOR FUTURE AGENDAS**

Committee member Laura Roughton indicated that a presentation had been previously requested on the trucking industry, as well as a recap on SCAG's demographic summary.

Rick Bishop responded that staff is working on those presentations.

## **6. GENERAL ANNOUNCEMENTS**

Rick Bishop indicated that last month the WRCOG Executive Committee was provided a presentation on an Agency move. While this matter has been discussed amongst this Committee, it had not happened at with the Executive Committee. Mr. Bishop saw the move as an administrative issue, not so much a policy issue that required vetting through all the various Committees. In an attempt to improve communications, perhaps a written recap of discussions and actions which occur at this meeting be forwarded to the Executive Committee.

Committee member Randon Lane indicated that he does not want to see a knee jerk reaction to this item. This is either something that occurs infrequently, or has not happened at all.

Committee member Laura Roughton indicated that she reports back to her City Council on this meeting. Cities that are not part of this Committee are not receiving the information. If Committee members read what is in the agenda, they would have known about it. You can only do so much. A summary would be another level of work.

**7. NEXT MEETING:**        **The next WRCOG Administration & Finance Committee meeting is scheduled for Wednesday, September 14, 2016, at 12:00 p.m., in the Riverside County Administrative Center, 5th Floor, Conference Room C.**

**8. ADJOURNMENT:**       **The meeting of the WRCOG Administration & Finance Committee adjourned at 1:28 p.m.**



# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** WRCOG Finance Department Activities Update

**Contact:** Ernie Reyna, Chief Financial Officer, [reyna@wrcog.coq.ca.us](mailto:reyna@wrcog.coq.ca.us), (951) 955-8432

**Date:** September 14, 2016

### Requested Action:

1. Receive and file.

*Following is a schedule of finance-related activities for the remainder of the Fiscal Year.*

### Financial Audit

Financial auditors from Vavrinek, Trine, Day, & Co., have conducted their interim audit work for Fiscal Year (FY) 2015/2016. The auditors worked with WRCOG staff to begin the process of reviewing the financial ledgers, and will return in late September to conduct final fieldwork. The final portion of the audit will be scheduled during the week of September 26, 2016. It is anticipated the audit will conclude in October or November 2016, with the final Comprehensive Annual Financial Report being issued shortly thereafter.

### Budget Amendment

September 30, 2016, will mark the end of the first quarter of FY 2016/2017, and the WRCOG Administration & Finance Committee will be presented with the budget amendment report at its October 12, 2016, meeting. The WRCOG Technical Advisory Committee will also consider the amendment report at its October 20, 2016, meeting. The WRCOG Executive Committee will consider the amendment report at its November 7, 2016, meeting.

### Annual TUMF Audit for FY 2015/2016

Letters have been transmitted to each member agency during the month of August to schedule the annual TUMF audit visits. This process will include a follow up email to the Agencies Finance and Public Works Directors confirming the date and time of their respective audits. TUMF audits will then commence in September and are anticipated to be completed by November 2016. The TUMF audits allow staff to ensure that member agencies are correctly calculating and remitting TUMF funds in compliance with the TUMF Program.

### Prior WRCOG Actions:

August 18, 2016: The WRCOG Technical Advisory Committee received report.

August 10, 2016: The WRCOG Administration & Finance Committee received report.

**WRCOG Fiscal Impact:**

This item is informational only; therefore, there is no fiscal impact.

**Attachment:**

None.



# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** WRCOG Financial Report Summary through July 2016

**Contact:** Ernie Reyna, Chief Financial Officer, [reyna@wrcog.coq.ca.us](mailto:reyna@wrcog.coq.ca.us), (951) 955-8432

**Date:** September 14, 2016

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**Requested Action:**

1. Receive and file.

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Attached is WRCOG's financial statement through July 2016.

**Prior WRCOG Action:**

None.

**WRCOG Fiscal Impact:**

This item is informational only; therefore there is no fiscal impact.

**Attachment:**

1. WRCOG Financial Report Summary – July 2016.

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# Item 3.C

WRCOG Financial Report Summary  
through July 2016

# Attachment 1

WRCOG Financial Report  
Summary – July 2016

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Western Riverside Council of Governments  
 Monthly Budget to Actuals  
 For the Month Ending July 31, 2016

		<b>Approved 6/30/2017 Budget</b>	<b>Thru 7/31/2016 Actual</b>	<b>Remaining 6/30/2017 Budget</b>
<b>Revenues</b>				
40001	Member Dues	309,410	306,410	3,000
40601	WRCOG HERO	1,963,735	125,615	1,838,120
40604	CA HERO	7,615,461	506,961	7,108,500
40607	WRCOG HERO Commercial	25,000	756	24,244
40611	WRCOG HERO Recording Revenue	335,555	38,860	296,695
40612	CA HERO Recording Revenue	1,301,300	155,840	1,145,460
41201	Solid Waste	93,415	93,415	(0)
41402	Air Quality-Clean Cities	139,500	128,000	11,500
43001	Commercial/Service - Admin (4%)	37,074	12,002	25,073
43002	Retail - Admin (4%)	142,224	1,137	141,087
43003	Industrial - Admin 4%	128,446	95,090	33,356
43004	Residential/Multi/Single - Admin (4%)	1,067,271	109,805	957,466
43005	Multi-Family - Admin (4%)	224,983	8,973	216,010
43001	Commercial/Service	889,786	288,037	601,749
43002	Retail	3,413,375	27,281	3,386,094
43003	Industrial	3,082,710	2,282,170	800,540
43004	Residential/Multi/Single	25,614,514	2,635,324	22,979,190
43005	Multi-Family	5,399,595	215,343	5,184,252
	<b>Total Revenues</b>	<b>60,858,676</b>	<b>7,031,019</b>	<b>53,827,657</b>
<b>Expenditures</b>				
<b>Wages and Benefits</b>				
60001	Wages & Salaries	1,993,083	89,706	1,903,377
61000	Fringe Benefits	579,799	41,957	537,843
	<b>Total Wages and Benefits</b>	<b>2,632,882</b>	<b>131,663</b>	<b>2,501,219</b>
<b>General Operations</b>				
63000	Overhead Allocation	1,518,136	126,511	1,391,625
65507	Commissioners Per Diem	45,000	3,750	41,250
73001	Office Lease	145,000	22,426	122,574
73003	WRCOG Auto Fuels Expense	-	82	(82)
73107	Event Support	183,000	2,685	180,315
73108	General Supplies	22,750	195	22,555
73111	Rent/Lease Equipment	25,000	1,186	23,814
73115	Meeting Support/Services	13,750	20	13,730
73116	Postage	5,600	107	5,493
73117	Other Household Expenditures	2,100	363	1,737
73122	Computer Hardware	4,000	-	4,000
73201	Communications-Regular	2,000	70	1,930
73203	Communications-Long Distance	1,200	19	1,181
73405	Insurance - General/Business Liason	63,170	28,095	35,075
73407	WRCOG Auto Insurance	-	345	(345)
73506	CA HERO Recording Fee	1,636,855	74,448	1,562,407
73601	Seminars/Conferences	25,050	175	24,875
73611	Travel - Mileage Reimbursement	22,433	196	22,237
	<b>Total General Operations</b>	<b>57,402,253</b>	<b>261,546</b>	<b>57,140,706</b>
	<b>Total Expenditures</b>	<b>60,035,135</b>	<b>393,209</b>	<b>59,641,926</b>



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# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** HERO Program Activities Update

**Contact:** Barbara Spoonhour, Director of Energy and Environmental Programs,  
[spoonhour@wrcog.cog.ca.us](mailto:spoonhour@wrcog.cog.ca.us), (951) 955-8313

**Date:** September 14, 2016

### Requested Actions:

1. Recommend to the WRCOG Executive Committee to defer the judicial foreclosure proceeding and to assign WRCOG's collection rights to Renovate America for 198 delinquent parcels totaling \$503,876.22.
2. Recommend to the WRCOG Executive Committee to change the minimum amount required for financing from \$5,000 to \$2,500 for a maximum term of 5-years.
3. Recommend to the WRCOG Executive Committee to authorize the WRCOG Executive Director to execute a professional service contract with Baker Tilly for operational analysis / audit of Renovate America, in an amount not to exceed \$165,000.

*WRCOG's HERO Program provides financing to property owners to implement a range of energy saving, renewable energy, and water conserving improvements to their homes and businesses. Improvements must be permanently fixed to the property and must meet certain criteria to be eligible for financing. Financing is paid back through a lien placed on the property tax bill. The HERO Program was initiated in December 2011 and has been expanded (an effort called "California HERO") to allow for jurisdictions throughout the state to join WRCOG's Program and allow property owners in these jurisdictions to participate.*

### Overall HERO Program Activities Update

Residential: As of this writing, more than 96,600 homeowners in both the WRCOG and California HERO Programs have been approved to fund more than \$5.6 billion in eligible renewable energy, energy efficiency and water efficiency projects.

WRCOG Subregion: Over 33,200 property owners located in Western Riverside County have been approved for funding through the WRCOG HERO Program, totaling over \$1.4 billion. Over 20,600 projects, totaling over \$396 million, have been completed.

Statewide Program: As of this writing, 352 jurisdictions outside the WRCOG and San Bernardino Associated Governments subregions have adopted Resolutions of Participation for the California HERO Program. Over 63,300 applications have been approved for the California HERO Program to fund over \$4.2 billion in eligible renewable energy, energy efficiency and water efficiency projects. Over 33,700 projects have been completed, totaling nearly \$718 million.

### HERO Assessment Delinquencies

Background: On September 14, 2015, the WRCOG Executive Committee adopted a policy to review, on an

annual basis, the number and amount of delinquencies and determine the assignment of collection rights, or to begin the judicial foreclosure process.

Under WRCOG's Master Bond Indentures, it is stated that any property owner that is delinquent in his or her tax bill on October 1st of each year will be subject to WRCOG initiating a judicial foreclosure process. However, WRCOG may elect to defer the judicial foreclosure proceedings if WRCOG has received or advanced funds to cover the delinquent amounts. Previous actions by the WRCOG Executive Committee include:

2013/2014 Tax Year – deferred 8 parcels totaling \$12,748.21  
2014/2015 Tax Year – deferred 44 parcels totaling \$97,687.67

2015/2016 Tax Year Delinquencies: David Taussig & Associates (DTA), the HERO Program Assessment Administrator, issues a preliminary report that details the delinquencies for the tax year. The final report will be calculated by the end of September 2016, and brought back this Committee in October 2016.

For the 2015/2016 Tax Year, WRCOG enrolled HERO assessments on 21,811 parcels totaling \$64,998,397.91. As of August 8, 2016, the total delinquency rate is 0.78% or \$503,876.22. An updated listing will be provided at the meeting and it is anticipated that this number will continue to decrease. A breakdown by county is provided in Attachment 1. A Delinquency simply means that the property owner(s) did not make timely payment of his and/or her property taxes (including the HERO Assessment payment) for the past tax year.

### **Program Report Changes**

Under the WRCOG Energy Efficiency and Water Conservation Administrative Guidelines and Program Report, and the California HERO Residential Handbook, the minimum amount that can be financed through the residential Program is \$5,000. Renovate America has requested this requirement be changed to \$2,500 because there may be instances where a property owner is adding additional projects that they may not want or need to reach the minimum threshold. While staff is in agreement that reducing the amount makes sense for certain projects, it does not make sense to have the financing of \$2,500 be stretched out over 10-, 15-, or 20-years. Staff is recommending that a fixed term of 5-years be implemented for these types of projects.

### **Operational Analysis / Audit**

On June 30, 2016, WRCOG released a Request for Proposal (RFP) to have a comprehensive operational and capacity review of the HERO Program, as is currently being implemented by Renovate America. The review will cover the period from July 1, 2015, through June 30, 2016, and is to ensure that Renovate America is operating the HERO Program in accordance with the Program Report and Consumer Protections adopted by the WRCOG Executive Committee. The proposals were due on July 25, 2016, and four proposals were received. Three proposals were selected for the interview process: EcoMotion, Baker Tilly, and PricewaterhouseCoopers. The proposal costs ranged from \$34,000 to \$825,000.

On August 26, 2016, the Review Committee (consisting of WRCOG staff, Public Financial Management, Rogers, Anderson, Malody, & Scott, LLP, and Best Best & Krieger) interviewed the three firms. Baker Tilly was selected as the firm to complete the operational analysis / audit. A copy of the draft agreement is attached for members review (Attachment 2).

### **Prior WRCOG Action:**

August 12, 2015: The WRCOG Administration & Finance Committee received report.

### **WRCOG Fiscal Impact:**

The \$165,000 fee for Baker Tilly's services will be included in the Fiscal Year 2016/2017 2nd Quarter budget

amendment in the HERO Program for the Consulting Services line item.

**Attachments:**

1. 2015/2016 Delinquency Summary.
2. Professional Services Agreement between WRCOG and Baker Tilly.

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# Item 3.D

HERO Program Activities Update

## Attachment 1

2015/2016 Delinquency Summary

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**Western Riverside Council of Governments  
Delinquency Summary Report  
Residential  
Fiscal Year 2015-2016**

<b>Contra Costa County [1] Fund #TE4394970</b>			
<b>Total Levy For FY 2015-2016:</b>	\$339,627.08	<b>Total Amount Collected:</b>	\$339,627.08
<b>Number of Parcels Subject to Levy:</b>	101	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Fresno County [2] Fund #6056</b>			
<b>Total Levy For FY 2015-2016:</b>	\$1,868,718.38	<b>Total Amount Collected:</b>	\$1,854,090.07
<b>Number of Parcels Subject to Levy:</b>	656	<b>Delinquent Amount:</b>	\$14,628.31
<b>Number of Parcels Delinquent:</b>	7	<b>Delinquency Rate:</b>	0.78%
<b>Imperial County [1] Fund #96200</b>			
<b>Total Levy For FY 2015-2016:</b>	\$56,105.08	<b>Total Amount Collected:</b>	\$56,105.08
<b>Number of Parcels Subject to Levy:</b>	36	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Kern County [1][3] Fund #42912</b>			
<b>Total Levy For FY 2015-2016:</b>	\$2,025,529.28	<b>Total Amount Collected:</b>	\$2,017,826.82
<b>Number of Parcels Subject to Levy:</b>	739	<b>Delinquent Amount:</b>	\$7,702.46
<b>Number of Parcels Delinquent:</b>	5	<b>Delinquency Rate:</b>	0.38%
<b>Kings County [1] Fund #5011</b>			
<b>Total Levy For FY 2015-2016:</b>	\$57,924.52	<b>Total Amount Collected:</b>	\$57,924.52
<b>Number of Parcels Subject to Levy:</b>	26	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Los Angeles County [2] Fund #96.21</b>			
<b>Total Levy For FY 2015-2016:</b>	\$6,635,256.75	<b>Total Amount Collected:</b>	\$6,536,095.94
<b>Number of Parcels Subject to Levy:</b>	1,949	<b>Delinquent Amount:</b>	\$99,160.81
<b>Number of Parcels Delinquent:</b>	33	<b>Delinquency Rate:</b>	1.49%
<b>Madera County [1] Fund #7720</b>			
<b>Total Levy For FY 2015-2016:</b>	\$92,897.82	<b>Total Amount Collected:</b>	\$92,416.85
<b>Number of Parcels Subject to Levy:</b>	33	<b>Delinquent Amount:</b>	\$480.97
<b>Number of Parcels Delinquent:</b>	1	<b>Delinquency Rate:</b>	0.52%
<b>Merced County [1] Fund #86510</b>			
<b>Total Levy For FY 2015-2016:</b>	\$213,111.86	<b>Total Amount Collected:</b>	\$208,029.50
<b>Number of Parcels Subject to Levy:</b>	71	<b>Delinquent Amount:</b>	\$5,082.36
<b>Number of Parcels Delinquent:</b>	3	<b>Delinquency Rate:</b>	2.38%
<b>Mono County [1] Fund #66100</b>			
<b>Total Levy For FY 2015-2016:</b>	\$19,415.02	<b>Total Amount Collected:</b>	\$19,415.02
<b>Number of Parcels Subject to Levy:</b>	6	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Monterey County [1] Fund #99600</b>			
<b>Total Levy For FY 2015-2016:</b>	\$41,311.32	<b>Total Amount Collected:</b>	\$41,311.32
<b>Number of Parcels Subject to Levy:</b>	8	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Napa County [1] Fund #52160</b>			
<b>Total Levy For FY 2015-2016:</b>	\$246,178.04	<b>Total Amount Collected:</b>	\$246,178.04
<b>Number of Parcels Subject to Levy:</b>	62	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Orange County [1] Fund #749 CE</b>			
<b>Total Levy For FY 2015-2016:</b>	\$5,525,700.28	<b>Total Amount Collected:</b>	\$5,485,597.38
<b>Number of Parcels Subject to Levy:</b>	1,599	<b>Delinquent Amount:</b>	\$40,102.90
<b>Number of Parcels Delinquent:</b>	9	<b>Delinquency Rate:</b>	0.73%
<b>Eastern Riverside [1] Fund #68-9010</b>			
<b>Total Levy For FY 2015-2016:</b>	\$253,022.38	<b>Total Amount Collected:</b>	\$253,022.38
<b>Number of Parcels Subject to Levy:</b>	102	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%

**Western Riverside Council of Governments  
Delinquency Summary Report  
Residential  
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<b>Riverside County [1]</b>			
<b>Fund #68-6547</b>			
<b>Total Levy For FY 2015-2016:</b>	\$221,034.80	<b>Total Amount Collected:</b>	\$221,034.80
<b>Number of Parcels Subject to Levy:</b>	98	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Fund #68-9004 [4]</b>			
<b>Total Levy For FY 2015-2016:</b>	\$5,981,960.77	<b>Total Amount Collected:</b>	\$5,949,915.59
<b>Number of Parcels Subject to Levy:</b>	2,780	<b>Delinquent Amount:</b>	\$32,045.18
<b>Number of Parcels Delinquent:</b>	21	<b>Delinquency Rate:</b>	0.54%
<b>Fund #68-9008 [5]</b>			
<b>Total Levy For FY 2015-2016:</b>	\$25,126,267.52	<b>Total Amount Collected:</b>	\$24,901,708.85
<b>Number of Parcels Subject to Levy:</b>	9,056	<b>Delinquent Amount:</b>	\$224,558.67
<b>Number of Parcels Delinquent:</b>	93	<b>Delinquency Rate:</b>	0.89%
<b>Fund #68-9009</b>			
<b>Total Levy For FY 2015-2016:</b>	\$20,193.84	<b>Total Amount Collected:</b>	\$20,193.84
<b>Number of Parcels Subject to Levy:</b>	8	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Riverside County - All Funds</b>			
<b>Total Levy For FY 2015-2016:</b>	\$31,349,456.93	<b>Total Amount Collected:</b>	\$31,092,853.08
<b>Number of Parcels Subject to Levy:</b>	11,942	<b>Delinquent Amount:</b>	\$256,603.85
<b>Number of Parcels Delinquent:</b>	114	<b>Delinquency Rate:</b>	0.82%
<b>Sacramento County [2]</b>			
<b>Fund #1030</b>			
<b>Total Levy For FY 2015-2016:</b>	\$70,027.60	<b>Total Amount Collected:</b>	\$69,023.86
<b>Number of Parcels Subject to Levy:</b>	29	<b>Delinquent Amount:</b>	\$1,003.74
<b>Number of Parcels Delinquent:</b>	1	<b>Delinquency Rate:</b>	1.43%
<b>San Diego County [6]</b>			
<b>Fund #6265-01</b>			
<b>Total Levy For FY 2015-2016:</b>	\$12,727,846.45	<b>Total Amount Collected:</b>	\$12,665,262.56
<b>Number of Parcels Subject to Levy:</b>	3,360	<b>Delinquent Amount:</b>	\$62,583.89
<b>Number of Parcels Delinquent:</b>	18	<b>Delinquency Rate:</b>	0.49%
<b>San Francisco County [1]</b>			
<b>Fund# 84</b>			
<b>Total Levy For FY 2015-2016:</b>	\$3,742.58	<b>Total Amount Collected:</b>	\$3,742.58
<b>Number of Parcels Subject to Levy:</b>	1	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>San Joaquin County [1]</b>			
<b>Fund #72900</b>			
<b>Total Levy For FY 2015-2016:</b>	\$796,241.30	<b>Total Amount Collected:</b>	\$787,449.16
<b>Number of Parcels Subject to Levy:</b>	281	<b>Delinquent Amount:</b>	\$8,792.14
<b>Number of Parcels Delinquent:</b>	3	<b>Delinquency Rate:</b>	1.10%
<b>San Mateo County [1]</b>			
<b>Fund #C06F12</b>			
<b>Total Levy For FY 2015-2016:</b>	\$4,499.94	<b>Total Amount Collected:</b>	\$4,499.94
<b>Number of Parcels Subject to Levy:</b>	2	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Santa Clara County [1]</b>			
<b>Fund #995</b>			
<b>Total Levy For FY 2015-2016:</b>	\$857,209.12	<b>Total Amount Collected:</b>	\$853,837.52
<b>Number of Parcels Subject to Levy:</b>	212	<b>Delinquent Amount:</b>	\$3,371.60
<b>Number of Parcels Delinquent:</b>	1	<b>Delinquency Rate:</b>	0.39%
<b>Santa Cruz County [1]</b>			
<b>Fund #405000</b>			
<b>Total Levy For FY 2015-2016:</b>	\$32,655.68	<b>Total Amount Collected:</b>	\$32,655.68
<b>Number of Parcels Subject to Levy:</b>	9	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Solano County [1]</b>			
<b>Fund #8998</b>			
<b>Total Levy For FY 2015-2016:</b>	\$671,466.36	<b>Total Amount Collected:</b>	\$670,297.40
<b>Number of Parcels Subject to Levy:</b>	201	<b>Delinquent Amount:</b>	\$1,168.96
<b>Number of Parcels Delinquent:</b>	1	<b>Delinquency Rate:</b>	0.17%
<b>Sonoma County [1]</b>			
<b>Fund #94000</b>			
<b>Total Levy For FY 2015-2016:</b>	\$12,465.06	<b>Total Amount Collected:</b>	\$12,465.06
<b>Number of Parcels Subject to Levy:</b>	4	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%
<b>Stanislaus County [1]</b>			
<b>Fund #64075</b>			
<b>Total Levy For FY 2015-2016:</b>	\$889,295.38	<b>Total Amount Collected:</b>	\$886,858.12
<b>Number of Parcels Subject to Levy:</b>	312	<b>Delinquent Amount:</b>	\$2,437.26
<b>Number of Parcels Delinquent:</b>	1	<b>Delinquency Rate:</b>	0.27%

**Western Riverside Council of Governments  
Delinquency Summary Report  
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**Tulare County [1]  
Fund #690**

<b>Total Levy For FY 2015-2016:</b>	\$113,551.26	<b>Total Amount Collected:</b>	\$112,794.29
<b>Number of Parcels Subject to Levy:</b>	42	<b>Delinquent Amount:</b>	\$756.97
<b>Number of Parcels Delinquent:</b>	1	<b>Delinquency Rate:</b>	0.67%

**Ventura County [1]  
Fund #10-70 to -75**

<b>Total Levy For FY 2015-2016:</b>	\$95,142.44	<b>Total Amount Collected:</b>	\$95,142.44
<b>Number of Parcels Subject to Levy:</b>	28	<b>Delinquent Amount:</b>	\$0.00
<b>Number of Parcels Delinquent:</b>	0	<b>Delinquency Rate:</b>	0.00%

**All Counties**

<b>Total Levy For FY 2015-2016:</b>	\$64,998,397.91	<b>Total Amount Collected:</b>	\$64,494,521.69
<b>Number of Parcels Subject to Levy:</b>	21,811	<b>Delinquent Amount:</b>	\$503,876.22
<b>Number of Parcels Delinquent:</b>	198	<b>Delinquency Rate:</b>	0.78%

Created on: Aug 8, 2016

[1] Delinquency data as of 8/8/2016.

[2] Delinquency data as of 6/30/2016.

[3] 1 of the 5 delinquent parcels is currently on a payment plan.

[4] 1 of the 21 delinquent parcels is currently on a payment plan.

[5] 2 of the 93 delinquent parcels are currently on a payment plan.

[6] Delinquency data as of 7/7/2016.

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# Item 3.D

HERO Program Activities Update

## Attachment 2

Professional Services Agreement  
between WRCOG and Baker Tilly

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**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS PROFESSIONAL SERVICES  
AGREEMENT FOR OPERATIONAL ANALYSIS AND AUDITING SERVICES  
INVOLVING RENOVATE AMERICA**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this xxx day of October, 2016, by and between the Western Riverside Council of Governments, a California public agency (“WRCOG”) and Baker Tilly Virchow Krause, LLP (“Consultant”). WRCOG and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by WRCOG on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in conducting operational analysis and auditing services, is licensed in the State of California, and is familiar with the plans of WRCOG.

**2.2 Project.**

WRCOG desires to engage Consultant to render such professional services for to perform an analysis of our residential funding partner, Renovate America, to ensure that they are complying with WRCOG’s Energy Efficiency and Water Conservation Administrative Guidelines and Program Report and the residential PACE Consumer Protections Policy for the period of July 1, 2015 through June 30, 2016 (“Project”) as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to WRCOG all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply for conducting an operational analysis and audit of Renovate America for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference, and which are stated in the proposal to WRCOG and approved by WRCOG’s Executive Committee. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from October 3, 2016 to January 30, 2017, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### **3.2 Responsibilities of Consultant.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. WRCOG retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of WRCOG and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, WRCOG shall respond to Consultant's submittals in a timely manner. Upon request of WRCOG, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of WRCOG.

3.2.4 Substitution of Key Personnel. Consultant has represented to WRCOG that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of WRCOG. In the event that WRCOG and Consultant cannot agree as to the substitution of key personnel, WRCOG shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to WRCOG, or who are determined by the WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the WRCOG. The key personnel for performance of this Agreement are as follows: **[INSERT NAME OF KEY PERSONNEL]**.

3.2.5 WRCOG's Representative. WRCOG hereby designates Rick Bishop, or his or her designee, to act as its representative for the performance of this Agreement ("WRCOG's Representative"). WRCOG's Representative shall have the power to act on behalf

of WRCOG for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than WRCOG's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **INSERT NAME**, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with WRCOG staff in the performance of Services and shall be available to WRCOG's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from WRCOG, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to WRCOG, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the WRCOG, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold WRCOG, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to WRCOG that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to WRCOG that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. N/A

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by WRCOG to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) WRCOG, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects WRCOG, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by WRCOG, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) WRCOG, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects WRCOG, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by WRCOG, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against WRCOG, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to WRCOG; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to WRCOG, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to WRCOG, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the WRCOG. Consultant shall guarantee that, at the option of WRCOG, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects WRCOG, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to WRCOG.

3.2.10.8 Verification of Coverage. Consultant shall furnish WRCOG with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to WRCOG. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by WRCOG if requested. All certificates and endorsements must be received and approved by WRCOG before work commences. WRCOG reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed one hundred-sixty five thousand dollars (\$165,000) without written approval of WRCOG's Executive Director. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to WRCOG a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. WRCOG shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by WRCOG.

3.3.4 Extra Work. At any time during the term of this Agreement, WRCOG may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by WRCOG to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from WRCOG's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. WRCOG shall provide Consultant with a copy of the prevailing rates of per diem wages

in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the WRCOG, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of WRCOG during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.5 General Provisions.**

#### 3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. WRCOG may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to WRCOG, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, WRCOG may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, WRCOG may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:** [INSERT NAME, ADDRESS & CONTACT PERSON]

**WRCOG:** Western Riverside Council of Governments  
4080 Lemon Street, 3rd Floor, MS 1032

Riverside, CA 92373  
Attn: Rick Bishop, WRCOG Executive Director  
Facsimile: 951-787-7991

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for WRCOG to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that WRCOG is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by WRCOG. WRCOG shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at WRCOG’s sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of WRCOG, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use WRCOG’s name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of WRCOG.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney’s Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this

Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the WRCOG, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against WRCOG, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against WRCOG or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse WRCOG and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the WRCOG, its directors, officials, officers, employees, agents or volunteers.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 WRCOG's Right to Employ Other Consultants. WRCOG reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of WRCOG. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any

term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to WRCOG include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, WRCOG shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of WRCOG, during the term of his or her service with WRCOG, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any WRCOG's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

**3.6 Subcontracting.**

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of WRCOG. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

IN WITNESS WHEREOF, the Parties hereby have made and executed this Agreement as of the date first written above.

WESTERN RIVERSIDE COUNCIL  
OF GOVERNMENTS

Baker Tilly Virchow Krause, LLP

By: \_\_\_\_\_  
Rick Bishop  
Executive Director

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General Counsel  
Best Best & Krieger

## EXHIBIT “A” SCOPE OF SERVICES



### Scope of work

#### Understanding your needs; achieving your objectives

Baker Tilly has the experience and the wherewithal to support WRCOG and we are excited for the opportunity to partner with you to provide you with the services and support you have requested. We are eager to demonstrate how we will conduct an effective and efficient audit and provide you with a thoughtful analysis of our findings.

We understand WRCOG desires an auditor and consultant to perform an analysis of RA to ensure that they are complying with WRCOG's Energy Efficiency and Water Conservation Administrative Guidelines and Program Report and the residential PACE Consumer Protections Policy for the period of July 1, 2015 through June 30, 2016. We will perform each of the tasks outlined in the Scope of Work section of your RFP.

#### Project needs

Task 1: We will determine the appropriate random sampling size of HERO assessments from July 1, 2015 through June 30, 2016. This sampling will include a cross section of:

- > Energy efficiency projects
- > Water conservation projects
- > Renewable energy projects

Task 2: Using the data we gather from Task 1, we will confirm and verify that RA is adhering to the policies and practices included in WRCOG's Energy Efficiency and Water Conservation Administrative Guidelines and Program Report, including specific requirements for the following sections:

- |  |                                |
|--|--------------------------------|
| > Program parameters                   | > Marketing and communications |
| > Disclosures and documentation        | > Protected classes            |
| > Funding process                      | > Contractor requirements      |
| > Operational process                  | > Maximum financing amount     |
| > Post-funding homeowner support       | > Reporting                    |
| > Data security and privacy procedures | > Closing and funding          |

Task 3: We will prepare a report of our audit findings that will include recommendations for improvements and areas that need further study. We will work with the WRCOG staff in finalizing the report prior to presenting the materials to the WRCOG staff and appropriate committee. Approach and methodology



## Scope of work

### Overall project approach

The Baker Tilly project plan follows a six-step proven approach that our clients have found to be very effective in meeting their project objectives:



### Project approach will be based on attestation standards

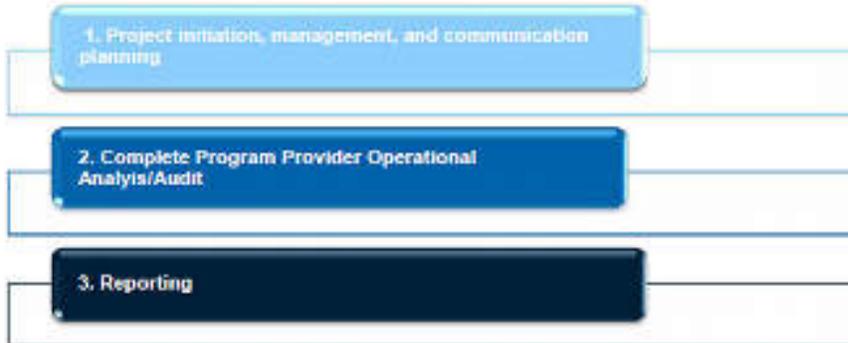
Because we are a CPA and consulting firm, our project approach will be based on the attestation standards of the American Institute of Certified Public Accountants (AICPA). The AICPA standards applicable to this project are detailed in Attestation Standards (AT) Section 101 Attest Engagements of the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants.

### Project work plan framework

The project work plan framework will flow through these primary steps, as explained in the remainder of this section.



## Scope of work



### Detailed project work plan

Our planned project approach is shown in detail in this section. We have structured the project work plan steps to ensure adequate review of systems, data, interviews with key personnel, and detailed review of source documentation. Our testing will review the source documentation related to our sampled items to ensure compliance with WRCOG's Energy Efficiency and Water Conservation Administrative Guidelines and Program Report and the residential PACE Consumer Protection Policy. In addition, we will review policies, procedures, and key controls in place related to this program.

We believe that the approach we have tailored for WRCOG will result in a successful completion of the detailed work plan developed to review management performance of the PACE program. We will also use our industry expertise to provide recommended process improvements related to the management of the PACE program.

#### 1. Project initiation, management and communication planning

We will use the project initiation and management process to ensure an effective and efficient process and one that meets the timeline goals of the project. The steps for this task are as follows:

**Objective: To ensure project approach, scope, and activities are in alignment with WRCOG's needs and desired outcomes.**

Task 1.1: Planning with WRCOG	
Detailed work plan steps:	Deliverables
<ol style="list-style-type: none"> <li>1. Conduct project scoping and planning session with WRCOG project manager</li> <li>2. Define project milestones and timeline</li> <li>3. Schedule meetings to review deliverables and project milestones</li> <li>4. Distribute project communication materials, including deliverable signoff framework</li> <li>5. Request input by WRCOG project manager as to other areas they feel we should include as areas of focus</li> </ol>	<ul style="list-style-type: none"> <li>▶ Project management plan</li> <li>▶ Project timeline</li> <li>▶ Status update templates and schedule</li> <li>▶ Communication plan framework</li> <li>▶ Approved project protocols for information requests</li> </ul>
Task 1.2: Project kickoff with Renovate America	



## Scope of work

Detailed work plan steps	Deliverables
<ol style="list-style-type: none"> <li>1. Conduct project kickoff with Renovate America project manager and key participants to discuss project protocols</li> <li>2. Review preliminary audit procedures and make updates / clarifications as needed</li> </ol>	<ul style="list-style-type: none"> <li>Project information protocols delivered to Renovate America on delivery of documents requested within 10 business days</li> <li>Protocols established for interview contacts</li> <li>Protocols established for requesting documents and personnel interviews</li> <li>Protocols for system access</li> </ul>
<b>Task 1.3: Background information gathering and clarifications</b>	
Detailed work plan steps	Deliverables
<ol style="list-style-type: none"> <li>1. Issue information request to Renovate America for initial background documentation to review—organization charts, contact information, and relevant systems documentation (will copy WRCOG Project Manager)</li> <li>2. Review information submitted by Renovate America for completeness and issue follow-up information request as needed</li> <li>3. Review WRCOG's Energy Efficiency and Water Conservation Administrative Guidelines and Program Report and the residential PACE Consumer Protections Policy for the period of July 1, 2015 through June 30, 2016.</li> <li>4. Review any prior evaluation reports or activities related to the PACE program, including WRCOG assessments and Renovate America internal audit reports (if performed).</li> </ol>	<ul style="list-style-type: none"> <li>Information requests</li> </ul>
<b>Task 1.4: Finalize work plan</b>	
Detailed work plan steps	Deliverables
<ol style="list-style-type: none"> <li>1. Finalize audit work plans (agreed upon procedures) and gain approval by WRCOG project manager</li> </ol>	<ul style="list-style-type: none"> <li>Approved work plan</li> </ul>

### *Proven project management methods*

Baker Tilly's proven project management methodology has been successfully performed many times on projects of all sizes by our experienced team. Our project management approach is driven by the work plan for this project and includes regular internal team meetings, status updates, commitment to timelines, and frequent, structured communications with the client.

### *Communication plan*

We believe that communication is a key ingredient to project management and overall project success. We have developed a range of tools on past successful projects that facilitate communication among the project team, project stakeholders, and executives. Our communication plan will be tailored to this project. An example of a communication plan proven successful in the past and one we propose for this project is shown as follows:



## Scope of work

Communication tool	Weekly reporting	Monthly reporting	Other reporting and information
Project kickoff meeting and charter			√
Communication plan			√
Status reports (at to-be-confirmed intervals, bi-weekly minimum) via phone conference or e-mail	√	√	
Project issues log (as needed) supplied to WRCOG project manager for delays or other project risks			√
Information request logs			√
Draft report discussions			√
Final report presentation			√
Testimony as requested			√
Project close meeting			√

We will tailor the communication plan to meet WRCOG needs and our approach is structured to aggressively analyze, address, and mitigate project risks as they emerge, in addition to the ongoing, day-to-day quality assurance activities by the project manager and project partner to ensure that the project has a successful outcome.

### 2. Complete Program Provider Operational Analysis/Audit

We will use the project work plan as our guide in testing data, systems, and business processes as it relates to Renovate America's strategies, business processes and information systems in place to manage its compliance with WRCOG's Energy Efficiency and Water Conservation Administrative Guidelines and Program Report and the residential PACE Consumer Protections Policy. We will use a combination of review of business process documentation and internal controls testing, systems reviews, statistical sampling, data extraction tools of databases, source documentation review, and interviews with key personnel.

The period under review for the audit is July 1, 2015 through June 30, 2016. The steps for ascertaining Renovate America's compliance are anticipated to be preliminarily structured as follows. This approach will be finalized with the WRCOG project manager prior to commencing fieldwork:

Objective: To review Renovate America's compliance with the program and their management over the program.	
Task 2.0: Information request, review of policies and procedures, process interviews	
Detailed work plan steps	Deliverables
<ol style="list-style-type: none"> <li>Contact Renovate America project manager for discussion on upcoming information request for testing data and performing interviews</li> <li>Request documentation from Renovate America on policies and procedures and information systems used related to HERO Assessments</li> <li>Interview personnel that are responsible for compliance planning and strategy</li> </ol>	<ul style="list-style-type: none"> <li>Information requests</li> <li>Listing of key contacts for audit process</li> <li>Policies and procedures and / or strategy documents</li> <li>Business process and information technology documentation</li> </ul>



## Scope of work

<ul style="list-style-type: none"> <li>4. Review policies and procedures / business process and information technology systems for analyzing compliance options and developing a compliance plan</li> <li>5. Compare Renovate America policies, procedures and strategy documentation against compliance.</li> <li>6. Compliance:               <ul style="list-style-type: none"> <li>a. Compare documents against WRCCOG's Energy Efficiency and Water Conservation Administrative Guidelines and Program Report</li> <li>b. Compare documents against residential PACE Consumer Protections Policy for the period of July 1, 2015 through June 30, 2016</li> <li>c. Review Renovate America's strategy for meeting requirements</li> </ul> </li> <li>7. Request documentation on policies and procedures and information systems used related to tracking HERO Assessments</li> <li>8. Interview key personnel that are responsible for ensuring compliance requirements are met.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Interview notes</li> <li>➤ Analysis of Renovate America's strategy and infrastructure (policy, process, systems) with WRCCOG guidelines and PACE Consumer Protection Policy</li> </ul>
<b>Task 2.1: Sample Selection</b>	
<b>Detailed work plan steps</b>	<b>Deliverables</b>
<ul style="list-style-type: none"> <li>1. Request a database / system-generated report of all HERO Assessments executed for the audit period</li> <li>2. Select a statistically valid sample (33) of HERO Assessments for the audit period, ensuring a cross section of energy efficiency, water conservation, and renewable energy projects.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Sample listing</li> </ul>
<b>Task 2.2: Adherence to Policies and Practices</b>	
<b>Detailed work plan steps</b>	<b>Deliverables</b>
<p>On a sample basis, review HERO Assessments for the following attributes / parameters:</p>	
<ul style="list-style-type: none"> <li>1. <u>Program Parameters</u> <ul style="list-style-type: none"> <li>a. Eligible assessments consistent with objectives of the PACE enabling legislation</li> <li>b. All aspects of WRCCOG's guidelines and program report are being adhered to</li> <li>c. Only eligible financing properties are approved</li> <li>d. Approved properties meet WRCCOG's program eligibility criteria</li> <li>e. Provider verified that homeowners are eligible at time of application</li> <li>f. Procedures are established to ensure the homeowner intends to install Eligible Improvements and that such improvements have been installed at the time of funding</li> <li>g. Processes and controls exist to ensure that personal identifiable information is obtained directly from the homeowner and not a third party</li> <li>h. Improvements are approved by the Provider and installed by the Registered Contractor</li> <li>i. Provider has established and maintains an Eligible Improvements database that conforms to the requirements, defines a process for adding or modifying the database, ensures performance standards are calibrated and verified using performance criteria established by US, DOE, EPA,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Policies and Procedures documentation</li> <li>➤ Interview notes from key individuals involved in HERO Assessments</li> <li>➤ Results from sample-based testing</li> <li>➤ Listing of key controls in place</li> <li>➤ GAP Analysis (current state vs. recommended improvements)</li> </ul>



## Scope of work

CEC, or other federal and state agencies, and the product is permanently affixed to the property

- j. For Solar Power Agreements, the Provider is adhering to Streets and Highway Code 5890.2

### 2. Disclosures and Documentation

- a. Ensure that the Provider has verified that the homeowner has (i) submitted an application; (ii) received approval of the Improvements from the Partner; and (iii) executed documentation covering the terms
- b. Provider has verified that the homeowner has (i) executed an acknowledgement that the installation of the Improvements has been completed satisfactorily; and (ii) received a final summary of costs and payments
- c. The Provider verified that the terms comprise of the amount financed including fees and capitalized interest, the repayment process and schedule, the payment amounts, term does not exceed useful life of the improvement, the rate of interest charged, a fixed interest rate, fully amortized payment schedule, nature of lien created upon recordation, specific improvements to be installed, the 3-day right to cancel the financing, right to withhold payment until project is complete, and Section 5888.2 rights for solar lease improvements
- d. Provider verified the delivery to, and receipt by, the homeowners of the disclosures along with written acknowledgement from homeowner that they have read and understand them
- e. At what point does the Provider confirm by telephone interviews with the homeowner applicant each of the Program financing terms (i.e., new contractors, protected classes, etc.)?
- f. The Provider confirms terms and includes the appropriate information as outlined in the RFP

### 3. Funding Process

- a. Provider offered fixed simple interest rates and payments are fully amortized
- b. Determine if the Provider has a source of capital for funding PACE financed projects separate from WRCOG's general fund or budget and have access to capital markets to ensure funding of
- c. qualified projects is available on a consistent basis
- d. The Provider can demonstrate the capacity to fund assessments that over a six (6) month period immediately following WRCOG's review of the Provider's financial statements, determine how calculated
- e. The Provider offer the capability to accommodate homebuyers and homeowners by offering subordination of certain rights of its PACE assessment lien to the lien of a mortgage or deed of trust. How many, how successful, what issues encountered?
- f. What fees are charged to Contractors (if any)? How much and why?

### 4. Operational Process

- i. Determine if the Provider has adequate personnel, processes,



## Scope of work

expertise, tools and technology necessary to support WRCCG's Program Report and residential Consumer Protection Policies

### 3. Post-funding Homeowner Support

- a. Determine if, and how, the Provider is proactively monitoring and testing the consumer protections available to homeowners, and requesting feedback from homeowners and contractors to identify areas in need of improvement.
- b. If there is a post-installation onboarding procedure to reinforce key characteristics of the Program, such as those highlighted in the Program disclosures, review the procedure and determine how it is implemented.
- c. Identify what disclosures and resources are in place to resolve homeowner questions regarding matters such as impound account catch-up payments, payment timing inquiries and payment amount reconciliation.
- d. Determine the procedures for responding to requests for partial or full prepayment of their PACE.
- e. property tax assessment in a timely and complete manner.
- f. Identify whether the Provider is tracking, resolving, reporting and otherwise properly managing all inquiries and complaints, etc., from homeowners and how this is completed.
- g. Determine if and how the Provider is proactively working to resolve inquiries and complaints in a reasonable and timely manner and in accordance with the Program guidelines, and making communication for homeowners available during regular business hours by phone, email and facsimile communication.
- h. Determine if the Provider has the capabilities to assist homeowners who are refinancing or selling their Properties. how is this determined and verified?

### 4. Data Security and Privacy Procedures

- a. Ensure the Provider is complying with secure and tested processes to protect the personal identifiable information of the homeowner, revise processes.
- b. Determine if the Provider has the minimum viable configurations in place on all servers? All firewalls should have continuous logging enabled and access control lists and audited server configurations should be used to ensure that data security is maintained. Document the Provider's efforts.
- c. Identify if, and how, the Provider is informing and enforcing the compliance with the Program's data privacy and security policies on the part of every employee, contractor, vendor, agent, service provider, representative, and associate who is exposed to personal identifiable information of homeowners.
- d. Determine the preventions and controls the Provider has implemented to prevent unauthorized copying, disclosure, or other misuse of sensitive consumer information.
- e. Determine if the Provider is utilizing a Privacy Policy that complies with state and federal law to prohibit the sharing of personal information to third parties.



## Scope of work

- f. Identify if, and how, the Provider is delivering any updates to the Privacy Policy to the homeowners
- 7. **Marketing and Communication**
  - a. Determine if the Provider is using any methods that are or could appear to be unfair, deceptive, abusive, and/or misleading, that violate laws or regulations, that provide tax advice, that are inappropriate, incomplete or are inconsistent with the Program's purpose (e.g., use of check facsimiles to dramatize the amount of PACE Program financing available or presented as if a negotiable instrument), or are otherwise potentially confusing to property owners
  - b. Identify whether there are any marketing practices likely to add unnecessary expense to a homeowner (e.g., paying consumers for applications), or are the unlawful use of sensitive consumer data or that violate any other law or regulation (including, for example, practices related to telemarketing)
  - c. Determine if the Provider has a plan for developing, delivering to and enforcing marketing guidelines for the Program's Registered Contractors. Document the plan
  - d. Identify whether any marketing materials that fall outside of marketing guidelines established being approved by the Provider to ensure that they are not unfair, deceptive, abusive and/or misleading
  - e. Determine if the Provider, contractor or third party (who is not a tax expert) providing tax advice to consumers regarding their Program financing which includes making affirmative statements or claims as to the tax deductibility of the payments? If so, why?
  - f. Identify whether the Provider, contractor or Affiliated Individual providing a direct cash payment or other thing of value to a homeowner explicitly in exchange for such homeowner's selecting Program financing? If so, why?
- 8. **Protected Classes**
  - a. Ensure the Provider has controls designed and implemented to monitor and test compliance with all state and federal laws covering homeowners in protected classes. Document these controls.
  - b. Determine if the Provider has developed and is implementing a program that validates elder homeowner (i.e., homeowners over 64 years old) understanding of the eligible improvement project for which they are seeking Program financing, including the terms of such financing. Document the process.
  - c. Ensure the Provider is providing legally unbiased access to, and the decision of, requests for Program participation
- 9. **Contractor Requirements**
  - a. Ensure the Provider confirms that all contractors who sell, install, or manage subcontractors who install, Eligible Improvements have executed and that all such contractors and all employees, entities, owners, partners, principals, independent contractors, third party agents or other person



## Scope of work

who perform any services for the contractor in connection with a Program financing (collectively, the "Affiliated Individuals") meet the requirements of the Program's Contractor Participation Agreement (Attachment C)

- b. For Registered Contractors, ensure that the Provider confirms the following:
  - i. Has a specified probationary period been identified (i.e., place the new Registered Contractors on a watch list until the new Registered Contractors have completed the required number of improvements)? If so, what is the period of time?
  - ii. Has a procedure in place, during the Registered Contractor probationary period, to provide additional quality assurance steps for improvements completed by the Registered Contractors on the watch list? If so, what are the additional assurance steps?
  - iii. Has a procedure in place to review Registered Contractor's work to confirm satisfactory completion of projects conducted during the probationary period for which Program financing is used? If yes, what is that process?
- c. Determine if the Provider has implemented a contractor management system and has procedures that manage and track contractor training and compliance violations on an individual and company basis. Document this process.
- d. Identify whether the Provider makes available contractor training regarding, at a minimum, the following: (i) the applicable contractor code of conduct terms as required by the Program, (ii) protected classes, including, without limitation, elder protection, and (iii) other consumer protection measures as required by the Program. If so, how are they made available?
- e. Determine whether the Provider warns, suspends or terminates a Registered Contractor and/or Affiliated Individual from the Program based on violations of the Contractor Participation Agreement? If so, how is this being determined?
- f. Determine if the Provider accepts Program applications processed by suspended or terminated contractors and/or associated representatives? If so, why?

### 10. Maximum Financing Amount

- a. Identify and document how the Provider is determining Maximum Financing Amounts (MFA)
- b. Determine if the Provider has established a MFA for each product type (e.g. for central air conditioners, solar PV systems, solar thermal systems, and artificial turf)
- c. Determine whether the Provider has established product/project attribute related pricing rules that dictate what pricing within such low to high MFA range is justified? If so, what are they?
- d. Identify and document the Provider's processes and systems for purposes of enforcing the MFA rules for every project
- e. Determine if the Provider has funded any improvements for an



## Scope of work

- amount that is greater than the MFA for such product and why
11. Reporting
    - a. Ensure the Provider is providing statistics reporting and estimated impact metrics in the following categories on a quarterly basis: (i) number of projects funded, (ii) project amount funded, (iii) estimated amount of energy savings, (iv) estimated amount of renewable energy produced, (v) estimated amount of water savings, (vi) estimated amount of greenhouse gas emissions reductions, and (vii) estimated number of jobs created
    - b. Determine if the Provider reports are being developed and collected using standardized, third party verified methodologies? If so, by which third party?
  12. Claims and Funding
    - a. Ensure the Provider is confirming, before funding, that the Eligible Improvements financed are installed, operational and in a condition that is acceptable to the homeowner and the contractor, and requiring that the homeowner and the contractor attest to such by signing a document stating that all Improvements have been installed to the homeowner's satisfaction and in accordance with product specifications? If so, how is this confirmed?
    - b. Determine if the Provider is confirming that homeowners obtain required permits for the installation of improvements and provide verification thereof upon request? If so, how?
    - c. Ensure the Provider is only disbursing funds for completed projects
    - d. Determine how the Provider confirms that product(s) listed on the Completion Certificate and for which Program financing has been provided have been installed
    - e. Identify whether the Provider has developed and implemented a randomized onsite inspection protocol? If so, what is that protocol?

### 3. Reporting

Project documentation and specific testing results will be used to compile Baker Tilly's report. The report will be supported by audit work papers and data requested.

**Objective: To utilize the data analyzed and reviewed to write a comprehensive report of compliance findings and recommendations for improvements in processes to aid in future compliance.**

#### Task 3.1: Design report framework

Detailed work plan steps	Deliverables
<ol style="list-style-type: none"> <li>1. Using work from Task 2 above, design report sections around compliance findings and recommendations</li> <li>2. Overall report design will be an executive summary supported by detailed information</li> </ol>	<ul style="list-style-type: none"> <li>• Report template</li> </ul>

#### Task 3.2: Prepare detailed section of report

Detailed work plan steps	Deliverables
<ol style="list-style-type: none"> <li>1. Prepare detailed section of report</li> </ol>	<ul style="list-style-type: none"> <li>• Detailed report section of report</li> </ul>



## Scope of work

<ol style="list-style-type: none"> <li>2. Include all schedules needed to support findings and recommendations</li> <li>3. Prepare summary document that cross references all findings to source documentation</li> <li>4. Prepare listing of recommended business process improvements</li> </ol>	<ul style="list-style-type: none"> <li>&gt; Cross reference document of all findings to source documentation</li> </ul>
<b>Task 3.3: Prepare executive summary report</b>	
Detailed work plan steps	Deliverables
Prepare executive summary based on detailed recommendation sections of report	<ul style="list-style-type: none"> <li>&gt; Executive summary section of report</li> </ul>
<b>Task 3.4: Quality assurance</b>	
Detailed work plan steps	Deliverables
<ol style="list-style-type: none"> <li>1. Use Baker Tilly quality assurance process for report review</li> <li>2. Make report revisions and complete report draft to be issued to WRCOG</li> </ol>	<ul style="list-style-type: none"> <li>&gt; Review procedures completed</li> </ul>
<b>Task 3.5: Report review with WRCOG</b>	
Detailed work plan steps	Deliverables
<ol style="list-style-type: none"> <li>1. Issue draft report to WRCOG and allow for time interval for review</li> <li>3. Gain feedback from WRCOG staff on their impressions of report and revisions that should be made</li> </ol>	<ul style="list-style-type: none"> <li>&gt; Draft report in Microsoft Word</li> </ul>
<b>Task 3.6: Issue report</b>	
Detailed work plan steps	Deliverables
<ol style="list-style-type: none"> <li>1. Make final report revisions</li> <li>2. Issue final report of findings of non-compliance and recommendations</li> <li>3. Report presentations as requested by WRCOG</li> </ol>	<ul style="list-style-type: none"> <li>&gt; Final report in Microsoft Word</li> <li>&gt; Summary presentations for meetings in PowerPoint format</li> </ul>

### Dedicated service team

Members of your project team have extensive compliance experience, particularly in evaluating programs similar to HERO. Our project team is staffed with individuals who are qualified and experienced to address issues that may arise during the project and conduct the project professionally and to report independently and fully on the issues under review.

See Appendix B for resumes of your engagement team members. Their roles and responsibilities and brief biographies follow in this section:

In the 12 months ending May 31, 2016, 91 percent of Russ Hisom's clients have rated him with a **9 out of 10** with an average rating of **9.71**

Member, title	Qualifications
Russell Hisom CPA, CIA, CISA, Partner	Serve as the engagement partner; direct the Baker Tilly project staff; attend meetings, provide quality assurance, including developing findings of compliance and non-compliance; and review and present deliverables. Russ will be responsible for overseeing the project and earning your utmost satisfaction with our service, work, approach, findings, and recommendations
Amanda Neuman Project Manager	Serve as the day-to-day project manager, single point of contact, subject matter expert, attend meetings as needed, and provide quality assurance review of the



## Scope of work

Member, title	Qualifications
	detailed testing and perform reviews and edits to the deliverables. Amanda will be in close contact with the WRCOG project manager and will provide status reports on a weekly basis to discuss the project schedule and budget.
Brian Kim Consultant Manager	Serve as manager of compliance review staff and subject matter expert; attend meetings as needed; ensure successful completion of work plan; and author deliverables, including findings of compliance and non-compliance (Task 3 from the RFP). Brian will also be responsible for completing Task 1 in the RFP - sample selection.
Kyle O'Rourke MPA, CIA, Senior Consultant	Assist in the successful completion of the work plan (Task 2 from RFP). This includes conducting interviews, reviewing policy and procedure documentation, documenting findings, review and documentation of key controls in place, identifying areas of improvement, and preparing the initial draft report (Task 3 from RFP).
Danielle Wakai CPA, CISA, Senior Consultant	Assist in the successful completion of the work plan (Task 2 from RFP). This includes conducting interviews, reviewing policy and procedure documentation, documenting findings, review and documentation of key controls in place, identifying areas of improvement, and preparing the initial draft report (Task 3 from RFP).

### Quality control and our most recent Peer Review

We strive to maintain the highest level of quality control over reports and other deliverables. Our firm policies require that detailed reviews of the report and working papers be done at the partner and manager level. In addition, concurring reviews of the deliverables will be done by a partner independent of the day-to-day operations of the project. This process can assure you that the final document, findings, and recommendations will be of the highest and most accurate quality.

Professionalism in the accounting industry means independence, integrity, and objectivity. This is accomplished through unwavering adherence to professional standards and the associated laws and regulations. This includes withstanding all pressures, competitive and other, which could compromise our principles, standards, and quality.

We have developed our own policies and procedures in order to provide reasonable assurance that every audit, tax, and accounting engagement will be completed in accordance with the highest standards the public and our clients expect us to meet. We have numerous stages of review before a finished product is issued.

As members of the AICPA, we are required to develop and maintain a quality control document which outlines the following major areas of quality control:

- > Independence, Integrity, and Objectivity
- > Personnel Management
  - Hiring
  - Assigning of Personnel
  - Professional Development
  - Advancement
- > Acceptance and Continuance of Clients and Engagements
- > Engagement Performance
  - Performance



## Scope of work

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- Consultation
- > Monitoring

Our quality control document and our adherence to its provisions are subject to an independent outside review, which is required every three years. Our most recent peer review was completed on November 3, 2015. Firms can receive one of three marks—*pass*, *pass with deficiencies*, or *fail*. Baker Tilly received a rating of *pass*, the highest mark possible. No letter of comments was issued. A copy of our 2015 Peer Review letter can be found in Appendix D.

In addition to the external peer review, we perform internal office inspections annually to ensure we are maintaining our audit quality at the highest possible standards.

**Identify any special issues, problems or risks that are likely to be encountered in this project and how the Proposer would propose to address them.**

The main issues and risks we encounter in projects like this are in the providing of data by the party under audit. In our experience in working on similar projects where we must request data from parties being audited, we have found that it is necessary to be exacting and persistent in requesting items of information in order to receive what is needed to perform required analysis and testing. We will use our knowledge of the energy industry in requesting information needed for the audit in order to ensure minimal delays in the information gathering process. We will request that all information requested be supplied within 10 business days, unless WRCOG has another protocol that it generally follows.

We will use communication plan protocols if there are delays in receipt of information outside of the 10-day requirement or if information requested is not provided after repeated requests. We will work with the WRCOG project manager to address these issues to ensure proper information is received to meet the goals of the project.

## EXHIBIT “B” SCHEDULE OF SERVICES



### Schedule

#### Anticipated audit timeline

Tasks 1-3 represent our proposed work plan approach. We recognize that this may change due to discussions with the WRCOG and conditions once fieldwork begins and progresses through the project. The work plan is a flexible tool and can be adjusted for these changing conditions. We look forward to finalizing this work plan with WRCOG to achieve your project goals.

Our work will be coordinated with the WRCOG project manager and will be planned to meet all WRCOG timeframes, with audit completion in between November and December 2016. We anticipate needing 3 weeks of onsite work to complete the testing.

Project Phase	Anticipated completion
0. Contract Award	Week of August 8, 2016
1. Project initiation, management, and communication planning including project kick-off calls and issuance of data requests	Week of August 22, 2016
2. Complete Operational Analysis/Audit	
2.1 Task 1 - Sample Selection	Week of September 12, 2016
2.2 Task 2 - Adherence to Policies and Procedures Testing	
2.2.1 - Program Parameters	Week of September 27, 2016
2.2.2 - Disclosures and Documentation	Week of September 27, 2016
2.2.3 - Funding Process	Week of September 27, 2016
2.2.4 - Operational Process	Week of September 27, 2016
2.2.5 - Post-Funding Homeowner Support	Week of October 10, 2016
2.2.6 - Data Security and Privacy Procedures	Week of October 10, 2016
2.2.7 - Marketing & Communications	Week of October 10, 2016
2.2.8 - Protected Classes	Week of October 10, 2016
2.2.9 - Contractor Requirements	Week of October 24, 2016
2.2.10 - Maximum Financing Amount	Week of October 24, 2016
2.2.11 - Reporting	Week of October 24, 2016
2.2.12 - Closing & Funding	Week of October 24, 2016
3. Reporting (including draft report, quality assurance reviews, WRCOG review, and issuing of final report, and presentations)	Week of November 21, 2016

## EXHIBIT “C” COMPENSATION

### Σ Detailed and itemized pricing

9/Val.

#### Cost proposal

Our competitive pricing for these projects is shown below.

Phase	Partner	Project Manager	Manager	Senior	Total
1. Project planning and communication	10	32	16	8	66
2. PACE Program Operational Analysis/Audit	32	120	120	240	512
3. Reporting	40	40	60	64	204
Total hours	82	192	196	312	782
Hourly rate	\$250	\$200	\$190	\$155	
Total fees	\$20,500	\$38,400	\$37,240	\$48,360	\$144,500
Estimated travel expenses					\$20,000
Total costs					\$164,500

\* Expenses including actual travel expenses (airfare, car rental, hotels, meals)

\*\* Maximum contract price – Firm price not to exceed

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# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** WRCOG Transportation Department Activities Update

**Contact:** Christopher Gray, Director of Transportation, [gray@wrcoq.coq.ca.us](mailto:gray@wrcoq.coq.ca.us), (951) 955-8304

**Date:** September 14, 2016

### Requested Action:

1. Receive and file.

*WRCOG's Transportation Uniform Mitigation Fee (TUMF) Program is a regional fee program designed to provide transportation and transit infrastructure that mitigates the impact of new growth in Western Riverside County. Each of WRCOG's member jurisdictions participates in the Program through an adopted ordinance, collects fees from new development, and remits the fees to WRCOG. WRCOG, as administrator of the TUMF Program, allocates TUMF to the Riverside County Transportation Commission (RCTC), groupings of jurisdictions – referred to as TUMF Zones – based on the amounts of fees collected in these groups, and the Riverside Transit Agency (RTA). The TUMF Nexus Study is intended to satisfy the requirements of California Government Code Chapter 5 Section 66000-66008 (also known as the California Mitigation Fee Act) which governs imposing development impact fees in California. The Study establishes a nexus or reasonable relationship between the development impact fee's use and the type of project for which the fee is required. The TUMF Program is a development impact fee and is subject to the California Mitigation Fee Act (AB 1600, Govt. Code § 6600), which mandates that a Nexus Study be prepared to demonstrate a reasonable and rational relationship between the fee and the proposed improvements for which the fee is used. AB 1600 also requires the regular review and update of the Program and Nexus Study to ensure the validity of the Program. The last TUMF Program Update was completed in October 2009.*

### TUMF Program Update

In September 2015, the WRCOG Executive Committee took action to delay finalizing the Nexus Study and include the growth forecast from the SCAG 2016 Regional Transportation Plan / Sustainable Communities Strategy, which was approved by SCAG in spring 2016, and has been integrated into the TUMF Nexus Study. While the technical work on the 2016 TUMF Nexus Study is nearing completion, staff have met with various regional stakeholders, including elected officials, representatives of the development community, jurisdictional staff, and others, to discuss the status of the TUMF Nexus Study as well as the next steps, given that the previous Nexus Study was delayed.

At its August 1, 2016, meeting, the Executive Committee directed staff to form an Ad Hoc Committee to review the options prepared in regard to the TUMF Nexus Study Update. The Executive Committee appointed Mayor Jeff Hewitt (City of Calimesa), Mayor Pro Tem Jeffrey Giba (City of Moreno Valley), and Mayor Rusty Bailey (City of Riverside) to the Ad Hoc Committee. Members from the WRCOG Public Works Committee (PWC) and Technical Advisory Committee (TAC) will assist the Ad Hoc Committee members in making any recommendations to the Executive Committee.

At its September 12, 2016, meeting, the Executive Committee will be asked to approve the recommended representatives from the Public Works and Technical Advisory Committees to serve on the Ad Hoc Committee.

Staff is preparing a packet of materials that will be distributed to members of the Ad Hoc Committee, which will assist developing options for the TUMF Nexus Study. These materials will provide insight from all aspects of the Program to the Committee members and will help guide the preparation of an option to move forward with on the TUMF Nexus Study Update. Materials that will be provided include the following:

- Historical TUMF schedule since Program inception
- TUMF revenue by land use category for the past three fiscal years
- Summary of the Fee Analysis Study
- 2015 Draft TUMF Nexus Study
- Response to comments on the 2015 Draft TUMF Nexus Study
- Proposed 2016 TUMF Nexus Study fee schedule
- Revenue by fiscal year since Program inception
- Current TUMF Zone programmed projects
- TUMF Network facilities by jurisdiction

It is anticipated that the Ad Hoc Committee will begin meeting in late September to help formulate the development of a preferred option for eventual consideration by the Executive Committee.

### **TUMF Update Workshops**

In anticipation of the release of the draft 2016 TUMF Nexus Study Update, WRCOG will hold two workshops to discuss the actions taken since the delay in finalizing the Nexus Study. In addition to addressing the comments received from various stakeholders on the TUMF Nexus Study, WRCOG is in the process of finalizing a comprehensive fee analysis in and around the subregion. Staff will provide an overview of the study, along with the findings. Interested stakeholders may attend either one of the workshop:

- September 21, 2016, at 10:30 a.m. at the Riverside County Administrative Center, 3rd Floor, Conference Room A
- September 28, 2016, at 3:00 p.m. at the Riverside County Administrative Center, 3rd Floor, Conference Room A

### **Prior WRCOG Actions:**

September 8, 2016: The WRCOG Public Works Committee appointed the Cities of Banning and Eastvale, and the County of Riverside to assist members of the Ad Hoc Committee to discuss potential options related to completion of the Nexus Study.

August 18, 2016: The WRCOG Technical Advisory Committee 1) appointed Gary Thompson (Jurupa Valley), Grant Yates (Lake Elsinore), and Rob Johnson (Menifee) to assist members of the Ad Hoc Committee to discuss potential options related to completion of the Nexus Study; and 2) recommended that only one representative from any member jurisdiction serve on the Ad Hoc Committee.

August 10, 2016: The WRCOG Administration & Finance Committee received report.

August 1, 2016: The WRCOG Executive Committee 1) directed staff to convene an Ad Hoc Committee composed of three members of the Executive Committee, with assistance from three members of the Technical Advisory Committee and two members of the Public Works Committee, to discuss potential options related to completion of the Nexus Study; and 2) appointed three members of the Executive Committee to serve on the Ad Hoc Committee.

### **WRCOG Fiscal Impact:**

Transportation department activities are included in the Agency's adopted Fiscal Year 2016/2017 Budget under the Transportation Department.

### **Attachment:**

None.



# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** WRCOG Transportation Department On-Call Engineering Consultants

**Contact:** Christopher Gray, Director of Transportation, [gray@wrcoq.coq.ca.us](mailto:gray@wrcoq.coq.ca.us), (951) 955-8304

**Date:** September 14, 2016

### Requested Action:

1. Recommend that the WRCOG Executive Committee direct and authorize the WRCOG Executive Director to enter into agreements for on-call engineering services with WGZE, TEP, WSP Parsons Brinckerhoff, and Kimley-Horn.

*WRCOG's Transportation Department is comprised of the Transportation Uniform Mitigation Fee (TUMF) Program, the Active Transportation Plan, and the Western Riverside County Clean Cities Coalition. The TUMF Program is a regional fee program designed to provide transportation and transit infrastructure that mitigates the impact of new growth in Western Riverside County. As administrator of the TUMF Program, WRCOG allocates TUMF to the Riverside County Transportation Commission (RCTC), groupings of jurisdictions – referred to as TUMF Zones – based on the amounts of fees collected in these groups, and the Riverside Transit Agency (RTA). WRCOG Transportation staff efforts are supported by a variety of consultants who provide both planning and engineering services. As such, WRCOG recently undertook an effort to identify additional engineering consultants to support the departments various activities over the next few years.*

### On-Call Engineering Consultants

WRCOG has retained a variety of consultants to assist with various efforts, primarily focusing on the TUMF Program. Since 2006, WRCOG has retained one engineering consultant to assist with the review of TUMF invoices prepared by jurisdictions, conduct field reviews, and review developer cost estimates for Program eligibility. One of the main roles of this consultant is to review the invoices and determine whether these requests are consistent with the requirements of the TUMF Program and, therefore, eligible for payment.

Over the past year, the need for additional on-call engineering consultants has grown based on the following:

- The number of invoices submitted for reimbursement have increased and member agencies have requested that WRCOG expedite review to provide more timely reimbursement
- Several member agencies have also requested that WRCOG prepare additional guidance documents such as a manual or sample invoices to guide the reimbursement process
- WRCOG has initiated work on a regional Active Transportation Plan (ATP) and requires technical assistance to review elements of the ATP, particularly conceptual designs and cost estimates for future facilities
- WRCOG is also evaluating a potential regional Water Quality Mitigation Program, in coordination with Riverside County Flood Control, and staff requires additional technical expertise in that regard

WRCOG distributed a Request for Proposal, with a due date of July 1, 2016, for which six firms submitted written proposals for consideration. Staff reviewed these proposals and recommended that five firms be interviewed, which were conducted on July 28, 2016.

The interview panel consisted of WRCOG Transportation Department staff and a representative of the City of Perris. After interviewing the firms, the interview panel recommended that WRCOG select four firms to provide on-call engineering services as listed below:

1. WG Zimmerman Engineering
2. Transportation Engineering and Planning
3. WSP Parsons Brinckerhoff
4. Kimley-Horn

WRCOG staff has notified each of the firms regarding the selection results, including those firms that were not selected.

Once approved by the WRCOG Executive Committee, staff will be meeting with each selected firm to identify initial work assignments, which are expected to include:

- TUMF invoice review
- TUMF Reimbursement Manual
- Attending future meetings of stakeholder group discussing WRCOG's proposed regional Water Quality Mitigation Program (or Alternative Compliance Program - ACP)
- Supporting staff in the review of Credit Agreements, Reimbursement Agreements, and other TUMF-related documents

**Prior WRCOG Action:**

August 11, 2016: The WRCOG Public Works Committee recommended that the WRCOG Executive Committee direct and authorize the WRCOG Executive Director to enter into agreements for on-call engineering services with WGZE, TEP, WSP Parsons Brinckerhoff, and Kimley-Horn.

**WRCOG Fiscal Impact:**

Funding for on-call engineering services is included in the Agency's adopted Fiscal Year 2016/2017 Budget under the Transportation Department.

**Attachments:**

1. Agreement for On-Call Professional Services with WG Zimmerman Engineering.
2. Agreement for On-Call Professional Services with Transportation Engineering and Planning.
3. Agreement for On-Call Professional Services with WSP Parsons Brinckerhoff.
4. Agreement for On-Call Professional Services with Kimley-Horn.

# Item 3.F

WRCOG Transportation Department  
On-Call Engineering Consultants

## Attachment 1

Agreement for On-Call Professional  
Services with WG Zimmerman  
Engineering

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**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES**

1. Parties and Date.

This Agreement is made and entered into this \_\_\_\_\_ day of October, 2016, by and between the Western Riverside Council of Governments, a California public agency (“WRCOG”) and **WG Zimmerman Engineering, a small business enterprise** (“Consultant”). WRCOG and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by WRCOG on the terms and conditions set forth in this Agreement and in the task order(s) to be issued pursuant to this Agreement and executed by the parties (“Task Order”). Consultant represents that it is experienced in providing on-call engineering services is licensed in the State of California, and is familiar with the plans of WRCOG.

2.2 Project.

WRCOG desires to engage Consultant to render such professional services, on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein (each such project shall be designated a “Project” under this Agreement).

3. Terms.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to WRCOG all labor, materials, tools, equipment, services, and incidental and customary work, on an on-call basis, necessary to fully and adequately supply professional services and advise on various issues affecting the decision of WRCOG (“Services”). The types of Services to be provided are generally described in Exhibit “A” attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Order issued by WRCOG or its designee. No Services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **October 2016 to June 2018**, unless earlier terminated as provided herein. Consultant shall complete the Services

within the term of this Agreement, and shall meet any other established schedules and deadlines set forth in the Task Order. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

### 3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. WRCOG retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of WRCOG and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the specific schedule that shall be set forth in the Task Order ("Schedule of Services"). **Consultant shall be required to commence work within five (5) days of receiving a fully executed Task Order.** Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with each Schedule, WRCOG shall respond to Consultant's submittals in a timely manner. Upon the request of WRCOG, Consultant shall provide a more detailed schedule of anticipated performance to meet the relevant Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of WRCOG.

3.2.4 Substitution of Key Personnel. Consultant has represented to WRCOG that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of WRCOG. In the event that WRCOG and Consultant cannot agree as to the substitution of key personnel, WRCOG shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to WRCOG, or who are determined by the WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the WRCOG. The key personnel for performance of this Agreement are as follows: **Bill Zimmerman, President** or as otherwise specified in the relevant Task Order.

3.2.5 WRCOG's Representative. WRCOG hereby designates **Christopher Gray, Director of Transportation**, or his or her designee, to act as its representative for the

performance of this Agreement (“WRCOG’s Representative”). WRCOG’s Representative shall have the power to act on behalf of WRCOG for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than WRCOG’s Representative or his or her designee.

3.2.6 Consultant’s Representative. Consultant hereby designates **Bill Zimmerman, President**, or his or her designee, to act as its representative for the performance of this Agreement (“Consultant’s Representative”). Consultant’s Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant’s Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement and as described in the relevant Task Order.

3.2.7 Coordination of Services. Consultant agrees to work closely with WRCOG staff in the performance of Services and shall be available to WRCOG’s staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from WRCOG, any services necessary to correct errors or omissions which are caused by the Consultant’s failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to WRCOG, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to WRCOG, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold WRCOG, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or

liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.2.10 Insurance.

(a) Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to WRCOG that it has secured all insurance required under this section, in a form and with insurance companies acceptable to WRCOG. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to WRCOG that the subcontractor has secured all insurance required under this section.

(b) Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(i) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(ii) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

(c) Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

(d) Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by WRCOG to add the following provisions to the insurance policies:

(i) General Liability.

(1) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(2) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(3) The policy shall give WRCOG, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(4) The additional insured coverage under the policy shall be “primary and non-contributory” and will not seek contribution from WRCOG’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(ii) Automobile Liability.

(1) The automobile liability policy shall be endorsed to state that: (1) WRCOG, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects WRCOG, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant’s scheduled underlying coverage. Any insurance or self-insurance maintained by WRCOG, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant’s insurance and shall not be called upon to contribute with it in any way.

(iii) Workers’ Compensation and Employers Liability Coverage.

(1) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(2) The insurer shall agree to waive all rights of subrogation against WRCOG, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(iv) All Coverages.

(1) Defense costs shall be payable in addition to the limits set forth hereunder.

(2) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to WRCOG, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(3) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of WRCOG (if agreed to in a written contract or agreement) before WRCOG's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(4) Consultant shall provide WRCOG at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to WRCOG at least ten (10) days prior to the effective date of cancellation or expiration.

(5) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(6) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by WRCOG, is not intended to and shall not in any manner limit or qualify the liabilities and

obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(7) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, WRCOG has the right but not the duty to obtain the insurance it deems necessary and any premium paid by WRCOG will be promptly reimbursed by Consultant or WRCOG will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, WRCOG may cancel this Agreement. WRCOG may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(8) Neither WRCOG nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

(v) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to WRCOG, its directors, officials, officers, employees, agents and volunteers.

(vi) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by WRCOG. Consultant shall guarantee that, at the option of WRCOG, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects WRCOG, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

(vii) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to WRCOG.

(viii) Verification of Coverage. Consultant shall furnish WRCOG with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to WRCOG. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by WRCOG if requested. All certificates and endorsements must be received and approved by WRCOG before work commences. WRCOG reserves the right to require complete, certified copies of all required insurance policies, at any time.

(ix) Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to WRCOG that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name WRCOG as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If

requested by Consultant, WRCOG may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

(e) Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit “B” attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. The total compensation shall not exceed **One Hundred Thousand Dollars (\$100,000)** (“Total Compensation”) without written approval of WRCOG’s Executive Director. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to WRCOG a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. WRCOG shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by WRCOG.

3.3.4 Extra Work. At any time during the term of this Agreement, WRCOG may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by WRCOG to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from WRCOG’s Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and

“maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. WRCOG shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the WRCOG, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### 3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of WRCOG during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### 3.5 General Provisions.

#### 3.5.1 Termination of Agreement.

(a) Grounds for Termination. WRCOG may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to WRCOG, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(b) Effect of Termination. If this Agreement is terminated as provided herein, WRCOG may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(c) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, WRCOG may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:** WG Zimmerman Engineering  
17011 Beach Boulevard Suite 1240, Huntington Beach, CA 92647  
Attention: Bill Zimmerman

**WRCOG:** Western Riverside Council of Governments  
4080 Lemon Street, 3rd Floor, MS 1032  
Riverside, CA 92373  
Attn: Christopher Gray  
Phone: 951-955-8304

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.5.3 Ownership of Materials and Confidentiality.

(a) Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for WRCOG to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that WRCOG is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by WRCOG. WRCOG shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at WRCOG’s sole risk.

#### (b) Intellectual Property.

(i) In addition, WRCOG shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

(ii) WRCOG shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by WRCOG, whether or not developed in conjunction with Consultant, and whether or

not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of WRCOG.

(iii) Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the WRCOG.

(iv) All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

(v) WRCOG further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

(c) Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of WRCOG, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use WRCOG's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of WRCOG.

(d) Infringement Indemnification. Consultant shall defend, indemnify and hold WRCOG, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by WRCOG of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this

Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the WRCOG, its officials, officers, consultants, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project, this Agreement, or any Task Order, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against WRCOG, its directors, officials, officers, consultants, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against WRCOG or its directors, officials, officers, consultants, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse WRCOG and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by WRCOG, its directors, officials, officers, consultants, employees, agents or volunteers. This section shall survive any expiration or termination of this Agreement. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 WRCOG's Right to Employ Other Consultants. WRCOG reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of WRCOG. Any attempt to do so shall be null and void, and any

assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to WRCOG include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, WRCOG shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of WRCOG, during the term of his or her service with WRCOG, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any WRCOG's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### 3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of WRCOG. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE  
TO  
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS  
AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES**

IN WITNESS WHEREOF, the Parties hereby have made and executed this Agreement as of the date first written above.

WESTERN RIVERSIDE COUNCIL  
OF GOVERNMENTS

WG Zimmerman Engineering

By: \_\_\_\_\_  
Rick Bishop  
Executive Director

By: \_\_\_\_\_  
Bill Zimmerman  
President

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General Counsel  
Best Best & Krieger LLP

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

On-Call and As-Needed Engineering Services

Such engineering services may include, but are not limited to, the following work activities:

Task 1-Review of One Simple TUMF Invoice

The Consultant will be asked to review TUMF project invoices submitted by member jurisdictions for reimbursement. The invoice should contain all necessary support documentation and the Consultant shall review each invoice to ensure that the work invoiced against is for the identified project. As part of the review of invoices and support documentation, the Consultant will prepare a memo to WRCOG staff authorizing payment for eligible expenses under the Program. Exhibit A provides a sample of a typical invoice submitted to WRCOG for review.

Task 2-Review of One Complex TUMF Invoice

On occasions, member jurisdictions submit invoices and do not receive full reimbursement due to issues that arise during the review process. Issues that typically occur include, but are not limited to the following: expenses for work ineligible under the Program, expenses for work outside the scope of the project, local match contribution rate is not applied, amount invoice exceeds amount programmed on the Zone Transportation Improvement Program. With situations in which invoice issues are found, a meeting between WRCOG, the Consultant, and member jurisdiction staff is convened to discuss the issues pertaining to the invoice. Exhibit B provides a sample of an invoice that contains some of the issues previously described.

Task 3- Preparation of TUMF Reimbursement Manual

WRCOG currently administers the TUMF Program using a variety of documents including the Administrative Plan, the Nexus Study, and individual ordinances adopted by member jurisdictions. WRCOG has also developed an internal document related to preparation and review of TUMF invoices. The purpose of this Task is to develop an updated and comprehensive document that member agencies, consultants, and other parties can use to facilitate the reimbursement process.

Key elements of this document should include but not be limited to the following:

- A sample invoice packet
- A listing of expense items which are eligible for reimbursement
- A listing of expense items which are not eligible for reimbursement

Exhibit “A”

- A policy regarding project change orders and how WRCOG Staff will review change orders for reimbursement purposes

As part of developing this manual, the Consultant will be asked to review documents from other agencies who administer reimbursement programs of comparable size and scale. Additionally, the Consultant will be asked to make at least two presentations to the WRCOG Public Works Committee (PWC) to obtain input and present the draft document for review.

A key element of this effort is also working with local agencies to obtain their feedback on the TUMF reimbursement process. Consultants will be asked to meet with at least five (5) of WRCOG's member jurisdictions to discuss any questions or concerns about this process.

#### Task 4- Review of Active Transportation Plan Cost Estimates

The Consultant will be asked to perform a peer review of any cost estimates prepared for the Regional Active Transportation Plan (ATP) that WRCOG is currently updating. As part of the Regional ATP, WRCOG's Consultant Team will be identifying key regional corridors to provide additional bicycle and pedestrian connectivity between member agencies. The Consultant will be asked to provide input on the unit costs and the total project costs for each identified corridor.

#### Task 5- Meeting Attendance

WRCOG anticipates that Consultants could be asked to attend meetings on WRCOG's behalf related to a variety of issues involving the Transportation Department. For purposes of cost estimating, please assume that each meeting requires one hour traveling to the meeting site, 4 hours of meeting attendance, and one hour to prepare a summary of each meeting.

#### Task 6- Other Duties as Assigned

WRCOG anticipates that Consultants could be asked to perform other duties as they related to the Transportation Department. Such duties can include but are not limited to the review/reconciliation of TUMF Improvement and Credit Agreements, reviewing bid packets to advise WRCOG whether specific items are eligible expenses under the TUMF Program, and assistance with the Water Quality Framework – Alternative Compliance Program.

**EXHIBIT "B"**  
**COMPENSATION**

<b>Classification</b>	<b>Rate</b>
Principal	\$ 215.00/Hr
Registered Traffic Engineer	\$ 215.00/Hr
Senior Project Manager (Registered)	\$ 210.00/Hr
Project Manager (Registered)	\$ 190.00/Hr
Senior Project Engineer (Registered)	\$ 180.00/Hr
Project Engineer	\$ 145.00/Hr
Senior Associate Engineer	\$ 125.00/Hr
Associate Engineer	\$ 115.00/Hr
CAD Manager/Senior Designer	\$ 102.00/Hr
Microstation CAD/Technician	\$ 110.00/Hr
AutoCAD/Technician	\$ 95.00/Hr
Administration/Office Support	\$ 75.00/Hr
Non-Labor Expenses	
Mileage (local) Federal Rate¢ per Mile	
Printing Cost plus 5%	
Reproduction (Blue lines) Cost plus 5%	
Other Expenses (such as sub-consultants, outside services or special equipment needs) Cost plus 5%	

**EXHIBIT "C"**  
**SAMPLE TASK ORDER FORM**

**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**TASK ORDER**

Task Order No. \_\_\_\_\_

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

**The Consultant is hereby authorized to perform the following work subject to the provisions of the Contract identified above:**

**List any attachments:** (Please provide if any.)

**Dollar Amount of Task Order:** Not to exceed \$\_\_\_\_\_,\_\_\_\_\_.00

**Completion Date:** \_\_\_\_\_

The undersigned consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above.

**WESTERN RIVERSIDE  
COUNCIL OF GOVERNMENTS**

**Consultant**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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# Item 3.F

WRCOG Transportation Department  
On-Call Engineering Consultants

## Attachment 2

Agreement for On-Call Professional  
Services with Transportation  
Engineering and Planning

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**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES**

1. Parties and Date.

This Agreement is made and entered into this \_\_\_\_\_ day of October, 2016, by and between the Western Riverside Council of Governments, a California public agency (“WRCOG”) and **Transportation Engineering and Planning, Inc., a subchapter corporation** (“Consultant”). WRCOG and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by WRCOG on the terms and conditions set forth in this Agreement and in the task order(s) to be issued pursuant to this Agreement and executed by the parties (“Task Order”). Consultant represents that it is experienced in providing on-call engineering services is licensed in the State of California, and is familiar with the plans of WRCOG.

2.2 Project.

WRCOG desires to engage Consultant to render such professional services, on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein (each such project shall be designated a “Project” under this Agreement).

3. Terms.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to WRCOG all labor, materials, tools, equipment, services, and incidental and customary work, on an on-call basis, necessary to fully and adequately supply professional services and advise on various issues affecting the decision of WRCOG (“Services”). The types of Services to be provided are generally described in Exhibit “A” attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Order issued by WRCOG or its designee. No Services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **October 2016 to June 2018**, unless earlier terminated as provided herein. Consultant shall complete the Services

within the term of this Agreement, and shall meet any other established schedules and deadlines set forth in the Task Order. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

### 3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. WRCOG retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of WRCOG and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the specific schedule that shall be set forth in the Task Order ("Schedule of Services"). **Consultant shall be required to commence work within five (5) days of receiving a fully executed Task Order.** Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with each Schedule, WRCOG shall respond to Consultant's submittals in a timely manner. Upon the request of WRCOG, Consultant shall provide a more detailed schedule of anticipated performance to meet the relevant Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of WRCOG.

3.2.4 Substitution of Key Personnel. Consultant has represented to WRCOG that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of WRCOG. In the event that WRCOG and Consultant cannot agree as to the substitution of key personnel, WRCOG shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to WRCOG, or who are determined by the WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the WRCOG. The key personnel for performance of this Agreement are as follows: **Craig Neustaedter, President** or as otherwise specified in the relevant Task Order.

3.2.5 WRCOG's Representative. WRCOG hereby designates **Christopher Gray, Director of Transportation**, or his or her designee, to act as its representative for the

performance of this Agreement (“WRCOG’s Representative”). WRCOG’s Representative shall have the power to act on behalf of WRCOG for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than WRCOG’s Representative or his or her designee.

3.2.6 Consultant’s Representative. Consultant hereby designates **Craig Neustaedter, President**, or his or her designee, to act as its representative for the performance of this Agreement (“Consultant’s Representative”). Consultant’s Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant’s Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement and as described in the relevant Task Order.

3.2.7 Coordination of Services. Consultant agrees to work closely with WRCOG staff in the performance of Services and shall be available to WRCOG’s staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from WRCOG, any services necessary to correct errors or omissions which are caused by the Consultant’s failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to WRCOG, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to WRCOG, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold WRCOG, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or

liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.2.10 Insurance.

(a) Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to WRCOG that it has secured all insurance required under this section, in a form and with insurance companies acceptable to WRCOG. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to WRCOG that the subcontractor has secured all insurance required under this section.

(b) Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(i) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(ii) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

(c) Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

(d) Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by WRCOG to add the following provisions to the insurance policies:

(i) General Liability.

(1) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(2) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(3) The policy shall give WRCOG, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(4) The additional insured coverage under the policy shall be “primary and non-contributory” and will not seek contribution from WRCOG’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(ii) Automobile Liability.

(1) The automobile liability policy shall be endorsed to state that: (1) WRCOG, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects WRCOG, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant’s scheduled underlying coverage. Any insurance or self-insurance maintained by WRCOG, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant’s insurance and shall not be called upon to contribute with it in any way.

(iii) Workers’ Compensation and Employers Liability Coverage.

(1) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(2) The insurer shall agree to waive all rights of subrogation against WRCOG, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(iv) All Coverages.

(1) Defense costs shall be payable in addition to the limits set forth hereunder.

(2) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to WRCOG, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(3) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of WRCOG (if agreed to in a written contract or agreement) before WRCOG's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(4) Consultant shall provide WRCOG at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to WRCOG at least ten (10) days prior to the effective date of cancellation or expiration.

(5) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(6) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by WRCOG, is not intended to and shall not in any manner limit or qualify the liabilities and

obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(7) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, WRCOG has the right but not the duty to obtain the insurance it deems necessary and any premium paid by WRCOG will be promptly reimbursed by Consultant or WRCOG will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, WRCOG may cancel this Agreement. WRCOG may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(8) Neither WRCOG nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

(v) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to WRCOG, its directors, officials, officers, employees, agents and volunteers.

(vi) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by WRCOG. Consultant shall guarantee that, at the option of WRCOG, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects WRCOG, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

(vii) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to WRCOG.

(viii) Verification of Coverage. Consultant shall furnish WRCOG with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to WRCOG. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by WRCOG if requested. All certificates and endorsements must be received and approved by WRCOG before work commences. WRCOG reserves the right to require complete, certified copies of all required insurance policies, at any time.

(ix) Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to WRCOG that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name WRCOG as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If

requested by Consultant, WRCOG may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

(e) Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit “B” attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. The total compensation shall not exceed **One Hundred Thousand Dollars (\$100,000)** (“Total Compensation”) without written approval of WRCOG’s Executive Director. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to WRCOG a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. WRCOG shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by WRCOG.

3.3.4 Extra Work. At any time during the term of this Agreement, WRCOG may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by WRCOG to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from WRCOG’s Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and

“maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. WRCOG shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the WRCOG, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### 3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of WRCOG during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### 3.5 General Provisions.

#### 3.5.1 Termination of Agreement.

(a) Grounds for Termination. WRCOG may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to WRCOG, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(b) Effect of Termination. If this Agreement is terminated as provided herein, WRCOG may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(c) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, WRCOG may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:** Transportation Engineering and Planning, Inc.  
15 Corporate Park, Irvine, CA 92606  
Attention: Craig Neustaedter

**WRCOG:** Western Riverside Council of Governments  
4080 Lemon Street, 3rd Floor, MS 1032  
Riverside, CA 92373  
Attn: Christopher Gray  
Phone: 951-955-8304

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.5.3 Ownership of Materials and Confidentiality.

(a) Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for WRCOG to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that WRCOG is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by WRCOG. WRCOG shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at WRCOG’s sole risk.

#### (b) Intellectual Property.

(i) In addition, WRCOG shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

(ii) WRCOG shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by WRCOG, whether or not developed in conjunction with Consultant, and whether or

not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of WRCOG.

(iii) Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the WRCOG.

(iv) All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

(v) WRCOG further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

(c) Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of WRCOG, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use WRCOG's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of WRCOG.

(d) Infringement Indemnification. Consultant shall defend, indemnify and hold WRCOG, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by WRCOG of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this

Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the WRCOG, its officials, officers, consultants, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project, this Agreement, or any Task Order, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against WRCOG, its directors, officials, officers, consultants, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against WRCOG or its directors, officials, officers, consultants, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse WRCOG and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by WRCOG, its directors, officials, officers, consultants, employees, agents or volunteers. This section shall survive any expiration or termination of this Agreement. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 WRCOG's Right to Employ Other Consultants. WRCOG reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of WRCOG. Any attempt to do so shall be null and void, and any

assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to WRCOG include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, WRCOG shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of WRCOG, during the term of his or her service with WRCOG, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any WRCOG's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### 3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of WRCOG. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE  
TO  
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS  
AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES**

IN WITNESS WHEREOF, the Parties hereby have made and executed this Agreement as of the date first written above.

WESTERN RIVERSIDE COUNCIL  
OF GOVERNMENTS

Transportation Engineering and Planning, Inc.

By: \_\_\_\_\_  
Rick Bishop  
Executive Director

By: \_\_\_\_\_  
Craig Neustaedter  
President

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General Counsel  
Best Best & Krieger LLP

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

On-Call and As-Needed Engineering Services

Such engineering services may include, but are not limited to, the following work activities:

Task 1-Review of One Simple TUMF Invoice

The Consultant will be asked to review TUMF project invoices submitted by member jurisdictions for reimbursement. The invoice should contain all necessary support documentation and the Consultant shall review each invoice to ensure that the work invoiced against is for the identified project. As part of the review of invoices and support documentation, the Consultant will prepare a memo to WRCOG staff authorizing payment for eligible expenses under the Program. Exhibit A provides a sample of a typical invoice submitted to WRCOG for review.

Task 2-Review of One Complex TUMF Invoice

On occasions, member jurisdictions submit invoices and do not receive full reimbursement due to issues that arise during the review process. Issues that typically occur include, but are not limited to the following: expenses for work ineligible under the Program, expenses for work outside the scope of the project, local match contribution rate is not applied, amount invoice exceeds amount programmed on the Zone Transportation Improvement Program. With situations in which invoice issues are found, a meeting between WRCOG, the Consultant, and member jurisdiction staff is convened to discuss the issues pertaining to the invoice. Exhibit B provides a sample of an invoice that contains some of the issues previously described.

Task 3- Preparation of TUMF Reimbursement Manual

WRCOG currently administers the TUMF Program using a variety of documents including the Administrative Plan, the Nexus Study, and individual ordinances adopted by member jurisdictions. WRCOG has also developed an internal document related to preparation and review of TUMF invoices. The purpose of this Task is to develop an updated and comprehensive document that member agencies, consultants, and other parties can use to facilitate the reimbursement process.

Key elements of this document should include but not be limited to the following:

- A sample invoice packet
- A listing of expense items which are eligible for reimbursement
- A listing of expense items which are not eligible for reimbursement

Exhibit “A”

- A policy regarding project change orders and how WRCOG Staff will review change orders for reimbursement purposes

As part of developing this manual, the Consultant will be asked to review documents from other agencies who administer reimbursement programs of comparable size and scale. Additionally, the Consultant will be asked to make at least two presentations to the WRCOG Public Works Committee (PWC) to obtain input and present the draft document for review.

A key element of this effort is also working with local agencies to obtain their feedback on the TUMF reimbursement process. Consultants will be asked to meet with at least five (5) of WRCOG's member jurisdictions to discuss any questions or concerns about this process.

#### Task 4- Review of Active Transportation Plan Cost Estimates

The Consultant will be asked to perform a peer review of any cost estimates prepared for the Regional Active Transportation Plan (ATP) that WRCOG is currently updating. As part of the Regional ATP, WRCOG's Consultant Team will be identifying key regional corridors to provide additional bicycle and pedestrian connectivity between member agencies. The Consultant will be asked to provide input on the unit costs and the total project costs for each identified corridor.

#### Task 5- Meeting Attendance

WRCOG anticipates that Consultants could be asked to attend meetings on WRCOG's behalf related to a variety of issues involving the Transportation Department. For purposes of cost estimating, please assume that each meeting requires one hour traveling to the meeting site, 4 hours of meeting attendance, and one hour to prepare a summary of each meeting.

#### Task 6- Other Duties as Assigned

WRCOG anticipates that Consultants could be asked to perform other duties as they related to the Transportation Department. Such duties can include but are not limited to the review/reconciliation of TUMF Improvement and Credit Agreements, reviewing bid packets to advise WRCOG whether specific items are eligible expenses under the TUMF Program, and assistance with the Water Quality Framework – Alternative Compliance Program.

**EXHIBIT “B”  
COMPENSATION**

**Task 1 - Review of One Simple TUMF Invoice**

\$1200.00 {initial setup}

\$ 500.00 (subsequent invoices on same

**Task 2 - Review of One Complex TUMF Invoice**

\$1200.00 (initial setup)

\$ 900.00 (correction of overbilled invoice)

\$ 500.00 (subsequent invoices on same project)

**Task 3 - Preparation of TUMF Reimbursement Manual**

\$35,000.00

**Task 4 - Review of Active Transportation Plan Cost Estimates**

\$ 750.00 per corridor for 10 corridors or less

\$ 650.00 per corridor for each additional corridor.

**Task 5-Meeting Attendance**

Assumes attendance of TEP project manager including one hour travel time, meeting attendance, and one hour preparation of meeting summary.

\$ 950 per meeting.

**EXHIBIT "C"**  
**SAMPLE TASK ORDER FORM**

**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**TASK ORDER**

Task Order No. \_\_\_\_\_

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

**The Consultant is hereby authorized to perform the following work subject to the provisions of the Contract identified above:**

**List any attachments:** (Please provide if any.)

**Dollar Amount of Task Order:** Not to exceed \$\_\_\_\_\_,\_\_\_\_\_.00

**Completion Date:** \_\_\_\_\_

The undersigned consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above.

**WESTERN RIVERSIDE  
COUNCIL OF GOVERNMENTS**

**Consultant**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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# Item 3.F

WRCOG Transportation Department  
On-Call Engineering Consultants

## Attachment 3

Agreement for On-Call Professional  
Services with WSP Parsons  
Brinckerhoff

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**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES**

1. Parties and Date.

This Agreement is made and entered into this \_\_\_\_\_ day of October, 2016, by and between the Western Riverside Council of Governments, a California public agency (“WRCOG”) and **WSP Parsons Brinckerhoff, Inc., a consulting firm** (“Consultant”). WRCOG and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by WRCOG on the terms and conditions set forth in this Agreement and in the task order(s) to be issued pursuant to this Agreement and executed by the parties (“Task Order”). Consultant represents that it is experienced in providing on-call engineering services is licensed in the State of California, and is familiar with the plans of WRCOG.

2.2 Project.

WRCOG desires to engage Consultant to render such professional services, on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein (each such project shall be designated a “Project” under this Agreement).

3. Terms.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to WRCOG all labor, materials, tools, equipment, services, and incidental and customary work, on an on-call basis, necessary to fully and adequately supply professional services and advise on various issues affecting the decision of WRCOG (“Services”). The types of Services to be provided are generally described in Exhibit “A” attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Order issued by WRCOG or its designee. No Services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **October 2016 to June 2018**, unless earlier terminated as provided herein. Consultant shall complete the Services

within the term of this Agreement, and shall meet any other established schedules and deadlines set forth in the Task Order. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

### 3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. WRCOG retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of WRCOG and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the specific schedule that shall be set forth in the Task Order ("Schedule of Services"). **Consultant shall be required to commence work within five (5) days of receiving a fully executed Task Order.** Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with each Schedule, WRCOG shall respond to Consultant's submittals in a timely manner. Upon the request of WRCOG, Consultant shall provide a more detailed schedule of anticipated performance to meet the relevant Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of WRCOG.

3.2.4 Substitution of Key Personnel. Consultant has represented to WRCOG that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of WRCOG. In the event that WRCOG and Consultant cannot agree as to the substitution of key personnel, WRCOG shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to WRCOG, or who are determined by the WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the WRCOG. The key personnel for performance of this Agreement are as follows: **Douglas Sawyer, Area Manager** or as otherwise specified in the relevant Task Order.

3.2.5 WRCOG's Representative. WRCOG hereby designates **Christopher Gray, Director of Transportation**, or his or her designee, to act as its representative for the

performance of this Agreement (“WRCOG’s Representative”). WRCOG’s Representative shall have the power to act on behalf of WRCOG for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than WRCOG’s Representative or his or her designee.

3.2.6 Consultant’s Representative. Consultant hereby designates **Douglas Sawyer, Area Manager**, or his or her designee, to act as its representative for the performance of this Agreement (“Consultant’s Representative”). Consultant’s Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant’s Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement and as described in the relevant Task Order.

3.2.7 Coordination of Services. Consultant agrees to work closely with WRCOG staff in the performance of Services and shall be available to WRCOG’s staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from WRCOG, any services necessary to correct errors or omissions which are caused by the Consultant’s failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to WRCOG, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to WRCOG, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold WRCOG, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or

liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.2.10 Insurance.

(a) Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to WRCOG that it has secured all insurance required under this section, in a form and with insurance companies acceptable to WRCOG. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to WRCOG that the subcontractor has secured all insurance required under this section.

(b) Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(i) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(ii) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

(c) Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

(d) Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by WRCOG to add the following provisions to the insurance policies:

(i) General Liability.

(1) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(2) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(3) The policy shall give WRCOG, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(4) The additional insured coverage under the policy shall be “primary and non-contributory” and will not seek contribution from WRCOG’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(ii) Automobile Liability.

(1) The automobile liability policy shall be endorsed to state that: (1) WRCOG, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects WRCOG, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant’s scheduled underlying coverage. Any insurance or self-insurance maintained by WRCOG, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant’s insurance and shall not be called upon to contribute with it in any way.

(iii) Workers’ Compensation and Employers Liability Coverage.

(1) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(2) The insurer shall agree to waive all rights of subrogation against WRCOG, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(iv) All Coverages.

(1) Defense costs shall be payable in addition to the limits set forth hereunder.

(2) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to WRCOG, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(3) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of WRCOG (if agreed to in a written contract or agreement) before WRCOG's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(4) Consultant shall provide WRCOG at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to WRCOG at least ten (10) days prior to the effective date of cancellation or expiration.

(5) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(6) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by WRCOG, is not intended to and shall not in any manner limit or qualify the liabilities and

obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(7) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, WRCOG has the right but not the duty to obtain the insurance it deems necessary and any premium paid by WRCOG will be promptly reimbursed by Consultant or WRCOG will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, WRCOG may cancel this Agreement. WRCOG may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(8) Neither WRCOG nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

(v) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to WRCOG, its directors, officials, officers, employees, agents and volunteers.

(vi) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by WRCOG. Consultant shall guarantee that, at the option of WRCOG, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects WRCOG, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

(vii) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to WRCOG.

(viii) Verification of Coverage. Consultant shall furnish WRCOG with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to WRCOG. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by WRCOG if requested. All certificates and endorsements must be received and approved by WRCOG before work commences. WRCOG reserves the right to require complete, certified copies of all required insurance policies, at any time.

(ix) Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to WRCOG that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name WRCOG as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If

requested by Consultant, WRCOG may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

(e) Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit “B” attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. The total compensation shall not exceed **One Hundred Thousand Dollars (\$100,000)** (“Total Compensation”) without written approval of WRCOG’s Executive Director. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to WRCOG a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. WRCOG shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by WRCOG.

3.3.4 Extra Work. At any time during the term of this Agreement, WRCOG may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by WRCOG to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from WRCOG’s Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and

“maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. WRCOG shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the WRCOG, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### 3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of WRCOG during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### 3.5 General Provisions.

#### 3.5.1 Termination of Agreement.

(a) Grounds for Termination. WRCOG may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to WRCOG, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(b) Effect of Termination. If this Agreement is terminated as provided herein, WRCOG may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(c) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, WRCOG may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant: WSP Parsons Brinckerhoff**  
**451 E. Vanderbilt Way Suite 200, San Bernardino, 92408**  
**Attention: Robert Morin**

**WRCOG:** Western Riverside Council of Governments  
4080 Lemon Street, 3rd Floor, MS 1032  
Riverside, CA 92373  
Attn: Christopher Gray  
Phone: 951-955-8304

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.5.3 Ownership of Materials and Confidentiality.

(a) Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for WRCOG to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that WRCOG is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by WRCOG. WRCOG shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at WRCOG’s sole risk.

#### (b) Intellectual Property.

(i) In addition, WRCOG shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

(ii) WRCOG shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by WRCOG, whether or not developed in conjunction with Consultant, and whether or

not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of WRCOG.

(iii) Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the WRCOG.

(iv) All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

(v) WRCOG further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

(c) Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of WRCOG, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use WRCOG's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of WRCOG.

(d) Infringement Indemnification. Consultant shall defend, indemnify and hold WRCOG, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by WRCOG of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this

Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the WRCOG, its officials, officers, consultants, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project, this Agreement, or any Task Order, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against WRCOG, its directors, officials, officers, consultants, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against WRCOG or its directors, officials, officers, consultants, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse WRCOG and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by WRCOG, its directors, officials, officers, consultants, employees, agents or volunteers. This section shall survive any expiration or termination of this Agreement. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 WRCOG's Right to Employ Other Consultants. WRCOG reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of WRCOG. Any attempt to do so shall be null and void, and any

assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to WRCOG include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, WRCOG shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of WRCOG, during the term of his or her service with WRCOG, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any WRCOG's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of WRCOG. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE  
TO  
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS  
AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES**

IN WITNESS WHEREOF, the Parties hereby have made and executed this Agreement as of the date first written above.

WESTERN RIVERSIDE COUNCIL  
OF GOVERNMENTS

WSP Parsons Brinckerhoff, Inc.

By: \_\_\_\_\_  
Rick Bishop  
Executive Director

By: \_\_\_\_\_  
Douglas Sawyer  
Area Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General Counsel  
Best Best & Krieger LLP

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

On-Call and As-Needed Engineering Services

Such engineering services may include, but are not limited to, the following work activities:

Task 1-Review of One Simple TUMF Invoice

The Consultant will be asked to review TUMF project invoices submitted by member jurisdictions for reimbursement. The invoice should contain all necessary support documentation and the Consultant shall review each invoice to ensure that the work invoiced against is for the identified project. As part of the review of invoices and support documentation, the Consultant will prepare a memo to WRCOG staff authorizing payment for eligible expenses under the Program. Exhibit A provides a sample of a typical invoice submitted to WRCOG for review.

Task 2-Review of One Complex TUMF Invoice

On occasions, member jurisdictions submit invoices and do not receive full reimbursement due to issues that arise during the review process. Issues that typically occur include, but are not limited to the following: expenses for work ineligible under the Program, expenses for work outside the scope of the project, local match contribution rate is not applied, amount invoice exceeds amount programmed on the Zone Transportation Improvement Program. With situations in which invoice issues are found, a meeting between WRCOG, the Consultant, and member jurisdiction staff is convened to discuss the issues pertaining to the invoice. Exhibit B provides a sample of an invoice that contains some of the issues previously described.

Task 3- Preparation of TUMF Reimbursement Manual

WRCOG currently administers the TUMF Program using a variety of documents including the Administrative Plan, the Nexus Study, and individual ordinances adopted by member jurisdictions. WRCOG has also developed an internal document related to preparation and review of TUMF invoices. The purpose of this Task is to develop an updated and comprehensive document that member agencies, consultants, and other parties can use to facilitate the reimbursement process.

Key elements of this document should include but not be limited to the following:

- A sample invoice packet
- A listing of expense items which are eligible for reimbursement
- A listing of expense items which are not eligible for reimbursement

Exhibit “A”

- A policy regarding project change orders and how WRCOG Staff will review change orders for reimbursement purposes

As part of developing this manual, the Consultant will be asked to review documents from other agencies who administer reimbursement programs of comparable size and scale. Additionally, the Consultant will be asked to make at least two presentations to the WRCOG Public Works Committee (PWC) to obtain input and present the draft document for review.

A key element of this effort is also working with local agencies to obtain their feedback on the TUMF reimbursement process. Consultants will be asked to meet with at least five (5) of WRCOG's member jurisdictions to discuss any questions or concerns about this process.

#### Task 4- Review of Active Transportation Plan Cost Estimates

The Consultant will be asked to perform a peer review of any cost estimates prepared for the Regional Active Transportation Plan (ATP) that WRCOG is currently updating. As part of the Regional ATP, WRCOG's Consultant Team will be identifying key regional corridors to provide additional bicycle and pedestrian connectivity between member agencies. The Consultant will be asked to provide input on the unit costs and the total project costs for each identified corridor.

#### Task 5- Meeting Attendance

WRCOG anticipates that Consultants could be asked to attend meetings on WRCOG's behalf related to a variety of issues involving the Transportation Department. For purposes of cost estimating, please assume that each meeting requires one hour traveling to the meeting site, 4 hours of meeting attendance, and one hour to prepare a summary of each meeting.

#### Task 6- Other Duties as Assigned

WRCOG anticipates that Consultants could be asked to perform other duties as they related to the Transportation Department. Such duties can include but are not limited to the review/reconciliation of TUMF Improvement and Credit Agreements, reviewing bid packets to advise WRCOG whether specific items are eligible expenses under the TUMF Program, and assistance with the Water Quality Framework – Alternative Compliance Program.

**EXHIBIT “B”  
COMPENSATION**

***Exhibit C: Billing Rates***

Staff	Role	Billing Rates
Bob Morin, PE, TE	TUMF Program Lead	\$250/ hour
George Harvilla, PE	Active Transportation Program Lead	\$220/ hour
Jarrod Miller, CPESC, QSD/P, ENV SP	Water Quality Program Lead	\$172/ hour
Cynthia Cavazos	Project Administrator	\$125/ hour

**EXHIBIT "C"**  
**SAMPLE TASK ORDER FORM**

**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**TASK ORDER**

Task Order No. \_\_\_\_\_

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

**The Consultant is hereby authorized to perform the following work subject to the provisions of the Contract identified above:**

**List any attachments:** (Please provide if any.)

**Dollar Amount of Task Order:** Not to exceed \$\_\_\_\_\_,\_\_\_\_\_.00

**Completion Date:** \_\_\_\_\_

The undersigned consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above.

**WESTERN RIVERSIDE  
COUNCIL OF GOVERNMENTS**

**Consultant**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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# Item 3.F

WRCOG Transportation Department  
On-Call Engineering Consultants

## Attachment 4

Agreement for On-Call Professional  
Services with Kimley-Horn

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**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES**

1. Parties and Date.

This Agreement is made and entered into this \_\_\_\_\_ day of October, 2016, by and between the Western Riverside Council of Governments, a California public agency (“WRCOG”) and **Kimley-Horn and Associates, Inc., a consulting firm** (“Consultant”). WRCOG and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by WRCOG on the terms and conditions set forth in this Agreement and in the task order(s) to be issued pursuant to this Agreement and executed by the parties (“Task Order”). Consultant represents that it is experienced in providing on-call engineering services is licensed in the State of California, and is familiar with the plans of WRCOG.

2.2 Project.

WRCOG desires to engage Consultant to render such professional services, on an on-call basis. Services shall be ordered by Task Order(s) to be issued pursuant to this Agreement for future projects as set forth herein (each such project shall be designated a “Project” under this Agreement).

3. Terms.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to WRCOG all labor, materials, tools, equipment, services, and incidental and customary work, on an on-call basis, necessary to fully and adequately supply professional services and advise on various issues affecting the decision of WRCOG (“Services”). The types of Services to be provided are generally described in Exhibit “A” attached hereto and incorporated herein by reference. The Services shall be more particularly described in the individual Task Order issued by WRCOG or its designee. No Services shall be performed unless authorized by a fully executed Task Order in the form attached hereto as Exhibit "C". All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **October 2016 to June 2018**, unless earlier terminated as provided herein. Consultant shall complete the Services

within the term of this Agreement, and shall meet any other established schedules and deadlines set forth in the Task Order. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

### 3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. WRCOG retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of WRCOG and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the specific schedule that shall be set forth in the Task Order ("Schedule of Services"). **Consultant shall be required to commence work within five (5) days of receiving a fully executed Task Order.** Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with each Schedule, WRCOG shall respond to Consultant's submittals in a timely manner. Upon the request of WRCOG, Consultant shall provide a more detailed schedule of anticipated performance to meet the relevant Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of WRCOG.

3.2.4 Substitution of Key Personnel. Consultant has represented to WRCOG that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of WRCOG. In the event that WRCOG and Consultant cannot agree as to the substitution of key personnel, WRCOG shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to WRCOG, or who are determined by the WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the WRCOG. The key personnel for performance of this Agreement are as follows: **Darren Adrian, Vice President** or as otherwise specified in the relevant Task Order.

3.2.5 WRCOG's Representative. WRCOG hereby designates **Christopher Gray, Director of Transportation**, or his or her designee, to act as its representative for the

performance of this Agreement (“WRCOG’s Representative”). WRCOG’s Representative shall have the power to act on behalf of WRCOG for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than WRCOG’s Representative or his or her designee.

3.2.6 Consultant’s Representative. Consultant hereby designates **Darren Adrian, Vice President**, or his or her designee, to act as its representative for the performance of this Agreement (“Consultant’s Representative”). Consultant’s Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant’s Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement and as described in the relevant Task Order.

3.2.7 Coordination of Services. Consultant agrees to work closely with WRCOG staff in the performance of Services and shall be available to WRCOG’s staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from WRCOG, any services necessary to correct errors or omissions which are caused by the Consultant’s failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to WRCOG, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to WRCOG, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold WRCOG, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or

liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.2.10 Insurance.

(a) Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to WRCOG that it has secured all insurance required under this section, in a form and with insurance companies acceptable to WRCOG. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to WRCOG that the subcontractor has secured all insurance required under this section.

(b) Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(i) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(ii) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

(c) Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

(d) Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by WRCOG to add the following provisions to the insurance policies:

(i) General Liability.

(1) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(2) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(3) The policy shall give WRCOG, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(4) The additional insured coverage under the policy shall be “primary and non-contributory” and will not seek contribution from WRCOG’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(ii) Automobile Liability.

(1) The automobile liability policy shall be endorsed to state that: (1) WRCOG, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects WRCOG, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant’s scheduled underlying coverage. Any insurance or self-insurance maintained by WRCOG, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant’s insurance and shall not be called upon to contribute with it in any way.

(iii) Workers’ Compensation and Employers Liability Coverage.

(1) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(2) The insurer shall agree to waive all rights of subrogation against WRCOG, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(iv) All Coverages.

(1) Defense costs shall be payable in addition to the limits set forth hereunder.

(2) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to WRCOG, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(3) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of WRCOG (if agreed to in a written contract or agreement) before WRCOG's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(4) Consultant shall provide WRCOG at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to WRCOG at least ten (10) days prior to the effective date of cancellation or expiration.

(5) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(6) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by WRCOG, is not intended to and shall not in any manner limit or qualify the liabilities and

obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(7) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, WRCOG has the right but not the duty to obtain the insurance it deems necessary and any premium paid by WRCOG will be promptly reimbursed by Consultant or WRCOG will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, WRCOG may cancel this Agreement. WRCOG may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(8) Neither WRCOG nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

(v) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to WRCOG, its directors, officials, officers, employees, agents and volunteers.

(vi) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by WRCOG. Consultant shall guarantee that, at the option of WRCOG, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects WRCOG, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

(vii) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to WRCOG.

(viii) Verification of Coverage. Consultant shall furnish WRCOG with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to WRCOG. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by WRCOG if requested. All certificates and endorsements must be received and approved by WRCOG before work commences. WRCOG reserves the right to require complete, certified copies of all required insurance policies, at any time.

(ix) Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to WRCOG that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name WRCOG as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If

requested by Consultant, WRCOG may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

(e) Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit “B” attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to each Task Order shall be set forth in the relevant Task Order. The total compensation shall not exceed **One Hundred Thousand Dollars (\$100,000)** (“Total Compensation”) without written approval of WRCOG’s Executive Director. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to WRCOG a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. WRCOG shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by WRCOG.

3.3.4 Extra Work. At any time during the term of this Agreement, WRCOG may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by WRCOG to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from WRCOG’s Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and

“maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. WRCOG shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the WRCOG, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### 3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of WRCOG during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### 3.5 General Provisions.

#### 3.5.1 Termination of Agreement.

(a) Grounds for Termination. WRCOG may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to WRCOG, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

(b) Effect of Termination. If this Agreement is terminated as provided herein, WRCOG may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

(c) Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, WRCOG may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:** Kimley-Horn and Associates, Inc.  
765 The City Drive, Orange, CA 92868  
Attn: Darren Adrian

**WRCOG:** Western Riverside Council of Governments  
4080 Lemon Street, 3rd Floor, MS 1032  
Riverside, CA 92373  
Attn: Christopher Gray  
Phone: 951-955-8304

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.5.3 Ownership of Materials and Confidentiality.

(a) Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for WRCOG to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that WRCOG is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by WRCOG. WRCOG shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at WRCOG’s sole risk.

#### (b) Intellectual Property.

(i) In addition, WRCOG shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

(ii) WRCOG shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by WRCOG, whether or not developed in conjunction with Consultant, and whether or

not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of WRCOG.

(iii) Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the WRCOG.

(iv) All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

(v) WRCOG further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

(c) Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of WRCOG, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use WRCOG's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of WRCOG.

(d) Infringement Indemnification. Consultant shall defend, indemnify and hold WRCOG, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by WRCOG of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this

Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the WRCOG, its officials, officers, consultants, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project, this Agreement, or any Task Order, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against WRCOG, its directors, officials, officers, consultants, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against WRCOG or its directors, officials, officers, consultants, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse WRCOG and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by WRCOG, its directors, officials, officers, consultants, employees, agents or volunteers. This section shall survive any expiration or termination of this Agreement. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 WRCOG's Right to Employ Other Consultants. WRCOG reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of WRCOG. Any attempt to do so shall be null and void, and any

assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to WRCOG include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, WRCOG shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of WRCOG, during the term of his or her service with WRCOG, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any WRCOG's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of WRCOG. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE  
TO  
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS  
AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES**

IN WITNESS WHEREOF, the Parties hereby have made and executed this Agreement as of the date first written above.

WESTERN RIVERSIDE COUNCIL  
OF GOVERNMENTS

Kimley-Horn and Associates, Inc.

By: \_\_\_\_\_  
Rick Bishop  
Executive Director

By: \_\_\_\_\_  
Darren Adrian  
Vice President

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General Counsel  
Best Best & Krieger LLP

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

On-Call and As-Needed Engineering Services

Such engineering services may include, but are not limited to, the following work activities:

Task 1-Review of One Simple TUMF Invoice

The Consultant will be asked to review TUMF project invoices submitted by member jurisdictions for reimbursement. The invoice should contain all necessary support documentation and the Consultant shall review each invoice to ensure that the work invoiced against is for the identified project. As part of the review of invoices and support documentation, the Consultant will prepare a memo to WRCOG staff authorizing payment for eligible expenses under the Program. Exhibit A provides a sample of a typical invoice submitted to WRCOG for review.

Task 2-Review of One Complex TUMF Invoice

On occasions, member jurisdictions submit invoices and do not receive full reimbursement due to issues that arise during the review process. Issues that typically occur include, but are not limited to the following: expenses for work ineligible under the Program, expenses for work outside the scope of the project, local match contribution rate is not applied, amount invoice exceeds amount programmed on the Zone Transportation Improvement Program. With situations in which invoice issues are found, a meeting between WRCOG, the Consultant, and member jurisdiction staff is convened to discuss the issues pertaining to the invoice. Exhibit B provides a sample of an invoice that contains some of the issues previously described.

Task 3- Preparation of TUMF Reimbursement Manual

WRCOG currently administers the TUMF Program using a variety of documents including the Administrative Plan, the Nexus Study, and individual ordinances adopted by member jurisdictions. WRCOG has also developed an internal document related to preparation and review of TUMF invoices. The purpose of this Task is to develop an updated and comprehensive document that member agencies, consultants, and other parties can use to facilitate the reimbursement process.

Key elements of this document should include but not be limited to the following:

- A sample invoice packet
- A listing of expense items which are eligible for reimbursement
- A listing of expense items which are not eligible for reimbursement

Exhibit “A”

- A policy regarding project change orders and how WRCOG Staff will review change orders for reimbursement purposes

As part of developing this manual, the Consultant will be asked to review documents from other agencies who administer reimbursement programs of comparable size and scale. Additionally, the Consultant will be asked to make at least two presentations to the WRCOG Public Works Committee (PWC) to obtain input and present the draft document for review.

A key element of this effort is also working with local agencies to obtain their feedback on the TUMF reimbursement process. Consultants will be asked to meet with at least five (5) of WRCOG's member jurisdictions to discuss any questions or concerns about this process.

#### Task 4- Review of Active Transportation Plan Cost Estimates

The Consultant will be asked to perform a peer review of any cost estimates prepared for the Regional Active Transportation Plan (ATP) that WRCOG is currently updating. As part of the Regional ATP, WRCOG's Consultant Team will be identifying key regional corridors to provide additional bicycle and pedestrian connectivity between member agencies. The Consultant will be asked to provide input on the unit costs and the total project costs for each identified corridor.

#### Task 5- Meeting Attendance

WRCOG anticipates that Consultants could be asked to attend meetings on WRCOG's behalf related to a variety of issues involving the Transportation Department. For purposes of cost estimating, please assume that each meeting requires one hour traveling to the meeting site, 4 hours of meeting attendance, and one hour to prepare a summary of each meeting.

#### Task 6- Other Duties as Assigned

WRCOG anticipates that Consultants could be asked to perform other duties as they related to the Transportation Department. Such duties can include but are not limited to the review/reconciliation of TUMF Improvement and Credit Agreements, reviewing bid packets to advise WRCOG whether specific items are eligible expenses under the TUMF Program, and assistance with the Water Quality Framework – Alternative Compliance Program.

**EXHIBIT "B"**  
**COMPENSATION**

**Hourly Rate Schedule**

Project Manager	\$275
Sr. Professional II	\$275
Sr. Professional I	\$250
Professional III	\$235
Professional II	\$210
Professional I	\$180
Jr. Professional	\$150
Analyst III	\$140
Analyst II	\$130
Analyst I	\$120
Project Support	\$140
Clerical	\$100

*\*Hourly rates are escalated each year on July 1st.*

**Other Direct Costs:** Outside Printing/Reproduction, Delivery Services/USPS, Misc. Field Equipment/Supplies, Travel Expenses will be billed at actual cost. Mileage will be billed at the current Federal Rate.

A charge for indirect expenses (currently at 4.6%) will be added to the labor fee shown above to cover routine expenses, such as local mileage, copying, faxing, mail, telephone, in-house blueprinting, computer, etc.

**EXHIBIT "C"**  
**SAMPLE TASK ORDER FORM**

**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**TASK ORDER**

Task Order No. \_\_\_\_\_

Contract: [INSERT NAME OF CONTRACT]

Consultant: [INSERT NAME OF CONSULTANT]

**The Consultant is hereby authorized to perform the following work subject to the provisions of the Contract identified above:**

**List any attachments:** (Please provide if any.)

**Dollar Amount of Task Order:** Not to exceed \$\_\_\_\_\_,\_\_\_\_\_.00

**Completion Date:** \_\_\_\_\_

The undersigned consultant hereby agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted above, and perform all services for the work above specified in accordance with the Contract identified above and will accept as full payment therefore the amount shown above.

**WESTERN RIVERSIDE  
COUNCIL OF GOVERNMENTS**

**Consultant**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** Amendment to WRCOG Bylaws

**Contact:** Janis Leonard, Executive Assistant, [leonard@wrcog.coq.ca.us](mailto:leonard@wrcog.coq.ca.us), (951) 955-8320

**Date:** September 14, 2016

### **Requested Action:**

1. Recommend that the WRCOG Executive Committee Adopt WRCOG Resolution Number 35-16; A Resolution of the Executive Committee of the Western Riverside Council of Governments Amending its Bylaws to Recognize the March Joint Powers Authority as a voting member on the WRCOG Technical Advisory Committee and making other technical changes.

*WRCOG's Bylaws, among other matters, identifies and organizes the General Assembly, Executive Committee, Administration & Finance Committee, and the Technical Advisory Committee of WRCOG.*

In review of WRCOG's Bylaws, it is been determined that the March JPA is not specifically listed as a voting member on the Technical Advisory Committee. However, WRCOG's Committee Procedures, which identifies and organizes membership of additional WRCOG Committees such as the Planning Directors' Committee, Public Works Committee, Solid Waste Committee, and the Clean Cities Coalition, further indicates the March JPA as a voting member (specifically on the Planning Directors' and Public Works Committees). Additionally, the WRCOG TUMF Administrative Plan indicates that the March JPA is a participant in the WRCOG TUMF Program, serves as a voting member on the WRCOG Technical Advisory Committee, and is provided one vote on the Technical Advisory Committee for TUMF matters only.

The attached Bylaws have been updated to reflect this inconsistency and include minor clerical corrections, and are attached for members' review and comments.

### **Prior WRCOG Action:**

None.

### **WRCOG Fiscal Impact:**

This item is informational only; therefore there is no fiscal impact.

### **Attachments:**

1. WRCOG Bylaws Redline version.
2. WRCOG Committee Structure Policy.
3. WRCOG Resolution Number 35-16; A Resolution of the Executive Committee of the Western Riverside Council of Governments Amending its Bylaws to Recognize the March Joint Powers Authority as voting members on the WRCOG Technical Advisory Committee and making other technical changes.

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# Item 3.G

Amendment to WRCOG Bylaws

# Attachment 1

WRCOG Bylaws Redline version

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**BY-LAWS  
FOR THE  
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**ARTICLE I**

**SECTION 1.**

These By-Laws are provided for the organization and administration of the Western Riverside Council of Governments which has been established under a Joint Powers Agreement. These By-Laws supplement the Agreement.

**ARTICLE II  
GENERAL ASSEMBLY**

**SECTION 1. MEETINGS**

- A. Annual Meeting. The annual General Assembly shall meet in June. In addition, an annual local Government Conference may be held sometime during each fiscal year and a General Assembly social event may be held anytime as provided for in Article II, Section I.B. The locations and times of these meetings shall be determined by the Executive Committee.
- B. Special Meetings. Special meetings of the General Assembly may be called by the Chairperson, or in his or her absence by the Vice-Chairperson or in the absence of the Chairperson and the Vice-Chairperson by the ~~Second Vice-Chairperson~~, or a majority of the member agencies.

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**SECTION 2. OFFICERS**

- A. Nomination and Election. The General Assembly shall elect, by a majority vote, the Chairperson, Vice-Chairperson and Second Vice-Chairperson from members of the Executive Committee, provided he or she is first nominated by either the General Assembly or Executive Committee. The election of the Chairperson, Vice-Chairperson and Second Vice-Chairperson shall be conducted once each year and no later than July.
- B. Prohibition. The General Assembly shall not elect the Chairperson, Vice-Chairperson and Second Vice-Chairperson from representatives of the same member agency.
- C. Term. The elected Chairperson, Vice-Chairperson and Second Vice-Chairperson shall assume office at the close of the meeting of their election and

each officer shall hold office for one year, or until his or her successor shall be elected.

- D. Vacancy. Notwithstanding Article II, Section 2.C., if the office of the Chairperson, Vice-Chairperson or Second Vice-Chairperson becomes vacant, the Executive Committee shall appoint, by a majority vote, one of its members to fill the unexpired term of the vacated office.
- E. Removal. Notwithstanding Article II, Section 2.D., the Executive Committee may remove the Chairperson, Vice-Chairperson or Second Vice-Chairperson by majority vote. The removal of either the Chairperson, Vice-Chairperson or Second Vice-Chairperson creates a vacancy which shall be filled in accordance with Article II, Section 2.D.
- F. Duties of the Chairperson, Vice-Chairperson and Second Vice-Chairperson. The Chairperson shall, if present, preside at all meetings of the General Assembly and Executive Committee and exercise such other powers and duties as may from time to time be assigned to the Chairperson. In the absence of the Chairperson, the Vice-Chairperson shall perform all the duties of the Chairperson. When so acting, [the](#) Vice-Chairperson shall have all the powers of, and be subject to all the restrictions upon, [the](#) Chairperson. In the absence of both the Chairperson and Vice-Chairperson, the Second Vice-Chairperson shall perform all the duties of the Chairperson. When so acting, [Second](#) Vice-Chairperson shall have all the powers of, and be subject to all the restrictions upon, [the](#) Chairperson. In the absence of the Chairperson, Vice-Chairperson, and Second Vice-Chairperson, the General Assembly Chairperson of the Previous Year (the "Past Chairperson") shall perform the duties of the Chairperson for that meeting only. When so acting, [Past](#) Chairperson shall have all the powers of, and be subject to all the restrictions upon, [the](#) Chairperson. In the absence of the Chairperson, Vice-Chairperson, Second Vice-Chairperson and the Past Chairperson, the General Assembly or Executive Committee shall choose one of its voting members to chair the meeting for that day only.

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### **SECTION 3. VOTING**

- A. In General. Each member of the General Assembly shall have one vote.
- B. Eligibility. The Chairperson, Vice-Chairperson and Second Vice-Chairperson are eligible to vote.
- C. Quorum. The General Assembly shall act only upon a majority of a quorum. A quorum shall be the majority of the total authorized representatives of each member agency, provided that the members representing a majority of the member agencies are present.

**ARTICLE III**  
**EXECUTIVE COMMITTEE**

**SECTION 1. MEMBERSHIP**

A. The Executive Committee will be composed of the Mayor from each of the member cities, four members of the Riverside County Board of Supervisors, the President of each water district, and the Tribal Chairman of the Morongo Band of Mission Indians. Any City Council, at its discretion, can appoint a Mayor Pro Tem or other city council member in place of the Mayor. Each water district board, at its discretion, can appoint another board member in place of the President. The Tribal Council of the Morongo Band of Mission Indians, at its discretion, can appoint another tribal council member in place of the Tribal Chairman.

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B Each regular member on the Executive Committee shall also have an alternate, who must also be a current member of the legislative body of the party such alternate represents. For the Board of Supervisors, the Board of Supervisor's member not serving under section A, above, shall serve as an alternate to the members of the Board of Supervisors. The name of the alternate members shall be on file with the Executive Committee. In the absence of the regular member from an agency, the alternate member from such agency shall assume all rights and duties of the absent regular member.

**SECTION 2. OFFICERS**

- A. Officers and Duties. The officers of the Executive Committee shall be the Chairperson, Vice-Chairperson and Second Vice-Chairperson of the General Assembly. The Chairperson, Vice-Chairperson and Second Vice-Chairperson shall perform the same duties set forth in Article II.
- B. Absence. If a jurisdiction misses three consecutive meetings, said jurisdiction shall be notified of these occurrences.

**SECTION 3. MEETINGS**

The Executive Committee shall meet in accordance with the meeting schedule adopted by the Executive Committee, as may be revised from time to time.

**SECTION 4. QUORUM**

The Executive Committee shall act only upon a majority of a quorum. A quorum shall consist of a majority of the voting members of the Executive Committee.

**SECTION 5. VOTING**

Each member city present shall have one vote in the Executive Committee, each County Supervisor present shall have one vote, each member water district present shall have one vote, and the representative of the Morongo Band of Mission Indians present shall have one vote. Only authorized members present, or designated alternates acting when the regular member is absent, may vote.

#### **SECTION 6. POWERS AND FUNCTIONS**

- A. To prepare and recommend to the General Assembly a yearly budget for funds and distribution, and to determine the estimated share of contributions from each member agency.
- B. To administer, manage, contract for, and handle the financing of the studies, projects and programs.
- C. To exercise the powers of the Joint Powers Agreement between sessions of the General Assembly.
- D. To select and employ an Executive Director who shall be the Chief Administrative Officer of WRCOG and who shall have administrative supervision over all WRCOG employees. The Executive Committee shall establish personnel rules and regulations.
- E. To appoint regular and special committees within the Executive Committee.
- F. To establish and operate a permanent office for WRCOG.
- G. To appoint advisory committees on such projects as it determines advisable.
- H. To provide for additional ex-officio, non-voting members, as deemed appropriate for the effective conduct of the business of the organization.

#### **SECTION 7. POLICY REGARDING CONFIDENTIAL INFORMATION DISCLOSED DURING CLOSED SESSIONS**

The Executive Committee recognizes that, from time to time, it is vital that members of the Executive Committee divulge certain privileged information obtained in closed sessions at WRCOG to their own governing bodies meeting in closed sessions. Thus, WRCOG adopts the policy set forth in Government Code section 54956.96 which authorizes the disclosure of closed session information that has directed financial or liability.

- A. All information received by the legislative body of the member agency in a closed session related to the information presented to WRCOG in closed session shall be confidential. However, a member of the legislative body of a member agency,

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or his/her duly appointed alternate under the JPA, may disclose information obtained in a closed session that has direct financial or liability implications for that member agency to the following individuals:

~~1. Legal counsel of that member agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member agency.~~

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~~2. Other members of the legislative body of the member agency present in a closed session of that member agency, as well as other persons that may be invited to attend the closed session by the member agency's legislative body.~~

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B. The legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of WRCOG pursuant to this Policy.

**ARTICLE IV**  
**OTHER COMMITTEES**

**SECTION 1. TECHNICAL ADVISORY COMMITTEE**

A. Duties. The Technical Advisory Committee (TAC) shall interface with WRCOG staff, review staff reports, consider staff recommendations, provide recommendations to the Executive Committee and perform such other duties as may be delegated to it.

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B. Meetings. The TAC may meet once a month or as it is deemed necessary.

C. Membership. The TAC is comprised of an executive from the County of Riverside, the City Manager from each of WRCOG's member cities, the General Manager from each of WRCOG's member water districts, ~~the Chief Administrative Officer from the Morongo Band of Mission Indians, and the Executive Director from the March Joint Powers Authority.~~ A City Manager, Water District General Manager, Chief Administrative Officer of the Morongo Band of Mission Indians, and Executive Director from the March JPA may appoint an alternate who is a department head of the agency.

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D. Quorum. The TAC shall act only upon a majority of a quorum. A quorum shall consist of a majority of the members of the TAC.

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**SECTION 2. ADMINISTRATION & FINANCE COMMITTEE**

A. Duties. The Administration & Finance Committee shall provide budget and finance overview for WRCOG in the conduct of its business and personnel issues and forward its recommendations to the Executive Committee for consideration. The Administration & Finance Committee shall have the authority (i) to increase the WRCOG budget in any category up to fifteen percent (15%); and (ii) to authorize contracts up to \$100,000 when the contract requires execution prior to the next regularly scheduled Executive Committee meeting.

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B. Meetings. The Administration & Finance Committee may meet once a month or as it is deemed necessary.

C. Membership. The Administration & Finance Committee shall be composed of the Executive Committee Chairperson; the Executive Committee Vice-Chairperson, the Executive Committee Second Vice-Chairperson, the Past Executive Committee Chairperson; and seven other members of the Executive Committee selected by the Executive Committee Chairperson. When selecting members of the Administration & Finance Committee, the Executive Committee Chairperson is encouraged to consider geographic balance. At least two members of the Board of Supervisors shall be members of the Committee. At least one member shall be a water district representative.

D. Quorum. The Administration & Finance Committee shall act only upon a majority of a quorum. A quorum shall consist of a majority of the members of the committee.

E. Term and Removal. Appointments to the Administration & Finance Committee shall be for a one-year term ending on June 30 of the fiscal year (July to June) in which the appointments are made. The process set forth below applies should the Chair wish to remove a Board member ("Appointee") appointed during the one-year term of the appointment. The process does not apply to the Chair's decision not to reappoint an Appointee at the end of the Appointee's one-year term.

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1. The Chair shall provide Appointee with written notice of the Chair's decision to remove the Appointee from the appointment.

2. The notice shall be provided in writing to Appointee through WRCOG's [Executive Director](#) and shall include a brief statement of why removal is sought, which reason may include, without limitation, 3 or more consecutive absences of committee meetings. The notice shall be delivered to the email address, if any, provided by Appointee as well as by first class mail to the Clerk of the City/County appointing Appointee to the WRCOG Executive Committee and Appointee's mailing address.

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3. The removal shall be effective on the 15th day after WRCOG's [Executive Director](#) sends notice to Appointee unless Appointee provides notice to

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Updated through [October 3, 2016](#)

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the WRCOG [Executive Director](#), prior to the expiration of such 15 day period, of his or her desire to contest the removal.

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4. In the event that the removal is contested, the removal shall be stayed and the Executive Director shall schedule an Administration & Finance Committee meeting at which both the Chair and Appointee may present their arguments for and against removal. Based thereon, the Administrative & Finance Committee shall either uphold or reject the removal. The decision of the Administration & Finance Committee shall be final.
5. If the removal is not contested or is approved by the Administration & Finance Committee, the Chair may appoint an [other](#) WRCOG Executive Committee member to fill the remainder of the Appointee's term. The appointment of the new member shall comply with the membership requirements set forth in Section C, above. The term of the newly appointed member shall expire on June 30 of the fiscal year in which the appointment is made.

This section 2E shall only apply to appointments made by the Chair to the seven open seats on the Administration & Finance Committee and not to the four ex-officio members of the committee.

## ARTICLE V EXECUTIVE DIRECTOR

### SECTION 1.

- A. Duties. In addition to those duties enumerated in the Joint Powers Agreement, the duties of the Executive Director are:
  1. To administer all contracts.
  2. To have full charge of the administration of the business affairs of WRCOG.
  3. To exercise general supervision over all property belonging to WRCOG.
  4. To accept, on behalf of WRCOG, easements and other property rights and interests.
  5. To be responsible for the purchase of all supplies and equipment of [WRCOG](#).
- B. Contract. The Executive Director is authorized to contract and execute on behalf of WRCOG, contracts for supplies, equipment and materials, and consultants not

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to exceed \$50,000.00, provided the contract relates to purposes previously approved and budgeted by the General Assembly or Executive Committee. The Executive Director may execute contracts up to \$100,000, if approved by the Administration & Finance Committee.

**ARTICLE VI**  
**DEFINITION OF WESTERN RIVERSIDE AREA**

The boundaries of WRCOG shall be defined according to the legal description attached hereto as Exhibit "A".

**ARTICLE VII**  
**AMENDMENTS**

These By-Laws and any amendments thereto may be amended by the General Assembly, by majority vote. Proposed amendments shall be submitted, in writing, to members of the General Assembly [along with the agenda for such meeting](#).

## WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

## LEGAL DESCRIPTION

1. **BEGINNING** at the Northeast corner of Section 1, Township 2 South, Range 2 East, San Bernardino Meridian;
2. Thence South along Range line to the Northeast corner of Section 36, T2S, R2E;
3. Thence West along the North line of said Section 36 to the North one-quarter corner thereof;
4. Thence South along the North-south center section line of said Section 36 to the Center section thereof;
5. Thence East along the East-West center section line of said Section 36 to the East one-quarter corner thereof;
6. Thence South along the East line of said Section 36 to the Northeast corner of Section 1, T3S, R2E;
7. Thence West along the North line of said Section 1 to the Northwest corner thereof;
8. Thence South along the West line of said Section 1 to the Northwest corner of Section 12, T3S, R2E;
9. Thence East along the North line of said Section 12 to the Northeast corner thereof;
10. Thence South along the East line of said Section 12 to the Southeast corner thereof;
11. Thence west along the South line of said Section 12 to the Northwest corner of Section 13, T3S, R2E;
12. Thence South along the West line of said Section 13 to the Southwest corner thereof;
13. Thence East along the South line of said Section 13 to the Southeast corner thereof;
14. Thence South along Range line to the Southwest corner of Section 18, T4S, R3E;
15. Thence East along Section lines to the Northeast corner of Section 20, T4S, R3E;
16. Thence South along the East line of said Section 20 to the Southeast corner thereof;
17. Thence West along the south line of said Section 20 to the Northwest corner of Section 29, T4S, R3E;
18. Thence South along the West line of said Section 29 to the Southwest corner thereof;
19. Thence East along the South line of said Section 29 to the Northeast corner of Section 32, T4S, R3E;
20. Thence South along the East line of said Section 32 to the Southeast corner thereof;
21. Thence West along the South line of Said Section 32 to the Northeast corner of Section 5, T5S, R3E;
22. Thence South along Section lines to the Northwest corner of Section 16, T5S, R3E;
23. Thence East along the North line of said Section 16 to the Northeast corner thereof;
24. Thence South along the East line of said Section 16 to the Northwest corner of Section 22, T5S, R3E;
25. Thence East along the North line of said Section 22 to the Northeast corner thereof;
26. Thence South along the East line of said Section 22 to the Northwest corner of Section 26, T5S, R3E;
27. Thence East along the North line of said Section 26 to the Northeast corner thereof;
28. Thence South along Section lines to the Northwest corner of Section 1, T6S, R3E;
29. Thence East along the North line of said Section 1 to Northeast corner thereof;
30. Thence South along the East line of said Section 1 to the Northwest corner of Section 6, T6S, R4E;
31. Thence East along the North line of said Section 6 to the Northeast corner thereof;
32. Thence south along the East line of Said Section 6 to the Northwest corner of Section 8, T6S, R4E;
33. Thence South along Section lines to the Southeast corner of Section 17, T6S, R4E;
34. Thence West along Section lines to the Northwest corner of Section 19, T6S, R4E;
35. Thence South along the West line of said Section 19 to the Southeast corner of Section 24, T6S, R3E;
36. Thence west along the South lines of said Sections 24 and Section 23, T6S, R3E to a point of intersection with the centerline of State Highway 74;
37. Thence Southeasterly along said centerline of State Highway 74, through its various courses, to the intersection with State Highway 371;
38. Thence Southeasterly, Westerly, and Southerly along the centerline of said State Highway 371, through its various courses, to a point of intersection West line of Section 18, T7S, R4E;
39. Thence South along Section lines to the East one-quarter corner of Section 19, T7S, R4E;
40. Thence West along the East-West Center section line of said Section 19 to the West line thereof;

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

LEGAL DESCRIPTION

(Continued)

41. Thence South along the West line of said Section 19 to the North line of Section 30, T7S, R4E;
42. Thence East along the North line of said Section 30 to the Northwest corner of Section 29, T7S, R4E;
43. Thence South along the West line of said Section 29 to the West one-quarter corner thereof;
44. Thence East along the East-West center section line of said Section 29 to the Northeast corner of the West one-half of the East one-half of the West one-half of the South one-half of said Section 29;
45. Thence South along the East line of said West one-half of the East one-half of the West one-half of the South one-half to a point of intersection with the South line of the North 400 acres of said Section 29;
46. Thence East along said South line of the North 400 acres of Section 29 to a point of intersection with the East line of said Section 29;
47. Thence South along the East line of said Section 29 and Section 32, T7S, R4E to the North line of Section 4, T8S, R4E;
48. Thence East along said North line of Section 4 to the Northeast corner thereof;
49. Thence South along the East line of said Section 4 to the Southeast corner thereof;
50. Thence West along the South line of said Section 4 to the Northeast corner of Section 8, T8S, R4E;
51. Thence South along the West line of said Section 8 to a point of intersection with the centerline of Coyote Canyon Road, as it currently exists;
52. Thence southeasterly and southerly along the centerline of said Coyote Canyon Road, through its various courses, to a point of intersection with the East line of Section 36, T8S, R4E;
53. Thence South along said East line of Section 36 to the Southeast corner thereof, said corner being on the South boundary of the County of Riverside;
54. Thence Westerly, Northerly and Easterly along the boundary of the County of Riverside to the **Point of Beginning**.

By: *K. Teich*

Date: 5-10-05



# Item 3.G

Amendment to WRCOG Bylaws

## Attachment 2

WRCOG Committee Structure Policy

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**COMMITTEE PROCEDURES  
FOR THE  
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

**ARTICLE I**

**SECTION 1. PURPOSE**

These Committee Procedures are provided for the organization and administration of the Committees of the Western Riverside Council of Governments ("WRCOG") which has been established under a Joint Powers Agreement. These Committee Procedures supplement the Agreement and the By-Laws of WRCOG.

These Committee Procedures are adopted by the Executive Committee of WRCOG. The Executive Committee authorizes the Executive Director of WRCOG to update these Committee Procedures as necessary.

**SECTION 2. APPLICABILITY**

These Committee Procedures apply only to those Committees of WRCOG listed herein.

**SECTION 3. BROWN ACT**

Regular, adjourned and special meetings of the Committees listed herein shall be called and conducted in accordance with the provisions of the Ralph M. Brown Act, Government Code Section 54950 et. seq., as it may be amended, including the provision of minutes which indicate actions approved by such Committee.

**ARTICLE II**

**COMMITTEE PROCEDURES**

**SECTION 1. PLANNING DIRECTORS' COMMITTEE**

- A. Purpose and Duties. The Planning Directors' Committee advises the WRCOG Technical Advisory Committee ("TAC") and Executive Committee on issues related to planning that come before WRCOG.
- B. Meetings. The Planning Directors' Committee may meet bi-monthly or as it is deemed necessary.
- C. Membership. The Planning Directors' Committee is comprised of the following:
  - 1) Planning Directors, or designee holding a similar position, from each member jurisdiction, 2) a representative from the March JPA, and 3) a representative from the Riverside Transit Agency.

- D. Quorum. The Planning Directors' Committee shall act only upon a majority of a quorum with each jurisdiction having one vote, except for the county which will have two votes. A quorum shall consist of 10 members.

## **SECTION 2. PUBLIC WORKS COMMITTEE**

- A. Purpose and Duties. The Public Works Committee ("PWC") is the technical advisory body to the WRCOG Technical Advisory Committee ("TAC") and Executive Committee for the TUMF Program and Public Works-related issues that come before WRCOG.
- B. Meetings. The PWC may meet once a month or as it is deemed necessary.
- C. Membership. The PWC is comprised of the Public Works Director, or similar title, from each member jurisdiction and also one representative from the County of Riverside, one representative from the March JPA, one representative from the Riverside Transit Authority, and one representative from the Riverside County Transportation Commission.
- D. Quorum. The PWC shall act only upon a majority of a quorum with each jurisdiction having one vote. A quorum shall consist of a majority of the members of the PWC.

## **SECTION 3. SOLID WASTE COMMITTEE**

- A. Purpose and Duties. The Solid Waste Committee is a Regional Cooperative Program administered by WRCOG to assist Western Riverside jurisdictions and Riverside County with reducing the waste stream going to landfills and to encourage recycling that protects our environment, as well as other environmental challenges that may impact the region. From litter cleanup to protecting water quality through used oil / oil filter recycling, WRCOG provides hands-on programs that empower both business and individuals. WRCOG helps jurisdictions meet regulations requiring reduction of waste going to landfills using methods such as the development of regional educational materials, business recycling education, and community outreach. Specifically, WRCOG coordinates bi-monthly meetings forming a strong working relationship between the jurisdictions, the County, waste haulers and CalRecycle, provides quarterly disposal tracking and analysis, prepares AB 939 annual reports for several jurisdictions, provides significant State and Federal legislative updates, provides notification of regional grant opportunities, and provides representation at area Chamber of Commerce events promoting business recycling.
- B. Meetings. The Solid Waste Committee may meet bi-monthly or as it is deemed necessary.

- C. Membership. Membership in the Solid Waste Committee is limited to those agencies that pay dues as established by WRCOG. Currently the Solid Waste Committee is comprised of the Cities of Banning, Calimesa, Canyon Lake, Corona, Eastvale, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, Temecula, and the County Unincorporated.
- D. Quorum. The Solid Waste Committee shall act only upon a majority of a quorum with each jurisdiction having one vote. A quorum shall consist of 5 members.

#### **SECTION 4. WESTERN RIVERSIDE COUNTY CLEAN CITIES COALITION**

- A. Purpose and Duties. The Western Riverside County Clean Cities Coalition (Coalition) is part of the U.S. Department of Energy's ("DOE") Clean Cities Coalition Program, a voluntary local government / industry partnership. Clean Cities advances the nation's economic, environmental, and energy security by supporting local actions to reduce petroleum consumption in transportation. The Coalition works to mobilize local stakeholders toward expanding the use of alternative fuels and idle reduction measures, accelerate the deployment of advanced technology vehicles ("AFV"), and strengthen local AFV refueling infrastructure in nearly 100 communities around the country.
- B. Meetings. The Coalition may meet bi-monthly or as it is deemed necessary.
- C. Membership. Membership in the Coalition is limited to those agencies that pay dues as established by WRCOG. Currently the Coalition is comprised of the Cities of Banning, Calimesa, Corona, Eastvale, Hemet, Lake Elsinore, Moreno Valley, Perris, Riverside, San Jacinto, Temecula, and the County Unincorporated.
- D. Quorum. The Coalition shall act only upon a majority of a quorum with each jurisdiction having one vote. A quorum shall consist of 5 members.

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# Item 3.G

Amendment to WRCOG Bylaws

## Attachment 3

WRCOG Resolution Number 35-16;  
A Resolution of the Executive  
Committee of the Western Riverside  
Council of Governments Amending  
its Bylaws to Recognize the March  
Joint Powers Authority as voting  
members on the WRCOG Technical  
Advisory Committee and making  
other technical changes

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## RESOLUTION NUMBER 35-16

### A RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS AMENDING ITS BY-LAWS TO RECOGNIZE THE MARCH JOINT POWERS AUTHORITY AS A VOTING MEMBER OF THE TECHNICAL ADVISORY COMMITTEE AND MAKING OTHER TECHNICAL CHANGES

**WHEREAS**, the Western Riverside Council of Governments (“WRCOG”) is a joint powers authority consisting of the County of Riverside and seventeen cities situated in Western Riverside County; and

**WHEREAS**, pursuant to Section 2.4.2 of the Joint Powers Agreement of WRCOG (“Agreement”), the WRCOG Executive Committee (“Committee”) is authorized to exercise the powers of the Agreement between sessions of the General Assembly; and

**WHEREAS**, Section 2.4.1 of the Agreement includes the power to amend WRCOG’s By-laws (“By-laws”); and

**WHEREAS**, the Committee desires to amend the By-laws to recognize the March Joint Powers Authority as a voting member of the Technical Advisory Committee; and

**NOW THEREFORE, BE IT RESOLVED** the Executive Committee of the Western Riverside Council of Governments does hereby amend its By-laws as follows:

**Section 1:** Article II, Section 1, Subsection B of the By-laws is hereby amended to read as follows:

- B. Special Meetings. Special meetings of the General Assembly may be called by the Chairperson, or in his or her absence by the Vice-Chairperson or in the absence of the Chairperson and the Vice-Chairperson by the Second Vice-Chairperson, or a majority of the member agencies.

**Section 2:** Article II, Section 2, Subsection F of the By-laws is hereby amended to read as follows:

- F. Duties of the Chairperson, Vice-Chairperson and Second Vice Chairperson. The Chairperson shall, if present, preside at all meetings of the General Assembly and Executive Committee and exercise such other powers and duties as may from time to time be assigned to the Chairperson. In the absence of the Chairperson, the Vice-Chairperson shall perform all the duties of the Chairperson. When so acting, the Vice-Chairperson shall have all the powers of, and be subject to all the restrictions upon, the Chairperson. In the absence of both the Chairperson and Vice-Chairperson, the Second Vice-Chairperson shall perform all the duties of the Chairperson. When so acting, Second Vice-Chairperson shall have all the powers of, and be subject to all the restrictions upon, the Chairperson. In the absence of the Chairperson,

Vice-Chairperson, and Second Vice-Chairperson, the General Assembly Chairperson of the Previous Year (the "Past Chairperson") shall perform the duties of the Chairperson for that meeting only. When so acting, Past Chairperson shall have all the powers of, and be subject to all the restrictions upon, the Chairperson. In the absence of the Chairperson, Vice-Chairperson, Second Vice-Chairperson and the Past Chairperson, the General Assembly or Executive Committee shall choose one of its voting members to chair the meeting for that day only.

Section 3: Article III, Section 1 of the By-laws is hereby amended to read as follows:

**SECTION 1. MEMBERSHIP**

- A. The Executive Committee will be composed of the Mayor from each of the member cities, four members of the Riverside County Board of Supervisors, the President of each water district, and the Tribal Chairman of the Morongo Band of Mission Indians. Any City Council, at its discretion, can appoint a Mayor Pro Tem or other city council member in place of the Mayor. Each water district board, at its discretion, can appoint another board member in place of the President. The Tribal Council of the Morongo Band of Mission Indians, at its discretion, can appoint another tribal council member in place of the Tribal Chairman.
  
- B. Each regular member on the Executive Committee shall also have an alternate, who must also be a current member of the legislative body of the party such alternate represents. For the Board of Supervisors, the Board of Supervisor's member not serving under section A, above, shall serve as an alternate to the members of the Board of Supervisors. The name of the alternate members shall be on file with the Executive Committee. In the absence of the regular member from an agency, the alternate member from such agency shall assume all rights and duties of the absent regular member.

Section 4: Article III, Section 5 of the By-laws is hereby amended to read as follows:

**SECTION 5. VOTING**

Each member city present shall have one vote in the Executive Committee, each County Supervisor present shall have one vote, each member water district present shall have one vote, and the representative of the Morongo Band of Mission Indians present shall have one vote. Only authorized members present, or designated alternates acting when the regular member is absent, may vote.

Section 5: Article III, Section 6, Subsection A of the By-laws is hereby amended to read as follows:

- A. To prepare and recommend to the General Assembly a yearly budget for funds and distribution, and to determine the estimated share of contributions from each member agency.

Section 7: Article IV, Section 1, Subsection A of the By-laws is hereby amended to read as follows:

- A. Duties. The Technical Advisory Committee (TAC) shall interface with WRCOG staff, review staff reports, consider staff recommendations, provide recommendations to the Executive Committee and perform such other duties as may be delegated to it.

Section 8: Article IV, Section 1, Subsection C of the By-laws is hereby amended to read as follows:

- C. Membership. The TAC is comprised of an executive from the County of Riverside, the City Manager from each of WRCOG's member cities, the General Manager from each of WRCOG's member water districts, the Chief Administrative Officer from the Morongo Band of Mission Indians, and the Executive Director from the March Joint Powers Authority. A City Manager, Water District General Manager, Chief Administrative Officer of the Morongo Band of Mission Indians, and Executive Director from the March JPA may appoint an alternate who is a department head of the agency.

Section 9: Article IV, Section 2, Subsection E of the By-laws is hereby amended to read as follows:

- E. Term and Removal. Appointments to the Administration & Finance Committee shall be for a one-year term ending on June 30 of the fiscal year (July to June) in which the appointments are made. The process set forth below applies should the Chair wish to remove a Board member ("Appointee") appointed during the one-year term of the appointment. The process does not apply to the Chair's decision not to reappoint an Appointee at the end of the Appointee's one-year term.
  - 1. The Chair shall provide Appointee with written notice of the Chair's decision to remove the Appointee from the appointment.
  - 2. The notice shall be provided in writing to Appointee through WRCOG's Executive Director and shall include a brief statement of why removal is sought, which reason may include, without limitation, 3 or more consecutive absences of committee meetings. The notice shall be delivered to the email address, if any, provided by Appointee as well as by first class mail to the Clerk of the City/County appointing Appointee to the WRCOG Executive Committee and Appointee's mailing address.
  - 3. The removal shall be effective on the 15th day after WRCOG's Executive Director sends notice to Appointee unless Appointee provides notice to the WRCOG Executive Director, prior to the expiration of such 15 day period, of his or her desire to contest the removal.
  - 4. In the event that the removal is contested, the removal shall be stayed and the Executive Director shall schedule an Administration & Finance Committee meeting at which both the Chair and Appointee may present their arguments for and against removal. Based thereon, the Administrative & Finance Committee shall either uphold or reject the removal. The decision of the Administration & Finance Committee shall be final.

5. If the removal is not contested or is approved by the Administration & Finance Committee, the Chair may appoint another WRCOG Executive Committee member to fill the remainder of the Appointee's term. The appointment of the new member shall comply with the membership requirements set forth in Section C, above. The term of the newly appointed member shall expire on June 30 of the fiscal year in which the appointment is made.

This section 2E shall only apply to appointments made by the Chair to the seven open seats on the Administration & Finance Committee and not to the four ex-officio members of the committee.

Section 10: Article V, Section 1, Subsection A.5 of the By-laws is hereby amended to read as follows:

5. To be responsible for the purchase of all supplies and equipment of WRCOG.

Section 11: Article VII of the By-laws is hereby amended to read as follows:

These By-Laws and any amendments thereto may be amended by the General Assembly, by majority vote. Proposed amendments shall be submitted, in writing, to members of the General Assembly along with the agenda for such meeting.

Section 12: This Resolution shall become effective upon adoption by the WRCOG Executive Committee.

**PASSED AND ADOPTED** at a Meeting of the Executive Committee of the Western Riverside Council of Governments held this 3rd day of October, 2016.

\_\_\_\_\_  
Ben Benoit, Chair  
WRCOG Executive Committee

\_\_\_\_\_  
Rick Bishop, Secretary  
WRCOG Executive Committee

Approved as to form:

\_\_\_\_\_  
Steven DeBaun  
WRCOG Legal Counsel

AYES: \_\_\_\_\_ NOES: \_\_\_\_\_ ABSENT: \_\_\_\_\_ ABSTAIN: \_\_\_\_\_



# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** Amendment to the Appendix of the WRCOG Conflict of Interest Code

**Contact:** Janis Leonard, Executive Assistant, [leonard@wrcog.coq.ca.us](mailto:leonard@wrcog.coq.ca.us), (951) 955-8320

**Date:** September 14, 2016

### Requested Action:

1. Recommend that the WRCOG Executive Committee Adopt WRCOG Resolution Number 32-16; A Resolution of the Executive Committee of the Western Riverside Council of Governments Amending the Conflict of Interest Code pursuant to the Political Reform Act of 1974, to include additional WRCOG Titles and Committee name changes.

A review of the WRCOG Conflicts of Interest Code is performed every two years. Two titles have been added, and one Committee name has changed, within the list of Designated Positions. The newly designated titles / Committee will be required to provide an annual Form 700, Statement of Economic Interest, beginning April 1, 2017.

### WRCOG Titles added:

Director of Government Relations  
 Director of Transportation  
 Program Manager, Administration  
 Program Manager, Transportation  
 Program Manager, HERO

### Committee name change:

From Planning Directors' Technical Advisory Committee to Planning Directors' Committee  
 From Solid Waste Technical Committee to Solid Waste Committee

### Prior WRCOG Action:

None.

### WRCOG Fiscal Impact:

This item is informational only; therefore there is no fiscal impact.

### Attachments:

1. Redlined WRCOG Conflict of Interest Code.
2. Notice of Intention to Amend the Conflict of Interest Code of the Western Riverside Council of Governments.
3. WRCOG Resolution Number 32-16; A Resolution of the Executive Committee of the Western Riverside Council of Governments Amending the Conflict of Interest Code Pursuant to the Political Reform Act of 1974 (with attached Legislative Version (Show Changes Made) of the Appendix).

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# Item 3.H

Amendment to the Appendix of the  
WRCOG Conflict of Interest Code

# Attachment 1

Redlined WRCOG Conflict of  
Interest Code

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**CONFLICT OF INTEREST CODE**  
**OF THE**  
**WESTERN RIVERSIDE**  
**COUNCIL OF GOVERNMENTS**

**CONFLICT OF INTEREST CODE**  
**OF THE**  
**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

(Amended October ~~6, 2014~~, 2016)

The Political Reform Act, (Gov. Code § 81000, et seq.), requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730), that contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency’s code. After public notice and hearing Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This incorporation page, Regulation 18730 and the attached Appendix designating positions and establishing disclosure categories, shall constitute the conflict of interest code of the **Western Riverside Council of Governments (“WRCOG”)**.

All officials and designated positions required to submit a statement of economic interests shall file their statements with the **Executive Assistant** as WRCOG’s Filing Officer. The **Executive Assistant** shall make and retain a copy of all statements filed by Members of the Executive Committee, the Executive Director and the Treasurer, and forward the originals of such statements to the Clerk of the Board of Supervisors. The **Executive Assistant** shall retain the originals of the statements of all other officials and designated positions and make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code Section 81008.)

**APPENDIX**  
**CONFLICT OF INTEREST CODE**  
**OF THE**  
**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

(Amended October ~~6, 2014~~, 2016)

**PART "A"**

**OFFICIALS WHO MANAGE PUBLIC INVESTMENTS**

WRCOG Officials who manage public investments, as defined by 2 Cal. Code of Regs. § ~~48704~~18700.3(b), are NOT subject to WRCOG's Code, but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)] These positions are listed here for informational purposes only.

It has been determined that the positions listed below are officials who manage public investments<sup>1</sup>:

Executive Committee Members, including ex-officio non-voting members  
Executive Director  
Treasurer  
Chief Financial Officer  
Investment Consultant

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<sup>1</sup> Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

**DESIGNATED POSITIONS**  
**GOVERNED BY THE CONFLICT OF INTEREST CODE**

DESIGNATED POSITIONS'  
TITLE OR FUNCTION

DISCLOSURE CATEGORIES  
ASSIGNED

Deputy Executive Director <i>Director of Transportation</i>	1, 2 <i>(Reorganized to create</i>
Director of Energy & Environmental Programs	2, 5
<i>Director of Government Relations</i>	<i>4 created by reorg.</i>
<i>Director of Transportation</i>	<i>1, 2 created by reorg.</i>
Fiscal Analyst	4
General Counsel	1, 2
<i>Program Manager, Accounting</i>	<i>1, 4</i>
Program Manager, Administration_ <i>create Director of Government Relations)</i>	2, 3, 5 <i>(Reorganized to</i>
Program Manager, Environmental	5
<i>Program Manager, HERO</i>	<i>2, 3, 5</i>
<i>Program Manager, Transportation</i>	<i>1, 2</i>
Program Manager, TUMF	1, 2
Staff Analyst	5
System Administrator	5
Technician	5

**MEMBERS OF BOARDS,**  
**COMMITTEES AND COMMISSIONS**

Finance Directors' Committee	1, 2
Planning Directors' <del>TAC</del> Committee	2, 3, 5
Public Works Committee	2, 3, 5

Solid Waste ~~Technical~~-Committee  
Technical Advisory Committee

2, 5  
1, 2

Consultants and New Positions<sup>2</sup>

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<sup>2</sup> Individuals serving as a consultant as defined in FPPC Reg ~~18701-18700.3(a)~~ or in a new position created since this Code was last approved that makes or participates in the making of decisions must file under the broadest disclosure set forth in this Code subject to the following limitation:

The Executive Director may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regulations 18219 and 18734.) The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)

## PART “B”

### DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the designate position must disclose for each disclosure category to which he or she is assigned.<sup>3</sup> ~~Such economic interests-~~“Investment” means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in or doing business in the jurisdiction, are planning to do business in the jurisdiction, or have done business during the previous two years in the jurisdiction of WRCOG.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, do business in or that own real property in the jurisdiction of WRCOG.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of WRCOG.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property in within the jurisdiction of WRCOG.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by WRCOG.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated position’s department, unit or division.

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<sup>3</sup> This Conflict of Interest Code does not require the reporting of gifts from outside this agency’s jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

# Item 3.H

Amendment to the Appendix of the  
WRCOG Conflict of Interest Code

## Attachment 2

Notice of Intention to Amend the  
Conflict of Interest Code of the  
Western Riverside Council of  
Governments

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## **NOTICE OF INTENTION TO AMEND THE CONFLICT OF INTEREST CODE OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS**

NOTICE IS HEREBY GIVEN that the Executive Committee of the Western Riverside Council of Governments (“WRCOG”) intends to amend WRCOG’s Conflict of Interest Code (the “Code”) pursuant to Government Code section 87306.

The Appendix of the Code designates those employees, members, officers, and consultants who make or participate in the making of decisions and are subject to the disclosure requirements of WRCOG’s Code. WRCOG’s proposed amendment includes new positions that must be designated, revises titles of existing positions, and includes updated references to Regulations and clarifying language provided by the Fair Political Practices Commission.

The proposed amended Code will be considered by the Executive Committee on October 3, 2016, at 2:00 p.m. at the Riverside County Administrative Center Board Hearing Room, 4080 Lemon Street, Riverside, California. Any interested person may be present and comment at the public meeting or may submit written comments concerning the proposed amendment. Any comments or inquiries should be directed to the attention of Janis Leonard, Executive Assistant, Western Riverside Council of Governments, 4080 Lemon Street, 3rd Floor, MS 1032, Riverside, CA 92501-3609; (951) 955-8302. Written comments must be submitted no later than October 3, 2016, at 2:00 p.m.

The proposed amended Code may be reviewed at, and copies obtained from, the office of the Executive Assistant during regular business hours.

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# Item 3.H

Amendment to the Appendix of the  
WRCOG Conflict of Interest Code

## Attachment 3

WRCOG Resolution Number 32-16;  
A Resolution of the Executive  
Committee of the Western Riverside  
Council of Governments  
Amending the Conflict of Interest  
Code Pursuant to the Political  
Reform Act of 1974 (with attached  
Legislative Version (Show Changes  
Made) of the Appendix)

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## Western Riverside Council of Governments

County of Riverside • City of Banning • City of Calimesa • City of Canyon Lake • City of Corona • City of Eastvale • City of Hemet • City of Jurupa Valley  
City of Lake Elsinore • City of Menifee • City of Moreno Valley • City of Murrieta • City of Norco • City of Perris • City of Riverside • City of San Jacinto  
City of Temecula • City of Wildomar • Eastern Municipal Water District • Western Municipal Water District • Morongo Band of Mission Indians  
Riverside County Superintendent of Schools

### RESOLUTION NUMBER 32-16

#### A RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS AMENDING THE CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974

**WHEREAS**, the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of the Western Riverside Council of Governments ("WRCOG") and requires all public agencies to adopt and promulgate a Conflict of Interest Code; and

**WHEREAS**, the Executive Committee adopted a Conflict of Interest Code (the "Code") for WRCOG which was amended on October 6, 2014, in compliance with the Act; and

**WHEREAS**, subsequent changed circumstances within WRCOG have made it advisable and necessary pursuant to Sections 87306 and 87307 of the Act to amend and update WRCOG's Code; and

**WHEREAS**, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in WRCOG being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

**WHEREAS**, notice of the time and place of a public meeting on, and of consideration by the Executive Committee of, the proposed amended Code was provided each affected designated employee and publicly posted for review at the County Administrative Offices at 4080 Lemon Street, Riverside, California; and

**WHEREAS**, a public meeting was held upon the proposed amended Code at a regular meeting of the Executive Committee of WRCOG on October 3, 2016, at which all present were given an opportunity to be heard on the proposed amended Code.

**NOW THEREFORE, BE IT RESOLVED** by Executive Committee of the Western Riverside Council of Governments follows:

- Section 1. The Executive Committee does hereby adopt the proposed amended Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Executive Assistant and available to the public for inspection and copying during regular business hours.
- Section 2. The said amended Code shall be submitted to the Board of Supervisors of the County of Riverside for approval.
- Section 3. The said amended Code shall become effective immediately upon approval by the Riverside County Board of Supervisors.

**PASSED AND ADOPTED** at a Meeting of the Executive Committee of the Western Riverside Council of Governments held this 3rd day of October, 2016.

\_\_\_\_\_  
Ben Benoit, Chair  
WRCOG Executive Committee

\_\_\_\_\_  
Rick Bishop, Secretary  
WRCOG Executive Committee

Approved as to form:

\_\_\_\_\_  
Steven DeBaun  
WRCOG Legal Counsel

AYES: \_\_\_\_\_ NOES: \_\_\_\_\_ ABSENT: \_\_\_\_\_ ABSTAIN: \_\_\_\_\_



# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** Agency Comparisons of Salaries and Benefits

**Contact:** Ernie Reyna, Chief Financial Officer, [reyna@wrcog.coq.ca.us](mailto:reyna@wrcog.coq.ca.us), (951) 955-8432

**Date:** September 14, 2016

### Requested Action:

1. Receive and file.

WRCOG staff has researched agencies similar in size and structure and has compiled information related to salaries, benefits, average salaries and benefits per agency, and average square foot per employee. For the purpose of this exercise, five agencies were sampled, including the Riverside County Transportation Commission (RCTC), Western Riverside County Regional Conservation Authority (RCA), Southern California Association of Governments (SCAG), Coachella Valley Association of Governments (SCAG), and Riverside Transportation Agency (RTA).

To gather information related to salary and benefits, staff used information provided via the various agencies' approved Fiscal Year 2016/2017 budget. Each agency was also asked how many full-time employees they have in order to compute the average salaries and benefit per agency.

In addition to inquiring about the number of full-time employees, staff also inquired about the total amount of square footage each agency either owns or leases. This square footage includes all available space occupied from offices, cubicles, meeting and conference rooms, kitchen, storage, etc.

Upon examining the average salaries and benefits per agency, two tiers of groups emerged when the six agencies were compared (including WRCOG). The first tier included average salaries and benefits that ranged from \$166,257 to \$193,886. These agencies included SCAG, RCA, and RCTC. The second tier included average salaries and benefits that were much less than the first tier. The second tier ranged from \$103,952 to \$109,546 and included RTA, WRCOG, and CVAG.

Each agency has varying amounts of space they occupy or own depending on the agency's nature or purpose. Because each agency utilizes various amount of space, staff only compared the administrative portion of their office to get an equal comparison. The total amount of space utilized was divided by the total number of full-time employees to arrive at the average square foot utilized per employee, per agency. From the results of this exercise, the average range varied from the high of 485 square feet per employee (RCA), to the low of 178 square feet per employee (WRCOG).

This exercise will be performed by WRCOG staff on a yearly basis to get an understanding where WRCOG stands against each agency in terms of salaries, benefits, and office space occupied.

### Prior WRCOG Action:

None.

**WRCOG Fiscal Impact:**

This item is informational only; therefore there is no fiscal impact.

**Attachment:**

1. Agency Comparison of Salary and Benefits 2016/2017.

# Item 3.1

Agency Comparisons of Salaries and  
Benefits

## Attachment 1

Agency Comparison of Salary and  
Benefits 2016/2017

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Comparison of Salaries & Benefits  
Fiscal Year 2016/2017

<b>RCTC</b>						
<u>FTE</u>	<u>Salaries</u>	<u>Benefits</u>	<u>Total Salaries &amp; Benefits</u>	<u>Average S&amp;B</u>	<u>(1)Square Feet Utilized</u>	<u>Average Sq. Feet Per Employee</u>
49	-	-	9,500,400	\$ <b>193,886</b>	14,386	294
<b>RCA</b>						
<u>FTE</u>	<u>Salaries</u>	<u>Benefits</u>	<u>Total Salaries &amp; Benefits</u>	<u>Average S&amp;B</u>	<u>Square Feet Utilized</u>	<u>Average Sq. Feet Per Employee</u>
13	1,574,000 E-mailed	617,800 E-mailed	2,191,800	\$ <b>168,600</b>	6,299	485
<b>SCAG</b>						
<u>FTE</u>	<u>Salaries</u>	<u>Benefits</u>	<u>Total Salaries &amp; Benefits</u>	<u>Average S&amp;B</u>	<u>Square Feet Utilized</u>	<u>Average Sq. Feet Per Employee</u>
135	13,065,248	9,379,514	22,444,762	\$ <b>166,257</b>	46,299	343
<b>CVAG</b>						
<u>FTE</u>	<u>Salaries</u>	<u>Benefits</u>	<u>Salaries plus Benefits</u>	<u>Average S&amp;B</u>	<u>Square Feet Utilized</u>	<u>Average Sq. Feet Per Employee</u>
17	\$ 1,713,006	\$ 587,466	2,300,472	\$ <b>109,546</b>	5,133	302
<b>WRCOG</b>						
<u>FTE</u>	<u>Salaries</u>	<u>Benefits</u>	<u>Salaries plus Benefits</u>	<u>Average S&amp;B</u>	<u>Square Feet Utilized</u>	<u>Average Sq. Feet Per Employee</u>
31	\$ 1,993,083	\$ 639,799	2,632,882	\$ <b>84,932</b>	5,532	178
<b>RTA</b>						
<u>FTE</u>	<u>Salaries</u>	<u>Benefits</u>	<u>Total Salaries &amp; Benefits</u>	<u>Average S&amp;B</u>	<u>Square Feet Utilized</u>	<u>Average Sq. Feet Per Employee</u>
118	7,198,263	5,068,048	12,266,311	\$ <b>103,952</b>	28,853	245

(1) Square Feet Utilized includes all areas paid for under an agency's lease including offices, conference rooms, and any storage space.

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# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** Agency Carryover Funds Ad Hoc Committee Update

**Contact:** Jennifer Ward, Director of Government Relations, [ward@wrcoq.coq.ca.us](mailto:ward@wrcoq.coq.ca.us), (951) 955-0186

**Date:** September 14, 2016

### Requested Action:

1. Receive and file.

### Fiscal Year 2015/2016 Agency Carryover Funds

Carryover funds from the Fiscal Year (FY) 2015/2016 Agency Budget total \$4.3 million. In June 2016, the WRCOG Executive Committee approved the following allocations for FY 2015/2016 Agency Carryover funds:

1. Contribution to WRCOG Agency Reserves = \$400,000
2. BEYOND Framework Fund – Round II = \$2.0 million
3. Support for Healthy Communities Activities = \$100,000
4. Funding for WRCOG Agency Activities = \$700,000

An Agency Carryover Funds Ad Hoc Committee was established to discuss the allocation of the remaining \$1.1 million of FY 2015/2016 Carryover Funds. The Ad Hoc Committee met on August 22, 2016, and its discussion resulted in the following recommendation: allocate \$250,000 towards a comprehensive, regional economic development initiative for Western Riverside County, and allocate the remaining \$850,000 to Agency Reserves, with the caveat that some of these funds could be applied towards the WRCOG Sustainability Center concept / project.

Regarding the \$250,000 for an economic development initiative, the Ad Hoc Committee recommended that WRCOG staff convene a committee of economic development representatives from each member agency in Western Riverside County, along with the Riverside County Economic Development Agency and other relevant parties.

Other items that the Ad Hoc Committee discussed included 1) the allocation formula for Round II of the BEYOND Framework Fund; 2) allocation methods for \$200,000 set aside to incentivize collaborative projects between member agencies; and 3) allocation methods for \$100,000 set aside to incentivize local healthy community initiatives.

WRCOG staff will provide a detailed presentation to the WRCOG Administration & Finance Committee at its October meeting to allow for discussion by the members and provision of a recommendation to the WRCOG Executive Committee.

### Prior WRCOG Action:

None.

**WRCOG Fiscal Impact:**

This item is informational only; therefore there is no fiscal impact.

**Attachment:**

None.



# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** Alternative Compliance Framework Introduction

**Contact:** Christopher Gray, Director of Transportation, [gray@wrcoq.coq.ca.us](mailto:gray@wrcoq.coq.ca.us), (951) 955-8304

**Date:** September 14, 2016

### Requested Action:

1. Receive and file.

*Stormwater management is a complex issue of which the Municipal Separate Stormwater Sewer System (MS4) permit is the primary mechanism to regulate stormwater. New regulations have required Regional Water Boards to update their MS4 permits to require additional stormwater treatment measures when new development occurs. These regulations may increase cost and the need for more land; thus negatively affecting the feasibility of new development. As a result, Regulators allow Alternative Compliance Programs (ACP) to assist in complying with these new regulations. In 2016, WRCOG completed a study to understand the feasibility of an Alternative Compliance Program in the Southwest area of the region. WRCOG is interested in providing local jurisdictions an Alternative Compliance Framework so that jurisdictions are able to implement a program if they so choose – the Alternative Compliance Framework is a voluntary program.*

### Background

The management of stormwater generated by public and private sector projects is a complex issue that involves a wide variety of agencies, regulations, legal requirements, and other factors. The primary mechanism to regulate stormwater is the MS4 permit. These permits are overseen by Regional Water Quality Control Boards (Regional Boards) throughout California. Two Regional Boards have jurisdiction over the WRCOG subregion, the San Diego (southwest Riverside County) and the Santa Ana (remaining portion of the WRCOG Region) Regional Boards. Note: the City of Banning is under jurisdiction of a third, the Colorado River Regional Board.

Within the past several years, new regulations have required Regional Boards to update their MS4 permits to require additional stormwater treatment measures when new development occurs. These additional treatment measures can be significantly more costly than current requirements for certain types of development. There may also be instances in which these treatment measures are infeasible based on the size of the development parcel and other considerations.

Recognizing that these new permit requirements could negatively affect the feasibility of new development, the Regulators allow for **Alternative Compliance Programs (ACP)**. In stormwater terms, alternative compliance refers to the use of an in-lieu fee or credit system which is tied to a regional program. Under the alternative compliance concept, private development may continue to address their stormwater requirements either on-site or through an ACP. In laymen's terms, developers who find it impossible or cost-prohibitive to comply with requirements for stormwater management on their development site could instead "pay into" a regional stormwater management system that consolidates mitigation of stormwater, and combines best practices for water quality management, into a single, regional site. ACPs are being considered by a variety of Regional

Boards throughout the State, though the San Diego Regional Board is among the most advanced in terms of developing a formal program.

An ACP can serve as an economic development tool by promoting flexible land development and can support the development of regional and community planning goals – such as Transit Oriented Development (TOD) in conjunction with future transit stations. TOD and infill development could benefit greatly from an ACP as it allows private development to meet regulatory requirements where onsite compliance is not feasible. It can also provide cost-effective and market-driven benefits, such as off-site options for public agency projects, funding for required regional Best Management Practices (BMPs), cost savings through centralizing BMP maintenance, and obtains needed funding for “multiple-benefit” public projects (i.e., ecological restoration, parks, other “green infrastructure”). Lastly, an ACP promotes regional solutions that can utilize uniform metrics and creates economies of scale.

With a grant from SCAG, WRCOG completed a study in 2016 analyzing feasibility of an ACP focusing on the Cities of Murrieta, Temecula, and Wildomar, which are under the jurisdiction of the San Diego Water Board. This study concluded that an ACP would be beneficial and identified that WRCOG evaluate potential options to develop such a program. Riverside County Flood Control has also been directed by the Riverside County Board of Supervisors to explore the feasibility of an ACP.

### **Where Do We Stand Now**

WRCOG has convened a technical working group to further investigate the feasibility of developing an ACP. These meetings are facilitated by Alexa Washburn, WRCOG consultant; members of this group include:

- County of Riverside
- Riverside County Flood Control & Water Conservation District
- San Diego Regional Water Quality Control Board
- Santa Ana Regional Water Quality Control Board
- San Diego County Flood Control District
- San Bernardino County Flood Control District
- Orange County Flood Control
- Building Industry Association of Southern California
- City of Temecula
- City of Hemet
- WRCOG Legal Counsel
- Stormwater Experts / Engineer Consultants

This group has met thrice to further explore an ACP to be administered by WRCOG. These initial meetings have concluded the following:

- There is a high level of interest in an ACP for the WRCOG subregion by a variety of stakeholders
- WRCOG would be ideally suited to establish and administer a program, in partnership with other agencies such as Riverside County Flood Control and the various Regional Boards
- An ACP would be within the realm of WRCOG’s current JPA
- An ACP would have to be structured as a voluntary program, under which jurisdictions and property owners could choose to participate in the regional program or address their stormwater issues individually
- Given an ACP would be a voluntary program, WRCOG staff are approaching the ACP as an “Alternative Compliance Framework” (“Framework”) for jurisdictions to consider. The Framework will give jurisdictions an approach to follow if they so choose to participate in an ACP.

The technical working group has expressed a desire to continue meeting regularly over the next several months to discuss how to establish a Framework. The MS4 Permit requires two studies to prepare an ACP: 1) a Watershed Management Area Analysis (WMAA), and 2) a Water Quality Equivalency Study. Riverside County Flood Control developed a scope for this first Study – the WMAA. The WMAA serves as the technical basis for an ACP, similar to how the Nexus Study is the technical basis for the TUMF.

### **Next Steps**

Given that the WMAA is a critical step towards developing an ACP, WRCOG staff have spoken with Riverside County Flood Control (RCFC) staff and offered to assist with the Study. There is an agreement to utilize WRCOG's on-call engineering consultants to support a technical scope of work for the WMAA, and WRCOG will serve as project manager for the Study. WRCOG needs to authorize its on-call engineering consultants to perform tasks identified with RCFC in the WMAA scope of work.

### **Schedule**

Over the next couple of months, staff will coordinate with RCFC on the WMAA. WRCOG staff will also continue coordination of technical working group meetings to discuss the different components of the Framework. Implementing a formal ACP will likely require 18-24 months.

### **What Does WRCOG Need to Do?**

While the technical studies proceed, WRCOG staff should continue with the technical working group meetings for the foreseeable future. Additionally, staff suggests regular briefings through the WRCOG Committee structure in order to build support for the program in the interim period.

### **Prior WRCOG Action:**

None.

### **WRCOG Fiscal Impact:**

The Alternative Compliance Framework is included in the Agency's adopted Fiscal Year 2016/2017 Budget under the Transportation Department.

### **Attachment:**

None.

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# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** Community Choice Aggregation Program Activities Update

**Contact:** Barbara Spoonhour, Director of Energy and Environmental Programs,  
[spoonhour@wrcog.cog.ca.us](mailto:spoonhour@wrcog.cog.ca.us), (951) 955-8313

**Date:** September 14, 2016

### Requested Action:

1. Recommend to the WRCOG Executive Committee to direct staff to move forward with the development and implementation of a Community Choice Aggregation Program and to return to the Committee with additional information and recommendations on selection of governance and operational structures.

*Community Choice Aggregation (CCA) allows cities and counties to aggregate their buying power to secure electrical energy supply contracts on a region-wide basis. In California, CCA (Assembly Bill 117) was chaptered in September 2002 and allows for CCA formation. Several local jurisdictions are pursuing formation of CCAs as a way to lower energy costs and/or provide “greener” energy supply. WRCOG’s Executive Committee has directed staff to pursue the feasibility of Community Choice Aggregation for Western Riverside County.*

### CCA Activities Update

In January 2016, WRCOG staff received direction from the WRCOG Executive Committee to pursue a Feasibility Study for the formation of a CCA. To achieve economies of scale and resource efficiencies, San Bernardino Associated Governments (SANBAG) and the Coachella Valley Association of Governments (CVAG) joined WRCOG’s effort to have a multi-county Study completed. To complete the Feasibility Study, WRCOG entered into an agreement with BKi.

At the August 2016 WRCOG Technical Advisory Committee (TAC) meeting, staff presented the preliminary data and key findings regarding the feasibility of a CCA for the subregion, including the CVAG and SANBAG subregions. On August 31, 2016, staff received the Draft Feasibility Study (attachment 1).

WRCOG and its consultants will present the findings from the Study and request that the Committee recommend to the WRCOG Executive Committee to direct staff to move forward with developing and implementing a CCA.

The Study concludes that the formation of a CCA in the service areas of CVAG, SANBAG and WRCOG (TRICOG) is financially prudent and will yield considerable benefits for TRICOG’s residents and businesses. These benefits include at least a 3.7 percent lower rate for electricity than is charged by Southern California Edison (SCE) while receiving nearly twice the amount of renewable energy. Once the CCA is fully operational, the CCA will reduce greenhouse gas emissions by as much as 2.34 million metric tons of CO<sub>2</sub>e per year, add over 500 jobs, generate over \$54 million annually in additional GDP, and provide the Cities, Counties and its residents local control over their power supply and energy efficiency programs. There are risks associated with a CCA, which are manageable. On balance, the formation of a CCA for CVAG, SANBAG and WRCOG is

financially feasible and results in beneficial environmental / economic impacts. A joint CCA with common back office functions is the most economical option and is recommended.

Some highlights from the report include:

Consumer cost savings: The combined savings (taking into account the generation savings with the SCE distribution cost assumptions) are:

- 4.5% savings with a 33% renewable
- 3.7% savings with a 50% renewable (11% lower than SCE's 50% Green Rate)
- 3.9% higher with a 100% renewable (11% lower than SCE's 100% Green Rate)

Implementation / start-up costs: A number of the implementation / start-up costs would be reduced if a CCA is formed by all 3 COGs (i.e., staffing, infrastructure, consultant costs).

Exhibit 36 Start-Up Costs for Three CCAs Summarized by Phase						
	CVAG	CVAG	SANBAG	SANBAG	WRCOG	WRCOG
	2017	2018	2017	2018	2017	2018
<b>Start-Up Costs</b>						
Infrastructure	\$240,000	\$410,000	\$350,000	\$350,000	\$240,000	\$430,000
Consultants	\$1,226,215	\$2,398,639	\$1,792,679	\$9,074,423	\$1,402,207	\$6,331,596
Staffing	\$600,000	\$2,302,500	\$1,590,000	\$3,732,500	\$600,000	\$2,482,500
Utility Trans. Fee	\$451	\$918,803	\$2,079,134	\$4,405,258	\$1,205,709	\$2,922,530
<b>Total Start-Up</b>	<b>\$2,066,666</b>	<b>\$6,029,942</b>	<b>\$5,811,813</b>	<b>\$17,562,181</b>	<b>\$3,447,916</b>	<b>\$12,166,626</b>

Economic Development Impacts: The Study outlines enhanced local economic development with the formation of a CCA. The analyses contained in this Study focused primarily on the direct effects of this formation. However, in addition to direct effects, indirect economic effects are also encountered. The indirect effects of creating a CCA include the effects of increased local investments, increased disposable income due to bill savings, and improved environmental and health conditions.

In total, approximately 547 jobs are expected to be created in the TRICOG region. The TRICOG region is also projected to have a labor income impact of over \$24.0 million, a total value added impact of approximately \$37.2 million, and an output impact over \$54.9 million.

SCE Rates and Surcharges: The base case forecast of SCE rates assumes delivery rates increase at 2 percent per year and generation rates increase approximately 2.0 percent based on the projected market prices and renewable resource growth rates. Additionally, SCE's generation cost was modeled in the high and low case by incorporating the expected range of market and renewable resource costs.

The level of the Power Cost Indifference Adjustment (PCIA), or Exit Fee, will impact the cost competitiveness of a CCA. In order to be cost-effective, CCA power supply costs plus PCIA and other surcharges must be lower than SCE's generation rates. Over time, the PCIA will vary, but it is expected that it will decline as market prices increase. The PCIA reflects SCE's own resources and signed contracts. Once the contracts expire, the related PCIA will disappear. Sensitivity to the PCIA has been modeled in the high case by assuming the PCIA would increase to reflect a historic high of 2.5 cents per kWh and remain flat for the 20-year analysis period. For the low case, it was assumed that the PCIA decreases by 50 percent in year one and remains flat for the 20-year analysis period.

Governance Structure: The JPA governance model is being used by most functioning CCAs in California. It is anticipated that a JPA will be formed to provide the legal structure for the CCA. A JPA provides a flexible framework and historically has been the preferred structure. Additionally, a JPA provides financial risk mitigation for its local government members. The governance of a JPA anticipates that a Board of Directors will be appointed to set policies and procedures for an Executive Director that will be entrusted to manage the

day-to-day operations. If the recommendation from the WRCOG Executive Committee is for staff to move forward with the development and implementation of a CCA, staff will be returning to the Administration & Finance Committee with various options to consider for the governance structure.

Operational Options: There are several options for how to setup and organize a CCA. For the Study, the options applied are:

### 1. *One CCA for the Three COGs*

This option consolidates workload by having one CCA perform all “back office” duties, including power procurement and data management. At the same time, this option allows each COG to design locally-targeting branding, programs, and customer outreach. The CCA operational option of one JPA for back office functions and has the local COGs brand and develops locally-specific programs and outreach is suggested.

This option is recommended for the following reasons:

- Retail rates will be the lowest possible.
- Local control and choice in programs will be maintained.
- A JPA organization provides a liability buffer between the CCA and its members.
- This business model is currently being used by the four operating CCAs in California with success.

### 2. *Three CCAs Working Independently*

This option entails each of the three COGs providing a full service CCA to include power procurement, data management and local program development / outreach. The three CCAs within TRICOG also have some initial appeal. If each COG formed a CCA, more local control would be achieved and potential thorny governance issues are avoided; however, the goal of lowest possible rates would likely not be achieved. The back office functions (i.e., power procurement and data management) are fairly consistent on a per unit basis; however, the internal costs are about the same for a 100,000-meter utility, and a 1,000,000-meter utility.

### 3. *Outsource the entire CCA Operation*

Under this option, the COGs would hire a third-party entity to operate the CCA through “turnkey” CCA service with the guarantee of a fixed income stream. The turnkey option is initially attractive given it is zero-cost to the CCA and the ease of administration. The primary issue with a turnkey operation is that rates will likely be higher for customers. The utility industry is highly capital-intensive, so the cost of capital becomes a major driver of utility operating costs. Private third-parties incur roughly twice the cost of capital as would a city, county, or JPA-owned CCA.

Again, if the recommendation from the Executive Committee is for staff to move forward with the development and implementation of a CCA, staff will be returning to the Administration & Finance Committee with more information on the operational options so that the Committee can provide direction on the best path forward.

Timeline: The following is the proposed timeline for completion of the Study and, if directed, steps to develop a CCA:

	Month									
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	
Compile SCE Load Data										
Prepare Business Plan										
Vet Business Plan and Finalize										
Determine Governance Preference										
Decision on Moving Forward										
Select Power Supply and Data Management Vendor										
File Implementation Plan with CPUC										
File Notice of Intent with SCE										
Arrange Financing of Start-Up Costs										
SCE Data Testing										
Opt-Out Notices – 1 and 2										
Launch Phase 1										
Opt-Out Notices – 3 and 4										

**Prior WRCOG Action:**

August 18, 2016: The WRCOG Technical Advisory Committee received report.

**WRCOG Fiscal Impact:**

WRCOG’s portion for Phase 1 is estimated to be \$130,000 to cover the costs of the CCA Feasibility Study, SCE data request, and WRCOG staffing. The costs for this will come from existing carryover funds and will be reflected in the Fiscal Year 2016/2017 1st Quarter Budget Amendment.

**Attachment:**

1. Draft Customer Choice Aggregation Business Plan (Feasibility Study).

# Item 4.A

Community Choice Aggregation  
Program Activities Update

## Attachment 1

Draft Customer Choice Aggregation  
Business Plan (Feasibility Study)

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**DRAFT**

# **Inland Choice Energy Customer Choice Aggregation Business Plan**

**August 31, 2016**

**Prepared by:**



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# Executive Summary

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## Background

The California legislature passed AB 117 in 2002 (amended in 2011 by SB 790) allowing all Cities, Counties, or groups of Cities and Counties to provide an electric power supply source to customers within their jurisdictions that are currently served by Southern California Edison, Pacific Gas & Electric or San Diego Gas & Electric (IOUs). Community Choice Aggregation (CCA) or Community Choice Energy (CCA) is a customer opt-out program where the CCA provides power supply and behind the meter services<sup>1</sup>, and the incumbent IOUs provide transmission and distribution (wires) service.

This Business Plan (Plan) evaluates the prudence of forming a CCA within three government associations: Coachella Valley Association of Governments (CVAG), San Bernardino Associated Governments (SANBAG) and Western Riverside Council of Governments (WRCOG). Collectively, this CCA is referred to in this Plan as Inland Choice Energy (ICE). The proposed CCA will provide power supply and behind the meter services, while Southern California Edison (SCE) will continue to provide transmission and distribution services. Customers will be part of the ICE program until they proactively opt-out.

This Plan estimates ICE's power supply costs, administrative costs, electric loads, and future retail rates and compares ICE's rates to the incumbent SCE. These forecast rates are compared to determine if a CCA can offer competitive rates, better products and superior customer service while also improving the environment and creating local jobs.

## Description of ICE

The Plan and structure of ICE are currently being analyzed by CVAG, SANBAG and WRCOG collectively. CVAG is the regional planning agency coordinating government services in the Coachella Valley, and has 10 Cities, Riverside County, the Agua Caliente Band of Cahuilla Indians and the Cabazon Band of Mission Indians as members. SANBAG is the council of governments and transportation planning agency for San Bernardino County. SANBAG's members include 24 cities and San Bernardino County. WRCOG's purpose is to unify Western Riverside County and it consists of 20 Cities, Riverside County and the Morongo Band of Mission Indians. The geographic area and customer base covered by CVAG, SANBAG and WRCOG are collectively called TRICOG.

Two organizational scenarios are explored in this Plan. For the Plan's base case, results are provided assuming one organization will operate a CCA for all three entities. This scenario is referred to as

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<sup>1</sup> For example energy efficiency programs, net energy metering or other programs that promote the deployment of distributed energy resources

the “TRICOG” scenario. In addition, results are provided assuming three separate CCA’s will be formed. This scenario is referred to in the Plan as the “Three CCA” scenario.

For this Plan, it is assumed that service will be offered to customers in two phases. Phase 1 will include the members of TRICOG’s own municipal facilities in addition to 5 percent of non-municipal commercial facilities. In Phase 2, all customers located in the service area of TRICOG will be included in ICE. Exhibit ES-1 summarizes this phased approach to forming ICE, including the number of customers and load attendant with each phase. ICE’s total loads will represent roughly 30 percent of SCE’s total current electrical loads.

Exhibit ES-1 CCA Load, Customers, and Revenue by Phase in 2017*						
Phase	Assumed Start	Eligibility	Customer Accounts	Peak Load*** (MW)	Average Load*** (aMW)	ICE Annual Revenues
<b>TRICOG</b>						
Phase 1**	July, 2017	Municipal + 5% Commercial	69,667	73	49	\$12 million
Phase 2	January 2018	All Customers	960,975	3,951	1,720	\$970 Million
<b>CVAG</b>						
Phase 1**	July, 2017	Municipal + 5% Commercial	10,121	7	6	\$1.6 Million
Phase 2	January 2018	All Customers	108,576	517	209	\$124 Million
<b>SANBAG</b>						
Phase 1**	July, 2017	Municipal + 5% Commercial	41,207	44	29	\$7.0 Million
Phase 2	January 2018	All Customers	517,628	2,126	955	\$550 Million
<b>WRCOG</b>						
Phase 1**	July, 2017	Municipal + 5% Commercial	18,339	22	14	\$3.5 Million
Phase 2	January 2018	All Customers	334,771	1,343	555	\$330 Million

\*Estimates assume a 75% participation rate for residential customers, and a 65% participation rate for non-residential customers.

\*\*Phase 1 is assumed to run July – December of 2017. Therefore, load and revenue for this phase reflect only the 6-month duration.

\*\*\*Loads are expressed as wholesale, including losses of 6%.

This phasing strategy enables ICE to manage any start-up and operational issues before full scale operations are undertaken. In addition, this phasing strategy will allow ICE’s third party electricity suppliers, scheduling agents and data management entities to ramp up power supply procurement and bill processing over several months. It will also minimize the possibility of customers not participating in ICE. Finally, bad debt expense exposure should be minimal in Phase 1.

Within the base case, this Plan explores the prudence of full participation of all three COGs as one operating CCA over a 20-year forecast period. The results for the individual COG’s CCA option is

also analyzed and provides insight into CCA operations if not all Cities participate. It is anticipated that the results of this Plan are scalable.

## Governance

It is anticipated that a JPA will be formed to provide the legal structure for ICE. A JPA provides a flexible framework for CCAs and historically has been the preferred structure for an organization like ICE. Additionally, a JPA provides financial risk mitigation for its local government members. The governance of a JPA anticipates that a Board of Directors will be appointed to set policies and procedures for an Executive Director that will be entrusted to manage the day-to-day operations of ICE. This same JPA governance model is being used by most functioning CCAs in California.

## Plan Uncertainties/Risks

The results of this Plan are subject to uncertainties. These uncertainties are evaluated in the Plan's sensitivity analysis section. The list below provides a summary discussion of the key uncertainties of this Plan.

- Market Price Forecasts – Market prices (and forecasts) are continually changing. The market price forecasts for electricity and natural gas utilized in this Plan are based on the best currently available information regarding future natural gas and electricity prices, and have been confirmed by recent wholesale power transactions in southern California. These types of forecasts vary over time. Thus, a range of market price forecasts are evaluated in the Plan's sensitivity analysis.
- Rate Forecasts – The Plan forecasts both ICE and SCE rates over a 20-year study period. These forecasts are based on current information regarding inflation and other cost drivers. Unexpected impacts on rates are discussed in more detail in the Plan's sensitivity analysis.
- Forecasted Load and Customer Growth – The Plan bases the load forecasts on customer growth. Each of these forecasts includes a level of uncertainty. To illustrate the impacts of load uncertainty, low, medium, and high load forecasts are analyzed in the Plan's sensitivity analysis.
- Regulatory Risks – Unforeseen changes in legislation (California Public Utility Commission, State legislation and Federal Energy Regulatory Commission) may impact the results of this Plan. Sensitivities on these risks are also provided.

This sensitivity analysis shows that the ICE rate could be greater than SCE rates if:

- The Power Charge Indifference Adjustment (PCIA) becomes much larger. The PCIA is a charge assessed by the IOU to cover generation costs acquired prior to CCA formation,
- ICE loads are much less than forecast
- Wholesale market prices are much less than current experience

Each of these three scenarios has a low probability of actually occurring. For example, wholesale market prices for natural gas/electricity are at all-time lows. The probability of any significant further lowering of these prices is judged to be very small. The PCIA level should be fairly stable

going forward as regulatory remedies are in play to stabilize the CCA and because the CCA community has become very vigilant in this area. Finally, this plan assumes a relatively low customer participation rate of 75% for residential customers and 65% for non-residential customers, compared to the roughly 85% -95% participation rates seen in California’s currently operating CCAs. It is very unlikely ICE loads will not meet or exceed those assumed in the Plan. Thus, the major risks of forming a CCA are manageable and small.

## **Retail Rate Construct**

This Plan evaluates the costs and resulting rates of operating ICE, and compares these rates to a rate forecast for SCE. The analysis begins with a 20-year forecast of electrical loads and customers, incorporates several power supply resource portfolio options, and allows for the sensitivity or stress testing of input assumptions. ICE customers will see no obvious changes in electric service other than lower prices and potential increases in renewable resources in their power supply resource mix. Customers will pay the power supply charges set by ICE and no longer pay the costs of SCE power supply.

In addition to paying ICE’s power supply rate, ICE customers will pay the SCE delivery (wires) rate and all other non-power supply related charges on the SCE bill to include Franchise Fees and Utility User Taxes.

ICE will establish rates sufficient to recover all costs related to operation of the CCA. It is anticipated that ICE’s rate designs initially will mirror the structure of SCE’s rates so that rates similar to SCE’s can be provided to ICE’s customers. In setting rates, the Plan’s financial analysis assumes the customer phase-in schedule noted above and assumes that the implementation costs are largely financed via a start-up loan.

## **Retail Rate Forecast of SCE versus ICE**

The first consequence for forming ICE is the retail rate impact as illustrated on ES-2. ES-2 compares SCE’s current total bundled rates (with 28 percent renewable power), SCE’s 50% Green Rate and 100% Green Rate compared to three comparable ICE rate options.

For reference, the column headers noted on ES-2 are summarized below.

- RPS Bundled – ICE rates with the same share (currently 28 percent) of renewables as SCE’s current power supply.
- 50% Green Bundled Rate – ICE rates with 50 percent renewable power.
- 100% Green Bundled Rates – ICE rates with 100 percent renewable power.

A rate schedule comparison of ICE’s rates and SCE’s rates follows.

Exhibit ES-2 Indicative Rate Comparison in ¢/kWh							
Rate Class	Customer Type	SCE Bundled Rate*	ICE RPS Bundled Rate	SCE 50% Green Bundled Rate	ICE 50% Green Bundled Rate	SCE 100% Green Bundled Rate	ICE 100% Green Bundled Rate
Residential	Domestic	20.55	19.66	22.30	19.81	24.05	21.33
Residential Care	Domestic	12.22	11.70	13.97	11.79	15.72	13.47
GS-1	Commercial	17.03	16.29	18.78	16.42	20.53	17.68
GS-2	Commercial	16.57	15.86	18.32	15.98	20.07	17.21
GS-3	Industrial	14.71	14.08	16.46	14.19	18.21	15.28
PA-2	Public Authority	13.08	12.52	14.83	12.62	16.58	13.58
PA-3	Public Authority	11.31	10.82	13.06	10.90	14.81	11.74
TOU-8 Secondary	Domestic	13.07	12.51	14.82	12.61	16.57	13.58
TOU-8 Primary	Commercial	11.84	11.33	13.59	11.42	15.34	12.29
TOU-8 Substation	Industrial	7.76	7.43	9.51	7.48	11.26	8.06
Total ICE Rate Savings over Comparable SCE Rates of 50% or 100% Green			4.5%		11.0%		11.0%
Total ICE Rate Savings over SCE's Standard Bundled Rate			4.5%		3.7%		-3.7%

\*SCE bundled average rate based on SCE's ERRRA 2017 Draft Filing

As can be seen on Exhibit ES-2, the ICE RPS residential rate with an equal amount of renewable power (28 percent) to what SCE currently offers is 0.9¢/kWh or 4.3 percent lower. The ICE residential rate with 50 percent renewable power (compared to SCE's 50 percent optional rate) is 2.5¢/kWh or 11.2 percent lower. The ICE residential rate with 100 percent green power (compared to SCE's 100 percent) is 2.7¢/kWh or 11.3 percent lower. Appendix B contains the final proformas to support Exhibit ES-2.

The difference between the ICE bundled rate for residential consumers of 19.66¢/kWh and the ICE 50 percent renewable rate forecast of 19.81¢/kWh is close enough that the base case rate for this Plan is the ICE 50 percent renewable rate forecast. The difference in retail rates between the ICE RPS and the 50 percent green rate forecast is de minimis, and there are additional greenhouse gas (GHG) and economic development benefits associated with the 50% green power option being the Plan's baseline; however, the final decision of the baseline rate scenario for ICE will ultimately rest with ICE's governing board. The 50 percent green baseline portfolio results in a savings over SCE's RPS rate of 3.7 percent.

## Renewable Energy Impacts

A second consequence of forming ICE could be the potential for an increase in the proportion of energy supplied by renewable resources. The majority of this renewable energy will be met by renewable energy purchased on the wholesale market or newly constructed renewable resources. By 2020, SCE must procure a minimum of 33 percent of its customers' annual electricity usage from renewable resources due to the State's RPS mandate and the Energy Action Plan requirements of the California Public Utilities Commission (CPUC). In contrast, ICE customers will procure at least 50 percent renewable power from day one of ICE's operation under the Plan's base case which will come from new and local renewable resources.

## Energy Efficiency Programs

A third consequence of the Plan is a potential increase in energy efficiency program investments and activities. The existing energy efficiency programs administered by SCE are not expected to change as a result of ICE. ICE customers will continue to pay the Public Goods Charges to SCE which funds energy efficiency programs for all customers, regardless of power supply provider. The energy efficiency programs ultimately planned by ICE will be in addition to the level of energy efficiency investment currently provided by SCE. Thus, ICE has the potential to increase energy savings with an attendant reduction in emissions due to expanded energy efficiency programs.

## Economic Development

The fourth consequence of ICE is increased economic development. So far, the Plan's analyses focuses on the direct rate impacts of forming ICE. However, in addition to these direct effects, indirect economic effects will also be encountered. The indirect effects of creating ICE include increased local investments, increased disposable income due to bill savings, and improved environmental and health conditions.

Exhibit ES-3 shows the economic impact resulting from \$100 million in electric bill savings across the ICE service area. The \$100 million rate savings represents the minimum bill savings per year achievable by ICE once Phase 2 operations are at steady state. It is estimated that these savings will create approximately 547 additional jobs in the TRICOG region and over \$24.0 million in labor income. It is also projected that the total value added will be approximately \$37.2 million and output over \$54.9 million.

Exhibit ES-3 \$100 Million Rate Savings Effects on TRICOG Economy				
Impact Type	Employment	Labor Income	Total Value Added	Output
Direct Effect	388.0	\$18,166,656	\$26,716,167	\$36,512,050
Indirect Effect <sup>2</sup>	60.3	\$2,105,059	\$3,462,091	\$6,306,939
Induced Effect <sup>3</sup>	98.3	\$3,793,548	\$7,040,577	\$12,129,463
Total Effect	546.6	\$24,065,263	\$37,218,836	\$54,948,451

In addition to increased economic activity due to electric bill savings, potential local projects can also create job and economic growth within the TRICOG service territory. As an example of the macroeconomic activity caused by local distributed energy resource (DER) deployment, this Plan analyzes the installation of 50 crystalline silicon, fixed mount solar systems with nameplate capacities of 1 MW each for a total capacity of 50 MW. Overall, the building of a 50 MW solar project is projected to create \$87 million in earnings and \$188 million in output (GDP) in the local economy along with 1,636 jobs during construction and 14 full-time jobs ongoing. ICE could examine installing a number of larger utility scale solar projects such as the one described.

## Green House Gas Impacts

The fifth consequence of forming ICE could be environmental benefits. The amount of renewable power in SCE's power supply portfolio is currently 28 percent<sup>4</sup> and is scheduled to increase to 33 percent by 2020. Assuming ICE achieves a base case 50 percent RPS target at start-up, GHG emissions reductions attributable to ICE operations in 2019 will range from 1.33 to 2.34 million metric tons CO<sub>2</sub> equivalent (CO<sub>2</sub>e) per year. ES-4 details these reductions.

Exhibit ES-4 Baseline Comparison of GHG Reduction by ICE in 2018				
	TRICOG	CVAG	SANBAG	WRCOG
Forecast Renewables (50% Renewables) ICE (GWH) – Phase 2	7,533	916	4,184	2,433
ICE RPS (GWH) – Phase 2	4,219	513	2,343	1,362
Additional Green Power	3,315	403	1,841	1,070
CO <sub>2</sub> reduction – Low (Million Metric tons CO <sub>2</sub> e)	1.33	0.16	0.74	0.43
CO <sub>2</sub> reduction – High (Million Metric tons CO <sub>2</sub> e)	2.34	0.28	1.30	0.76

The reduction in GHG emissions associated with ICE operations is significant. This amount of reduced emissions represents a reduction in the emissions from the in-State generation resources of 2.6 to 4.6 percent.

<sup>2</sup> The Indirect effect is the business-to-business transactions required to satisfy the direct effect.

<sup>3</sup> The Induced effect measure the effects of the changes in household income:

<sup>4</sup> [http://www.cpuc.ca.gov/RPS\\_Homepage/](http://www.cpuc.ca.gov/RPS_Homepage/)

## Operational Options

There are several options for how to setup and organize a CCA. For this Plan, we have assumed three organizational options for ICE. These options are:

- One CCA for the Three COGs

This option consolidates workload by having one CCA perform all “back office” duties, including power procurement and data management. At the same time, this option allows each COG to design locally-targeting branding, programs, and customer outreach.

- Three CCAs Working Independently

This option entails each of the three COGs providing a full service CCA to include power procurement, data management and local program development/outreach.

- Outsource the Entire CCA Operation

Under this option, the COGs would hire a third-party entity to operate the CCA through “turnkey” CCA service with the guarantee of a fixed income stream.

Each option is critiqued and compared below.

The CCA operational option of one JPA for back office functions and have the local COGs brand and develop locally-specific programs and outreach is recommended for the following reasons:

- Retail rates will be the lowest possible.
- Local control and choice in programs will be maintained.
- A JPA organization provides a liability buffer between the CCA and its members.
- This business model is currently being used by the four operating CCAs in California with success.

The option to form three CCAs within TRICOG also has some initial appeal. If each COG formed a CCA, more local control would be achieved and potential thorny governance issues are avoided; however, the goal of lowest possible rates would likely not be achieved. The back office functions (i.e., power procurement and data management) are fairly consistent on a per unit basis; however, the internal costs are about the same for a 100,000-meter utility, and a 1,000,000-meter utility. Based on the operating CCAs in California, CCA operation requires between 15 and 20 full-time equivalent employees (FTEs). As such, forming three CCAs versus one for back office functions costs the CCA customers an additional \$7-8 million per year. This is a material amount of economic inefficiency.

The turnkey option is initially attractive given it is zero-cost to the CCA and the ease of administration. The primary issue with a turnkey operation is that rates will likely be higher for customers. The utility industry is highly capital-intensive, so the cost of capital becomes a major driver of utility operating costs. Private third-parties incur roughly twice the cost of capital as would a city, county, or JPA-owned CCA. Therefore, the publicly-operated CCA will almost certainly be able

to offer lower rates due to its favorably low borrowing costs. In addition, giving CCA operation to a third-party often compromises the CCA's control over its power supply and other policies. The third-party operator typically guarantees the CCA owner an income stream but in exchange is given liberty to dictate the power supply options, energy efficiency programs, rates, staffing levels, and programs available to the CCA customers

## Summary

This Plan concludes that the formation of ICE in the service areas of CVAG, SANBAG and WRCOG is financially prudent and will yield considerable benefits for TRICOG's residents and businesses. These benefits include at least a 3.7 percent lower rate for electricity than is charged by SCE while receiving nearly twice the amount of renewable energy. With the achievement of Phase 2 level of operations, ICE will reduce GHG emissions by as much as 2.34 million metric tons of CO<sub>2</sub>e per year, add over 500 jobs, generate over \$54 million in additional GDP, and give residents and businesses local control over their power supply and energy efficiency programs. There are risks associated with a CCA which are manageable. On balance, the formation of a CCA for CVAG, SANBAG and WRCOG is financially feasible and results in beneficial environmental/economic impacts. A joint CCA with common back office functions is the most economical operational option and is recommended.

# Introduction

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## Background

California's legislature passed AB 117 in 2002 (amended in 2011 by SB 790) which allows all Cities, Counties, or groups of Cities and Counties to provide electric service to customers currently served by Investor-Owned Utilities (IOUs). Community Choice Aggregation (CCA) is the legislative organization empowered to provide this service. California CCAs are customer opt-out programs that provide power supply, data management and behind the meter services, while the incumbent IOUs continue to provide transmission and distribution (wires) service. This legislation states that CCAs will enable California to experience more competitive electricity rates, a more renewable power supply mix, and growth in local resources and associated economic activity. Currently, there are four CCAs operating in California and these utilities offer competitive rates for power supply that have a higher percentage of renewable resources. CCAs have also proven to promote local economic activity and their associated benefits. Several other California Cities and Counties are currently evaluating the feasibility of CCA formation within their jurisdictions. This information can be found in Appendix A.

There are several potential benefits of the CCA model in addition to competitive rates. Other benefits include local control over energy resources selection including renewable local projects, energy efficiency, a reduction in greenhouse gases (GHG), and more economic development. In addition, CCAs can minimize power supply rates and maximize renewable energy utilization with the attendant local jobs in the local community.

## Objective

This Business Plan (Plan) evaluates the feasibility of forming a CCA within the SCE service area of Coachella Valley Association of Governments (CVAG), San Bernardino Associated Governments (SANBAG) and Western Riverside Council of Governments (WRCOG), collectively named Inland Choice Energy (ICE). The proposed CCA will continue to provide power supply, data management and behind the meter services<sup>5</sup>, and Southern California Edison (SCE) will provide transmission and distribution (wires) services. This Plan estimates ICE's power supply costs, administrative costs, electric loads, and future retail rates for ICE and the incumbent Investor-Owned Utility (IOU), Southern California Edison (SCE). These forecast rates are compared to determine if the proposed CCA can offer competitive rates, better products, and superior customer service. A sound financial and operational foundation for ICE must be achievable before the other desirable attributes of a CCA can be enjoyed.

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<sup>5</sup> For example energy efficiency programs, net energy metering or other programs that promote the deployment of distributed energy resources

Regarding the possible membership of ICE, CVAG is the regional planning agency coordinating government services in the Coachella Valley and has 10 Cities, Riverside County, the Agua Caliente Band of Cahuilla Indians and the Cabazon Band of Mission Indians as members. SANBAG is the council of government and transportation planning agency for San Bernardino County. SANBAG's members include 24 cities and San Bernardino County. WRCOG's purpose is to unify Western Riverside County and it consists of 17 Cities, the Riverside County and the Morongo Band of Mission Indians. Combined, these three organizations are referred to in this Plan as TRICOG.

Three governance scenarios are explored in this Plan. This provides information to each of the three COGs on the benefits and costs of implementing a CCA in their individual service area. It also provides information to the reader about the benefit and cost of different sizes of CCA load. For the base case in this Plan, results are provided assuming one organization will operate a CCA for all three entities. This scenario is referred to as the "TRICOG" scenario. In addition, results will be provided assuming three separate CCA's will be implemented. This scenario is referred to as the "Separate CCA" scenario. Finally, we explore use of a "turnkey" CCA operator, wherein a third-party would bear the financial burden of operation in exchange for a share of revenues.

## ICE Description

In 2015, before opt-outs, CVAG's average annual wholesale load is 288 aMW (average Megawatts) with a peak load of 697 MW. SANBAG's 2015 average annual wholesale load, before opt-outs, is 1,339 aMW with a peak demand of 2,950 MW, while WRCOG's 2015 average wholesale annual load before opt-outs is 765 aMW with a peak demand of 1,819 MW. Energy consumption for the entire TRICOG area served by SCE is equal to more than 30 percent of SCE's total retail load.

For this Plan, it is assumed that service will be offered to customers in two phases. Phase 1 assumes that municipal facilities within each COG in addition to 5 percent of each COG's commercial accounts will be included into ICE. Phase 2 assumes all customers within TRICOG's service area are included in ICE. Exhibit 1 summarizes this phased approach to starting ICE and the amount of load attendant with each phase.

**Exhibit 1**  
**CCA Load, Customers, and Revenue by Phase in 2017\***

Phase	Assumed Start	Eligibility	Customer Accounts	Peak Load*** (MW)	Average Load*** (aMW)	ICE Annual Revenues
<b>TRICOG</b>						
Phase 1**	July, 2017	Municipal + 5% Commercial	69,667	73	49	\$12 million
Phase 2	January 2018	All Customers	960,975	3,951	1,720	\$970 Million
<b>CVAG</b>						
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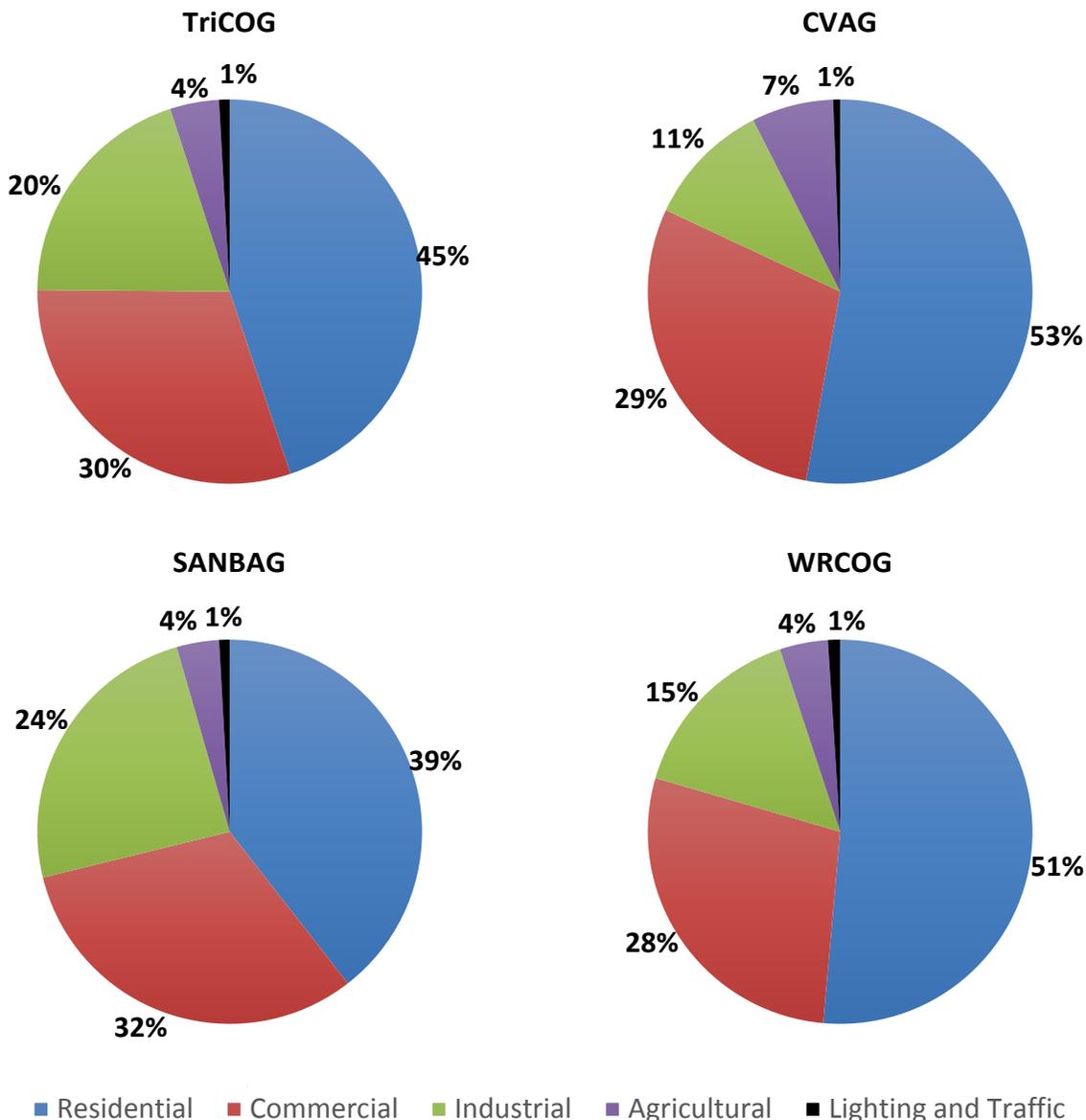
\*\*\*Loads are expressed as wholesale, including losses of 6%.

## Customer Participation Schedule

Because of the number of Cities in TRICOG and the size of their associated loads, a phasing strategy is assumed for this Plan. This phasing strategy enables ICE to address any start-up and operational issues before full scale operations are undertaken. In addition, this strategy will allow ICE's third party electricity suppliers, scheduling agents and data managers to ramp up their activities.

By 2036, ICE is projected to serve almost 1.16 million retail customers after opt-outs with annual electricity sales potential of over 17,392 GWh. Annual ICE revenues at Phase 2 build-out are projected to be \$1,500 million. In the same period, CVAG will serve over 132,000 customers with an average annual load of 2,110 GWh and revenues of \$300 million. SANBAG will serve over 633,000 customers, a load of 9,677 GWh, and earn revenues of \$550 million. WRCOG will serve almost 410,000 customers, a load of 5,605 GWh per year, and \$330 million. The breakdown of projected sales in Phase 2 by major customer class is shown in the following Exhibit 2.

**Exhibit 2**  
**Retail Energy Share by Rate Class**



**Summary of ICE’s Proposed Governance and Operations**

ICE will likely be established under the terms of a Joint Powers Authority (JPA), which will promote, develop and conduct electricity-related projects and programs for TRICOG’s residences and businesses. The JPA agreement will dictate the governance provisions of ICE.

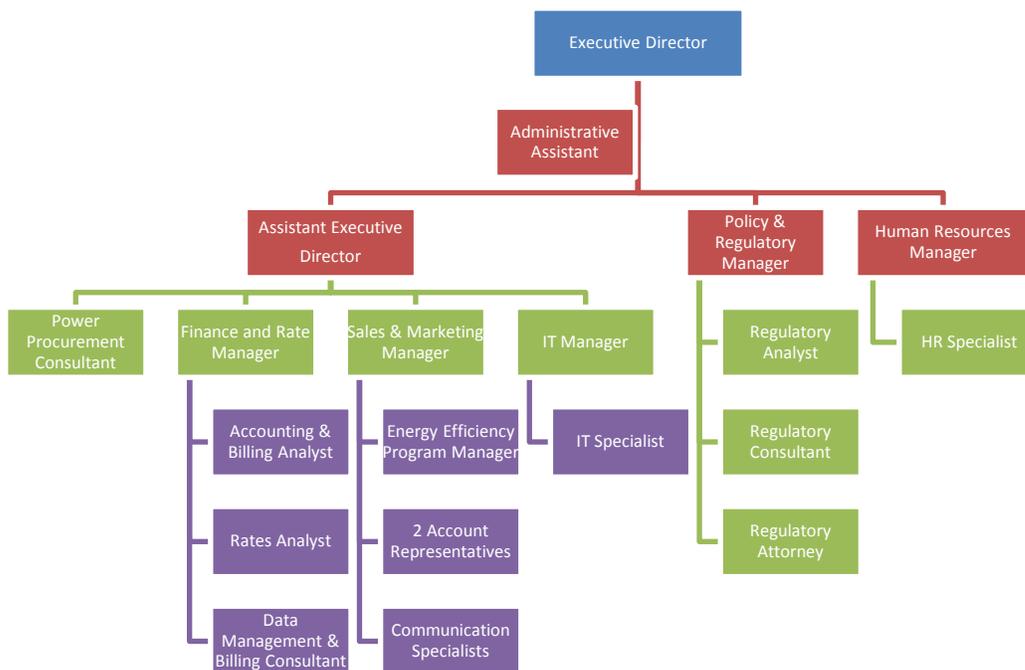
ICE activities will be overseen by the new JPA’s Board of Directors (Board). This Board will have primary responsibility for managing all aspects of ICE programs. The JPA will adopt an

Implementation Plan, as required by the CCA legislation (AB 117), and register with the California Public Utilities Commission (CPUC) as a Community Choice Aggregator (CCA).

Operations of ICE programs will be the responsibility of an Executive Director, appointed by ICE's Board. The Executive Director will manage staff, contractors and third party providers, in accordance with the general policies established by the Board. ICE has responsibilities over the functional areas of Finance, Legal/Regulatory, and Operations. This Plan assumes that ICE will utilize a combination of internal staff and contractors. Certain specialized functions are needed within ICE operations, namely those of electric supply procurement and data management.

When ICE transitions some of its administrative and operational responsibilities to internally staffed positions, ICE will likely have a full time staff of approximately 15 – 20 employees to perform its responsibilities, primarily related to program and contract management, legal and regulatory, finance and accounting, energy efficiency, marketing and customer service. Technical functions associated with managing and scheduling power suppliers and those related to retail customer billings will likely be performed by an experienced third party contractor. The proposed organization chart for ICE is provided below in Exhibit 3.

**Exhibit 3  
Sample Organization Chart**



### Plan Methodology

This Plan evaluates the cost and resulting rates of operating ICE and compares these rates to a SCE rate forecast. This pro forma 20-year feasibility analysis models the following cost components:

- Power Supply Costs:
  - Wholesale purchase
  - Renewable purchases
  - Procurement of resource adequacy capacity
  - Other power supply and charges
- Non-Power Supply Costs:
  - Start-up costs
  - ICE staffing and administration costs
  - Consulting support
  - SCE and regulatory charges
  - Financing costs
- Pass-Through Charges from SCE:
  - Transmission and distribution charges
  - Power Cost Indifference Adjustment (PCIA) Charge
  - Other SCE non-bypassable charges

The information above is used to determine the retail rates for ICE. ICE rates are then compared to the SCE projected rates for ICE service area.

## **Plan Organization**

This Plan is organized into the following main sections:

- Load Requirements
- Power Supply Strategy and Costs
- ICE Cost of Service
- Products, Services, Rates Comparison and Environmental/Economic Considerations
- Sensitivity Analysis
- Summary and Recommendations

Each section is discussed in more detail below.

## Load Requirements

The viability of ICE depends to various degrees on the number of customers that participate in the CCA and the amount of energy they consume. This section of the Plan provides an overview of these projected values and the methodology used to estimate them.

### Historical Consumption

SCE has provided monthly historical data on energy use (kWh), non-coincident peak load (kW), and number of accounts aggregated by rate class for both direct access (DA) and bundled customers for Cities expected to participate in ICE as well as unincorporated areas in the three council of government associations for the 2015 calendar year. These include 7 cities in CVAG, 21 in SANBAG, 16 in WRCOG, as well as both the Riverside and San Bernardino county unincorporated areas. Collectively, CVAG, SANBAG, WRCOG, and the unincorporated counties used almost 20,000 GWh of electricity in 2015. Of this, SANBAG used 56 percent, WRCOG 32 percent, and CVAG 12 percent.

### Bundled and Direct Access Customers

Bundled customers (full service) make up over 93 percent of total customer accounts across the three government associations and comprise approximately 85 percent of the total energy use. Direct access customers account for under 7 percent of customers, but use nearly 15 percent of the annual energy. Exhibits 4 and 5 summarize historic energy consumption and number of accounts for bundled and DA customers within the three COGs.

Exhibit 4 Bundled and Direct Access Customer Accounts by COG in 2015				
Government Association	Bundled Accounts	DA Accounts	Bundled Accounts (% of total)	DA Accounts (% of total)
CVAG	142,715	1,299	99%	1%
SANBAG	678,524	38,236	95%	5%
WRCOG	438,019	55,235	89%	11%
<b>Total</b>	<b>1,259,258</b>	<b>89,545</b>	<b>93%</b>	<b>7%</b>

Exhibit 5 Bundled and Direct Access Retail Load by COG in 2015				
Government Association	Bundled Load (MWh)	DA Load (MWh)	Bundled Load (% of total)	DA Load (% of total)
CVAG	2,370,751	79,197	97%	3%
SANBAG	11,085,138	2,043,264	84%	16%
WRCOG	6,312,021	1,285,402	83%	17%
<b>Total</b>	<b>19,767,910</b>	<b>3,407,864</b>	<b>85%</b>	<b>15%</b>

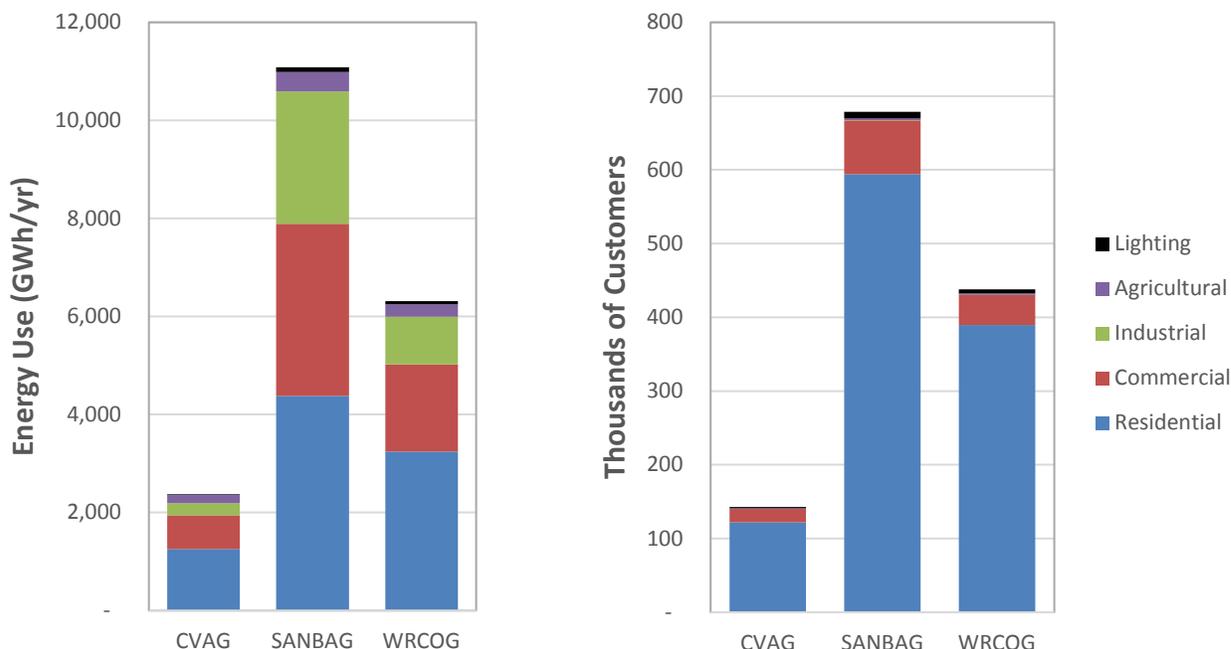
Direct access customers purchase their power supply and other services from an electric service provider (ESP), rather than the incumbent utility. In California, eligibility for DA enrollment is currently limited to retail non-residential customers and enrollment is based on an annual lottery.<sup>6</sup> Customers classified as taking service under direct access arrangements are not included in this Plan, as it is assumed that these customers will remain with their current ESPs.

### City and Unincorporated Loads

Among bundled customers, approximately 79 percent are located within the 44 cities and account for 81 percent of annual energy usage in the three COGs as shown in Exhibit 6. Potential customers and energy consumption are shown in Exhibit 7 aggregated for each COG including the respective unincorporated load. Exhibit 8 illustrates the distribution of load by sector for each jurisdiction.

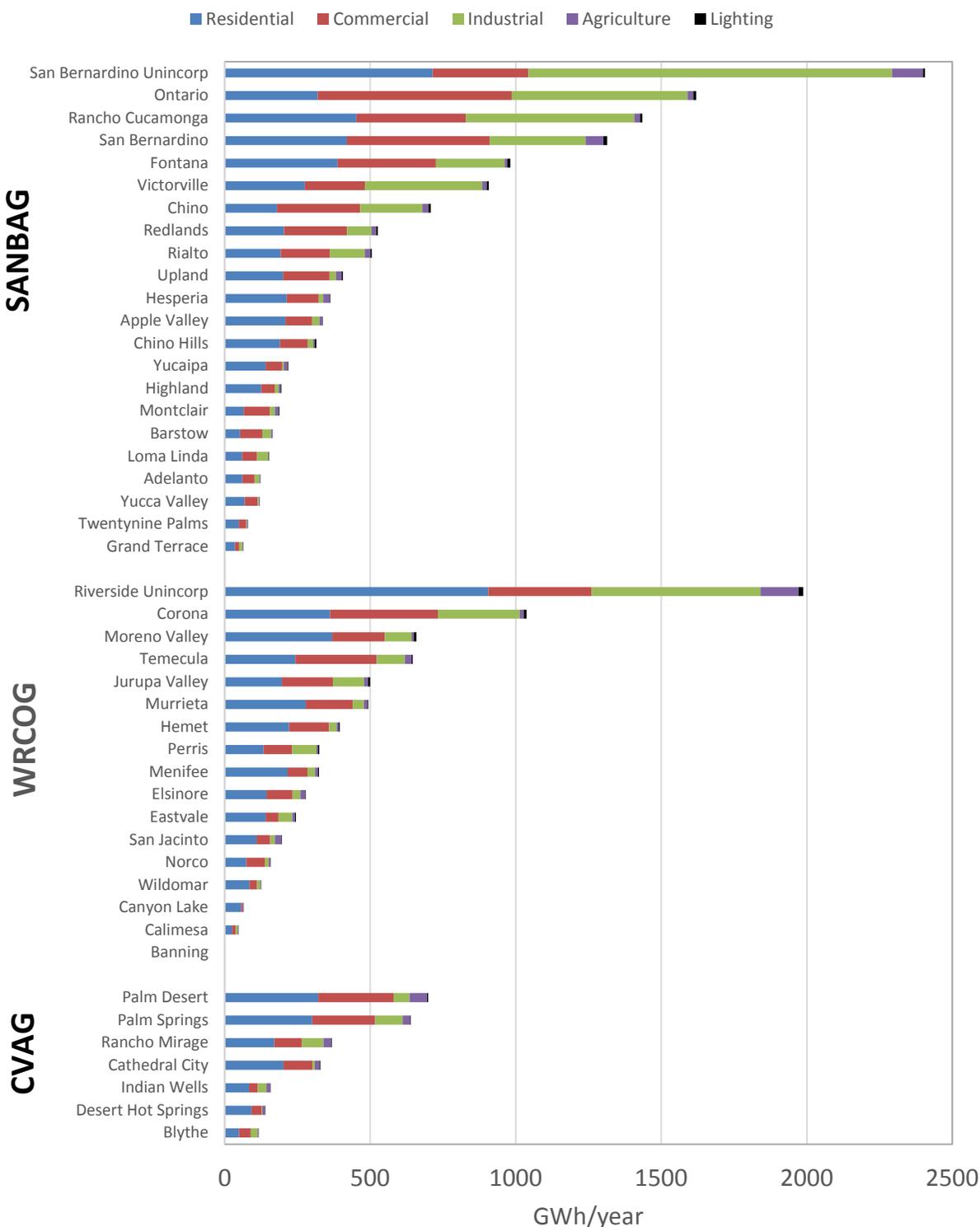
Exhibit 6 Bundled Load and Accounts by Jurisdiction Type in 2015				
Jurisdiction	Customer Accounts	Customer Accounts (% of total)	Annual Wholesale Load (GWh)	Energy Use (% of total)
Cities	994,814	79%	16,975	81%
Unincorporated	264,444	21%	3,982	19%
<b>Total</b>	<b>1,259,258</b>	<b>100%</b>	<b>20,957</b>	<b>100%</b>

Exhibit 7  
Bundled Load and Accounts by Sector and COG



<sup>6</sup> S.B. 286 (CA, 2015-2016 Reg. Sess.)

**Exhibit 8**  
**Bundled Energy Use by Jurisdiction and Sector**



Riverside County unincorporated areas were split up between WRCOG and CVAG for the 3-CCA scenarios, but are represented as a single entity in this figure for comparison.

## ICE Launch Phases

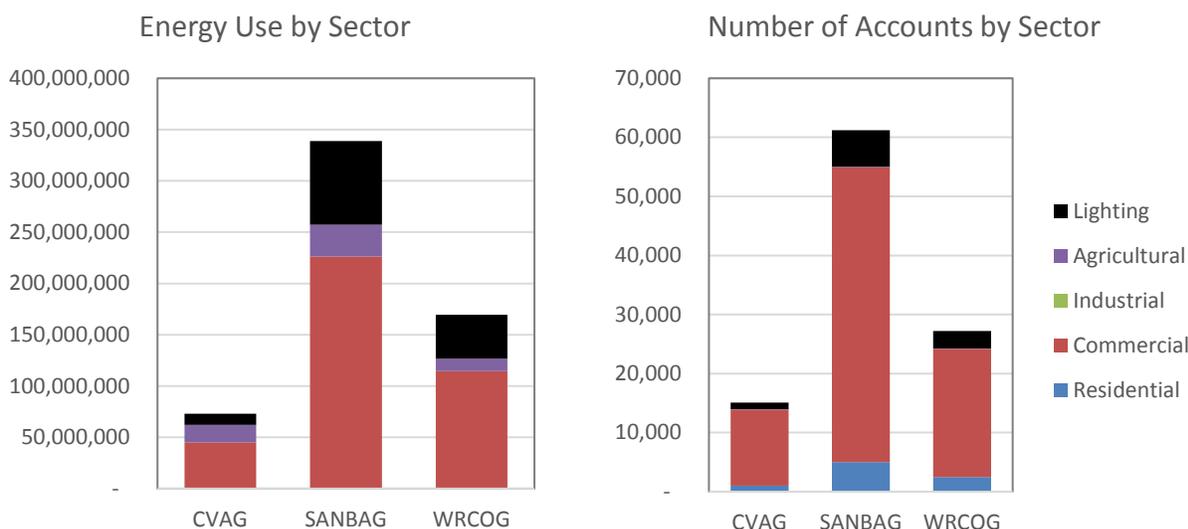
For the purpose of this Plan, it has been assumed that the development of ICE will occur using a two-phase implementation schedule. Phase 1 will include all municipal facilities as well as 5 percent of private commercial accounts within the three COGs. Phase 1 includes the 5 percent non-municipal accounts to balance out the daily load profile of the municipal accounts, which on their own would not be representative of ICE as a whole. These non-municipal accounts will be recruited for participation in Phase 1 during the start-up of ICE. Phase 2 will enroll all remaining customers in the three COGs.

Municipal facility energy use and number of accounts was provided by CVAG, SANBAG, and WRCOG. That data, in combination with 5 percent of non-municipal commercial accounts, is summarized in Exhibit 10. This data provides the basis for Phase 1 of ICE’s Implementation Plan. Exhibit 9 shows the total number of eligible municipal facilities in the three COGs and their consumption.

Exhibit 9 Phase 1 Accounts and Load, July 2017				
Location	Customer Accounts	Customer Accounts (% of total)	Annual Wholesale Load (MWh)	Load (% of total)
CVAG	10,121	15%	51,678	13%
SANBAG	41,207	59%	239,845	58%
WRCOG	18,339	26%	119,963	29%
<b>Total</b>	<b>69,667</b>	<b>100%</b>	<b>411,486</b>	<b>100%</b>

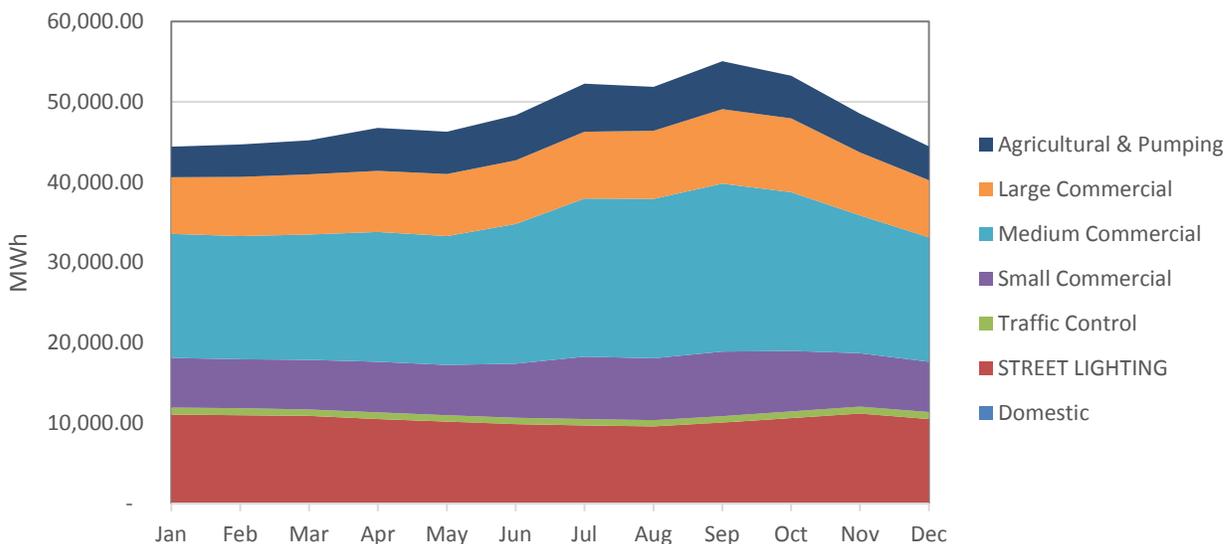
Exhibit 10 shows energy consumption and customer distribution by sector for Phase 1 facilities.

**Exhibit 10  
Phase 1 Load Data by Rate Schedule**



The monthly energy distribution of Phase 1 customers is illustrated in Exhibit 11.

**Exhibit 11**  
**Monthly Energy Use by Rate Class for Total County Facilities**



### ICE Customer Participation Rates

Before customers are served by ICE, they will receive two notices at 60 and 30 days before ICE’s launch that will provide information needed to understand the terms and conditions of service from ICE and explain how customers can opt-out, if desired. Customers that opt-out between the initial switchover date and the close of the post enrollment opt-out period will be responsible for ICE charges for the time they are served by ICE but will not otherwise be subject to any charges for leaving ICE. All customers that do not follow the opt-out process specified in the customer notices will be automatically enrolled into ICE. Customers automatically enrolled will continue to have their electric meters read and billed for electric service by SCE. ICE bills processed by SCE will show separate charges for power supply procured by ICE, all other charges related to delivery of the electricity by SCE and other utility charges that will continue to be assessed.

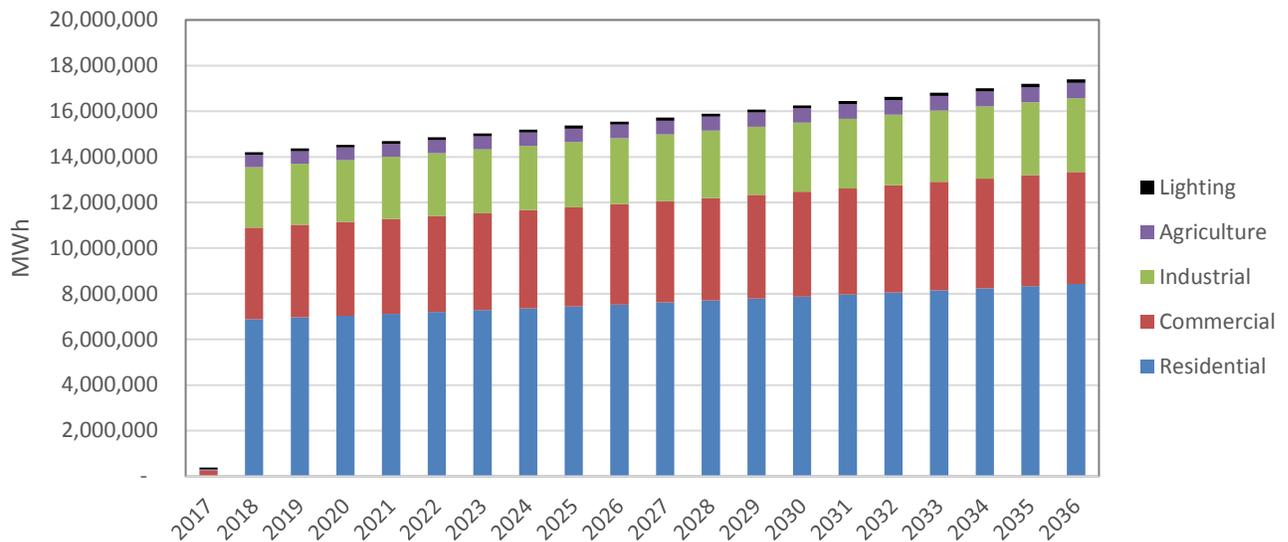
This Plan anticipates an overall customer participation rate of 100 percent during Phase 1, as service is being offered to municipal facilities and selectively recruited private commercial customers. For Phase 2, it is assumed that approximately 75 percent of residential customers and 65 percent of non-residential customers will remain with ICE. These opt-out assumptions are conservative estimates when compared to participation rates in other CCAs. For operating CCAs in California, at least 85 percent of the potential customers have stayed with the CCA.

## Forecast Consumption and Customers

Going forward, projections for customers enrolled in ICE and retail energy consumption have been forecast to increase at 1.13 percent per year. This forecast is based on the mid-case electricity demand forecasts for the SCE planning area, as reported to the California Energy Commission (CEC).<sup>7</sup> Hourly electric consumption and peak demands have been estimated based on SCE’s hourly load profiles for each customer classification.

The forecast of load served by ICE over the next 20 years is shown in Exhibit 12. This exhibit reflects an estimated annual growth of 1.13 percent. The ICE forecast of kWh sales reflects the roll-out and customer enrollment schedule shown above. Annual energy requirements are shown below in Exhibit 13.

**Exhibit 12**  
**Projected Load by Sector**



**Exhibit 13**  
**ICE Projected Annual Energy Requirements**

	2017	2018	2019	2020	2021	2022	2023	2024	2025
Retail Sales (MWh)	386,383	14,207,376	14,367,920	14,530,277	14,694,469	14,860,517	15,028,441	15,198,262	15,370,003
Losses (MWh)	25,103	858,741	868,445	878,258	888,183	898,219	908,369	918,634	929,014
Total Load Requirements (MWh)	411,486	15,066,118	15,236,365	15,408,536	15,582,652	15,758,736	15,936,810	16,116,896	16,299,017

<sup>7</sup> Southern California Edison. *California Energy Demand Forecast, 2015-2025*. July 2015. Sacramento, CA: California Energy Commission.

## Renewable Resource Requirement

In addition to estimating the potential retail loads and customers, current legislation requires that a certain percent of annual retail electric sales be supplied from qualified renewable energy resources.

SBX1 2 passed in April, 2011 established a 33 percent Renewable Portfolio Standard (RPS) requirement by 2020 with certain procurement targets prior to 2020. SBX1 2 also defined three types of renewable categories (or Buckets) that can be used to meet the RPS target.

**Bucket 1** – Renewable resources located in California or out-of-state renewable resources that can meet strict scheduling requirement ensuring deliverability into California. According to SBX1 2 there are no limits on Bucket 1 renewable resources.

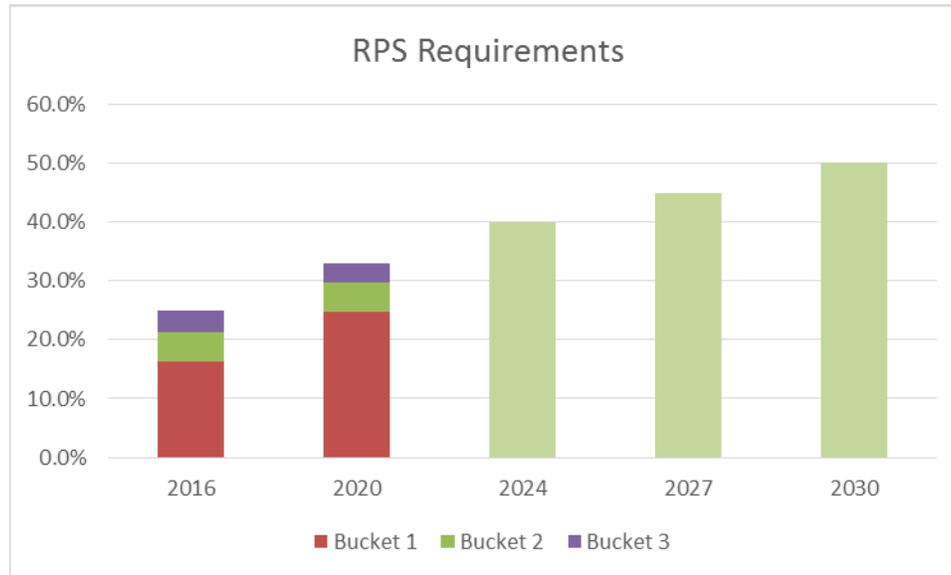
**Bucket 2** – Bucket 2 renewable resources are firmed or shaped renewable resources not necessarily delivered to California, but an equivalent amount of energy is delivered from a different non-renewable resource and then bundled with Renewable Energy Certificates (RECs). Bucket 2 resources are limited to annual maximum of 20 percent of total RPS procurement through 2016 and 15 percent through 2020.

**Bucket 3** – Bucket 3 consists of unbundled Renewable Energy Certificates which are separated from the actual electric energy. Bucket 3 resources are limited to an annual maximum of 15 percent of total RPS procurement through 2016 and 10 percent through 2020.

In addition, SB350 increased the RPS requirement to 50 percent by 2030. At this time, the amount of REC's that can be used to meet the 50 percent RPS requirement has not been finalized.

Exhibit 14 provides an overview of the RPS requirements until 2030.

**Exhibit 14**  
**California RPS Requirements as a Percent of Total Power Supply**



ICE's Plan has been developed assuming ICE will meet a 50 percent RPS target as soon as possible through contracts, distributed generation and local resources.

ICE will exceed SCE's renewable energy percentage from the first day of its operations when it meets its 50 percent goal. ICE will therefore significantly exceed the minimum RPS requirements and significantly exceed the renewable power share provided by SCE.

### **Resource Adequacy Requirements**

In addition to determining the renewable resource requirement, ICE will also need to demonstrate it has sufficient physical power supply capacity to meet its projected peak demand plus a 15 percent planning reserve margin. This requirement is in accordance with resource adequacy regulation administered by the CPUC and the California Energy Commission (CEC).

The CPUC's resource adequacy standards applicable to ICE require a demonstration one year in advance that ICE has secured physical capacity for 90 percent of its projected peak demand for each of the five months May through September, plus a minimum 15 percent reserve margin. On a month-ahead basis, ICE must demonstrate 100 percent of the peak load plus a minimum 15 percent reserve margin.

The Plan's load forecast estimates capacity needs, including resource capacity requirements, to be used for the power supply cost forecasting.

## Power Supply Strategy and Costs

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This section of the Plan provides a discussion of the power supply resource cost forecasts, potential power supply strategies that could be implemented by ICE and provides power supply portfolio pricing based on the loads projected for ICE.

ICE will be charged with developing both short (one and two-year) and long-term (five to twenty years) resource plans. ICE will develop the resource plan under the guidance provided by the Joint Power Agency (JPA), in compliance with California law, and other requirements of California regulatory bodies (CPUC and CEC).

Long-term resource planning includes load forecasting and supply planning on a 10- to 20-year time horizon. ICE's planners will develop Integrated Resource Plans (IRPs) that meet their supply objectives and balance cost, risk, and environmental considerations. Integrated resource planning considers demand side energy efficiency and demand response programs as well as traditional supply options. ICE will require a planning function even if the day-to-day supply operations are contracted to third parties. This will ensure that local preferences regarding the future composition of supply and demand resources are planned for, developed and implemented.

### Resource Strategy

ICE may want to seek to maximize the use of local, cost-effective renewable generation resources in its IRP. The ability to invest capital in power supply and demand-side resources using tax-exempt financing is an important factor in ICE's ability to increase the use of renewable energy while offering rates that are competitive with SCE. Power purchases from renewable and non-renewable resources will supply the remaining majority of the resource mix. ICE's power supply portfolio will be managed by a third party electric supplier, at least during the initial implementation period. Through a power services agreement, the Plan assumes that ICE will obtain full service requirements electricity for its customers, including providing for all electric, ancillary services and the scheduling arrangements necessary to provide delivered electricity.

### Resource Costs

For this Plan, individual resource costs are estimated and other energy providers based on current market condition, recent power supply contracts for renewable energy as well as a review of the applicable regulatory requirements.

### Market Purchases

Natural gas-fired power plants are typically the marginal power supply resource that sets the electricity market price in southern California and elsewhere in the Western Energy Coordinating Council (WECC) footprint. WECC guides power supply resources west of the Rocky Mountains. As the market price of electricity is usually set by the cost of the marginal unit, a wholesale market

price forecast has been developed using a forecast of natural gas prices and the projected relationship between gas prices and electricity prices (also defined as market-implied heat rates or spark spreads). The projected market-implied heat rates reflect the average efficiency of gas-fired power plants in California. Projected heat rates are based on historic market-implied heat rates which are calculated by dividing historic southern California (SP15) wholesale market prices by historic southern California natural gas prices. A natural gas price forecast has been developed based on NYMEX forward gas prices for the Henry Hub trading hub and southern California basis differentials. Projected market heat rates have then been applied to the southern California natural gas price forecast to calculate a wholesale electric market price forecast for southern California.

The following steps have been taken to produce the wholesale electric market price forecast:

1. Forward prices for natural gas at Henry Hub are available through June 2025.
2. The southern California basis differential is used to adjust the Henry Hub forward prices to southern California prices. Southern California forward natural gas prices are equal to NYMEX forward prices (Henry Hub) plus the southern California basis. The southern California basis forward curve is available through December 2020. After December 2020, the monthly southern California basis is assumed to increase at 5 percent.
3. Projected monthly market-implied heat rates are multiplied by forecast southern California natural gas prices to calculate forecast southern California wholesale market prices.
4. Projected heat rates are based on historic heat rates (southern California wholesale electricity prices divided by SoCal natural gas prices).
5. Monthly market-implied heat rates are held constant in all years.
6. Forecast southern California wholesale electric market prices are escalated by a 3.5 percent annual growth rate after June 2025.
7. Forecast southern California wholesale electric market prices are benchmarked against other market price forecasts.

Based on the methodology detailed above, southern California wholesale market prices are projected to escalate annually at an average rate of 3.7 percent over 2017 through 2036.

Exhibit 15 shows the forecast southern California natural gas prices.

**Exhibit 15**  
**Forecast SoCal Natural Gas Price (\$/MMBtu)**

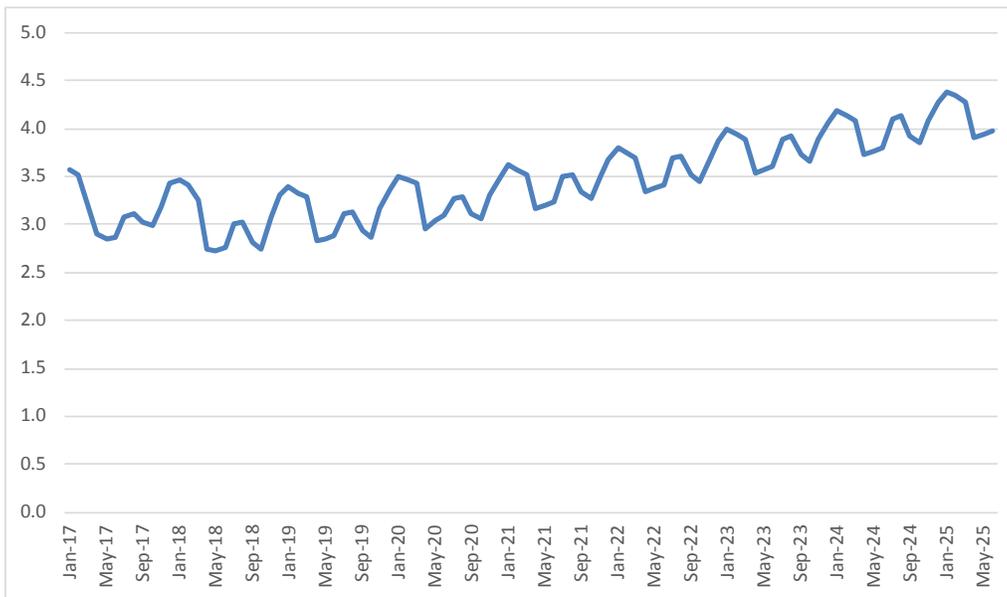
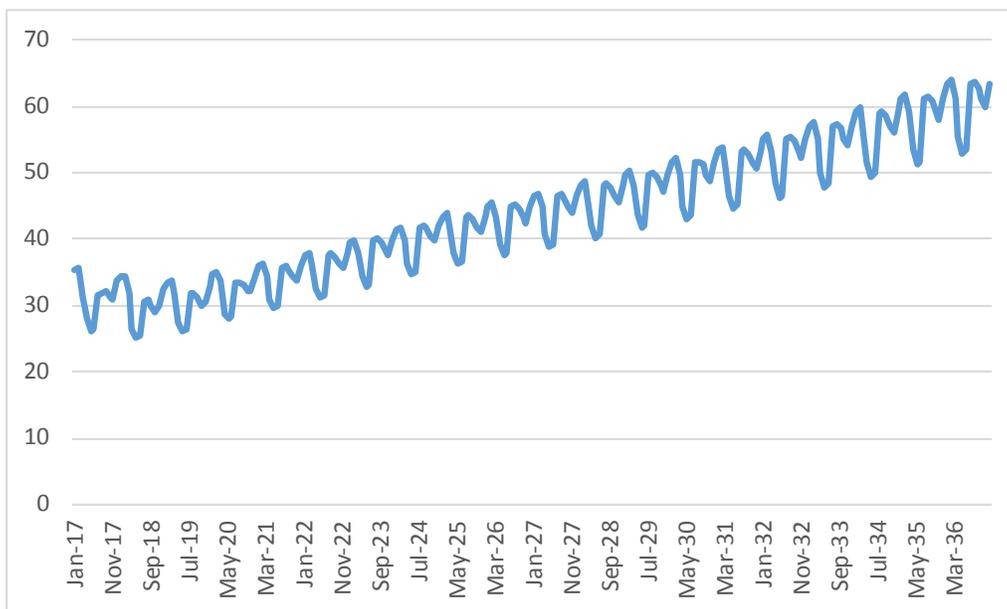


Exhibit 16 shows the resulting monthly southern California wholesale electric market price forecast. The levelized value of market prices over the study period is \$41.6/MWh (2016\$).

**Exhibit 16**  
**Forecast Southern California Wholesale Market Prices (\$/MWh)**



Wholesale power prices have been used to calculate balancing market purchases and sales. When ICE’s loads are greater than its resource capabilities, ICE’s scheduling agent will schedule balancing purchases and ICE will incur balancing market purchase costs. When ICE’s loads are less than its resource capabilities, ICE’s scheduling agent will transact balancing sales and ICE will receive market

sales revenue. Balancing market purchases and sales can be transacted on a monthly, daily and hourly pre-schedule basis.

### **Renewable Energy**

The wholesale market prices shown above are for “brown” power (i.e., this product does not come with any renewable energy credit (REC) attributes). The cost of renewable resources varies greatly. Wind and solar levelized project costs vary from \$35 to \$60/MWh. Geothermal project costs can vary from \$70 to \$100/MWh. The availability of off-shore wind and ocean power in the marketplace is fairly minimal and, as such, these resources were not included in the assessment of renewable energy market prices.

Based on a survey of renewable resources currently in operation and new projects coming on-line, a base case renewable energy market price of \$42/MWh has been determined. Renewable energy prices may increase in the future as the demand for renewable energy increases due to California’s RPS. However, renewable prices are being driven down by solar project costs which have declined sharply over the past few years and are expected to continue to decrease over the next 10 to 20 years. Again, the renewable energy prices have been independently confirmed by current market tenders in southern California.

Projected power costs in this Plan are calculated using the base case renewable energy market price of \$42/MWh. The amount of renewable energy purchased will be assumed to be equal to the RPS requirements in the base case. A higher case of 50 and 100 percent renewable energy will also be considered later in this Plan. In the “100 percent renewables” case the renewable energy market price was increased to \$52/MWh. The \$42/MWh price was based on an assumption that renewable purchases would be served almost exclusively with the output from solar projects. In the “100 percent renewables” case a higher price was assumed in recognition that a more diverse, and therefore more expensive, renewable energy portfolio would be needed. As such, the \$52/MWh is a blend of projected solar, geothermal and wind project costs. This is a conservative assumption as current solar contracts have a market value of \$35 - \$40/MWh.

### **Renewable Energy Credits (RECs)**

As noted earlier, California load serving entities must purchase renewable energy or attributes that meet certain eligibility requirements across three categories or buckets. Each of the buckets represents a different type of renewable energy and can be used to meet a specific percent of the total. The shares of each bucket also changes over time. The three buckets and the type of energy included in each bucket can be summarized as follows:

- Bucket 1: In-state renewable generation
- Bucket 2: Firmed and shaped renewable energy products from a generator that has its first point of interconnection with a California Balancing Authority (such as the CAISO)
- Bucket 3: Energy is not included with the RECs (also known as unbundled RECs)

Under the current guidelines, the amount of RECs procured through Buckets 1 and 2 is limited and decreases over time. Historically, the first bucket has been the most expensive type of energy to purchase and load serving entities were only procuring the minimum they need to meet the RPS requirement. However, with the decrease in solar project costs, Bucket 1 has become relatively less expensive (compared to Buckets 2 and 3).

RECs are not viewed as good for the development of new projects. In addition, the REC market is not as liquid as it once was. For the Plan's base case, unbundled REC prices are assumed to increase from \$10/REC in 2017 to \$20 in 2036 (3.7 percent annual escalation). Due to the decline in solar project costs, the cost of unbundled RECs to meet RPS requirements and wholesale market purchases to meet load are negligible. Due to this shift in market dynamics, Bucket 3 RECs are no longer the least expensive option (as they were historically).

The Plan assumes that ICE will not rely on REC purchases to meet RPS requirements. The REC market can, however, be used to balance RPS requirements with renewable energy acquisitions. If ICE is short of RECs in a given compliance year, RECs could be purchased to meet the requirements. If the CCA is long on RECs in a given compliance year, surplus RECs could be sold.

## Transmission

ICE will pay the CAISO for transmission congestion and ancillary services. Transmission congestion occurs when there is insufficient capacity to meet the demands of all transmission customers. Congestion refers to a shortage of transmission capacity to supply a waiting market, and is marked by systems running at full capacity and still being unable to serve the needs of all customers. The transmission system is not allowed to run above its rated capacities. Congestion is managed by the CAISO by charging congestion charges in the day-ahead market. Congestion charges can be managed through the use of Congestion Revenue Rights (CRR). CRRs are financial instruments made available through a CRR allocation, a CRR auction, and a secondary registration system. CRR holders manage variability in congestion costs. The CCA's congestion charges will depend on the transmission paths used to bring resources to load. As such, the location of generating resources used to serve ICE load will impact these congestion costs.

The Grid Management Charge (GMC) is the vehicle through which the CAISO recovers its administrative and capital costs from the entities that utilize the CAISO's services. ICE's Grid Management Charges are expected to near \$0.5/MWh.

The CAISO performs annual studies to identify the minimum local resource capacity required in each local area to meet established reliability criteria. Load serving entities receive a proportional allocation of the minimum required local resource capacity by transmission access charge area, and submit resource adequacy plans to show that they have procured the necessary capacity. Depending on these results of the annual studies, there may be costs associated with local capacity requirements for ICE.

Because generation is delivered as it is produced and particularly with respect to renewables can be intermittent, deliveries need to be firmed using ancillary services to meet ICE's load

requirements. Ancillary services will need to be purchased from the CAISO. Regulation and operating reserves are described below.

- *Regulation Service:* Regulation service is necessary to provide for the continuous balancing of resources with load and for maintaining scheduled interconnection frequency at 60 cycles per second (60 Hertz). Regulation and frequency response service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generating control equipment) and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load.
- *Operating Reserves - Spinning Reserve Service:* Spinning reserve service is needed to serve load immediately in the event of a system contingency. Spinning reserve service may be provided by generating units that are on-line and loaded at less than maximum output and by non-generation resources capable of providing this service.
- *Operating Reserves – Non-Spinning Reserve Service:* Non-spinning reserve service is available within a short period of time to serve load in the event of a system contingency. Non-spinning reserve service may be provided by generating units that are on-line but not providing power, by quick-start generation or by interruptible load or other non-generation resources capable of providing this service.

Based on a survey of ancillary service costs currently paid by CAISO participants, ICE's ancillary service costs are estimated to be near \$5/MWh. The Plan's base case will assume the CCA's ancillary service costs are \$5/MWh in 2017, escalating by 1.5 percent annually thereafter. Serving a greater percentage of load with renewables will likely result in increased grid congestion and higher ancillary service costs. For this reason, the ancillary service costs have been increased in the 50 percent and 100 percent renewables cases included in this Plan. For the 50 percent renewables case, ancillary service costs are assumed to be \$5.5/MWh in 2017, escalating by 1 percent. For the 100 percent renewables case, ancillary service costs are assumed to be \$8/MWh in 2017, escalating by 2.5 percent.

## **Power Management/Scheduling Agent**

Given the likely complexity of ICE's resource portfolio, ICE will want to rely on a reputable scheduling agent to economically manage ICE's power purchases and wholesale market transactions. ICE's resource portfolio will ultimately include market purchases, shares of some relatively large power supply projects, as well as shares of smaller, most likely renewable, resources with intermittent output. Managing a diverse resource portfolio with metered loads that will be heavily influenced by distributed generation will be one of the most important functions of ICE. As such, ICE needs a dependable, established scheduling agent with a proven track record in the industry. ICE's scheduling agent will be one of its most important business partners.

ICE should initially contract with a third party with the necessary experience (and balance sheet) to perform most of ICE's portfolio operation requirements. This will include the procurement of

energy and ancillary services, scheduling coordinator services, and day-ahead and real-time trading. Portfolio operations encompass the activities necessary for wholesale procurement of electricity to serve end use customers. These activities include the following:

- *Electricity Procurement* – assemble a portfolio of electricity resources to supply the electric needs of ICE customers.
- *Risk Management* – standard industry risk management techniques will be employed to reduce exposure to the volatility of energy markets and insulate customer rates from sudden changes in wholesale market prices.
- *Load Forecasting* – develop accurate load forecasts, both long term for resource planning, and short-term for the electricity purchases and sales needed to maintain a balance between hourly resources and loads.
- *Scheduling Coordination* – scheduling and settling electric supply transactions with the CAISO.

ICE should approve and adopt a set of protocols that will serve as the risk management tools for ICE and any third party involved in ICE portfolio operations. Protocols will define risk management policies and procedures, and a process for ensuring compliance throughout the organization. During the initial start-up period, the chosen full requirements electric suppliers will bear the majority of risks and be responsible for their management. Development of protocols can take place during the first few months of ICE operations to cover electricity procurement activities.

A scheduling agent provides day-ahead and real-time power and transmission scheduling services. Scheduling agents bear the responsibility for accurate and timely load forecasting and resource scheduling including wholesale power purchases and sales required to maintain hourly load/resource balances. A scheduling agent needs to provide the marketing expertise and analytical tools required to optimally dispatch ICE’s surplus resources on a monthly, daily and hourly basis.

Inside each hour, the CAISO Energy Imbalance Market (EIM) takes over load/resource balancing duties. The EIM automatically balances loads and resources every fifteen minutes and dispatches least-cost resources every 5-minutes. The EIM allows balancing authorities to share reserves, and more reliably and efficiently integrate renewable resources across a larger geographic region.

Within a given hour, metered energy (i.e. actual usage) may differ from supplied power due to hourly variations in resource output or unexpected load deviations. Deviations between metered energy and supplied power are accounted for by the EIM. The imbalance market is used to resolve imbalances between supply and demand. The EIM deals only with energy, not ancillary services or reserves (which are addressed in the next section).

The EIM optimally dispatches participating resources to maintain load/resource balance in real-time. The EIM uses the CAISO’s real-time market which uses Security Constrained Economic Dispatch (SCED). SCED finds the lowest cost generation to serve the load taking into account operational constraints such as limits on generators or transmission facilities. The five-minute market automatically procures generation needed to meet future imbalances. The purpose of the

five-minute market is to meet the very short term load forecast. Dispatch instructions are effectuated through the Automated Dispatch System (ADS).

The CAISO is the market operator, and runs and settles EIM transactions. ICE's scheduling agent will submit ICE's load and resource information to the market operator. EIM processes are running continuously for every fifteen-minute and five-minute intervals, producing dispatch instructions and prices.

Participating resource scheduling coordinators submit energy bids to let the market operator know that they are available to participate in the real-time market to help resolve energy imbalances. Resource schedulers may also submit an energy bid to declare that resources will increase or decrease generation if a certain price is struck. An energy bid is comprised of a megawatt value and a price. For every increase in megawatt level, the settlement price also increases.

The CAISO calculates financial settlements based on the difference between schedules and actual meter data, and bid prices during each hour. Locational Marginal Prices (LMP) are used in settlement calculations. The LMP is the price of a unit of energy at a particular location at a given time. LMPs are influenced by nearby generation, load level, and transmission constraints and losses.

ICE's scheduling agent will need to forecast ICE's hourly loads as well as ICE's hourly resources including shares of any hydro, wind, solar and other resources in which ICE is a participant/purchaser. Forecasting the output of hydro, wind and solar projects involves more variables than forecasting loads. Scheduling agents already have models set up to forecast accurately hourly hydro, wind and solar generation. Accurate load and resource forecasting will be a key element in assuring ICE's power supply costs are minimized.

A scheduling agent also needs to provide monthly checkout and after-the-fact reconciliation services. This requires scheduling agents to agree on the amount of energy purchased and/or sold and the purchase costs and/or sales revenue associated with each counterparty with which ICE transacted in a given month.

Based on conversations with scheduling agents currently working the CAISO footprint, the estimated cost of scheduling services is in the \$1 to \$2/MWh range. For the base case, the Plan has assumed a cost of \$1.5/MWh, escalating at 2.5 percent annually.

## **Resource Portfolios**

In order to develop pricing options for ICE customers and evaluate the impact of varying levels of renewable resources in ICE's portfolios, three resource portfolios were developed: RPS Portfolio, 50 percent renewable portfolio and 100 percent renewable portfolio.

## Resource Options

For each of the resource portfolios, a combination of resources has been assumed in order to meet the renewable energy target, resource adequacy targets, and ancillary and balancing requirements.

Exhibit 17 shows the 20-year levelized resource costs included in this Plan.

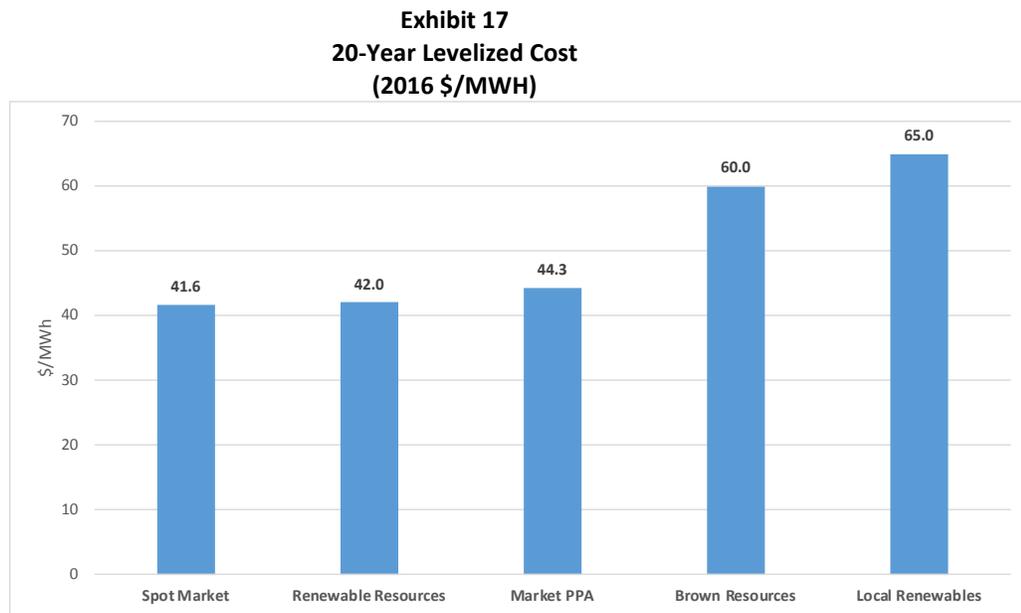


Exhibit 17 above includes both spot market and market PPA costs. It is assumed that these costs are primarily for natural gas resources although the specific resource source cannot be determined from a spot market purchase. Market PPA costs are greater than spot market costs in recognition of the cost of the PPA supplier absorbing the market price risk associated with providing a long-term PPA contract price.

The capacity factor for market PPA purchases is assumed to be 100 percent (flat monthly blocks of power). The average monthly capacity factor for renewable resources and local renewables is assumed to be 33 percent. The capacity factor for non-renewable resources is assumed to be 80 percent. As noted above, the cost of renewable resources was increased from \$42/MWh to \$52/MWh in the 100 percent renewables case in recognition of the need for a more diverse mix of renewable resources. Again, this higher price may be mitigated if large solar projects continue to be pursued in California.

As shown above, the base case 20-year levelized cost of renewable resources is comparable to the 20-year levelized cost of market purchases. The cost of solar projects has declined significantly over the past few years. The \$42/MWh projection is based on the cost of relatively new solar projects that reflect the decreased costs, on a \$/watt basis, of solar projects and the extension of the Federal production tax credit. The \$/watt is expected to continue to decrease in future years. As such, the cost of the output of solar projects is expected to continue to decrease.

On a \$/watt basis, the cost of smaller scale solar projects is greater than the cost of large scale solar projects. The \$65/MWh cost associated with local renewables reflects this trend. The advantage of local renewable projects is lower transmission costs and less stress on the congested transmission grid.

A more detailed description of each ICE power supply portfolio option follows.

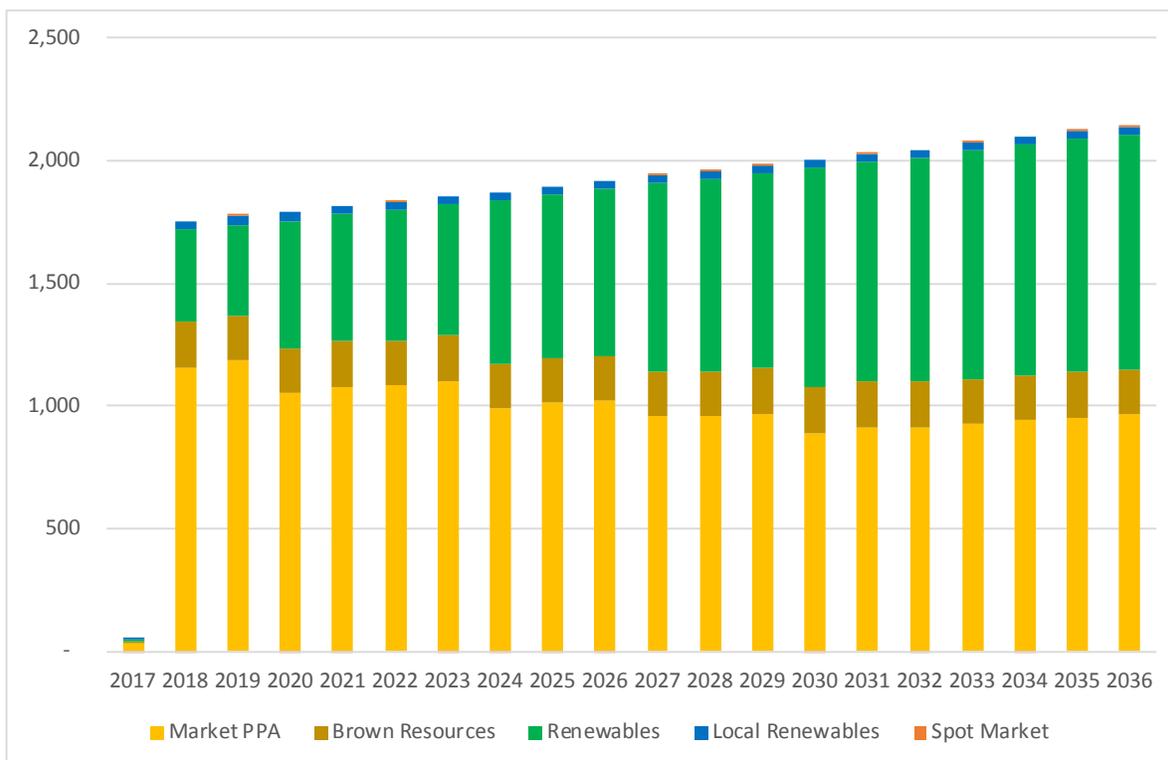
**Portfolio 1: Meet Current RPS Requirements (Baseline Portfolio, similar to current SCE resource mix)**

In the first portfolio, ICE will meet the State RPS requirements shown below:

- 2017-19: 25 percent
- 2020-23: 33 percent
- 2024-26: 40 percent
- 2027-29: 45 percent
- 2030 - 50 percent

As shown above, due to the decrease in the cost of solar projects, the projected cost of renewables is comparable to the cost of market power and less than the cost of greenfield brown resources (e.g. natural gas fired generation). Exhibit 18 shows the power supply portfolio used to serve load in Portfolio 1.

**Exhibit 18  
Portfolio 1: Meet RPS Requirements (aMW)**

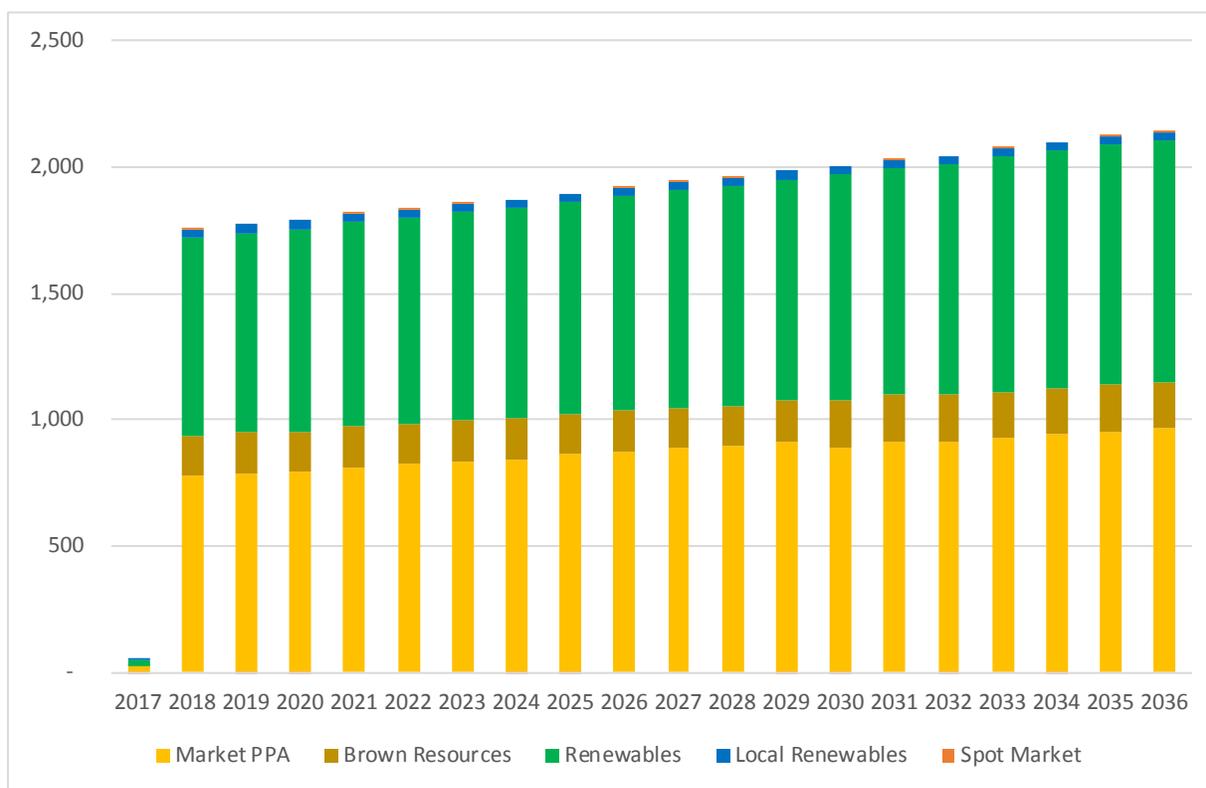


The green bars increase each year along with California’s RPS requirements. The costs associated with this portfolio could be reduced if it was assumed that more power was purchased from market PPAs instead of brown resources. The percent of non-renewable energy purchased via market PPAs, as opposed to brown resources, is the same in each of the three portfolios.

**Portfolio 2: Serve 50% of Retail Load with Renewables Starting on Day 1**

In this portfolio, the 50 percent renewable energy purchase requirement in the RPS is effectively moved up from 2030 to January 1, 2017. Beginning in 2018, the amount of power purchased from the relatively expensive (\$65/MWh 20-year levelized cost) local renewables is held constant at 100 MW with an average monthly capacity factor of 33 percent in each of the three portfolios. As shown below in Exhibit 19 the green bars showing renewable energy purchases in 2017 through 2029 increased compared to those shown above in Exhibit 18.

**Exhibit 19**  
**Portfolio 2: Serve 50% of Retail Load with Renewables (aMW)**



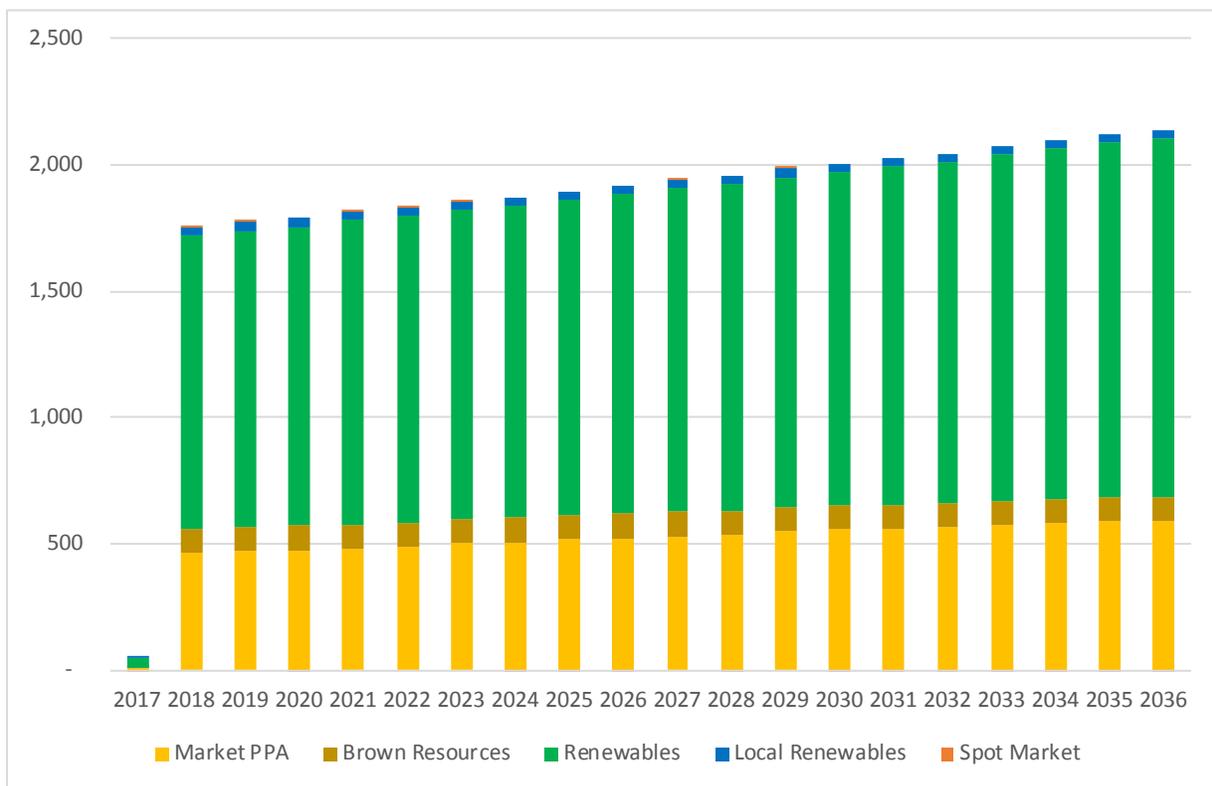
The percentage of non-renewable energy purchased from the more expensive brown resources is approximately the same as Portfolio 1. In all three portfolios, approximately 15 percent of non-renewable energy is purchased from brown resources, which has a base case 20-year levelized cost of \$60/MWh. In all three portfolios, 85 percent of non-renewable energy is purchased at the lower \$44.3/MWh levelized cost associated with market PPA purchases.

**Portfolio 3: Serve 100% of Retail Load with Renewables Starting on Day 1**

In this portfolio retail loads are served entirely with renewable energy purchases. As in Portfolios 1 and 2, it is assumed that 100 MW of capacity from local renewable energy projects is available beginning in 2018. Exhibit 20 below shows the resource mix used to serve load in Portfolio 3.

The renewable energy requirements in the State’s RPS are based on retail energy sales. To be consistent, it was assumed that the 100 percent renewable energy target would only apply to retail energy sales. The same concept applies to Portfolios 1 and 2. For example, renewable energy purchases in Portfolio 2 are equal to 50 percent of projected retail energy sales in all years.

**Exhibit 20**  
**Portfolio 3: Serve 100% of Retail Load with Renewables (aMW)**



There is a significant amount of market PPA and brown resource power included in Portfolio 3 due to the mismatch between seasonal solar generation and seasonal loads. Solar generation is relatively low in winter months and peaks during summer months. Loads are also lower in the winter and higher in the summer. However, beginning in March solar generation ramps up faster than loads. This could put utilities in a position of having to find a market for relatively large amounts of surplus energy during the months of March through June when market prices are typically the lowest. Many utilities and generators will likely be surplus in the spring because of the mismatch between seasonal solar generation and loads in the spring. In addition, utilities and generators located in the Northwest also have surplus energy in the spring due to increased

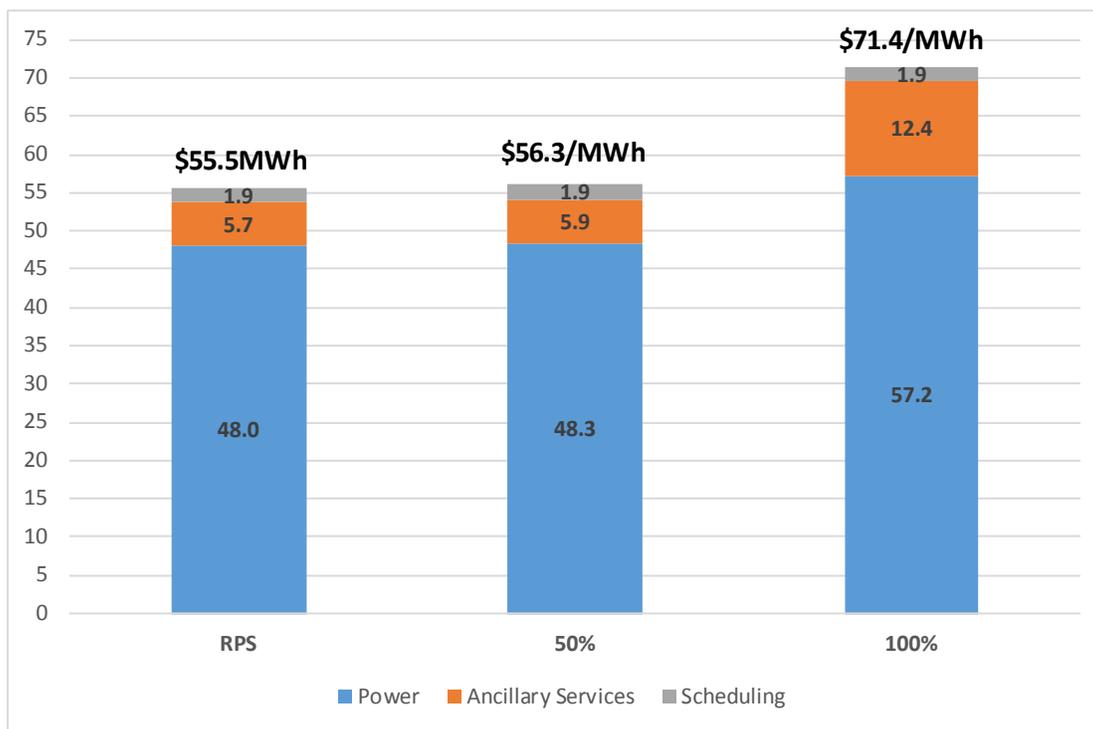
hydroelectric generation (due to melting snow) and wind. Non-renewable resources are included in Portfolio 3 in order to reduce ICE’s exposure to low market prices during periods in which there is an abundance of surplus energy available in the region.

Non-renewable resources are needed in Portfolio 3 to serve load during hours when renewable resources are not capable of generating power (e.g., when the wind is not blowing or the sun is not shining). Purchasing large amounts of renewable generation, as in Portfolio 3, will likely result in over-supply in on-peak hours when solar projects are generating power and under-supply in off-peak hours when solar projects are not generating. As such, during some periods, on-peak energy may need to be exchanged for off-peak energy. The cost of exchanging or firming some of the solar generation into off-peak blocks of energy is reflected in higher ancillary service costs in Portfolio 3.

**20-Year Levelized Portfolio Costs**

The 20-year levelized costs have been calculated based on the base case assumptions detailed above regarding resource costs and resource compositions under the three portfolios. Exhibit 21 shows a breakdown of power, ancillary service and scheduling costs associated with each portfolio.

**Exhibit 21**  
**20-year Levelized Base Case Portfolio Costs (\$/MWh)**



As shown above Portfolio 1 and 2 power costs are fairly similar. There is not a large variance in power costs in these two portfolios because the majority of power is supplied by market PPA and renewable energy purchases in each portfolio. The projected costs of renewable energy and market PPA purchases are very close. Exhibit 23 shows that the projected 20-year levelized cost of renewables is \$42/MWh while the projected 20-year levelized cost of market PPA purchases is

\$44.3/MWh. While the 20-year levelized cost of market PPA purchases is greater than the 20-year levelized cost of renewables, market PPA purchase prices are assumed to escalate from \$31/MWh in 2017 to \$47/MWh in 2029. Portfolios 1 and 2 are identical beginning in 2030 when the RPS increases to 50 percent. Portfolio 1 has a lower 20-year levelized cost because the cost of PPA market purchases is less than the cost renewables in 2017 through 2029.

Total costs under Portfolio 3 are approximately \$15/MWh greater than Portfolios 1 and 2. The costs of renewables have been assumed to be \$10/MWh greater in Portfolio 3 than in Portfolios 1 and 2 in recognition of the need for a more diverse mix of renewable resources. This translates into greater power costs (the blue bar) for Portfolio 3.

Each portfolio assumes that 15 percent of non-renewable energy is purchased from brown, natural gas-fired resources with a projected 20-year levelized cost of \$60/MWh. However, since more non-renewable energy is purchased in Portfolio 1 it has the highest percentage of brown resource purchases. In Portfolio 1, 10 percent of power purchases are brown resource purchases, compared to 9 percent in Portfolio 2 and 5 percent in Portfolio 3.

## ICE Cost of Service

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This section of the Plan describes the financial pro forma analysis and cost of service for ICE. It includes estimates of start-up costs, staffing and administrative costs, consultant costs, power supply costs, and SCE charges. In addition, it provides an estimate of start-up working capital and longer-term financial needs. The analysis and assumptions are first described for the TRICOG scenario. The financial impacts of three separate COGs are next described. The cost of a turnkey operation is detailed at the end of this section.

### Cost of Service for ICE Base Case Operations

The first category of the pro forma analysis is the cost of service for ICE operations. To estimate the overall costs associated with ICE operations, the following components have been included:

- Power Supply Costs
- Non-Power Supply Costs
  - Start-up costs
  - ICE staffing and administration costs
  - Consulting Support
  - SCE and regulatory charges
  - Financing costs
- Pass-Through Charges from SCE
  - Transmission and distribution charges
  - Power Cost Indifference Adjustment (PCIA) Charge
  - Other non-bypassable charges

Once the costs of ICE operations have been determined, the total costs can be compared to SCE's projected rates.

### Power Supply Costs

A key element of the cost of service analysis is the assumption that electricity will be procured under a power purchase arrangement (PPA) for both renewable and non-renewable power until local ICE resources can be developed. Power supply must be obtained by ICE's procurement contractor prior to commencing operations. The products required from the third party procurement are energy, capacity, renewable energy, load forecasting and scheduling coordination.

The calculated starting cost of electric power supply, including the cost of the scheduling coordinator and all regulatory power requirements, is between \$45 and \$65 per MWh. This price

represents the price needed for a full requirements, load following electricity contract. The variation in price is a function of the desired level of renewable resources.

## Non-Power Supply Costs

While power supply costs make up the majority of costs associated with operating ICE (roughly 80 percent), there are several additional cost components that must be considered in the pro forma financial analysis. These additional non-power supply costs are noted below.

### Startup Activities and Costs

Monthly costs associated with ICE start-up and phasing of customer enrollments include expenditures for program staff/contract staff, associated infrastructure, contractor costs and fees payable to SCE by ICE. The estimated startup costs include capital expenditures and one-time expenses as well as ongoing expenses that will be accrued before significant revenues from ICE operations are realized. These cost components are quantified in Exhibit 22 and Exhibit 23 below.

Exhibit 22 Monthly Start-Up Cost Summary (TRICOG)						
	Pre-Start					
	January	February	March	April	May	June
<b>Start-Up Costs</b>						
Infrastructure	\$0	\$0	\$0	\$0	\$55,000	\$35,000
Consultants	\$70,000	\$100,000	\$100,000	\$100,000	\$125,000	\$125,000
Staffing	\$0	\$0	\$0	\$0	\$57,500	\$77,500
Utility Trans. Fee	\$0	\$0	\$780	\$0	\$94,262	\$104,511
<b>Total Start-Up</b>	<b>\$70,000</b>	<b>\$100,000</b>	<b>\$100,780</b>	<b>\$100,000</b>	<b>\$331,762</b>	<b>\$342,011</b>

Exhibit 23 Start-Up Costs Summarized by Phase (TRICOG)			
		Phase 1	Phase 2
	Total Pre-Start Costs	2017	2018
<b>Start-Up Costs</b>			
Infrastructure	\$90,000	\$260,000	\$350,000
Consultants (incl. Data Manager)	\$620,000	\$1,321,101	\$15,724,632
Staffing	\$135,000	\$1,455,000	\$3,732,500
Utility Trans. Fee	\$199,553	\$3,520,706	\$8,246,376
<b>Total Start-Up</b>	<b>\$1,044,553</b>	<b>\$6,556,807</b>	<b>\$28,053,508</b>

Other costs related to starting up ICE's program will be the responsibility of ICE's contractors. These include capital requirements paid by others, customer information system costs, electronic data exchange system costs, call center costs, and billing administration/settlements systems costs. The costs payable by ICE are contained in Exhibit 23.

## Estimated Staffing Costs

Staffing is a key component of the start-up. Staff will be added incrementally to match workloads involved in forming ICE, managing contracts, and initiating customer outreach/marketing during the pre-operations period.

Exhibit 24 provides the estimated staffing budgets for the startup period (Phase 1 and Phase 2 of ICE implementation). Staffing budgets include direct salaries and benefits. For start-up, we assume an operating team will be employed prior to the board's selection of an Executive Director, per the example of other CCAs in California thus far. This operating team includes one assistant Executive Director and one manager of policy and regulatory affairs and one administrative assistant. The remaining functions will be performed by consultants. Exhibit 24 details the anticipated staffing of ICE.

Exhibit 24 Staffing Plan (TRICOG)			
Number of Staff	Pre Start-Up	2017	2018
Executive Director	0	1	1
Assistant Executive Director	1	1	1
Policy & Regulatory Manager	1	1	1
Regulatory Analyst	0	1	1
Administrative Assistant	1	1	2
Finance & Rates Manager	0	1	1
Rates Analyst	0	1	1
Accounting & Billing Analyst	0	1	2
Human Resources Manager	0	1	1
HR Specialist	0	1	1
Sales & Marketing Manager	0	1	1
Energy Efficiency Program Manager	0	0	1
Account Representatives	0	2	2
Communication Specialists	0	1	2
IT Manager	0	1	1
IT Specialist	0	0	1
<b>Total Number of Employees</b>	<b>2</b>	<b>15</b>	<b>20</b>
<b>Total Staffing Costs</b>	<b>\$135,000*</b>	<b>\$1,455,000*</b>	<b>\$3,732,500</b>

\*Represents only partial year.

Based on this staffing plan, ICE will initially employ 3 staff members. Once ICE has expanded its service area and operated for one year or so, it is anticipated that staffing will increase to approximately 20 employees. These positions to be hired by ICE over the first two years are described below:

### *Executive Director*

The Executive Director will be responsible for overseeing ICE operation and ensuring that the vision of the JPA Board is followed. The Executive Director will ultimately be responsible for all ICE programs, finances and communication programs plus be accountable to the Board.

#### *Assistant Executive Director*

The Assistant Executive Director will oversee the day to day operation of ICE. In particular, this staff position will work closely with outside consultants, and oversee hedging and power procurement, resource portfolio strategy, CAISO settlements and other financial planning and rate setting analysis. Behind the meter ICE programs will also be coordinated through this position.

#### *Policy and Regulatory Manager*

The Policy and Regulatory Manager will oversee the legal and regulatory functions of ICE. This position will work closely with the CPUC and State/Federal legislators. ICE will require ongoing regulatory representation to file resource plans, resource adequacy compliance, compliance with California RPS, and overall representation on issues that will impact ICE and its customers. ICE should plan on maintaining an active role at the CPUC, CEC, FERC and the California legislature.

#### *Finance and Rates Manager*

The Finance and Rates Manager oversees ICE's budgets and accounting functions. In addition, this person will develop annual budgets, rates and credit policies for approval by the Board. Managing the overall financial aspects of ICE is expected to be a significant work activity.

#### *Sales and Marketing Manager*

The Sales and Marketing Manager is responsible for the enrollment and notification of new customers. In addition, this staff person will market ICE, and provide on-going communication with ICE's communities and customers. A significant amount of customer service and key account representation will be necessary in addition to regular marketing services. This position will be the point person for the outsourced data management and customer service consultants.

#### *Administrative Assistant*

The staffing plan assumes a full-time administrative assistant will be added during the pilot phase to provide administrative assistance to management.

#### *Future Staff*

As additional customers join ICE, duties can be shifted from third-party consultants to in-house staff if internal staffing is more cost effective.

### **Estimated Infrastructure Costs**

Infrastructure or overhead needed to support the organization includes computers and other equipment, office furnishings, office space and utilities. These expenses are estimated at \$90,000 during program pre-startup. Office space and utilities are ongoing monthly expenses that will begin to accrue before revenues from program operations commence and are therefore assumed to be financed as shown in Exhibit 25 and Exhibit 26.

<b>Exhibit 25</b>						
<b>Monthly Estimated Infrastructure Costs (TRICOG)</b>						
	<b>Pre-Start</b>					
	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>
<b>Infrastructure Costs</b>						
Computers	\$0	\$0	\$0	\$0	\$15,000	\$5,000
Furnishings	\$0	\$0	\$0	\$0	\$15,000	\$5,000
Office Space	\$0	\$0	\$0	\$0	\$15,000	\$15,000
Utilities/Other						
Office Supplies	\$0	\$0	\$0	\$0	\$10,000	\$10,000
<b>Total Start-Up</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$55,000</b>	<b>\$35,000</b>

<b>Exhibit 26</b>			
<b>Estimated Infrastructure Cost by Phase (TRICOG)</b>			
		<b>Phase 1</b>	<b>Phase 2</b>
	<b>Total Pre-Start Costs</b>	<b>2017</b>	<b>2018</b>
<b>Infrastructure Costs</b>			
Computers	\$20,000	\$55,000	\$25,000
Furnishings	\$20,000	\$55,000	\$25,000
Office Space	\$30,000	\$90,000	\$180,000
Utilities/Other Office Supplies	\$20,000	\$60,000	\$120,000
<b>Total Infrastructure Costs</b>	<b>\$90,000</b>	<b>\$260,000</b>	<b>\$350,000</b>

It is estimated that the per employee start-up cost is approximately \$10,000. This expense covers computer and furniture needs. An additional annual expense of \$180,000 for office space, and approximately \$120,000 per year in office supplies and utilities costs is expected. In addition, it is assumed that computers will need to be replaced every 5 years.

## Utility Implementation and Transaction Charges

The estimated costs payable to SCE for services related to ICE start-up include costs associated with initiating service with SCE, processing of customer opt-out notices, customer enrollment, post enrollment opt-out processing, and billing fees. These distribution utilities fees are explicitly stated in the relevant SCE tariffs.

Customers who establish service with ICE will be automatically enrolled in the program and have sixty days from the date of enrollment to customer opt-out of the program. Such customers will be provided with two opt-out notices within this sixty-day post enrollment period. The first notice will be mailed to customers approximately sixty days prior to the date of automatic enrollment. A second notice will be sent approximately thirty days later. Following automatic enrollment, two additional opt-out notices will be provided within the sixty-day period following customer

enrollment. It is estimated that the enrollment charges will be approximately \$3.6 million for 2017 and \$3.5 million for 2018, as shown in Exhibit 27 and Exhibit 28.

<b>Exhibit 27</b>						
<b>Monthly Utility Transaction Fees (TRICOG)</b>						
	<b>Pre-Start</b>					
	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>
Enrollment Charges	0	0	780	0	94,262	104,511
Ongoing Charges	0	0	0	0	0	0
<b>Total SCE Transaction Fee</b>	<b>\$0</b>	<b>\$0</b>	<b>\$780</b>	<b>\$0</b>	<b>\$94,262</b>	<b>\$104,511</b>

<b>Exhibit 28</b>			
<b>Utility Transaction Fees by Phase (TRICOG)</b>			
		<b>Phase 1</b>	<b>Phase 2</b>
	<b>Total Pre-Start Costs</b>	<b>2017</b>	<b>2018</b>
Enrollment Charges	199,553	3,384,363	3,518,269
Ongoing Charges	0	136,343	4,728,107
<b>Total SCE Transaction Fees</b>	<b>199,553</b>	<b>3,520,706</b>	<b>8,246,376</b>

### Estimates of Third Party Contractor Costs

Contractor costs include outside assistance for advertising, legal services, resource and financial planning, implementation support, customer enrollment, customer service, and payment processing/accounts receivable and verification. The latter three will be provided by ICE's customer account services provider, and these preliminary estimates will be refined as the services and costs provided by the selected contractor are negotiated. Exhibit 29 and Exhibit 30 show the estimated contractor costs during the startup period.

<b>Exhibit 29</b>						
<b>Monthly Estimated Consultant Costs (TRICOG)</b>						
	<b>Pre-Start</b>					
	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>
Legal/Regulatory	\$20,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Communication	\$0	\$0	\$0	\$0	\$25,000	\$25,000
Data Management	\$0	\$0	\$0	\$0	\$0	\$0
Financial Consulting	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
<b>Total Consultant Costs</b>	<b>\$70,000</b>	<b>\$100,000</b>	<b>\$100,000</b>	<b>\$100,000</b>	<b>\$125,000</b>	<b>\$125,000</b>

<b>Exhibit 30</b>			
<b>Estimated Consultant Costs by Phase (TRICOG)</b>			
		<b>Phase 1</b>	<b>Phase 2</b>
	<b>Total Pre-Start Costs</b>	<b>2017</b>	<b>2018</b>
Legal/Regulatory	\$270,000	\$300,000	\$480,000
Communication	\$50,000	\$150,000	\$300,000
Data Management	\$0	\$581,101	\$14,414,632
Financial Consulting	\$300,000	\$290,000	\$530,000
<b>Total Consultant Costs</b>	<b>\$620,000</b>	<b>\$1,321,101</b>	<b>\$15,724,632</b>

The estimate for each of the services is based on costs experienced by other CCAs. Consultant costs are increased by inflation every year.

## Cash Flow Analysis and Working Capital

This cash flow analysis estimates the level of working capital that will be required until full operation of ICE is achieved. For the purposes of this analysis, it is assumed that ICE pre-operations begin in January 2017 and continue through June 2017. In general, the components of the cash flow analysis can be summarized into two distinct categories: (1) Cost of ICE operations, and (2) Revenues from ICE operations. The cash flow analysis identifies and provides monthly estimates for each of these two categories. A key aspect of the cash flow analysis is to focus primarily on the monthly costs and revenues associated with ICE and specifically account for the transition or “Phase-In” of ICE customers. The cash flow analysis assumes the phase-In schedule for ICE as described previously.

The cash flow analysis also provides estimates for revenues generated from ICE operations or from electricity sales to customers. In determining the level of revenues, the cash flow analysis assumes the customer phase-in schedule noted above, and assumes that ICE provides a discount of 3.7 percent from the existing rates for each customer class, where pre-operations run from January 1, 2017 to June 31, 2017. Thereafter, Phase 1 starts in July 2017.

The results of the cash flow analysis provide an estimate of the level of working capital required for ICE to move through the pre-operations period. This estimated level of working capital is determined by examining the monthly cumulative net cash flows (revenues minus cost of operations) based on assumptions for payment of costs by ICE, along with an assumption for when customer payments will be received. The cash flow analysis assumes that customers will make payments within 60 days of the service month, and that ICE will make payments to suppliers within 30 days of the service month. This analysis is somewhat conservative because customer payments begin to come in soon after the bill is issued, and most are received before the due date. At the same time, some customer payments are received well after the due date. The 30-day net lag is a conservative assumption for cash flow purposes.

For purposes of determining working capital requirements related to power purchases, ICE will be responsible for providing the working capital needed to support electricity procurement unless the electricity provider can provide the working capital as part of the contract services. In addition, ICE will be obligated to meet working capital requirements related to program management. For this Plan, it is assumed that this working capital requirement is included in the short term financing associated with start-up funding.

A summary of working capital needs is presented below on Exhibit 31.

<b>Exhibit 31</b>		
<b>Working Capital Needs (TRICOG)</b>		
	<b>2017</b>	<b>2018</b>
Working Capital (TRICOG)	\$12 Million	\$150 Million

## Total Financing Requirements

The start-up of the ICE program will require a significant amount of capital for three major functions: (1) staffing and contractor costs; (2) program initiation; and (3) working capital. Each of these anticipated requirements is discussed below.

Staffing costs for the pre-implementation period (January 2017 through June 2017) are estimated to be approximately \$135,000. Contractor costs for the same time period are estimated to be approximately \$620,000. These costs include: advertising/communications, consulting, legal, and data management.

ICE initiation costs include the infrastructure that ICE will require (office space, utilities, computers) as well as the distribution utility fees for initiating ICE. Infrastructure costs are estimated to be approximately \$90,000 and the distribution utility fees are estimated to be approximately \$199,553.

The Public Utilities Code requires demonstration of insurance or posting of a bond sufficient to cover reentry fees imposed on customers that are involuntarily returned to SCE service under certain circumstances. In addition, SCE requires a bond equivalent to two months of transaction fees.

For the TRICOG scenario, the total financing requirement, including working capital, during the start-up and pilot periods, are estimated to be approximately \$20 million, increasing to approximately \$175 million following full enrollment. The first \$20 million is needed in Spring 2017.

## Financing Plan

The initial start-up funding will be provided via short-term financing. ICE will recover the principal and interest costs associated with the start-up funding via subsequent retail rates. It is anticipated that the start-up costs will be fully recovered within the first five years of ICE operations.

The anticipated start-up and working capital requirements for ICE through Phase 1 are approximately \$20 million. Once ICE program is up and running, these costs would be recovered through retail rates. Actual recovery of these costs will be dependent on third-party electricity purchase prices and decisions regarding initial rates for Phase 1 customers.

Additional financing will be needed at the beginning of Phase 2. Depending on market conditions and payment terms established with the third-party suppliers, the loan may need to be increased to approximately \$175 million for the start of Phase 2. This number will be refined as the ICE program becomes operational, and bids are received from power providers.

Based on recent information regarding financing options for CCA's, the Plan's financial analysis assumes that ICE can obtain a loan for the first \$20 million with a term of 5 years at a rate of 5.5 percent. The second loan for \$175 million is assumed for a 20-year term at 5.5 percent.

The detail of the base case financial analysis is provided in Appendix B.

## Cost of Service for Three CCA Operations

There are several options for how to setup and organize a CCA. In addition to forming one CCA as outlined as the base case in the Plan, three CCAs (one for each COG) is an option. This option would entail each of the three COGs providing a full service CCA including power procurement, data management and local program development/outreach.

In order to develop this three CCA scenario, each major cost component has been reviewed to determine the appropriate cost structure for each individual CCA based on the size of load. Power procurement, SCE charges and data management costs follow load and number of customers in each CCA. However, the internal costs (staffing, office space, consulting) are about the same for a 100,000-meter utility, and a 1,000,000-meter utility.

### “Three Separate CCA” Assumptions

It is anticipated that if the three COG’s operate separately, staffing would be fairly similar to the TRICOG scenario for each of the CCA’s. Exhibit 32 provides the estimated staffing and annual cost under the separate CCA scenario.

Exhibit 32 Staffing Plan (Three CCAs)			
Number of Staff	CVAG	SANBAG	WRCOG
Executive Director	1	1	1
Assistant Executive Director	1	1	1
Policy & Regulatory Manager	1	1	1
Regulatory Analyst	1	1	1
Administrative Assistant	2	2	2
Finance & Rates Manager	1	1	1
Rates Analyst	1	1	1
Accounting & Billing Analyst	2	2	2
Human Resources Manager	0	1	1
HR Specialist	1	1	1
Sales & Marketing Manager	1	1	1
Energy Efficiency Program Manager	1	1	1
Account Representatives	1	2	2
Communication Specialists	0	2	0
IT Manager	1	1	1
IT Specialist	0	1	0
Total Number of Employees	15	20	17
Total Staffing Costs	\$2,302,500	\$3,732,500	\$2,495,000

The estimated start-up costs for each of the COGs and the combined “Three CCA” scenario are shown in Exhibit 33.

For the separate scenarios, the office space was reduced slightly to account for the lower number of employees. In addition, computers, furnishings and supplies were forecast based on employees in each CCA.

<b>Exhibit 33</b>			
<b>Estimated Infrastructure Cost by Phase (Three CCAs)</b>			
		<b>Phase 1</b>	<b>Phase 2</b>
	<b>Total Pre-Start Costs</b>	<b>2017</b>	<b>2018</b>
<b>Infrastructure Costs</b>			
CVAG	\$90,000	\$150,000	\$410,000
SANBAG	\$90,000	\$260,000	\$350,000
WRCOG	\$90,000	\$150,000	\$430,000
<b>Total Infrastructure Costs</b>	<b>\$270,000</b>	<b>\$560,000</b>	<b>\$1,190,000</b>

The estimated costs payable to SCE for services related to ICE start-up include costs associated with initiating service with SCE, processing of customer opt-out notices, customer enrollment, post enrollment opt-out processing, and billing fees. These distribution utilities fees are explicitly stated in the relevant SCE tariffs. The utility transaction fees for each of the COGs separately, are shown in Exhibit 34.

<b>Exhibit 34</b>			
<b>Utility Transaction Fees by Phase (Three CCAs)</b>			
		<b>Phase 1</b>	<b>Phase 2</b>
	<b>Total Pre-Start Costs</b>	<b>2017</b>	<b>2018</b>
CVAG	\$39,557	\$411,251	\$918,803
SANBAG	\$149,501	\$1,929,634	\$4,405,258
WRCOG	\$18,138	\$1,187,572	\$2,922,530
<b>Total SCE Transaction Fees</b>	<b>\$207,196</b>	<b>\$3,528,457</b>	<b>\$8,246,591</b>

Exhibit 35 shows the estimated contractor costs during the startup period for the “Three CCA” scenario. These are costs assumed for financial and accounting assistance, legal assistance, data management and communication.

<b>Exhibit 35</b>			
<b>Estimated Consultant Costs by Phase (Three CCAs)</b>			
		<b>Phase 1</b>	<b>Phase 2</b>
	<b>Total Pre-Start Costs</b>	<b>2017</b>	<b>2018</b>
CVAG	\$620,000	\$606,215	\$2,398,639
SANBAG	\$620,000	\$1,172,679	\$9,074,423
WRCOG	\$620,000	\$782,207	\$6,331,569
<b>Total Consultant Costs</b>	<b>\$1,860,000</b>	<b>\$2,561,101</b>	<b>\$17,804,631</b>

Estimated non-power supply costs associated with ICE start-up and phasing of customer enrollments for the “Three CCA” scenarios are provided in Exhibit 36.

Exhibit 36 Start-Up Costs for Three CCAs Summarized by Phase						
	CVAG 2017	CVAG 2018	SANBAG 2017	SANBAG 2018	WRCOG 2017	WRCOG 2018
<b>Start-Up Costs</b>						
Infrastructure	\$240,000	\$350,000	\$350,000	\$350,000	\$240,000	\$360,000
Consultants	\$1,226,215	\$2,398,639	\$1,792,679	\$9,074,423	\$1,402,207	\$6,331,569
Staffing	\$600,000	\$1,785,000	\$1,590,000	\$3,732,500	\$600,000	\$1,872,500
Utility Trans. Fee	\$450,808	\$918,803	\$2,079,134	\$4,405,258	\$1,205,709	\$2,922,530
<b>Total Start-Up</b>	<b>\$2,517,023</b>	<b>\$5,452,443</b>	<b>\$5,811,814</b>	<b>\$17,562,182</b>	<b>\$3,447,916</b>	<b>\$11,486,599</b>

Each CCA will be responsible for providing the working capital needed to support electricity procurement unless the electricity provider can provide the working capital as part of the contract services. In addition, each CCA will be obligated to meet working capital requirements related to program management. It is assumed that this working capital requirement is included in the short term financing associated with start-up funding. A summary of working capital needs for the three CCAs is presented below on Exhibit 37.

Exhibit 37 Working Capital Needs		
	2017	2018
Working Capital (CVAG)	\$2.5 Million	\$34.5 Million
Working Capital (SANBAG)	\$4.2 Million	\$75 Million
Working Capital (WRCOG)	\$3.5Million	\$50 Million

For the “Three CCA” scenario, the total financing requirements, during the start-up and pilot periods, are estimated to be approximately \$23 million with \$5 from CVAG, \$10 million from SANBAG and \$8 million from WRCOG. Before full enrollment, additional capital in the order of \$190 million will be needed from the three COGs following full enrollment. The first \$23 million is needed in Spring 2017.

The option to form three CCAs within TRICOG has some initial appeal. If each COG formed a CCA, each would achieve greater local control and avoid potential governance issues. However, the goal of providing the lowest possible rates would not be achieved. As such, forming three CCAs versus one for back office functions would cost the CCA customers an additional \$7-\$8 million per year. This is a material amount of economic inefficiency.

## Turnkey

The turnkey option is initially attractive given its zero-cost to the CCA and the ease of administration. The primary issue with a turnkey operation is that rates will likely be higher for customers. Power purchase is highly capital-intensive, so the cost of capital becomes a major driver of CCA-operating costs. Private third-parties incur roughly twice the cost of capital as would a city, county, or JPA-owned CCA. Therefore, the publicly-operated CCA will almost certainly be able to

offer lower rates. In addition, giving CCA operation to a third-party often compromises the CCA's control over its power supply. The third-party guarantees the CCA owner an income stream but in exchange is given liberty to dictate the power supply options, energy efficiency programs, rates, staffing levels, and programs available to the CCA customers.

## **Products, Services, Rates Comparison and Environmental/Economic Impacts**

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This section of the Plan provides a comparison of service and rates between SCE and ICE. Rates are evaluated based on total ICE electric total bundled rates as compared to SCE's total bundled rates. Total bundled electric rates include the rates charged by ICE, including non-bypassable charges, plus SCE's delivery charges. This section also includes the environmental impacts based on the reduction in Green House Gases (GHG), and the economic development impact on local jobs and overall economic activity created by ICE programs.

### **Rates Paid by SCE Bundled Customers**

The average customer weighted SCE rates have been calculated based on current rate schedules and ICE's projected customer mix. SCE's current 2016 rates and surcharges have been applied to customer load data aggregated by major rate schedules to form the basis for the SCE rate forecast.

The average SCE delivery rate, which is paid by both SCE bundled customers and ICE customers, has been calculated based on the forecasted customer mix for ICE. For future years, the SCE rate forecast assumes the delivery costs will increase by 2 percent per year, a conservative assumption given the history of SCE rate increases.

Similarly, the current average power supply rate component for SCE bundled customers has been calculated based on the estimated ICE customer mix. The SCE power supply rate component has been forecast to increase based on SCE's most recent filings and incorporating the increased RPS requirement mandated by SB 350. The most recent Energy Resource Recovery Account (ERRA) filing has been used to determine the 2017 SCE generation rates for each rate category. Finally, the SCE power supply rates have been projected to increase based on the renewable and non-renewable market price forecast, regulatory requirement for RPS, storage requirement and resource adequacy objectives.

### **Rates Paid by ICE Customers**

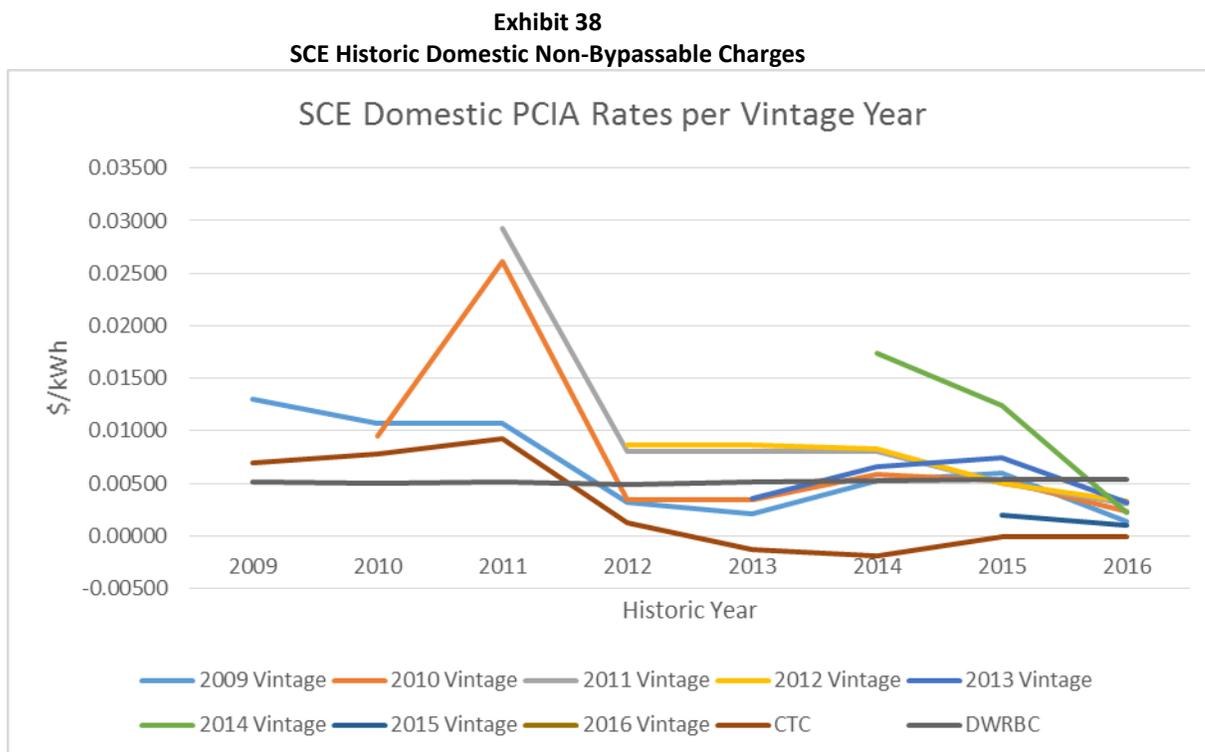
It is anticipated that ICE's rate designs will initially mirror the structure of SCE's rates so that similar rates can be provided to ICE's customers. In determining the level of ICE rates, the financial analysis assumes the customer phase-in schedule noted above and that the implementation phase costs are financed via a start-up loan.

In addition to paying ICE's power supply rate, ICE customers will pay the SCE delivery rate and non-bypassable charges. The calculation of the delivery rate is described earlier. The non-bypassable charges that are payable to SCE by ICE customers include:

- Power Cost Indifference Adjustment (PCIA)
- Department of Water Resources Bond Charge (DWRBC)
- Competition Transition Charge (CTC)
- Generation Municipal Surcharge (or Franchise Charge)

The DWRBC is the charge to recover the interest and principal of the California Department of Water and Resources (DWR) bonds. This charge is scheduled to end in 2023. The CTC is the ongoing charge, which recovers the above market costs of utility generation. The PCIA is a charge that is designed to keep bundled customers indifferent when other customers leave bundled service. The PCIA is calculated annually by subtracting the market price of wholesale power from the incumbent utility’s average cost of power supply based on a methodology determined by the CPUC.<sup>8</sup>

Exhibit 38 provides the historic values of the PCIA, CTC and DWRBC for the residential class. It is important to note that the non-by passable charges differ by the vintage of a CCA. The vintage of the CCA depends on when the CCA provides a binding notice of intent to SCE.



Note that CARE and medical base line customers do not pay the DWRBC or PCIA charges.

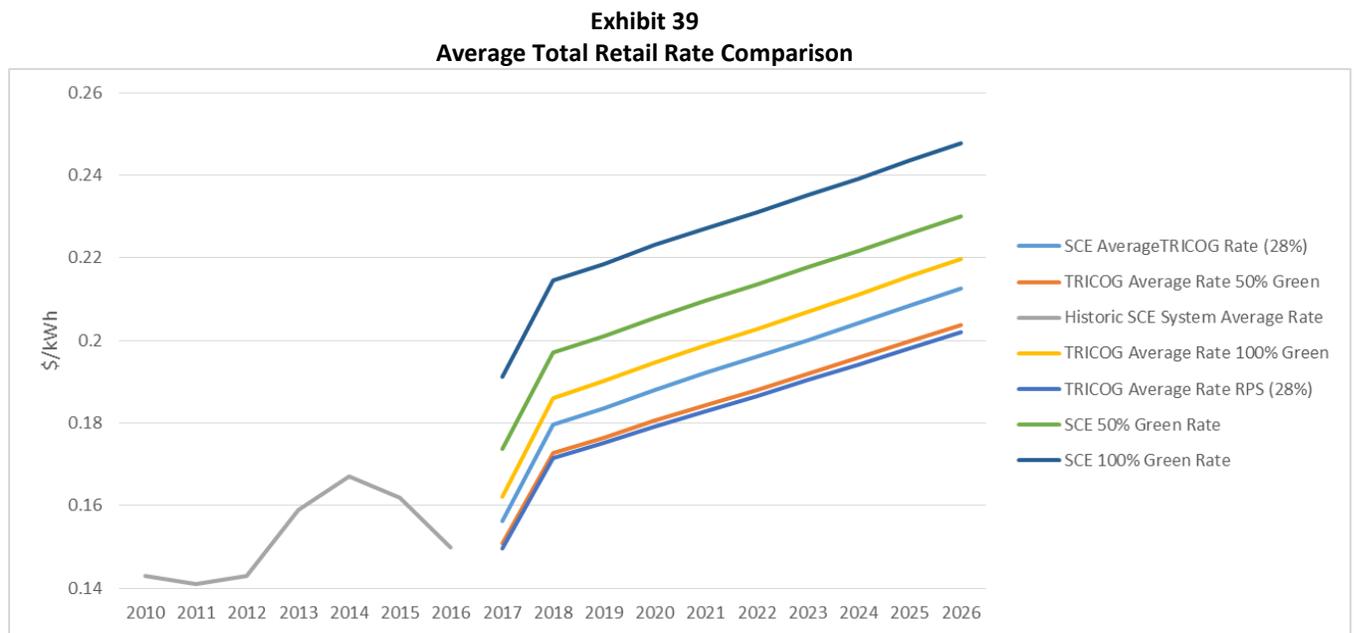
For this Plan, it was assumed in the base case that the PCIA changes based on the differential between SCE’s generation cost and market prices. For this Plan, PCIA is forecast to increase initially due to the end of offsetting credits that expire in 2018. Post-2018, the PCIA is expected to grow

<sup>8</sup> See D.-6-07-030 as modified by D. 11-12-018.

based on the inverse of the market price growth rate. The PCIA is calculated based on the difference between SCE’s surplus resource cost and the market price. Therefore, as market prices increase, SCE’s PCIA rate decreases as their surplus resources become more cost effective relative to market prices.

### Rate Impacts

Based on ICE’s projected power supply costs and operating costs, and SCE’s power supply and delivery costs, forecasts of ICE and SCE total rates have been developed. These rates are illustrated below on Exhibit 39.



As can be seen above, the ICE RPS residential rate with an equal amount of renewable power (28 percent) to what SCE currently offers is 0.9/kWh or approximately 4.3 percent lower. The ICE residential rate with 50 percent renewable power (compared to SCE’s 50 percent) is 2.5¢/kWh or 11.2 percent lower. The ICE residential rate with 100 percent green power (compared to SCE’s 100 percent) is 2.7¢/kWh or 11.3 percent lower. The rates calculated under this Plan are for comparison to SCE rates only. Under formal operations, the ICE policymakers will determine the actual rates to be offered to its customers.

These rate calculations assume all bill savings associated with forming ICE will be refunded to the residences and businesses within TRICOG. Based upon final ICE policy direction, some of these savings could be retained by ICE to build up *additional* financial reserves and/or build more local renewable energy projects.

Based on these assumed ICE discounts off the comparable SCE rate, Exhibit 40 provides a comparison of the indicative bundled rates for ICE’s products with the current SCE rate.

Exhibit 40 Indicative Rate Comparison in ¢/kWh							
Rate Class	Customer Type	SCE Bundled Rate*	ICE RPS Bundled Rate	SCE 50% Green Bundled Rate	ICE 50% Green Bundled Rate	SCE 100% Green Bundled Rate	ICE 100% Green Bundled Rate
Residential	Domestic	20.55	19.66	22.30	19.81	24.05	21.33
Residential Care	Domestic	12.22	11.70	13.97	11.79	15.72	13.47
GS-1	Commercial	17.03	16.29	18.78	16.42	20.53	17.68
GS-2	Commercial	16.57	15.86	18.32	15.98	20.07	17.21
GS-3	Industrial	14.71	14.08	16.46	14.19	18.21	15.28
PA-2	Public Authority	13.08	12.52	14.83	12.62	16.58	13.58
PA-3	Public Authority	11.31	10.82	13.06	10.90	14.81	11.74
TOU-8 Secondary	Domestic	13.07	12.51	14.82	12.61	16.57	13.58
TOU-8 Primary	Commercial	11.84	11.33	13.59	11.42	15.34	12.29
TOU-8 Substation	Industrial	7.76	7.43	9.51	7.48	11.26	8.06
Total ICE Rate Savings over Bundled Rate			4.5%		11.0%		11.0%

\*SCE bundled average rate based on SCE’s ERRR 2017 Draft Filing

A financial proforma in support of these rates can be referenced in Appendix B.

### Local Resources/Behind the Meter ICE Programs

ICE may wish to plan to establish a Net Energy Metering (“NEM”) program for qualified customers in their service territory to encourage DER. In addition, ICE should work with State agencies and SCE to promote deployment of distributed energy resources (DER) within ICE’s service territory, with the goal of maximizing use of the available incentives that are funded through current utility distribution rates and public goods surcharges.

ICE should also consider establishing a program which offers a combination of retail tariffs, rebates, incentives and other bundled offerings intended to increase customer participation in demand-side programs including: renewable distributed generation, energy storage, energy efficiency, demand response, electric vehicle charging, and other clean energy benefits defined as Distributed Energy Resources (DER). ICE can work with State agencies and SCE to promote deployment of DERs in specific and targeted locations throughout SCE’s distribution grid in order to help support efficient grid operations and maintenance as part of development of the future “smart grid”.

## Impact of Resource Plan on Greenhouse Gas (GHG) Emissions

The amount of renewable power in SCE’s power supply portfolio is 28 percent<sup>9</sup> and will rise to 33 percent by 2020. Based on power supply strategy described previously, the estimated GHG emission reductions attributable to forming ICE are forecast to range from 1.33 to 2.34 million metric tons CO<sub>2</sub>e per year by 2018 assuming a 50 percent RPS target is achieved. The baseline for comparison is the resource mix used by SCE versus the resource mix that will be utilized by ICE. Exhibit 41 details these reductions.

Exhibit 41 Baseline Comparison of GHG Reduction by ICE by 2018				
	TRICOG	CVAG	SANBAG	WRCOG
Forecast Renewables (50% Renewables) ICE (GWH) – Phase 2	7,533	916	4,184	2,433
ICE RPS (GWH) – Phase 2	4,219	513	2,343	1,362
Additional Green Power	3,315	403	1,841	1,070
CO <sub>2</sub> reduction – Low (Million Metric tons CO <sub>2</sub> e)	1.33	0.16	0.74	0.43
CO <sub>2</sub> reduction – High (Million Metric tons CO <sub>2</sub> e)	2.34	0.28	1.30	0.76

The reductions in GHG associated with ICE operations are significant. This amount of reduced emissions represents a reduction in the emissions from the in-State generation resources from 2.6 to 4.6 percent.

## Economic Development

The analyses contained in this Plan for forming ICE has focused on the direct rate effects of this formation. However, in addition to direct effects, indirect microeconomic effects are also encountered.

The indirect effects of creating ICE include the effects of increased commerce, and improved environmental and health conditions. Within this Plan, an Input/Output (IO) analysis is undertaken to analyze these indirect effects. The IO model turns on the assumption that forming ICE will lead to lower energy rates for their customers. Three types of impacts are analyzed in the IO model. These are described below.

*Local Investment* - ICE may choose to implement programs to incentivize investments in local distributed energy resources (DER). These resources can be behind the meter or community projects where several customers participate in a centrally located project. This demand for local resources will lead to an increase in the manufacturing and installation of DER, and lead to an increase in employment in the manufacturing and construction sectors.

<sup>9</sup> [http://www.cpuc.ca.gov/RPS\\_Homepage/](http://www.cpuc.ca.gov/RPS_Homepage/)

*Increased Disposable Income* - Establishing ICE will lead to reduced customer rates for energy, more disposable income for individuals and greater revenues for businesses. These cost savings would then lead to more investment by individuals and businesses for personal or business purposes. This increase in spending will then lead to increased employment for multiple sectors such as retail, construction, and manufacturing.

*Environmental and Health Impacts* - With the creation of ICE, other non-commerce indirect effects will occur. These may be largely environmental such as improved air quality or improved human health due to ICE adopting mainly renewable energy sources versus continuing use of traditional energy sources. This resource strategy significantly reduces GHG emissions compared with SCE's current resource mix. While the change in GHG emissions is not modeled directly in economic development models used in this Plan, the reduction of these GHGs may be captured in indirect effects projected by the models.

### ***Input-Output Modeling (IO modeling)***

IO modeling is a quantitative analysis representing relationships (dependence) between industries in an economy. IO models are based on the implicit assumption that each basic sector has a multiplier, or ripple effect, on the wider economy because each sector purchases goods and services to support that sector. IO modeling estimates the inter-industry transactions and uses those transactions to estimate the economic impacts of any change to the economy.

The IO model used in the Plan, IMPLAN, displays the economic impacts of changes in rates into four categories: employment, labor income, value added, and output. Employment is the number of jobs gained or lost. Labor income involves the increase in salaries and wages for current and newly gained or lost employees. Value added, similar to Gross Domestic Product (GDP), is the payment to labor and capital used in production of a particular industry.

IO models are made up of matrices of multipliers between each industry present in an economy. Each column shows how an industry is dependent on other industries for both its inputs to production and outputs. The tables of multipliers can be used to estimate the effects in changes in spending for various industries, household consumption, or labor income. Both positive and negative impacts can be measured using IO modeling. IO modeling produces results broken down into several categories. Each of these is described below:

- **Direct Effects** – Increased purchases of inputs used to produce final goods and services purchased by residents. Direct effects are the input values in an IO model, or first round effects.
- **Indirect Effects** – Value of inputs used by firms affected by direct effects (inputs). Economic activity that supports direct effects.
- **Induced Effects** – Results of Direct and Indirect effects (calculated using multipliers). Represents economic activity from household spending.
- **Total Effects** – Sum of Direct, Indirect, and Induced effects.
- **Total Output** – Value of all goods and services produced by industries.

- **Value Added** – Total Output less value of inputs, or the Net Benefit/Impact to an economy.
- **Employment** – Number of additional/reduced full time employment resulting from direct effects.

This Plan uses value added and employment figures to represent the total additional economic impact for each Project Alternative. IMPLAN has been used in this Plan to gauge the impacts on the TRICOG region of retail rate reductions associated with forming ICE. These impacts are discussed in detail below.

### Increase in Disposal Income Associated with Rate Reduction Impacts

Exhibit 42 shows the effects \$100 million in rate savings will have on the TRICOG economy. The \$100 million rate savings represents the minimum bill savings per year achievable by ICE once in full operation. Direct effects from reduced rates are expected to add 388 jobs. Indirect effects are expected to add about 60 jobs. The induced effects of the project create approximately 98 jobs. In total, approximately 547 jobs are expected to be created in the TRICOG region. The TRICOG region is also projected to have a labor income impact of over \$24.0 million, a total value added impact of approximately \$37.2 million, and an output impact over \$54.9 million. Exhibit 42 details the macroeconomics on the TRICOG region of the anticipated ICE customer bill reductions.

Exhibit 42				
\$100 Million Rate Savings Effects on TRICOG Economy				
Impact Type	Employment	Labor Income	Total Value Added	Output
Direct Effect	388.0	\$18,166,656	\$26,716,167	\$36,512,050
Indirect Effect	60.3	\$2,105,059	\$3,462,091	\$6,306,939
Induced Effect	98.3	\$3,793,548	\$7,040,577	\$12,129,463
Total Effect	546.6	\$24,065,263	\$37,218,836	\$54,948,451

These savings are based on the economic construct that households will spend some share of the increased disposable income on more goods and services. This increased spending on goods and services will then lead to producers either increasing the wages of their current employees or hiring additional employees to handle the increased demand. This in turn will give the employees a larger disposable income which they spend on goods and services and thus repeating the cycle of increased demand.

### DER Development Impacts

The economic impacts of DER development are estimated using the Jobs and Economic Development Impact (JEDI) model. JEDI estimates the effects of DER development on construction industries and the local economy. JEDI was initially developed by the National Renewable Energy Laboratory to demonstrate the economic benefits associated with constructing and operating wind and photovoltaic systems in the United States. JEDI has since been expanded to analyze similar economic impacts for various energy sources such as biofuels, coal, concentrating solar power, geothermal, marine and hydrokinetic power, and natural gas. A primary goal of JEDI is that it is being used as a tool for system developers, renewable energy advocates, government officials,

decision makers, and others to easily identify the local economic impacts associated with constructing and operating these systems on the economy as a whole, whether through direct and indirect effects.

Users input general information about a particular energy project, such as the project location, the type of system being installed, nameplate capacity, annual operations and maintenance costs, and others. JEDI has default but modifiable data regarding various aspects of each energy system type, such as equipment costs, tax parameters, and labor costs. JEDI then uses the input general information and the data, default or modified, to run calculations on the types of economic effects produced by the proposed project. This model can output projected direct job creation by industry, indirect job and business increases due to the project, projected operation costs, and more.

In order for JEDI to provide information, it must be populated with detailed data for the assumed DER project. Projected system data, type of solar cell, nameplate capacity (kW), and the number of systems. As an example of the macroeconomic activity caused by local DER deployment, this Plan explores the impact of ICE installing of a 50 crystalline silicon, fixed mount solar systems with nameplate capacities of 1 MW each for a total capacity of 50 MW. ICE could install a number of larger local solar projects such as the one described above. Exhibit 43 describes the macroeconomic impacts of constructing only one of these local solar projects.

<b>Exhibit 43</b>			
<b>Projected Solar Systems Impacts on TRICOG's Economy</b>			
<b>Description</b>	<b>Jobs</b>	<b>Earnings, \$000</b>	<b>Output (GDP), \$000</b>
During Construction and Installation Period			
*Project Development and Onsite Labor Impacts			
Construction and Installation Labor	342.5	\$22,182	
Construction and Installation Related Services	374.3	\$20,007	
Subtotal	716.8	\$42,189	\$67,620
*Module and Supply Chain Impacts			
Manufacturing Impacts	0.0	\$0	\$0
Trade (Wholesale and Retail)	79.4	\$4,425	\$12,887
Finance, Insurance and Real Estate	0.0	\$0	\$0
Professional Services	53.9	\$2,326	\$6,908
Other Services	141.4	\$15,048	\$42,364
Other Sectors	317.1	\$10,656	\$19,428
Subtotal	591.7	\$32,455	\$81,587
Induced Impacts	326.7	\$13,067	\$39,092
<b>Total Impacts</b>	<b>1,635.3</b>	<b>\$87,710</b>	<b>\$188,298</b>
During Operating Years			
*Onsite Labor Impacts			
PV Project Labor Only	9.2	\$555	\$555
*Local Revenue and Supply Chain Impacts	2.7	\$145	\$458
*Induced Impacts	1.9	\$74	\$221
<b>Total Impacts</b>	<b>13.8</b>	<b>\$774</b>	<b>\$1,235</b>

Exhibit 43 shows the construction and ongoing effects of building a 50 MW solar power project. It is projected that roughly 1,635 jobs will be created during construction and installation. Of this total, about 719 jobs will be directly involved in construction and installation while roughly 592 jobs will be indirectly involved with the building of the project. Induced impacts of the construction and installation will create approximately 327 jobs. These induced effects may include anything from increased employment in restaurants, retail, education, and others. Overall, the building of this one solar project is projected to create \$87 million in earnings and \$188 million in output (GDP) in the local economy along with 1,636 jobs during construction and 14 full-time jobs ongoing.

## Sensitivity Analysis

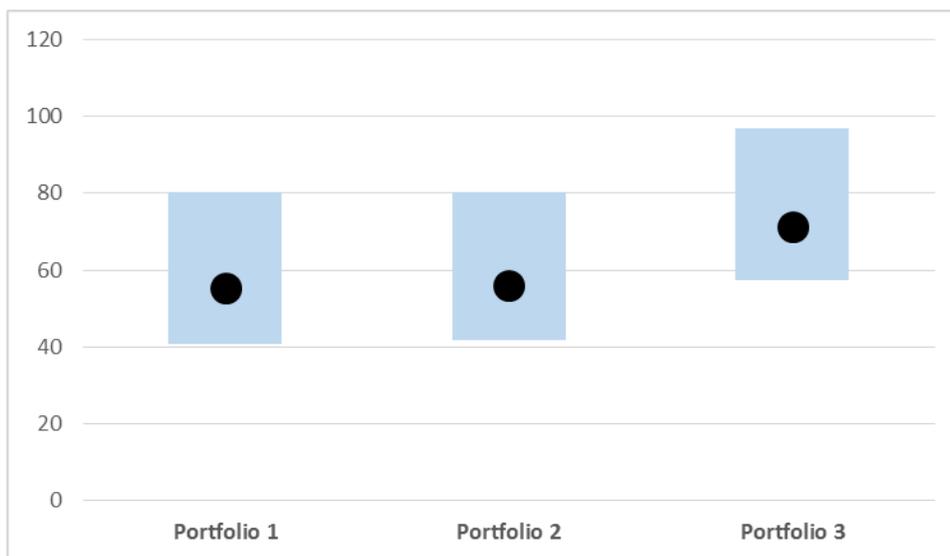
The aforementioned economic analysis provides the base case analysis of forming ICE. This base case is predicated on numerous assumptions and estimates that influence the overall results. This section of the Plan will provide the range of impacts that could result from changes in the most significant variables for the TRICOG scenario. In addition, this section will address risks that cannot be quantified, but should be addressed and mitigated to the maximum amount possible. Each key assumption is discussed, a band of uncertainty is established and ICE’s rate impacts associated with factoring in this uncertainty is developed for each key variable.

Since resource costs are based on forecast natural gas, wholesale market and renewable market prices, it is prudent to look at the sensitivity of the 20-year levelized cost calculation to fluctuations in these projections. Exhibit 44 below shows a summary of low, base, and high resource costs.

Exhibit 44 Low, Base and High 20-year Levelized Resource Costs (\$/MWh)					
Case	Market PPA	Portfolio 1 and 2 Renewables	Portfolio 3 Renewables	Brown Resources	Local Renewables
Low Case	26.3	32	40	45	45
Base Case	44.3	42	52	60	65
High Case	73.3	62	76	80	85

The 20-year levelized costs of each portfolio has been calculated using the range of resource costs shown above. The base case costs are depicted by the black dots in Exhibit 45.

Exhibit 45  
Sensitivity of Portfolio 20-year Levelized Costs



Portfolio 3, which relies on renewable energy purchases to serve all retail loads, has the highest projected costs that range from a low of \$57/MWh to a high of \$97/MWh. The low case for Portfolio 3 (\$57/MWh) is greater than the base case for both Portfolios 1 and 2. The likelihood of solar costs increasing to the point that 20-year levelized costs are near \$62/MWh seems unlikely. All signs point to decreases in solar equipment costs on a \$/watt basis. There have been significant decreases in solar costs over the past few years. Given the financial incentives targeted at the solar industry as well as the continuing advances in technology, it seems very unlikely that solar costs will increase over the next 10 to 20 years.

The potential for market PPA prices to increase to the high case of \$73/MWh has a much higher likelihood. Wholesale market prices are dependent on many factors the most notable of which are natural gas prices. Natural gas prices are at historic lows and wholesale market prices have followed. However, natural gas prices are subject to variety of local, national and international forces that could drastically alter the current market place. For one, increased regulation of the natural gas industry with respect to the deployment of fracking technology could cause decreases in natural gas supplies and commensurate increases in natural gas prices. If natural gas prices increased, it is highly likely that electric wholesale market prices would also increase.

When evaluating risks, it is important to note that power supply costs are approximately 81 percent of the total CCA costs, SCE non-bypassable charges account for 13 percent and CCA operating costs account for 6 percent of total CCA revenue requirement.

## **Loads and Customer Participation Rates**

The Plan bases the 20-year load forecasts on expected load growth, load profiles and participation rates. In order to evaluate the potential impact of varying loads, low, medium, and high load forecasts have been developed for the sensitivity analysis. SCE made available load shape profiles by customer class for the entire SCE service area. These load profiles were applied to all customer loads despite the varying climate zones within the County.

Another assumption that can impact the costs of ICE is the overall ICE customer participation rates. This Plan uses a conservative participation rate of 75% for residential customers and 65% for non-residential customers as its base case. A higher participation rate, such as has been experienced by all of California's operating CCAs to date, will increase energy sales relative to the base case and decrease the fixed costs paid by each customer. On the other hand, a reduced participation rate will increase the fixed costs to ICE participants. Sensitivity to changes in projected loads has been tested for the high and low load forecast scenarios. For the sensitivity analysis, the high case assumes an additional 10 percent participation rate, while the low case assumes the participation rate is reduced by 50 percent. The low case assumes a 0 percent growth in energy and customers after 2017, while the high scenario assumes a 5 percent growth in energy and customers.

## SCE Rates and Surcharges

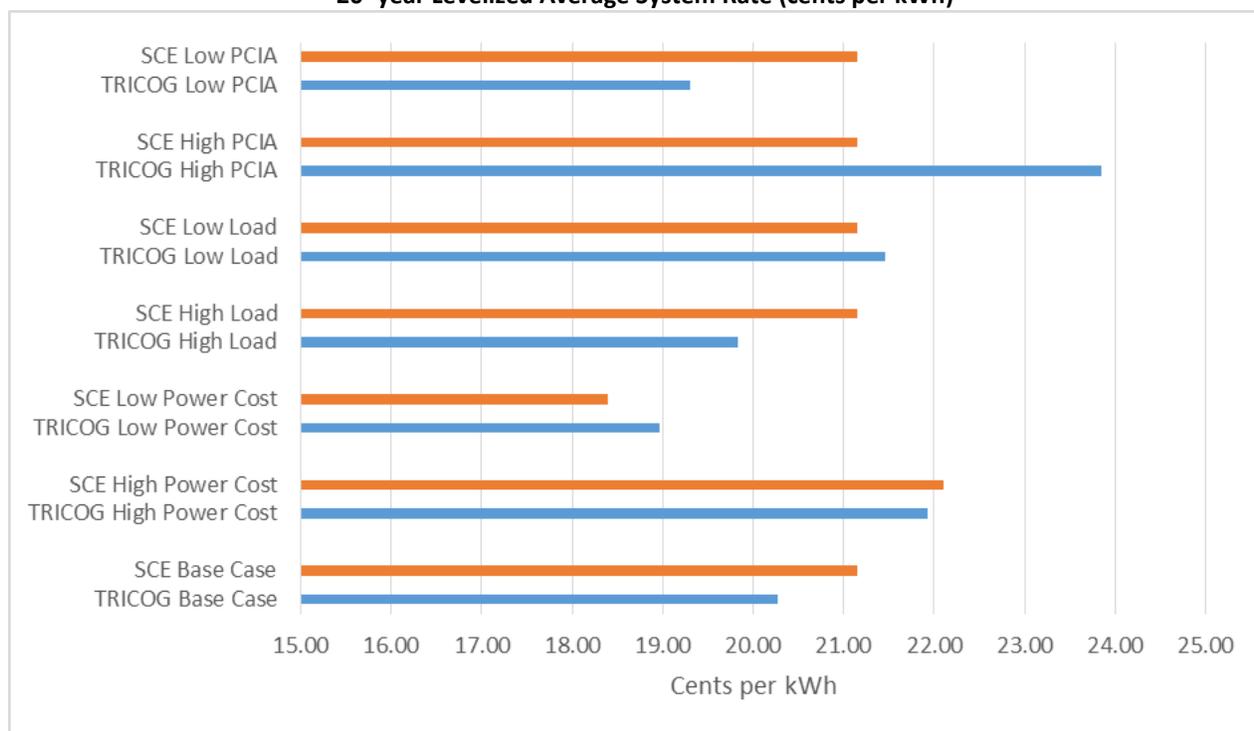
The base case forecast of SCE rates assumes delivery rates increase at 2 percent per year and generation rates increase approximately 2.0 percent based on the projected market prices and renewable resource growth rates. In addition, SCE’s generation cost was modeled in the high and low case by incorporating the expected range of market and renewable resource costs.

The level of the PCIA will impact the cost competitiveness of ICE. In order to be cost-effective, ICE power supply costs plus PCIA and other surcharges must be lower than SCE’s generation rates. Over time, the PCIA will vary, but it is expected that it will decline as market prices increase. The PCIA reflects SCE’s own resources and signed contracts. Once the contracts expire, the related PCIA will disappear. Sensitivity to the PCIA has been modeled in the high case by assuming the PCIA would increase to reflect a historic high of 2.5 cents per kWh and remain flat for the 20-year analysis period. For the low case, it was assumed that the PCIA decreases by 50 percent in year 1 and remains flat for the 20-year analysis period.

## Sensitivity Results

Exhibit 46 provides the results of the sensitivity analysis for the 50% Green TRICOG scenario, which is the most likely portfolio for ICE to pursue. This sensitivity shows that the biggest risk to ICE is if the PCIA increases to historic levels, ICE does not achieve sufficient customer participation or if market prices fall significantly below their current historical low level.

**Exhibit 46**  
**50% Green Portfolio Sensitivity**  
**20- year Levelized Average System Rate (cents per kWh)**



This sensitivity analysis shows that ICE rate could be greater than SCE rates if:

- The PCIA becomes much larger
- ICE loads are much less than forecast
- Wholesale market prices are much less than current experience

Each of these three scenarios has a low risk of actually occurring. For example, wholesale market prices for natural gas/electricity are at all-time lows. The probability of any significant further lowering of these prices is judged to be very small. The PCIA level should be fairly stable going forward as regulatory remedies are in play to stabilize the PCIA and the CCA vigilance in this area has increased markedly. Finally, this Plan assumes a relatively high customer opt-out percentage (25% for residential customers and 35% for non-residential customers) compared to the more modest opt-out rates experienced by California's actively operating CCAs, which is closer to 5%-15%. It is very unlikely ICE loads will not meet or exceed those assumed in this Plan.

## Risks

### Regulatory Risks

There are numerous factors that could impact SCE's rates in addition to the market price impacts described above. Regulatory changes, plant or technology retirements or additions, and the long-term impact of the Aliso Canyon leak all can impact SCE rates in the future. However, the impact of these factors is difficult to assess and model quantitatively.

Regulatory issues continue to arise that may impact the competitiveness of ICE. However, California's operating CCAs have worked hard to address any potentially detrimental changes through effective lobbying and technical support.

New legislation can also impact ICE. For example, new legislation that recently affected CCAs are SB 350 and AB 1110. In addition, there are several changes that impact CCAs regarding power supply procurement and contracting. The CCA-specific changes reflected in SB 350 are generally positive, providing for ongoing autonomy with regard to resource planning and procurement. CCAs must be aware, however, of the long term contracting requirement associated with renewable energy procurement.

Regulatory risks also include the potential for utility generation costs to be shifted to non-bypassable and delivery charges. ICE will need to continually monitor and lobby at the Federal, State and local levels to ensure fair and equitable treatment related to non-bypassable charges.

## Operational Options

There are several options for how to setup and organize a CCA. For this Plan, we have assumed three options for ICE. These options are:

- One CCA for the Three COGs

This option consolidates workload by having one CCA perform all “back office” duties, including power procurement and data management. At the same time, this option allows each COG to design locally-targeting branding, programs, and customer outreach.

- Three CCAs Working Independently

This option entails each of the three COGs providing a full service CCA to include power procurement, data management and local program development/outreach.

- Outsource the Entire CCA Operation

Under this option, the COGs would hire a third-party entity to operate the CCA through “turnkey” CCA service with the guarantee of a fixed income stream.

Each option is critiqued and compared below.

The CCA operational option of one JPA for back office functions and have the local COGs brand and develop locally-specific programs and outreach is suggested. This option is recommended for the following reasons:

- Retail rates will be the lowest possible.
- Local control and choice in programs will be maintained.
- A JPA organization provides a liability buffer between the CCA and its members.
- This business model is currently being used by the four operating CCAs in California with success.

The option to form three CCAs within TRICOG also has some initial appeal. If each COG formed a CCA, more local control would be achieved and potential thorny governance issues are avoided; however, the goal of lowest possible rates would likely not be achieved. The back office functions (i.e., power procurement and data management) are fairly consistent on a per customer basis; however, the internal costs are about the same for a 100,000-meter utility, and a 1,000,000-meter utility. Based on the operating CCAs in California, CCA operation requires between 15 and 20 full-time equivalent employees (FTEs). As such, forming three CCAs versus one for back office functions costs the CCA customers an additional \$7-8 million per year. This is a material amount of economic inefficiency.

Finally, there is the turnkey option. The turnkey option is initially attractive given its zero-cost to the CCA and the ease of administration. The primary issue with a turnkey operation is that rates will likely be higher for customers. Power purchase is highly capital-intensive, so the cost of capital becomes a major driver of CCA-operating costs. Private third-parties incur roughly twice the cost of capital as would a city, county, or JPA-owned CCA. Therefore, the publicly-operated CCA will almost certainly be able to offer lower rates. In addition, giving CCA operation to a third-party often compromises the CCA's control over its power supply. The third-party guarantees the CCA owner an income stream but in exchange is given liberty to dictate the power supply options, energy efficiency programs, rates, staffing levels, and programs available to the CCA customers.

## Summary and Recommendations

### Rate Impacts and Comparisons

The first impact associated with forming ICE will be lower electricity bills for ICE customers. ICE customers should see no obvious changes in electric service other than the lower price and increased procurement of renewable power. Customers will pay the power supply charges set by ICE and no longer pay the higher costs of SCE power supply.

Given this Plan's findings, ICE's rate setting can establish a goal of providing rates that are lower than the equivalent rates offered by SCE even under the 50 percent renewable portfolio. Under the 100 percent renewable portfolio, ICE customers will pay 11 percent less for their power compared to the comparable product offered by SCE. The projected ICE and SCE rates are illustrated in Exhibit 47.

Exhibit 47 Indicative Rate Comparison in ¢/kWh							
Rate Class	Customer Type	SCE Bundled Rate*	ICE RPS Bundled Rate	SCE 50% Green Bundled Rate	ICE 50% Green Bundled Rate	SCE 100% Green Bundled Rate	ICE 100% Green Bundled Rate
Residential	Domestic	20.55	19.66	22.30	19.81	24.05	21.33
Residential Care	Domestic	12.22	11.70	13.97	11.79	15.72	13.47
GS-1	Commercial	17.03	16.29	18.78	16.42	20.53	17.68
GS-2	Commercial	16.57	15.86	18.32	15.98	20.07	17.21
GS-3	Industrial	14.71	14.08	16.46	14.19	18.21	15.28
PA-2	Public Authority	13.08	12.52	14.83	12.62	16.58	13.58
PA-3	Public Authority	11.31	10.82	13.06	10.90	14.81	11.74
TOU-8 Secondary	Domestic	13.07	12.51	14.82	12.61	16.57	13.58
TOU-8 Primary	Commercial	11.84	11.33	13.59	11.42	15.34	12.29
TOU-8 Substation	Industrial	7.76	7.43	9.51	7.48	11.26	8.06
Total ICE Rate Savings over Comparable SCE Rate			4.5%		11.0%		11.0%
Total ICE Rate Savings over SCE Bundled Rate			4.5%		3.7%		-3.7%

\*SCE bundled average rate based on SCE's ERRR 2017 Draft Filing

Once ICE gives notice to SCE that it will commence service, ICE customers will not be responsible for costs associated with SCE's future electricity procurement contracts or power plant investments.<sup>10</sup> This is a distinct advantage to ICE customers as they will now have local control of power supply costs through ICE.

## **Renewable Energy Impacts**

A second consequence of forming ICE will be an increase in the proportion of energy generated and supplied by renewable resources. The Plan includes procurement of renewable energy sufficient to meet 50 percent or more of ICE's electricity needs. The majority of this renewable energy will be met by new renewable resources. By 2020, SCE must procure a minimum of 33 percent of its customers' annual electricity usage from renewable resources due to the State Renewable Portfolio Standard and the Energy Action Plan requirements of the CPUC. In contrast, ICE will target 50 percent renewable by 2018 and these resources will likely be new renewable resources.

## **Energy Efficiency Impacts**

A third consequence of forming ICE could be an increase in energy efficiency program investments and activities. The existing energy efficiency programs administered by SCE are not expected to change as a result of forming ICE. ICE customers will continue to pay the public goods charges to SCE which funds energy efficiency programs for all customers, regardless of supplier. The energy efficiency programs ultimately planned for ICE will be in addition to the level of investment that would continue in the absence of ICE. Thus, ICE has the potential for increased energy investment and savings with an attendant further reduction in emissions due to expanded energy efficiency programs.

## **Economic Development Impacts**

The fourth consequence of forming ICE will be enhanced local economic development. The analyses contained in this Plan has focused primarily on the direct effects of this formation. However, in addition to direct effects, indirect economic effects are also encountered. The indirect effects of creating ICE include the effects of increased local investments, increased disposable income due to bill savings and improved environmental and health conditions.

Exhibit 43 shows the effects \$100 million in rate savings will have on the TRICOG economy. The \$100 million rate savings represents the minimum bill savings per year achievable by ICE once in full operation. Direct effects from reduced rates are expected to add 388 jobs. Indirect effects

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<sup>10</sup> CCAs may be liable for a share of unbundled stranded costs from new generation, but would then receive associated Resource Adequacy credits.

are expected to add about 60 jobs. The induced effects of the project create approximately 98 jobs. In total, approximately 547 jobs are expected to be created in the TRICOG region. The TRICOG region is also projected to have a labor income impact of over \$24.0 million, a total value added impact of approximately \$37.2 million, and an output impact over \$54.9 million. Exhibit 48 details the macroeconomics on the TRICOG region of the anticipated ICE customer bill reductions.

Exhibit 48 \$100 Million Rate Savings Effects on TRICOG Economy				
Impact Type	Employment	Labor Income	Total Value Added	Output
Direct Effect	388.0	\$18,166,656	\$26,716,167	\$36,512,050
Indirect Effect	60.3	\$2,105,059	\$3,462,091	\$6,306,939
Induced Effect	98.3	\$3,793,548	\$7,040,577	\$12,129,463
Total Effect	546.6	\$24,065,263	\$37,218,836	\$54,948,451

These savings are based on the economic construct that households will spend some share of the increased disposable income on more goods and services. This increased spending on goods and services will then lead to producers either increasing the wages of their current employees or hiring additional employees to handle the increased demand. This in turn will give the employees a larger disposable income which they spend on goods and services and thus repeating the cycle of increased demand.

In addition to increased economic activity due to electric bill savings, potential local projects can also create job and economic growth in the local economy. As an example of the macroeconomic activity caused by local DER deployment, this Plan assumes the installation of fifty crystalline silicon, fixed mount solar systems with nameplate capacities of 1 MW each for a total capacity of 50 MW. Overall, the building of this one solar project is projected to create \$87 million in earnings and \$188 million in output (GDP) in the local economy along with 1,636 jobs during construction and 14 full-time jobs ongoing. It is anticipated that ICE will ultimately install a number of larger local solar projects such as the one described.

## Impact of Resource Plan on Greenhouse Gas (GHG) Emissions

The last consequence of forming ICE would be environmental benefits. The share of renewable power in SCE's power supply portfolio is currently 28 percent<sup>11</sup> and is scheduled to shift to 33 percent by 2020. Assuming ICE adopts a base case 50 percent RPS target at start-up, GHG emissions reductions attributable to ICE operations in 2019 will range from 1.33 to 2.34 million

<sup>11</sup> [http://www.cpuc.ca.gov/RPS\\_Homepage/](http://www.cpuc.ca.gov/RPS_Homepage/)

metric tons CO<sub>2</sub> equivalent (CO<sub>2</sub>e) per year relative to SCE’s projected resource mix over the same period. Exhibit 49 details these reductions.

Exhibit 49 Baseline Comparison of GHG Reduction by ICE by 2018				
	TRICOG	CVAG	SANBAG	WRCOG
Forecast Renewables (50% Renewables) ICE (MWH) – Phase 2	7,533	916	4,184	2,433
ICE RPS (MWH) – Phase 2	4,219	513	2,343	1,362
Additional Green Power	3,315	403	1,841	1,070
CO <sub>2</sub> reduction – Low (Metric Tons of CO <sub>2</sub> e)	1.33	0.16	0.74	0.43
CO <sub>2</sub> reduction – High (Metric tons of CO <sub>2</sub> e)	2.34	0.28	1.30	0.76

The reduction in GHG emissions associated with ICE operations is significant. This amount of reduced emissions represents a reduction in the emissions from the in-State generation resources of 2.6 to 4.6 percent.

## Summary

This Plan concludes that the formation of ICE in the service areas of CVAG, SANBAG and WRCOG is financially prudent and will yield considerable benefits for TRICOG’s residents and businesses. These benefits include at least a 3.7 percent lower rate for electricity than is charged by SCE while receiving nearly twice the amount of renewable energy. With the achievement of sustained Phase 2 level operations, ICE will reduce GHG emissions by as much as 2.34 million metric tons of CO<sub>2</sub>e per year, add over 500 jobs, generate over \$54 million in additional GDP, and give the Cities, Counties and its residents local control over their power supply and energy efficiency programs. There are risks associated with a CCA which are manageable. On balance, the formation of a CCA for CVAG, SANBAG and WRCOG is financially feasible and results in beneficial environmental/economic impacts. A joint CCA with common back office functions is the most economical option and is recommended.

## Appendix A – Cities/Counties Evaluating CCA Feasibility

	CCA Name	Service Area	Start Date	IOU
<b>Operational</b>				
	Marin Clean Energy	Marin County, Napa County, part of Contra Costa and Solano Counties	May 2010	PG&E
	Sonoma Clean Power	Sonoma County	May 2014	PG&E
	Lancaster Choice Energy	City of Lancaster	May 2015	SCE
	Clean Power San Francisco	City of San Francisco	May 2016	PG&E
<b>Exploring/In Process</b>				
	Redwood Coast Energy Authority	Humboldt County	May 2017	PG&E
	Peninsula Clean Energy	San Mateo County	October 2016	PG&E
	East Bay Community Energy	Alameda County		PG&E
	TBD	Butte County		PG&E
	TBD	City of San Jose		PG&E
	TBD	Contra Costa County		PG&E
	TBD	Humboldt County		PG&E
	LA Community Choice Energy	LA County		SCE
	TBD	Mendocino County		PG&E
	TBD	Monterey County		PG&E
	TBD	Placer County		PG&E
	TBD	Riverside County		SCE
	TBD	San Benito County		PG&E
	TBD	San Bernardino County		SCE
	TBD	San Diego County		SDG&E
	TBD	San Luis Obispo County		PG&E
	TBD	Santa Barbara County		SCE/PG&E
	Silicon Valley Clean Energy	Santa Clara County	April 2017	PG&E
	TBD	Santa Cruz County		PG&E

## Appendix B – Proforma Analyses

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## Appendix C – Glossary

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**aMW:** Average annual Megawatt. A unit of energy output over a year that is equal to the energy produced by the continuous operation of one megawatt of capacity over a period of time (8,760 megawatt-hours).

**Basis Difference (Natural Gas):** The difference between the price of natural gas at the Henry Hub natural gas distribution point in Erath, Louisiana, which serves as a central pricing point for natural gas futures, and the natural gas price at another hub location (such as for Southern California).

**Brown Power:** Electricity generated from non-renewable sources or that does not come with a Renewable Energy Credit (REC).

**Buckets:** Buckets 1-3 refer to different types of renewable energy contracts according to the Renewable Portfolio Standards requirements. Bucket 1 are traditional contracts for delivery of electricity directly from a generator within or immediately connected to California. These are the most valuable and make up the majority of the RECS that are required for LSEs to be RPS compliant. Buckets 2 and 3 have different levels of intermediation between the generation and delivery of the energy from the generating resources.

**Bundled Customers:** Electricity customers who receive all their services (transmission, distribution and supply) from the Investor-Owned Utility.

**CAISO:** The California Independent System Operator. The organization responsible for managing the electricity grid and system reliability within the former service territories of the three California IOUs.

**California Clean Power (CCP):** A private company providing wholesale supply and other services to CCAs.

**California Energy Commission (CEC):** The state regulatory agency with primary responsibility for enforcing the Renewable Portfolio Standards law as well as a number of other, electric-industry related rules and policies.

**California Public Utilities Commission (CPUC):** The state agency with primary responsibility for regulating IOUs, as well as Direct Access (ESP) and CCA entities.

**Capacity Factor:** the ratio of an electricity generating resource's actual output over a period of time to its potential output if it were possible to operate at full nameplate capacity continuously over the same period. Intermittent renewable resources, like wind and solar, typically have lower

capacity factors than traditional fossil fuel plants because the wind and sun do not blow or shine consistently.

**CCEAC:** Community Choice Energy Advisory Committee - a committee formed to advise the City of Davis on the best options for pursuing a CCA.

**Climate Zone:** A geographic area with distinct climate patterns necessitating varied energy demands for heating and cooling.

**Coachella Valley Association of Governments (CVAG):** CVAG is the regional planning agency coordinating government services in the Coachella Valley. It includes 10 Cities, Riverside County, the Agua Caliente Band of Cahuilla Indians and the Cabazon Band of Mission Indians as members.

**Coincident Peak:** Demand for electricity among a group of customers that coincides with peak total demand on the system.

**Community Choice Aggregation:** Method available through California law to allow Cities and Counties to aggregate their citizens and become their electric generation provider.

**Community Choice Energy:** A City, County or Joint Powers Agency procuring wholesale power to supply to retail customers.

**Community Choice Partners:** A private company providing services to CCAs in California.

**Congestion Revenue Rights (CRRs):** Financial rights that are allocated to Load Serving Entities to offset differences between the prices where their generation is located and the price that they pay to serve their load. These rights may also be bought and sold through an auction process. CRRs are part of the CAISO market design.

**Demand Response (DR):** Electric customers who have a contract to modify their electricity usage in response to requests from a utility or other electric entity. Typically, will be used to lower demand during peak energy periods, but may be used to raise demand during periods of excess supply.

**Direct Access:** Large power consumers which have opted to procure their wholesale supply independently of the IOUs through an Electricity Service Provider.

**EI (Edison Electric Institute) Agreement:** A commonly used enabling agreement for transacting in wholesale power markets.

**Electric Service Providers (ESP):** An alternative to traditional utilities. They provide electric services to retail customers in electricity markets that have opened their retail electricity markets to competition. In California the Direct Access program allows large electricity customers to opt-

out of utility-supplied power in favor of ESP-provided power. However, there is a cap on the amount of Direct Access load permitted in the state.

**Electric Tariffs:** The rates and terms applied to customers by electric utilities. Typically have different tariffs for different classes of customers and possibly for different supply mixes.

**Enterprise Model:** When a City or County establish a CCA by themselves as an enterprise within the municipal government.

**Federal Tax Incentives:** There are two Federal tax incentive programs. The Investment Tax Credit (ITC) provides payments to solar generators. The Production Tax Credit (PTC) provides payments to wind generators.

**Feed-in Tariff:** A tariff that specifies what generators who are connected to the distribution system are paid.

**Forward Prices:** Prices for contracts that specify a future delivery date for a commodity or other security. There are active, liquid forward markets for electricity to be delivered at a number of Western electricity trading hubs, including NP15 which corresponds closely to the price location which the City of Davis will pay to supply its load.

**Implied Heat Rate:** A calculation of the day-ahead electric price divided by the day-ahead natural gas price. Implied heat rate is also known as the ‘break-even natural gas market heat rate,’ because only a natural gas generator with an operating heat rate (measure of unit efficiency) below the implied heat rate value can make money by burning natural gas to generate power. Natural gas plants with a higher operating heat rate cannot make money at the prevailing electricity and natural gas prices.

**Inland Choice Energy (ICE):** The name of the proposed CCA that would serve the TRICOG areas of CVAG, SANBAG, and WRCOG.

**Integrated Resource Plan:** A utility's plan for future generation supply needs.

**Investor-Owned Utility:** For profit regulated utilities. Within California there are three IOUs - Pacific Gas and Electric, Southern California Edison and San Diego Gas and Electric.

**ISDA (International Swaps and Derivatives Association):** Popular form of bilateral contract to facilitate wholesale electricity trading.

**Joint Powers Agency (JPA):** A legal entity comprising two or more public entities. The JPA provides a separation of financial and legal responsibility from its member entities.

**Lancaster Choice Energy (LCE):** The most recent California CCA to go-live, exclusively serving the City of Lancaster in Southern California.

**LEAN Energy (Local Energy Aggregation Network):** A not-for-profit organization dedicated to expanding Community Choice Aggregation nationwide.

**Load Forecast:** A forecast of expected load over some future time horizon. Short-term load forecasts are used to determine what supply sources are needed. Longer-term load forecasts are used for budgeting and long-term resource planning.

**Marginal Unit:** An additional unit of power generation to what is currently being produced. At an electric power plant, the cost to produce a marginal unit is used to determine the cost of increasing power generation at that source.

**MCE:** Formerly Marin Clean Energy - the first CCA in California serving Cities within and the Counties of Marin and Napa.

**MRTU:** CAISO's Market Redesign and Technology Upgrade. The redesigned, nodal (as opposed to zonal) market that went live in April of 2009.

**Net Energy Metering:** The program and rates that pertain to electricity customers who also generate electricity, typically from rooftop solar panels.

**Non-Coincident Peak:** Energy demand by a customer during periods that do not coincide with maximum total system load.

**NP15:** Refers to a wholesale electricity pricing hub - North of Path 15 - which roughly corresponds to PG&E's service territory. Forward and Day-Ahead power contracts for Northern California typically provide for delivery at NP15. It is not a single location, but an aggregate based on the locations of all the generators in the region.

**On-Bill Repayment (OBR):** Allows electric customers to pay for financed improvements such as energy efficiency measures through monthly payments on their electricity bills.

**Operate on the Margin:** Operation of a business or resource at the limit of where it is profitable.

**Opt-Out:** Community Choice Aggregation is, by law, an opt-out program. Customers within the borders of a CCA are automatically enrolled within the CCA unless they proactively opt-out of the program.

**Power Cost Indifference Adjustment (PCIA):** A charge applied to customers who leave IOU service to become Direct Access or CCA customers. The charge is meant to compensate the IOU for costs that it has previously incurred to serve those customers.

**PPA (Power Purchase Agreement):** The standard term for bilateral supply contracts in the electricity industry.

**Renewable Energy Credits (RECs):** The renewable attributes from RPS-qualified resources which must be registered and retired to comply with RPS standards.

**Resource Adequacy (RA):** The requirement that a Load-Serving Entity own or procure sufficient generating capacity to meet its peak load plus a contingency amount (15 percent in California) for each month.

**RPS (Renewable Portfolio Standards):** The state-based requirement to procure a certain percentage of load from RPS-certified renewable resources.

**San Bernardino Associated Governments (SANBAG):** SANBAG is the council of government and transportation planning agency for San Bernardino County. SANBAG's members include 24 cities and San Bernardino County.

**Scheduling Coordinator:** An entity that is approved to interact directly with CAISO to schedule load and generation. All CAISO participants must be or have an SC.

**Scheduling Agent:** A person or service that forecasts and monitors short term system load requirements and meets these demands by scheduling power resource to meet that demand.

**Sonoma Clean Power (SCP):** A CCA serving Sonoma County and Sonoma County Cities.

**Spark Spread:** The theoretical gross margin of a gas-fired power plant from selling a unit of electricity, having bought the fuel required to produce this unit of electricity. All other costs (capital, operation and maintenance, etc.) must be covered from the spark spread.

**Supply Stack:** Refers to the generators within a region, stacked up according to their marginal cost to supply energy. Renewables are on the bottom of the stack and peaking gas generators on the top. Used to provide insights into how the price of electricity is likely to change as the load changes.

**TriCOG:** Refers collectively to the three councils of governments: Coachella Valley Association of Governments (CVAG), San Bernardino Associated Governments (SANBAG), and Western Riverside Council of Governments (WRCOG).

**Weather Adjusted:** Normalizing energy use data based on differences in the weather during the time of use. For instance, energy use is expected to be higher on extremely hot days when air conditioning is in higher demand than on days with comfortable temperature. Weather adjustment normalizes for this variation.

**Western Electric Coordinating Council (WECC):** The organization responsible for coordinating planning and operation on the Western electric grid.

**Western Riverside Council of Governments (WRCOG):** WRCOG is the council of governments in Western Riverside County consisting of 17 Cities, Riverside County, and the Morongo Band of Mission Indians.

**Wholesale Power:** Large amounts of electricity that are bought and sold by utilities and other electric companies in bulk at specific trading hubs. Quantities are measured in MWs, and a standard wholesale contract is for 25 MW for a month during heavy-load or peak hours (7am to 10 pm, Mon-Sat), or light-load or off-peak hours (all the other hours).

**WSPP (Western States Power Pool) Agreement:** Common, standardized enabling agreement to transact in the wholesale power markets.

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## Western Riverside Council of Governments Administration & Finance Committee

### Staff Report

**Subject:** Administration of Additional Property Assessed Clean Energy Programs in the WRCOG subregion

**Contact:** Barbara Spoonhour, Director of Energy and Environmental Programs,  
[spoonhour@wrcog.cog.ca.us](mailto:spoonhour@wrcog.cog.ca.us), (951) 955-8313

**Date:** September 14, 2016

#### Requested Action:

1. Consider the Ad Hoc Committee recommendation regarding Spruce under WRCOG's PACE umbrella.

#### Additional PACE Providers in the WRCOG Subregion

On June 6, 2016, the Executive Committee established an Ad Hoc Committee to review and complete the vetting process and provide recommendations on the possible inclusion of additional PACE providers under the WRCOG "umbrella" for the subregion. The Ad Hoc Committee consists of representation from the Cities of Banning, Jurupa Valley, Moreno Valley, and Wildomar, with assistance from WRCOG staff and WRCOG's Bond Counsel (Best Best & Krieger). To date, staff have received documentation and interest from CaliforniaFIRST and Spruce to come under the WRCOG PACE umbrella.

On August 3, 2016, the Ad Hoc Committee interviewed interested providers to seek additional information regarding their respective programs. From this interview and CaliforniaFIRST's site and operations visit, the Ad Hoc Committee recommended that the WRCOG Administration & Finance Committee recommend that the WRCOG Executive Committee direct and authorize the WRCOG Executive Director to enter into contract negotiations and execution of necessary documents to include CaliforniaFIRST under WRCOG's PACE umbrella at the September 12, 2016, Executive Committee meeting. If approved, this action will allow staff to work closely with CaliforniaFIRST over the next few months to ensure a successful launch in the subregion. The Ad Hoc Committee had also requested that staff conduct a site visit for Spruce's San Francisco and Anaheim office locations to review their operations and ask follow up questions. These site visits were completed on August 23, 2016, and August 29, 2016, respectively.

The Ad Hoc Committee will reconvene on September 12, 2016, to review these findings and determine whether or not to make a recommendation to the Administration & Finance Committee regarding Spruce. Since the Ad Hoc Committee meeting will occur after the release of the Administration & Finance Agenda packet, staff will present the recommendation regarding Spruce from the Ad Hoc Committee for member's consideration.

The following is an overview of Spruce's site visit:

- On August 23, 2016, staff and a member of the Ad Hoc Committee conducted a site visit at Spruce's Corporate Office in San Francisco, which houses its executive management and product development teams. There are approximately 120 employees currently working at that site, and Spruce has the ability to expand to more than 200. All software and financial product development is handled at this site, including its online portal "SpruceFlow."

In addition to meeting the upper level management, staff was able to get a deeper insight into Spruce's consumer protections and fair price development it has established through its years of Solar and Energy Efficiency financing. Management presented a roll-out plan, which is intended to focus on solar projects this year, and increase their efforts on financing energy efficient products in the first half of 2017.

Spruce will work directly with WRCOG over the upcoming months to ensure its PACE Program aligns with the expected consumer protections and compliance measures. Currently, Spruce vets contractors by verifying licensure, checking financial capacity, and monitoring social media and Better Business Bureau ratings. Spruce has already implemented recorded Confirmed Terms Calls and plan to offer these calls to 100% of the property owners by the time of their PACE launch.

- On August 29, 2016, staff and a member of the Ad Hoc Committee visited Spruce's Anaheim site, which handles the finance underwriting and houses one of Spruce's customer service call centers, in addition to centers in Des Moines and Houston. There are currently approximately 30 people at this site and they are currently handling more than 10,000 customer calls per month.

### **Prior WRCOG Actions:**

August 18, 2016: The WRCOG Technical Advisory Committee supported the WRCOG Administration & Finance Committee recommendation to request that the WRCOG Executive Committee direct and authorize the WRCOG Executive Director to enter into contract negotiations and execution of any necessary documents to include CaliforniaFIRST under WRCOG's PACE umbrella.

August 10, 2016: The WRCOG Administration & Finance Committee supported the Ad Hoc Committee recommendation to request that the WRCOG Executive Committee direct and authorize the WRCOG Executive Director to enter into contract negotiations and execution of any necessary documents to include CaliforniaFIRST under WRCOG's PACE umbrella.

June 6, 2016: The WRCOG Executive Committee 1) approved for WRCOG member agencies to place a 60-day review in considering requests by additional PACE Providers to implement Programs in WRCOG jurisdictions; 2) directed WRCOG staff to reach out to PACE Providers that wish to operate in the subregion and seek agreements for WRCOG to act as Program bond issuer and administrator, as it does with the HERO Program, for these additional Programs; 3) directed staff to return to the WRCOG Executive Committee with additional PACE Provider agreements that meet the criteria (i.e., practices and policies are consistent with WRCOG's Consumer Protection Policies and Program Report and are able to demonstrate compliance) to operate under the WRCOG PACE umbrella; 4) directed staff to regularly notify members regarding which Provider programs are and are not under the WRCOG administrative umbrella; 5) directed the WRCOG Executive Director to make any necessary changes to the WRCOG / Renovate America Administrative Agreement to allow WRCOG to provide oversight to additional PACE Providers in the subregion; and 6) created an Ad Hoc Committee to address all of the comments, concerns, and thoughts provided today by the Committee members and speakers.

### **WRCOG Fiscal Impact:**

Costs, including additional staff time, consulting fees, and any other expenditures not originally budgeted for administering additional PACE providers, will be recaptured through the one-time administrative fee and added during the course of a quarterly budget amendment in Fiscal Year 2016/2017.

### **Attachment:**

None.



# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** Regional Sustainability Demonstration Center Proposal Update

**Contact:** Jennifer Ward, Director of Government Relations, [ward@wrcoq.coq.ca.us](mailto:ward@wrcoq.coq.ca.us), (951) 955-0186

**Date:** September 14, 2016

### Requested Action:

1. Receive and file.

### Background

Western Riverside County is one of the fastest growing subregions in the State of California and the United States. Subregional leaders identified six interrelated components critically important to achieving a premier quality of life in Western Riverside County and incorporated these into an Economic Development & Sustainability Framework, which serves as a guide to grow intelligently and achieve a vibrant and livable community. The six Framework goal areas pertain to 1) Economic Development, 2) Water and Wastewater, 3) Education, 4) Health, 5) Transportation, and 6) Energy and the Environment.

WRCOG is seeking partners to explore the potential for development of an experiential sustainability center to further progress toward the Economic Development & Sustainability Framework by modeling best practices and providing necessary resources to regional decision makers, community organizations, and students alike to integrate sustainability into every facet of the community. The sustainability center will be tailored to fit the specific strengths and needs of the subregion, but informed by existing programs successfully working to enhance quality of life locally and across the globe. Below is a short list of model programs:

1. The Frontier Project – Rancho Cucamonga, CA
2. Southern California Edison Energy Education Center – Irwindale, CA
3. David Brower Center – Berkeley, CA
4. Alliance Center – Denver, CO

The intent of this Sustainability Center is to showcase the strides inland Southern California has made towards achieving a more sustainable quality of life, and attract those who want to learn more about these topics. The Center would feature a multitude of attractions, including those related to sustainability such as energy efficiency demonstrations, model home improvements, etc. The Center would also feature aspects that would draw audiences for other reasons, such as an education center, community farm, water efficient garden, walking loop, amphitheater, farm-to-fork café, and other public assets.

### Potential Center Locations

WRCOG staff have engaged in multiple discussions with potential partners for the Sustainability Center. These conversations have occurred with individuals from Eastern Municipal Water District (EMWD), Western Municipal Water District (WMWD), the City of Temecula, and the March Joint Powers Authority. The purpose of this staff report is to update the WRCOG Administration & Finance Committee on the potential for locating the Sustainability Center in partnership with EMWD at their location in Perris, CA. EMWD is

currently exploring the feasibility for construction of an education center at its Perris facility, and this project could potentially be expanded to include WRCOG's vision for the Sustainability Center. The feasibility study will assess the 1) financial feasibility; 2) local zoning compatibility and flexibility; 3) regional economic impact; and 4) potential to influence regional energy, water, and resource consumption. The study will also identify potential funding partners and an expected project timeline. Cost estimates to conduct a feasibility study are undetermined at this time.

As EMWD initiates its education center feasibility study, WRCOG staff will continue discussions with EMWD on the study and potential for siting the Regional Sustainability Demonstration Center at EMWD. Additionally, as WRCOG staff continues discussions with other potential partners, staff will report back with updates and next steps to the Administration & Finance Committee for further direction.

**Prior WRCOG Action:**

None.

**WRCOG Fiscal Impact:**

This item is informational only; therefore there is no fiscal impact.

**Attachment:**

None.



# Western Riverside Council of Governments Administration & Finance Committee

## Staff Report

**Subject:** City of Calimesa TUMF Request

**Contact:** Christopher Gray, Director of Transportation, [gray@wrcoq.coq.ca.us](mailto:gray@wrcoq.coq.ca.us), (951) 955-8304

**Date:** September 14, 2016

### Requested Action:

1. Discuss and provide direction.

*WRCOG's Transportation Uniform Mitigation Fee (TUMF) Program is a regional fee program designed to provide transportation and transit infrastructure that mitigates the impact of new growth in Western Riverside County. Each of WRCOG's member jurisdictions participates in the Program through an adopted ordinance, collects fees from new development, and remits the fees to WRCOG. WRCOG, as administrator of the TUMF Program, allocates TUMF to the Riverside County Transportation Commission (RCTC), groupings of jurisdictions – referred to as TUMF Zones – based on the amounts of fees collected in these groups, and the Riverside Transit Agency (RTA).*

### City of Calimesa Undercharged TUMF

In October 2009, the WRCOG Executive Committee authorized a temporary, one-year, 50% reduction in the TUMF. This action was taken in response to a study completed in collaboration with several partners including Riverside County, the City of Riverside, the Greater Riverside Chamber of Commerce, the Building Industry Association, and WRCOG to address the increasing number of foreclosures and the decline in new housing starts. In 2010, the Executive Committee took action to return to the 100% fee as an agency; however, allowed for any jurisdiction that wanted to continue the 50% reduction due to a local economic benefit for jobs creation and retention.

The City of Calimesa was one of the jurisdictions that exercised the option to implement a 50% reduction during the one-year period, which expired on December 31, 2010. For a period in early 2011, the City continued to collect 50% TUMF. WRCOG notified the City that the full fee was required to be collected beginning January 1, 2011, and on September 13, 2012, a Memorandum of Understanding (MOU) was executed between the City and WRCOG. The MOU outlined the terms of the remittance of undercharged TUMF, for which the City is subject to payments of \$989.89 each quarter for a period of ten years with an additional \$3.46 per quarter in interest up to a total payment of \$39,595.50. To date, the City has a current outstanding balance of \$24,695.25.

On August 8, 2016, WRCOG received a request from the City of Calimesa regarding the MOU and outstanding balance for the amount in TUMF that was uncollected. The City requests that WRCOG consider forgiving the balance based on the below items as outlined in Attachment 1 to the Staff Report:

- As noted in the MOU recitals, the error was inadvertent;
- This situation was the result of a calculation error;
- The calculation error occurred just after the rate increased due to a mid-year rate adjustment. Typically rate changes occur at the beginning of a fiscal year;

- This is an isolated, and explainable, instance. The City was in compliance prior to, as well as subsequent to, this incident;
- The repayments are coming from the City's General Fund and not from development revenue; thus, all residents are paying;
- The recently adopted changes to the TUMF Administrative Plan provides for more flexibility when clerical errors occur.

Staff is seeking input from the WRCOG Administration & Finance Committee to make a formal recommendation to the Executive Committee regarding the City's request. Since there is a formal agreement between the City of Calimesa and WRCOG, any action taken by WRCOG with respect to this agreement will have to be approved through the Executive Committee.

**Prior WRCOG Action:**

None.

**WRCOG Fiscal Impact:**

This item is informational only; therefore, there is no fiscal impact.

**Attachment:**

1. City of Calimesa TUMF Request Letter.

# Item 4.D

City of Calimesa TUMF Request

# Attachment 1

City of Calimesa TUMF Request  
Letter

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## City of Calimesa

August 8, 2016

Mr. Christopher Gray  
Director of Transportation  
Western Riverside Council of Governments  
4080 Lemon Street, 3rd Floor  
Riverside, CA 92501-3609

Subject: Memorandum of Understanding (MOU) regarding the Remittance of Undercharged Fees

Dear Mr. Gray:

The City of Calimesa has, and will continue to, support the Traffic Uniform Mitigation Fees (TUMF) program. The program facilitates funding for regional roadway improvements that benefit our citizens. In addition, as a member City, we are appreciative of WRCOG Staff's recent review of the Administrative Plan that governs the TUMF program. Implementing changes to adapt to the needs of member cities will serve all of us better in the future.

Thank you for meeting with City of Calimesa (City) staff to discuss, among other topics, the status of the MOU between the City of Calimesa and WRCOG. The MOU was adopted in September 2012 as the result of the under collection of TUMF by Calimesa in 2011.

With regard to the existing MOU, in early 2011, the City of Calimesa inadvertently failed to collect the full TUMF fee for a project. TUMF fees had been temporarily reduced by 50% for a period of time to encourage economic development. The 50% reduction ended December 31, 2010. Shortly thereafter, the City proceeded to only collect 50%, versus the required 100%, fees resulting in a \$39,595.50 deficit. As such, the City agreed, per the MOU, to make quarterly payments over a 10-year period to rectify the situation. To date, the City has made 15 payments resulting in a current outstanding balance of \$24,695.25.

At this time, the City would request that you consider forgiveness of the balance, based on the following:

- As noted in the MOU recitals, the error was inadvertent.
- This situation was the result of a calculation error.

- The calculation error occurred just after the rate increased due to a mid-year rate adjustment. Typically rate changes occur at the beginning of a fiscal year.
- This is an isolated, and explainable, instance. The City was in compliance prior to, as well as subsequent to, this incident.
- The repayments are coming from the City's General Fund and not from development revenue; thus all residents are paying.
- The recently adopted changes to the Administrative Plan provides for more flexibility when clerical errors occur.

We appreciate your consideration of this request.

If you have any questions or require additional information, please feel free to contact me.

Sincerely,



Jeff Hewitt, Mayor

cc: Bonnie Johnson, City Manager

Attachment: MOU between Calimesa and WRCOG

**MEMORANDUM OF UNDERSTANDING BETWEEN THE  
CITY OF CALIMESA AND THE  
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS  
REGARDING REMITTANCE OF UNDERCHARGED FEES**

This Memorandum of Understanding ("MOU") is made and effective this 17<sup>th</sup> day of Sept., 2012, by and between the CITY OF CALIMESA ("City") and the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS ("WRCOG" or "Council"). City and WRCOG are sometimes collectively referred to as the "Parties".

RECITALS

WHEREAS, WRCOG is the administrator of the Transportation Uniform Mitigation Fee Program of Western Riverside County ("TUMF Program"); and

WHEREAS, the TUMF Program is funded by TUMF fees paid by new development in Western Riverside County (collectively, "TUMF Program Funds"), which are held in trust by WRCOG for the purpose of funding qualifying projects; and

WHEREAS, the City is a participant in the TUMF Program and is obligated to collect and remit TUMF Program Funds to WRCOG; and

WHEREAS, the City adopted an ordinance pursuant to the TUMF Program that provided for a temporary fifty percent (50%) reduction in the TUMF fee to encourage economic development by reducing the overall cost of development, which expired on December 31, 2010; and

WHEREAS, the City inadvertently failed to collect the full TUMF fees from new development projects during early 2011, which the City was required to collect and remit to WRCOG; and

WHEREAS, the total TUMF fees that should have been collected related to these development projects during early 2011 amounted to \$79,115.58, but only \$39,520.08 was collected at that time, which left a deficit of \$39,595.50 owed by the City that was not collected and remitted to WRCOG; and

WHEREAS, the City desires to remit this deficit owed to WRCOG, and it is the purpose of this MOU to set forth the terms and conditions by which payments will be made by the City to WRCOG.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing facts, the Parties hereby agree, as follows:

1. Payments. The City shall make quarterly payments to WRCOG for ten (10) years consisting of a principal amount plus interest, as follows:

1.1 Principal Payment. The City shall pay WRCOG \$989.89 each quarter of the year for thirty-nine (39) consecutive quarters, and shall pay WRCOG one final, fortieth (40th) quarterly payment of \$989.79, which will remit the total principal balance owed to WRCOG of \$39,595.50.

1.2 Interest Payment. In addition to the payments for remitting the principal balance owed, the City shall also pay WRCOG \$3.46 each quarter of the year for interest that was calculated based on an interest factor of 35 basis points (0.35%). If the City fails to make timely payments, as described in Section 3, the City shall pay WRCOG an increased Interest Payment, as set forth therein.

1.3 Early Payment of Remaining Total Amount. Nothing in the Agreement precludes the City from paying the full amount of the remaining unpaid total balance at any time during the ten-year period. Such early payment of the entire remaining balance will not require payment of any interest yet to be accrued for the remaining term of the payment period.

2. Quarterly Due Dates. The first payment shall be due on or before January 1, 2013. The City shall make subsequent quarterly Payments to WRCOG on or before the first day of October, January, April and July.

3. Late Payment Penalty. If the City fails to make a Payment to WRCOG by the next subsequent due date from when the late payment was due, the City shall pay the Principal Payment plus an increased Interest Payment calculated based on the Federal Prime interest rate. The higher Federal Prime interest rate shall be applied to the portion of the payment amount that is late, but will not be applied to the portion of entire unpaid balance that is due but not late.

4. Default. The occurrence of any one or more of the following events shall, at WRCOG's option, constitute an event of default (each a "Default") and the City shall provide WRCOG with immediate notice thereof:

4.1 Any warranty, representation, statement, report or certificate made or delivered to WRCOG by the City or any of the City's officers, employees or agents now or hereafter regarding the TUMF Program which is incorrect, false, untrue or misleading in any material respect; or

4.2 The City's failure to pay, perform or comply with, or otherwise breach, any obligation, warranty, term or condition in this Agreement or any amendment to this Agreement, or any agreement delivered pursuant hereto; or

4.3 Dissolution, termination of existence or insolvency of the City; the commencement of any proceeding under any bankruptcy or insolvency law by or against the City unless prohibited by applicable law; entry of a court order which enjoins, restrains or in any way prevents the City from paying any sums owed by the City to WRCOG.

5. Remedies for Default. Should the City default, as provided in this Agreement, WRCOG may, in addition to any other remedies allowed under state law, take one or more of the following actions until any unpaid principal and interest remaining to be paid pursuant to the terms of this Agreement is received by WRCOG:

5.1 WRCOG may, by resolution of the board, take action terminating Calimesa's continued participation in the TUMF program. Such action would, among other things, result in the City's loss of its share of Measure A Local Street and Roads funding allocated to local jurisdictions by RCTC pursuant to RCTC Ordinance 02-001

5.2 WRCOG may take action to reduce or eliminate allocations for zone projects requested by the City in the amount of any unpaid principal and interest

5.3 WRCOG may withhold payments or reimbursement under any existing funding agreement between WRCOG and the City in the amount of any unpaid principal and interest.

6. Governing Law and Venue. This MOU shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.

7. Attorneys Fees. If either of the Parties commences an action against the other party arising out of or in connection with this MOU, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

8. Termination. WRCOG may, by written notice to the City, terminate this MOU, in whole or in part, at any time by giving written notice to the City of such termination, and specifying the effective date thereof. If not terminated by WRCOG, this MOU shall terminate upon the City's completion of the payments described herein.

9. Amendment. This MOU may be amended in writing by mutual agreement of the Parties.

10. Entire Agreement. This MOU contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

11. Invalidity; Severability. If any portion of this MOU is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.



**SIGNATURE PAGE TO  
MEMORANDUM OF UNDERSTANDING BETWEEN THE  
CITY OF CALIMESA AND THE WESTERN RIVERSIDE COUNCIL OF  
GOVERNMENTS REGARDING REMITTANCE OF UNDERCHARGED FEES**

IN WITNESS WHEREOF, the Parties have caused this MOU to be effective as of the day first above written.

WESTERN RIVERSIDE  
COUNCIL OF GOVERNMENTS

By:   
Rick Bishop  
Executive Director

CITY OF CALIMESA

By:   
Ella Zanowic, Mayor  
City of Calimesa

APPROVED AS TO FORM

By:   
Best Best & Krieger LLP  
General Counsel