



Western Riverside Council of Governments Administration & Finance Committee

AGENDA

**Wednesday, November 13, 2019
12:00 p.m.**

**Western Riverside Council of Governments
Citrus Tower
3390 University Avenue, Suite 450
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 Administration & Finance Committee meeting, please contact WRCOG at (951) 405-6703. 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 3390 University Avenue, Suite 450, Riverside, CA, 92501.

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

1. CALL TO ORDER (Bonnie Wright, Chair)

2. PUBLIC COMMENTS

At this time members of the public can address the 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. MINUTES

A. Summary Minutes from the October 9, 2019, Administration & Finance Committee Meeting are Available for Consideration.

P. 1

Requested Action: 1. *Approve the Summary Minutes from the October 9, 2019, Administration & Finance Committee meeting.*

4. 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. Finance Department Activities Update P. 5

Requested Action: 1. *Receive and file.*

B. Approval of Administration & Finance Committee 2020 Meeting Schedule P. 11

Requested Action: 1. *Approve the Schedule of Administration & Finance Committee meetings for 2020.*

C. 1st Quarter Draft Budget Amendment for Fiscal Year 2019/2020 P. 13

Requested Action: 1. *Recommend that the Executive Committee approve the 1st Quarter Draft Budget Amendment for Fiscal Year 2019/2020.*

D. Regional Housing Needs Assessment Methodology Activities Update P. 23

Requested Action: 1. *Receive and file.*

5. REPORTS / DISCUSSION

A. PACE Programs Activities Update P. 25

Requested Actions: 1. *Recommend that the Executive Committee approve and authorize the Executive Director to execute a HERO Commercial Programs Administration Agreement, as to form.*
2. *Recommend that the Executive Committee adopt Resolution Number 32-19; A Resolution of the Executive Committee of the Western Riverside Council of Governments authorizing Renovate America to administer and finance eligible improvements to be installed on commercial properties and other actions in connection thereto.*

B. Alternative Compliance Program Activities Update P. 63

Requested Action: 1. *Authorize Staff to submit a grant to the Bureau of Reclamation WaterSMART Cooperative Watershed Management Program Grant.*

C. Regional Streetlight Program Activities Update P. 91

Requested Action: 1. *Receive and file.*

D. TUMF Nexus Study Principles and Goal Discussion P. 95

Requested Action: 1. *Discuss and provide input.*

6. REPORT FROM THE EXECUTIVE DIRECTOR *Rick Bishop*

7. ITEMS FOR FUTURE AGENDAS *Members*

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

8. GENERAL ANNOUNCEMENTS *Members*

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

9. NEXT MEETING: The next Administration & Finance Committee meeting is scheduled for Wednesday, December 11, 2019, at 12:00 p.m., at WRCOG's office located at 3390 University Avenue, Suite 450, Riverside.

10. ADJOURNMENT

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1. CALL TO ORDER

The meeting of the Administration & Finance Committee was called to order at 12:00 p.m. by Chair Bonnie Wright at WRCOG's Office, Citrus Conference Room.

Members present:

Mike Lara, City of Beaumont
Bonnie Wright, City of Hemet, Chair
Brian Tisdale, City of Lake Elsinore
Kelly Seyarto, City of Murrieta
Kevin Bash, City of Norco
Rita Rogers, City of Perris
Rusty Bailey, City of Riverside (12:07 p.m. arrival)
Ben Benoit, City of Wildomar
Brenda Dennstedt, Western Municipal Water District

Staff present:

Steve DeBaun, Legal Counsel, Best Best & Krieger
Rick Bishop, Executive Director
Barbara Spoonhour, Deputy Executive Director - Operations
Andrew Ruiz, Interim Chief Financial Officer
Chris Gray, Director of Transportation & Planning
Casey Dailey, Director of Energy & Environmental Programs
Christopher Tzeng, Program Manager
Janis Leonard, Administrative Services Manager
Rachel Singer, Staff Analyst
Justin White, Staff Analyst
Suzy Nelson, Administrative Assistant

Guests present:

Mrunal Shaw, Best Best & Krieger
Damian Fussel, Building Industry Association, Riverside
Fred Walti, NGIN
Tom White, NGIN
Eric Espino, PFM
Andrea Howard, PlaceWorks
Karthick Ramakrishnan, University of California, Riverside

2. PUBLIC COMMENTS

Damian Fussel, Deputy Director of Government Affairs with the Building Industry Association (BIA), Riverside Branch, spoke on the BIA's concern with the TUMF Construction Cost Index adjustment and the housing crisis.

3. MINUTES – *(Perris / Wildomar) 8 yes; 0 no; 0 abstention. Item 3.A was approved. The City of Riverside and the County of Riverside Districts 2 and 3 were absent.*

A. Summary Minutes from the September 11, 2019, Administration & Finance Committee Meeting are Available for Consideration.

Action: 1. *Approved the Summary Minutes from the September 11, 2019, Administration & Finance Committee meeting.*

4. CONSENT CALENDAR – *(Wildomar / Beaumont) 8 yes; 0 no; 0 abstention. Items 4.A and 4.B were approved. The City of Riverside and the County of Riverside Districts 2 and 3 were absent.*

A. Finance Department Activities Update

Action: 1. *Received and filed.*

B. Single Signature Authority Report

Action: 1. *Received and filed.*

5. REPORTS / DISCUSSION

A. PACE Programs Activities Update: Refunding of WRCOG-issued Bonds and Request to Amend the WRCOG HERO and CA HERO Program Administration Agreement

Casey Dailey reported that as part of the overall PACE Program, WRCOG issues municipal bonds which are secured against the assessment on the properties of property owners who choose to utilize PACE financing.

Since launch, WRCOG has issued approximately 1,300 bonds with a current estimated value of just over \$1 billion.

Since the initial issuance of bonds, interest rates have declined, creating an opportunity to refund outstanding bonds at lower interest rates. Benefits of refunding include a reduced trustee expenses, consolidation of outstanding commercial bonds, as well as savings to WRCOG in streamlining its operations.

Over the next couple of months staff will return with an overview of a refunding plan; ideally WRCOG will be able to post the first round of refunds by the end of the calendar year. A rolling refunding plan will most likely be the process. It is likely that not all bonds will be recommended for refunding at once.

In 2015 the Executive Committee approved an addendum to the PACE Administration Agreement between WRCOG and Renovate America that allowed Renovate America to expand its territory into 49 cities in Los Angeles County, outside of the California HERO Program. In doing so, WRCOG received a nominal fee for the work done in Los Angeles County that was offset by work being done by additional providers WRCOG brought into the Program.

California Statewide Communities Development Authority (CSCDA), another bond issuer of PACE assessments, had an exclusive arrangement with Renew Financial; that arrangement has expired, opening up 23 new jurisdictions that Renovate America can compete in but are not a participant in the California HERO Program.

WRCOG has been in communicating with CSCDA to determine an equitable way for it to operate in those 23 jurisdictions. WRCOG proposes to do away with the formula currently used in the Los Angeles County area; WRCOG would automatically receive 25 basis points. For any work completed in the new 23 jurisdictions opened up to CSCDA, WRCOG would automatically receive 25 basis points. When and if those 23 new jurisdictions become CSCDA territory, and the statewide Program enters into it, WRCOG reverts to becoming the bond issuer for those jurisdictions. The new jurisdictions would also be able to participate in the commercial aspect of the Program.

Committee member Brian Tisdale asked if there are any preliminary savings numbers regarding the bond refinancing.

Mr. Dailey responded that it is too early to determine the exact numbers; however, it is likely in the seven figures. Currently each trustee is paid on a per-bond basis; if WRCOG can consolidate bonds that is another savings.

Committee member Mike Lara asked what the cost would be to refinance and if that amount is set aside in the agency budget.

Mr. Dailey responded that any cost associated with refinancing will be paid as part of the refinancing.

- Actions:**
1. *Recommended that the Executive Committee approve and authorize the Executive Director to execute a First Amendment to the WRCOG HERO Program and California HERO Program Administration Agreement.*
 2. *Recommended that the Executive Committee approve and authorize the Executive Director to execute Addendum No. 2 to the WRCOG HERO Program and California HERO Program Administration Agreement.*

(Lake Elsinore / Riverside) 9 yes; 0 no; 0 abstention. Item 5.A was approved. The County of Riverside Districts 2 and 3 were absent.

B. Experience Subregional Innovation Center Activities Update

Fred Walti reported that the Experience Subregional Innovation Center Project has been named Innovation 2030, which is modeled after the Los Angeles Clean Tech Incubator (LACI), a world-recognized program which has delivered approximately \$600 million long-term economic value to the city.

NGIN staff spoke with over 50 stakeholders consisting of cities, counties, elected officials, academia, business organizations, etc., to determine what role in innovation and the economy they could play. The mission is to build an innovation-driven economy by the year 2030.

Both direct and indirect jobs generate incremental taxes which pay for public services. One job in the technology field will generate five indirect jobs. One job in retail generates 1.2 indirect jobs. Investments should be made in innovation-driven economic development; that is where the best return is.

A non-profit, 501(c)3 organization needs to be created to focus entirely on the mission of Innovation 2030. This organization will connect employers to entrepreneurs. Start-up costs are anticipated to be approximately \$900k. There are several sources of funding that can be attracted over time as the organization grows. It is anticipated to cost approximately \$10M over five years to build an innovation economy by the year 2030 that will help create jobs and return economic value to the region.

Chair Wright asked how proactive NGIN will be in applying for funds, knowing the time it takes for state and federal processes.

Mr. Walti responded that one application has already been submitted at a financial institution.

Committee member Rusty Bailey asked for successful examples.

Mr. Walti responded that Los Angeles has a bigger hub – an incubator was built at Cal State Northridge as well as at the Ports. The Founders Program is a cohort-based program for the underserved communities and teaches that group how to develop entrepreneurs. If viewed as an innovation region versus a city, the program is more likely to succeed.

Rick Bishop added that staff met with staff from the Governor's Office last month. The Governor is looking to allocate funds to the inland region but does not know where to do so; perhaps a "region" is a better geography to disperse funds.

Committee member Kelly Seyarto indicated that there is much more information that accompanies the model presented today. In order to have this dream come to fruition, the innovation and technology has to be here.

Action: 1. *Received and filed.*

C. 2019 TUMF Construction Cost Index Adjustment

Chris Gray reported that because this subject has been such a contentious matter in the past, there is a formal process, as determined by the Executive Committee, to determine Construction Cost Index (CCI), in which staff utilizes 1) the National Association of Realtors (NAR) median home prices in the subregion, and 2) the Engineering News Record (ENR). Over the last couple of years, there has been a huge spike in construction costs; however, those costs are not used in determining CCI because this information is not part of the two numbers used.

Labor and materials for projects have increased. Member jurisdictions have indicated that while they used to receive seven or eight bids for a project, they are now receiving two or three bids, and the bids are coming in over the estimate. Some contractors do not have enough workers.

For most projects the fee increase project is approximately 1%; the total project costs would increase by less than 1/10 of 1%.

A CCI adjustment will keep the value of the TUMF dollar whole and there would be additional funding available for all TUMF projects.

Action: 1. *Recommended that the Executive Committee implement a TUMF CCI adjustment which would maintain the Retail fee at its current level, increase Service and Industrial, and Multi-family Residential fees, and phase-in the Single-family Residential fee.*

(Riverside / Norco) 9 yes; 0 no; 0 abstention. Item 5.C was approved. The County of Riverside Districts 2 and 3 were absent.

6. REPORT FROM THE EXECUTIVE DIRECTOR

Rick Bishop had no report to provide.

7. ITEMS FOR FUTURE AGENDAS

There were no items for future agendas.

8. GENERAL ANNOUNCEMENTS

Committee member Rusty Bailey announced that the City of Riverside is holding its Long Night of Innovation on Main Street downtown on Thursday, October 10, 2019.

9. NEXT MEETING: The next meeting is scheduled for Wednesday, November 13, 2019, at 12:00 p.m., at WRCOG's office located at 3390 University Avenue, Suite 450, Riverside.

11. ADJOURNMENT: The meeting of the Administration & Finance Committee adjourned at 12:56 p.m.



Western Riverside Council of Governments

Administration & Finance Committee

Staff Report

Subject: Finance Department Activities Update

Contact: Andrew Ruiz, Chief Financial Officer, aruiz@wrcog.us, (951) 405-6741

Date: November 13, 2019

The purpose of this item is to provide an update on the Fiscal Year (FY) 2018/2019 Agency Audit and the Agency Financial Report summary through September 2019.

Requested Action:

1. Receive and file.

FY 2018/2019 Agency Audit

WRCOG's annual Agency Interim Audit was completed on June 12, 2019. WRCOG utilizes the services of the audit firm Rogers, Anderson, Malody, and Scott, LLP (RAMS) to conduct its financial audit. The first visit is known as the "interim" audit, which involves preliminary audit work that is conducted prior to fiscal year end. The interim audit tasks are conducted in order to compress the period needed to complete the final audit after fiscal year end. In late September, RAMS returned to finish its second round, which is known as "fieldwork." The final Comprehensive Annual Financial Report (Report) is expected to be issued by the end of November 2019. The draft Report will be provided to the Finance Directors Committee as soon as it is received so that the Committee members can provide comments. Once comments from the Finance Directors are received, staff will present the Report to the Administration & Finance Committee in December 2019, with the Executive Committee receiving the report no later than at its January 2020 meeting.

Financial Report Summary Through September 2019

The Agency Financial Report summary through September 2019, a monthly overview of WRCOG's financial statements in the form of combined Agency revenues and costs, is provided as Attachment 1.

Investment Summary Through September 2019

The Agency Financial Investment summary through September 2019, a quarterly overview of WRCOG's investment statement earnings, is provided as Attachment 2.

Prior Action:

None.

Fiscal Impact:

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

Attachment:

1. Financial Report summary – September 2019.

Item 4.A

Finance Department Activities Update

Attachment 1

Financial Report summary – September 2019

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Western Riverside Council of Governments
Monthly Budget to Actuals
For the Month Ending September 30, 2019

Total Agency			
Revenues	Approved Budget 6/30/2020	Thru Actual 9/30/2019	Remaining Budget 6/30/2020
Member Dues	\$ 311,410	311,410	-
PACE Residential Revenue	212,500	50,559	161,941
Statewide HERO Revenue	570,000	150,837	419,163
PACE Residential Recording Rev	111,800	29,985	81,815
Statewide HERO Recording fee Rev	441,200	98,197	343,003
Regional Streetlights Revenue	187,511	194,512	(7,001)
NW Clean Cities - Member Dues	128,000	154,600	(26,600)
Solid Waste	107,313	112,970	(5,657)
Statewide Used Oil Grant Revenue	377,654	377,654	-
CAP Grant Revenue	125,000	2,686	122,314
TUMF Admin Commerical	47,284	30,947	16,337
TUMF Admin Retail	109,687	22,779	86,908
TUMF Admin Industrial	502,285	78,996	423,289
TUMF Admin Single Family	1,121,669	148,518	973,151
TUMF Admin Multi-Family	199,074	81,893	117,181
Commerical/Service	1,134,806	742,728	392,078
Retail	2,632,497	546,696	2,085,801
Industrial	12,054,852	1,895,904	10,158,948
Single Family	26,920,065	3,564,432	23,355,633
Multi-Family	4,777,779	1,965,432	2,812,347
Total Revenues & Carryover	55,365,007	10,561,735	44,803,272
Overhead Transfer In	1,996,602	473,334	1,523,268
Total Revenues & Overhead	57,361,609	11,035,069	46,326,540
Expenses	Approved Budget 6/30/2020	Thru Actual 9/30/2019	Remaining Budget 6/30/2020
Salaries & Wages - Fulltime	\$ 1,956,159	457,815	1,498,344
Fringe Benefits	628,266	157,071	471,195
CalPERS OPEB Paydown	200,000	184,103	15,897
Overhead Allocation	1,893,320	473,334	1,419,986
General Legal Services	387,000	130,416	256,584
Audit Svcs - Professional Fees	30,500	700	29,800
Bank Fees	38,512	7,327	31,185
Commissioners Per Diem	62,500	5,150	57,350
Office Lease	465,000	81,542	383,458
WRCOG Auto Fuels Expenses	1,500	280	1,220
Parking Validations	10,000	3,555	6,445
Coffee and Supplies	2,500	893	1,607
Event Support	182,283	59,058	123,225
Program/Office Supplies	22,263	4,209	18,054
Computer Equipment/Supplies	4,500	2,274	2,226
Computer Software	86,500	57,092	29,408
Rent/Lease Equipment	30,000	4,053	25,947
Membership Dues	32,500	2,620	29,880
Subscription/Publications	2,250	575	1,675

Meeting Support Services	10,698	41	10,657
Postage	5,600	1,254	4,346
Other Expenses	1,250	150	1,100
Storage	10,000	3,752	6,248
COG HERO Share Expenses	10,000	1,020	8,980
Printing Services	7,500	567	6,933
Communications - Regular Phone	16,000	3,811	12,189
Communications - Cellular Phones	17,500	2,924	14,576
Communications - Computer Services	57,500	8,465	49,035
Communications - Web Site	8,000	5,650	2,350
Equipment Maintenance - General	10,000	2,904	7,096
Insurance - Gen/Busi Liab/Auto	92,500	87,748	4,752
Recording Fee	254,339	40,240	214,099
Seminars/Conferences	11,825	360	11,465
General Assembly Expenses	300,000	1,702	298,298
Travel - Mileage Reimbursement	19,500	1,974	17,526
Travel - Ground Transportation	5,160	261	4,899
Travel - Airfare	12,250	812	11,438
Lodging	7,630	728	6,902
Meals	8,250	883	7,367
Other Incidentals	6,600	382	6,218
Training	9,250	3,099	6,151
Supplies/Materials	21,850	74	21,776
Advertising Media - Newspaper Ad	10,000	1,020	8,980
Advertisement Radio & TV Ads	72,000	10,800	61,200
Consulting Labor	2,291,999	531,584	1,760,415
TUMF Project Reimbursement	45,000,000	10,303,380	34,696,620
Total Expenses	\$ 54,955,554	12,647,652	42,367,902



Western Riverside Council of Governments

Administration & Finance Committee

Staff Report

Subject: Approval of Administration & Finance Committee 2020 Meeting Schedule

Contact: Janis L. Leonard, Administrative Services Manager, jleonard@wrcog.us, (951) 405-6702

Date: November 13, 2019

The purpose of this item is to provide and obtain approval of a meeting schedule for 2020.

Requested Action:

1. Approve the Schedule of Administration & Finance Committee meetings for 2020.

Below are the proposed 2020 meeting dates for the Administration & Finance Committee. All meeting dates are proposed for the second Wednesday of the month and are scheduled to begin at 12:00 p.m. at WRCOG's office, 3390 University Avenue, Suite #450, Riverside (Note: location will change in early 2020 as WRCOG moves to new office space on the second floor of the building.)

	Day	Time	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
Administration & Finance Committee	2nd Wed.	12:00 p.m.	8	12	11	8	13	10	8	DARK	9	14	11	9

Prior Action:

None.

Fiscal Impact:

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

Attachment:

None.

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Western Riverside Council of Governments

Administration & Finance Committee

Staff Report

Subject: 1st Quarter Draft Budget Amendment for Fiscal Year 2019/2020

Contact: Andrew Ruiz, Chief Financial Officer, aruiz@wrcog.us, (951) 405-6741

Date: November 13, 2019

The purpose of this item is to request approval of WRCOG's 1st Quarter Draft Budget Amendment for Fiscal Year (FY) 2019/2020. The staff report includes a summary of increases and/or decreases to both revenues and expenditures by department.

Requested Action:

1. Recommend that the Executive Committee approve the 1st Quarter Draft Agency Budget Amendment for Fiscal Year 2019/2020.

Transportation & Planning Department

Transportation & Planning Department expenditures exceeded the budgeted amount by \$304, primarily due to training costs associated with the Fellowship Program and member dues related to TUMF Program. These expenditures will be offset by a decrease in expenditures in other budgeted categories.

Net Expenditure increase to Transportation & Planning Department: \$0

Energy Department

Energy Department expenditures exceeded the budgeted amount by \$12,982, primarily due to legal costs associated with PACE providers SAMAS Capital and TWIN Capital. SAMAS is expected to pay back the legal costs, and the legal costs associated with TWIN Capital are expected to be offset by future revenues. \$1,638 in expenditures will be offset by a decrease in expenditures in other budgeted categories.

Net Expenditure increase to the Energy Department: \$11,344

Environmental Department

Environmental Department expenditures exceeded the budgeted amount by \$881, primarily due to costs associated with a new computer for staff. These expenditures will be offset by a decrease in expenditures in other budgeted categories.

Net Expenditure increase to the Environment Department: \$0

Prior Action:

October 24, 2019:

The Finance Directors Committee recommended that the Executive Committee approve the 1st Quarter Draft Agency Budget Amendment for Fiscal Year 2019/2020.

Fiscal Impact:

For the 1st Quarter of Fiscal Year 2019/2020, there will a net increase in expenditures of \$11,344 related to legal costs associated with PACE providers SAMAS Capital and TWAIN Capital.

Attachment:

1. Fiscal Year 2019/2020 1st Quarter Budget amendment.

Item 4.C

1st Quarter Draft Budget Amendment
for Fiscal Year 2019/2020

Attachment 1

Fiscal Year 2019/2020 1st Quarter
Budget amendment

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Department: Government Relations (Fellowship - 4700)

Expenditures

	Thru	Approved	Amendment
	9/30/2019	6/30/2020	Needed
	Actual	Budget	9/30/2019
Expenditures			
Salaries & Wages	40,020	273,961	189
Event Support	689	500	(189)
Total net (increase)/decrease			-

**Western Riverside Council of Governments
Annual Budget
For the Year Ending June 30, 2020**

Department: Transportation (TUMF - 1148)



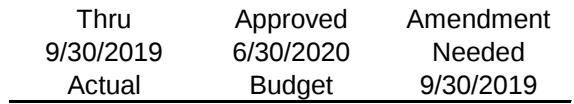
Thru	Approved	Amendment
9/30/2019	6/30/2020	Needed
Actual	Budget	9/30/2019

Expenditures

Membership Dues	115	-	(115)
Subscriptions/Publications	-	500	115

Total net (increase)/decrease -

Department: Energy (Streetlights - 2026)



Bank Fees	1,638	-	(1,638)
General Legal Services	1,043	10,000	1,638
Total net (increase)/decrease			-

**Western Riverside Council of Governments
Annual Budget
For the Year Ending June 30, 2020**

Department: Energy (Twain - 2115)



Thru 9/30/2019 Actual	Approved 6/30/2020 Budget	Amendment Needed 9/30/2019
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Expenditures

General Legal Services	6,322	-	(6,322)
Total net (increase)/decrease			(6,322)

**Western Riverside Council of Governments
Annual Budget
For the Year Ending June 30, 2020**

Department: Energy (SAMAS - 2107)

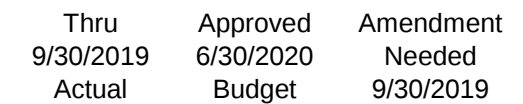


Thru 9/30/2019 Actual	Approved 6/30/2020 Budget	Amendment Needed 9/30/2019
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Expenditures

General Legal Services	5,022	-	(5,022)
Total net (increase)/decrease			(5,022)

Department: Environmental (Solid Waste - 1038)



Event Support	-	30,000	881
Computer Supplies	881	-	(881)
Total net (increase)/decrease			-



Western Riverside Council of Governments

Administration & Finance Committee

Staff Report

Subject: Regional Housing Needs Assessment Methodology Activities Update

Contact: Chris Gray, Director of Transportation & Planning, cgray@wrcoq.us, (951) 405-6710

Date: November 13, 2019

The purpose of this item is to provide an update on the Regional Housing Needs Assessment (RHNA) Cycle 6 process occurring at the Southern California Association of Governments (SCAG).

Requested Action:

1. Receive and file.

Background

The state-wide housing crisis is creating challenges locally in housing the subregion's growing population, complying with changing legislation, meeting RHNA targets, and avoiding growing risks that might come with findings of non-compliance. In response to this, WRCOG's 2019/2020 Legislative Platform established Housing as a Priority Issue Area, recognizing the acute impact of the state-wide housing shortage and housing-related legislative activity to the WRCOG subregion. For this Priority Issue Area, WRCOG committed, to the extent possible, to having staff lead more targeted efforts, including engaging state agency staff in solutions-oriented discussions regarding the housing crisis and related activities. One of the leading topics in housing-related issues is RHNA.

Each local jurisdiction in California is required to adopt a Housing Element as part of its General Plan that shows how the jurisdiction plans to meet the existing and projected housing needs of people at all income levels. RHNA is the state-mandated process to identify the total number of housing units (by affordability level) that each jurisdiction must accommodate in its Housing Element. As part of this process, the California Department of Housing and Community Development (HCD) and SCAG identify the total housing need for the SCAG region. California's Housing Element Law ([Government Code](#), Section [65584.04](#)) charges SCAG with developing a "methodology to distribute the identified housing need to local governments in a manner that is consistent with the development pattern included in the Sustainable Communities Strategy (SCS).

SCAG is currently preparing for its 6th RHNA Cycle, which will cover the planning period of October 2021 through October 2029. Between February and June 2019, SCAG staff presented to its RHNA Subcommittee on different factors that could be used to develop a proposed RHNA methodology. Based on the feedback received from the Subcommittee and public comment, SCAG staff has developed three options for consideration. In August 2019, SCAG held four public hearings to obtain input from stakeholders on the methodologies. The deadline to submit comments was September 13, 2019. WRCOG, along with many of its member agencies, submitted comment letters to SCAG regarding the proposed RHNA methodologies.

Based on the comment received from stakeholders (including WRCOG and its member agencies), SCAG developed a fourth option to allocate RHNA units to jurisdictions in the SCAG region. This option was approved by the SCAG RHNA Subcommittee and the Community, Economic & Human Development Committee. Final discussion and approval of a methodology will occur on November 7, 2019, at the SCAG

Regional Council Meeting. WRCOG will share the results of any action taken by SCAG after this meeting occurs.

Staff anticipates that once a final decision is made on the RHNA allocation methodology, SCAG will coordinate with each of its member agencies to notify them of their RHNA allocation and discuss next steps.

WRCOG Actions

Over the next several months, WRCOG will be providing regular updates to its member agencies through regular emails as well as Committee updates. Additionally, SCAG's Executive Director (Kome Ajise) will be attending the December 3, 2019, WRCOG Executive Committee meeting to present the Draft Connect SoCal Development, which is a long-range land use and transportation plan for the SCAG region. Staff expects that this presentation will also address an update on the RHNA process from SCAG's perspective.

Prior Action:

October 10, 2019: The Planning Directors Committee received and filed.

Fiscal Impact:

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

Attachment:

None.



Western Riverside Council of Governments

Administration & Finance Committee

Staff Report

Subject: PACE Programs Activities Update

Contact: Casey Dailey, Director of Energy & Environmental Programs, cdailey@wrcog.us, (951) 405-6720

Date: November 13, 2019

The purpose of this item is to request that the Executive Committee approve the HERO Commercial Programs Administration Agreement between Renovate America and WRCOG to allow Renovate America to administer services to WRCOG for the HERO Commercial Programs and recommend that the Executive Committee adopt Resolution Number 32-19, authorizing Renovate America to administer and finance eligible improvements on commercial properties.

Requested Actions:

1. Recommend that the Executive Committee approve and authorize the Executive Director to execute a HERO Commercial Programs Administration Agreement, as to form.
2. Recommend that the Executive Committee adopt Resolution Number 32-19; A Resolution of the Executive Committee of the Western Riverside Council of Governments authorizing Renovate America to administer and finance eligible improvements to be installed on commercial properties and other actions in connection thereto.

WRCOG's PACE Programs provide financing to property owners to implement energy saving, renewable energy, water conservation, and seismic strengthening improvements to their homes and businesses. Financing is paid back from assessments revenues generated by placing a lien on the subject property's tax bill. The Program was initiated in December 2011 and was expanded in 2014 to allow jurisdictions throughout the state to join WRCOG's Program and allow property owners in these jurisdictions to participate. WRCOG now offers HERO, CaliforniaFIRST, PACE Funding, and Ygrene as residential PACE providers and Greenworks, CleanFund, and Twain as commercial PACE providers.

Renovate America Commercial PACE

In June 2016, the Executive Committee adopted a resolution to have Renovate America implement the HERO Commercial PACE Program. Like the residential HERO PACE Program, Renovate America would have access to all participating jurisdictions within the California HERO footprint for commercial PACE (C-PACE) projects. However, due to certain market conditions, Renovate America was unable to establish the HERO Commercial PACE Program.

On October 2, 2017, the Executive Committee adopted a resolution which rescinded the authorization for Renovate America to administer the Commercial HERO Program and removed HERO Commercial Program references from the Program Report. This action allowed commercial PACE providers, such as Greenworks Lending, to operate within California HERO Statewide member jurisdictions.

As C-PACE markets have continued to evolve, Renovate America has been approached by several commercial PACE providers who have pending projects in jurisdictions located within the California HERO

Program footprint but are not authorized to provide program administration services within such area that desire to partner with Renovate America to finance such projects. For all such commercial projects, Renovate America will serve as the program administrator.

In order to facilitate financing of these projects and expand C-PACE, WRCOG staff is recommending that the Executive Committee adopt Resolution Number 32-19, as well as approve and authorize the Executive Director to execute the HERO Commercial Programs Administration Agreement, as to form, authorizing Renovate America to administer and finance eligible improvements on commercial properties. This will authorize Renovate America to serve as an additional program administrator for commercial properties within the WRCOG Programs allowing Renovate America to originate commercial projects of its own and partner with other PACE providers to finance commercial projects. This action does not impact existing WRCOG C-PACE providers that are currently allowed to operate within the footprint of the WRCOG Programs.

Prior Action:

October 9, 2017: The Executive Committee adopted a Resolution Number 41-17, which rescinded the authorization for Renovate America to administer the Commercial HERO Program and removed HERO Commercial Program references from the Program Report.

Fiscal Impact:

There is no fiscal impact directly associated with this item. Approval of the requested actions are likely to result in additional revenue to the WRCOG PACE Program.

Attachments:

1. HERO Commercial Programs Administration Agreement.
2. Resolution Number 32-19; A Resolution of the Executive Committee of the Western Riverside Council of Governments authorizing Renovate America to administer and finance eligible improvements to be installed on commercial properties and other actions in connection thereto.

Item 5.A

PACE Programs Activities Update

Attachment 1

HERO Commercial Programs
Administration Agreement

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HERO COMMERCIAL PROGRAMS

ADMINISTRATION AGREEMENT

1. PARTIES AND DATE.

This HERO Commercial Programs Administration Agreement is made and entered into as of _____, 2019, by and between the Western Riverside Council of Governments, a California public agency (“WRCOG”) and Renovate America, Inc., a Delaware corporation (“Renovate America”). WRCOG and Renovate America are sometimes individually referred to as a “Party” and collectively as the “Parties.” This agreement may be referred to herein as the “Administration Agreement” or the “Agreement.”

2. RECITALS.

2.1 The Executive Committee of WRCOG (the “Executive Committee”) has established a property assessed clean energy (“PACE”) program designated as the Energy Efficiency and Water Conservation Program for Western Riverside County (the “WRCOG PACE Program”) pursuant to the provisions of Chapter 29 of Part 3, Division 7 of the California Streets and Highways Code (commencing at Section 5898.12) (“Chapter 29”), the Joint Powers Agreement of WRCOG originally made and entered into April 1, 1991, as further amended to date (as amended, the “JPA”), and separate Implementation Agreements entered into pursuant to the JPA by and between WRCOG and its member agencies that elected to participate in the WRCOG PACE Program (the “Member Agencies”), to assist owners of commercial properties (the “Commercial Properties”) or commercial properties (“Residential Properties”) within the jurisdictional boundaries such Member Agencies to finance the cost of installation of distributed generation renewable energy sources or energy efficiency or water conservation improvements, seismic improvements or electric vehicle charging infrastructure (the “Eligible Products”) that are permanently fixed to the properties of such owners.

2.2 As a part of such proceedings, the Executive Committee initially approved and has subsequently amended a report prepared pursuant to and addressing all of the matters set forth in Streets and Highways Code Section 5898.22 and 5898.23 (as amended, the “WRCOG PACE Program Report”), including a map showing the boundaries of the territory within which the voluntary contractual assessments may be offered (the “WRCOG PACE Program Area”), a form of contract specifying the terms and conditions that would be agreed to by an owner of property within such boundaries and WRCOG (each, a “WRCOG PACE Program Assessment Contract”), a statement of policies of WRCOG concerning such voluntary contractual assessments and a plan for raising a capital amount required to pay for the work performed pursuant to the voluntary contractual assessments.

2.3 As a further part of such proceedings, the Executive Committee provided that one or more series of limited obligation improvement bonds would be issued under the Bond Act of 1915, being Division 10 of the Streets & Highways Code of the State of

California (the “1915 Bond Act”) or other financing relationships would be entered for the purpose of financing the installation of Eligible Products.

2.4 WRCOG and Renovate America entered into agreements and amendments and addendums thereto (the “WRCOG Residential Agreement”) to provide that Renovate America would, as a part of the WRCOG PACE Program, administer and finance a program (the “WRCOG HERO Residential Program”) to finance the installation of Eligible Improvements on Residential Properties within the WRCOG PACE Program Area.

2.5 Subsequently the Member Agencies of WRCOG entered into that certain Amendment to the Joint Powers Agreement of the Western Riverside Council of Governments to Permit the Provision of PACE Services (the “PACE JPA Amendment”) to empower WRCOG to establish and operate one or more PACE programs pursuant to Chapter 29 and to enter into one or more implementation agreements or joint powers agreements or amendments thereto to fulfill such programs both within and outside the jurisdictional boundaries of WRCOG and to further empower WRCOG to establish an “Associate Member” status that provides membership in WRCOG of local jurisdictions that are located outside of WRCOG’s jurisdictional boundaries but within whose boundaries such a PACE program will be established and implemented by WRCOG.

2.6 The PACE JPA Amendment provided that such local jurisdictions shall become Associate Members of WRCOG by the adopting an agreement on the terms established by the Executive Committee.

2.7 The Executive Committee did, pursuant to the PACE JPA Amendment, establish the terms of such an agreement in the form of an amendment to the JPA enabling local jurisdictions to be added as Associate Members to WRCOG to permit the provision of PACE services within such local jurisdiction (each such agreement, a “JPA Amendment”).

2.8 The Executive Committee subsequently undertook proceedings to establish and did thereby establish a PACE program designated as the California HERO Program (the “California HERO Program” and, together with the WRCOG PACE Program, the “Programs”) pursuant to the provisions of Chapter 29, the JPA, and separate JPA Amendments entered into pursuant to the JPA by and between WRCOG and the cities and counties that elected to become Associate Members of WRCOG and to participate in the California HERO Program, to assist owners of Commercial Properties or Residential Properties within the jurisdictional boundaries such Associate Members to finance the cost of installation of Eligible Products that are permanently fixed to the properties of such owners.

2.9 As a part of such proceedings, the Executive Committee initially approved and has subsequently amended a report prepared pursuant to and addressing all of the matters set forth in Streets and Highways Code Section 5898.22 and 5898.23 (as amended, the “California HERO Program Report” and, together with the WRCOG PACE Program Report, the “Program Reports”), including a map showing the boundaries of the territory within which the voluntary contractual assessments may be offered (the “California HERO

Program Area” and, together with the WRCOG PACE Program Area, the “Program Areas”), a form of contract specifying the terms and conditions that would be agreed to by an owner of property within such boundaries and WRCOG (each, together with the WRCOG PACE Program Assessment Contracts, an “Assessment Contract”), a statement of policies of WRCOG concerning such voluntary contractual assessments and a plan for raising a capital amount required to pay for the work performed pursuant to the voluntary contractual assessments.

2.10 As a part of such proceedings, the Executive Committee provided that one or more Series of Bonds would be issued under the 1915 Bond Act or other financing relationships would be entered for the purpose of financing the installation of Eligible Products.

2.11 WRCOG and Renovate America entered into agreements and amendments and addendum thereto (the “California HERO Residential Agreement,” collectively with the WRCOG Residential Agreement, the “Residential Agreements”) to provide that Renovate America would, as a part of the California HERO Program, administer and finance a separate program (the “California HERO Residential Program,” and together with the WRCOG HERO Residential Program, the “HERO Residential Programs”) to finance the installation of Eligible Improvements on Residential Properties within the California HERO Program Area.

2.12 Subsequently, WRCOG has also entered into agreements with numerous other program administrators that would, as a part of the Programs, administer and finance separate program (the “WRCOG Commercial Programs”) to finance the installation of Eligible Improvements on Commercial Properties within the Program Areas.

2.13 Renovate America has created the infrastructure and developed the resources to administer and finance the installation of Eligible Improvements on Commercial Properties.

2.14 The Executive Committee has determined that it would be in the best interests of the owners of Commercial Properties within the Program Areas to enable Renovate America to administer and finance a program as a part of each of the Programs (each, a “HERO Commercial Program” and together, the “HERO Commercial Programs”), separate and apart from the HERO Residential Programs and the Samas Commercial Programs, to finance the installation of Eligible Improvements on Commercial Properties in each of the Program Areas.

2.15 The Executive Committee has amended the Program Reports to enable Renovate America to implement the applicable HERO Commercial Program within each of the Program Areas.

2.16 WRCOG and Renovate America now desire and intend to enter into this agreement pursuant to which Renovate America shall provide administrative services for the HERO Commercial Programs (the “Administration Agreement”) and an Master Bond

Purchase Agreement (the “Master BPA”) to provide for and establish the terms and conditions pursuant to which WRCOG will sell to Renovate America and Renovate America shall purchase from WRCOG the limited obligation improvement bonds issued by WRCOG (the “Bonds”) to finance the installation of Eligible Improvements on Commercial Properties the owners of which elect to participate in one of the HERO Commercial Programs.

2.17 The Parties hereto desire and that this Administration Agreement and this Master BPA taken together represent the operating relationship between the parties pertaining to the HERO Commercial Programs.

3. THE PURPOSE OF THE AGREEMENT.

WRCOG and Renovate America desire to enter into the Agreement to establish the terms and conditions pursuant to which Renovate America shall provide administration services to WRCOG for both the HERO Commercial Programs for Commercial Properties participating in such programs (the “Program Administration Services”) as set forth in Exhibit B attached hereto and incorporated herein by this reference. In respect to such services, Renovate America desires to perform and assume responsibility for the provision of such Program Administration Services on the terms and conditions set forth in this Agreement. Renovate America represents that it is legally qualified to provide such Program Administration Services, and has or will obtain all necessary licenses and authorizations from the State of California and any agency of the federal government with the authority to regulate the provision of such Program Administration Services. The Parties intend that terms and conditions providing for the purchase of the limited obligation improvement bonds to be issued by WRCOG to finance the installation of Eligible Products on Commercial Properties located within the Program Areas shall be incorporated in the Master BPA to be entered into between the Parties concurrently with this Agreement.

WRCOG desires to engage Renovate America to render such Program Administration Services as set forth in and pursuant to the terms and conditions of this Agreement.

4. TERMS.

4.1 Scope of Program Administration Services and Term of Agreement.

4.1.1 General Scope of Program Administration Services. Renovate America promises and agrees to provide Program Administration Services and to furnish financing necessary to provide labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately implement the provision of the Program Administration Services. All Program Administration 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.

In the event that the Program Administration Services conflict with the Program Reports, the provisions of the Program Reports shall prevail; *provided that* any changes to the Program Reports subsequent to the date hereof, shall be provided to Renovate America and Renovate America shall expressly acknowledge and agree to any such changes before they shall

be deemed to control pursuant to this Section 4.1.1.

4.1.2 Term. The initial term of this Agreement shall commence on December __, 2019 and shall terminate on June 1, 2022 and shall extend for an additional year at the end of each succeeding year upon the written consent of WRCOG and Renovate America.

4.1.3 Residential Agreements. Nothing in this Agreement shall modify any terms and conditions under the Residential Agreements and none of the provisions of the Residential Agreements shall apply and/or modify the terms and conditions of this Agreement.

4.2 Responsibilities of Renovate America and WRCOG.

4.2.1 Control and Payment of Subordinates; Independent Contractor and Other Costs. The Program Administration Services shall be performed by Renovate America. Renovate America will determine the means, methods and details of performing the Program Administration Services subject to the requirements of this Agreement. WRCOG retains Renovate America on an independent contractor basis and not as an employee. Any personnel performing Program Administration Services under this Agreement on behalf of Renovate America shall not be employees of WRCOG and shall at all times be under Renovate America's exclusive direction and control. Renovate America shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Program Administration Services under this Agreement and as required by law. Renovate America shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers compensation insurance.

4.2.2 Rights to provide Program Administrator Services to other entities and Limitations thereon

(a) Renovate America hereby acknowledges that (i) WRCOG has established the WRCOG Commercial Programs, (ii) such WRCOG Commercial Programs shall continue operate and (iii) may authorize additional program administrators to administer and finance separate programs to finance the installation of Eligible Improvements on Commercial Properties within the Program Areas.

(b) Outside California, Renovate America retains the right to perform services similar to Program Administration Services authorized to be provided under this Agreement for other public agencies implementing similar programs ("Other Issuers" and each an "Other Issuer").

(c) Within California, Renovate America shall market the HERO Commercial Programs to cities and counties outside only on behalf of WRCOG.

4.2.3 Schedule of Responsibilities. Renovate America shall perform Program Administration Services and WRCOG shall perform the WRCOG Responsibilities (defined in

4.2.3 below) upon and pursuant to a Schedule of Responsibilities to be agreed upon by the WRCOG Representative (defined in 4.2.7 below) and the Renovate America Representative (defined in 4.2.8 below) which Schedule of Responsibilities shall be executed by both the WRCOG Representative and Renovate America Representative indicating the approval and acceptance of such schedule and the incorporation of such schedule into this Agreement, shall thereafter be attached to this Agreement as Exhibit C hereto and shall thereafter be incorporated herein by this reference. Renovate America represents that it has the professional and technical personnel and financial resources required to perform Program Administration Services in conformance hereto. WRCOG represents that it has the professional personnel and financial resources required to perform the WRCOG Responsibilities in conformance hereto.

4.2.4 WRCOG Responsibilities. In order to facilitate Renovate America's performance of Program Administration Services, WRCOG shall respond to Renovate America's requests and submittals in a timely manner including reviewing, approving, acting upon and/or executing documents listed in the Schedule of Responsibilities.

4.2.5 Compensation for Performance of Program Administration Services. WRCOG has no responsibility to directly pay Renovate America and the only payment to Renovate America for the provision or the performance of its Program Administration Services shall be from the proceeds of the Bonds to be issued to finance the Eligible Improvements for a property participating in one of the HERO Commercial Programs. Renovate America will be compensated for its Program Administration Services performed relating to the administration of the HERO Commercial Programs as follows: at the time of the issuance of a Bond or a Series of Bonds to fund Eligible Improvements for a Commercial Property participating in one of the HERO Commercial Programs, Renovate America will receive a one-time fee for its Program Administration Services in the amounts as shall be mutually agreed to by the Parties from time to time and payable solely from the proceeds of the Bonds. As of the effective date of this Agreement, the Parties agree that such fee shall be equal to ____% of the principal amount of each Bond.

4.2.6 Conformance to Applicable Requirements. At the beginning of each calendar year, Renovate America shall meet with the WRCOG Representative and other WRCOG representatives to review and approve Renovate America's marketing and customer service plans for the HERO Programs. To the extent there are material changes to the marketing and customer service plans, Renovate America shall meet with the WRCOG Representative and other WRCOG representatives to review and approve the revised marketing and customer service plans. Renovate America and WRCOG shall schedule monthly meetings at Renovate America offices for an update on the HERO Commercial Programs.

4.2.7 The WRCOG Representative. WRCOG hereby designates Rick Bishop, Executive Director, or his or her designee, to act as its representative for the performance of this Agreement (the "WRCOG Representative"). The WRCOG Representative shall have the power to act on behalf of WRCOG for all purposes under this Agreement. Renovate America shall not accept direction or orders from any person on behalf of WRCOG other than the WRCOG Representative or his or her designee. The WRCOG Representative shall provide written notice

to Renovate America of the appointment or the rescission of the appointment of any designee of the WRCOG Representative hereunder.

4.2.8 The Renovate America Representative. Renovate America hereby designates _____, or his or her designee, to act as its representative for the performance of this Agreement (the “Renovate America Representative”). The Renovate America Representative shall have full authority to represent and act on behalf of Renovate America for all purposes under this Agreement. The Renovate America Representative shall supervise and direct Program Administration Services, using his or her 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 Program Administration Services under this Agreement. The Renovate America Representative shall provide written notice to the WRCOG Representative of the appointment or the rescission of the appointment of any designee of the Renovate America Representative hereunder.

4.2.9 Coordination of Program Administration Services. Renovate America agrees to work closely with WRCOG staff and WRCOG’s other consultants engaged to assist WRCOG in the HERO Commercial Programs (the “HERO Commercial Programs Consultants”) in the performance of Program Administration Services and shall be reasonably available to WRCOG’s staff and the HERO Commercial Programs Consultants.

4.2.10 Standard of Care. Renovate America shall perform all Program Administration 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. Renovate America represents and maintains that it is skilled in the professional calling and has the financial resources necessary to perform Program Administration Services. Renovate America warrants that all employees and/or agents of Renovate America shall have sufficient skill and experience to perform Program Administration Services assigned to them. Finally, Renovate America represents that it, its employees and agents have, or will have prior to the performance of Program Administration Services, all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform Program Administration Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Renovate America 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 Renovate America’s failure to comply with the standard of care provided for herein.

4.2.11 Laws and Regulations. Renovate America shall keep itself fully informed of and in compliance in all material respects with all local, state and federal laws, rules and regulations in any manner affecting the performance of the HERO Commercial Programs or Program Administration Services, including without limitation, all Cal/OSHA requirements and all applicable federal and state securities laws and regulations, and shall give all notices required by law. Renovate America shall be liable for all violations of such laws, rules and regulations in connection with Program Administration Services. If Renovate America performs or fails to perform any work contrary to such laws, rules and regulations, Renovate America shall be solely responsible for all costs arising therefrom. Renovate America 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 by Renovate America to comply with such laws, rules or regulations.

4.3 Accounting Records – Maintenance and Inspection.

Renovate America shall maintain complete and accurate records, consistent with its records retention policy, which policy shall be commercially reasonable and shall take into account the nature and duration of the instruments to be issued in connection with the Programs. All such records shall be clearly identifiable. Renovate America shall, at reasonable times and upon reasonable notice, 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. Renovate America shall, at reasonable times and upon reasonable notice, allow inspection of all work, data, documents, proceedings, and activities related to the Agreement. Renovate America shall cooperate with WRCOG to facilitate WRCOG's compliance with its responsibilities under the California Public Records Act in relation to the Program Administration Services.

4.4 General Provisions.

4.4.1 Grounds for Termination – At Will. Either WRCOG or Renovate America may, by written notice to the other party, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to such party of such termination, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Notwithstanding the provisions of Section 4.4.1.1 of this Agreement, upon termination by WRCOG, Renovate America shall be compensated only for those services which have been rendered to WRCOG, and Renovate America shall be entitled to no further compensation.

4.4.1.1 Effect of Termination. Upon notification of termination Renovate America shall be required to notify WRCOG of all pending applications for WRCOG Assessment Contracts to fund Commercial PACE Projects originated by Renovate America during the course of Renovate America's provision of Program Administrative Services hereunder (each, a "Pending Renovate America Program Assessment Contract") and Renovate America shall have the right but not the obligation to close such Pending WRCOG Assessment Contracts subject to the review of the appropriate documentation by WRCOG. Except in the case previously described upon termination, Renovate America shall be compensated in the amount and from the sources set forth in Section 4.2.5 only for those Program Administration Services which have been provided in accordance with standard industry practices as determined by WRCOG, and Renovate America shall be entitled to no further compensation. If this Agreement is terminated as provided in this Section 4.4, WRCOG may require Renovate America to provide all finished or unfinished documents and data and other information of any kind prepared by Renovate America in connection with this Agreement, the performance of services under this Agreement and such finished

or unfinished documents produced in connection with this Agreement. Renovate America shall be required to provide such document and other information within fifteen (15) days of the request.

4.4.1.2 Additional Services. In the event this Agreement is terminated in whole or in part as provided in Section 4.4.1, WRCOG may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated upon effectiveness of such termination.

4.4.2 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:

Renovate America: Renovate America, Inc.
15073 Avenue of Science, Suite 200
San Diego, CA 92128
Attn: _____
Facsimile: (619) 923-2761

WRCOG: Western Riverside Council of Governments
3390 University Avenue, 4th Floor
Riverside, CA 92502
Attn: Rick Bishop
Facsimile: (951) 787-7991

With copy to: Best Best & Krieger LLP
3390 University Avenue, 5th Floor
Riverside, CA 92502
Attn: Steven DeBaun, Esq., General Counsel, WRCOG
Facsimile: (951) 686-3083

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.

4.4.3 Confidentiality, Intellectual Property and Data Compilation.

(a) Confidentiality. Except as otherwise set forth in this Agreement, all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data provided either Party to the other Party (including any copies or manuscripts of such information produced by a Party pursuant to this Agreement) or otherwise including any financial structure and financing approach of HERO Commercial Program Assessments in connection with the

performance of this Agreement shall be held confidential by the other Party. Nothing furnished to either Party which is otherwise known to the receiving Party prior to such disclosure or is generally known, or has become known, to the related industry, shall be deemed confidential. Renovate America shall not use WRCOG's name or insignia in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of WRCOG. Notwithstanding the above, any documents prepared for the HERO Commercial Programs that are intended to be provided to the public shall not be subject to the limitations of this Section 4.4.3.

(b) Intellectual Property. WRCOG expressly acknowledges and agrees that any and all computer software and all source code thereof, used or developed by Renovate America ("Proprietary Software") in performing the Services is proprietary and Renovate America, or its licensors, shall at all times exclusively own all rights, title, and interest in such software and Proprietary Software, including all intellectual property rights contained therein.

During the term of the Agreement, Renovate America grants WRCOG, solely for use in connection with HERO Commercial Programs related to Commercial Property, a non-exclusive, non-transferable license for WRCOG to use Renovate America's trademarks or trade names including, without limitation, "Renovate America," "Financing the Home Energy Revolution," "Home Energy Renovation Opportunity," "HERO," "HERO Financing," or new trademarks developed by Renovate America (collectively, the "Renovate America Marks"). Renovate America hereby reserves all right, title and interest in and to the Renovate America Marks. WRCOG agrees it will not use the Renovate America Marks upon termination of the Agreement and shall not contest, oppose or challenge Renovate America's ownership of any Renovate America Marks. Notwithstanding the foregoing, if Renovate America exits the business and ceases to provide Program Administration Services for any entity WRCOG and its agents shall have the right for a period of no more than one (1) year to use the names "Home Energy Renovation Opportunity," "HERO," or "HERO Financing," in connection with the WRCOG Program at no cost to WRCOG, using a formulation substantially similar to the following: "XYZ Company/Program, formerly known as the HERO Financing Program," in all cases qualifying each and every use (whether provided in writing, electronically, orally or otherwise) of the Renovate America Marks with the term "formerly" or a term of similar meaning.

(c) Data Compilation. WRCOG acknowledges and agrees that Renovate America, or its licensors, will have spent substantial time and effort in collection and compiling data and information (the "Data Compilations") in connection with the Program Administration Services and that such Data Compilations may be used by Renovate America (or such licensors) for their own purposes, including, without limitation, sale or distribution to third parties; provided, however, that Renovate America will not, and shall ensure that its licensors will not, sell or distribute any of WRCOG's confidential information that may be contained in such Data Compilations, unless such confidential information is used only on an aggregated and anonymous basis.

4.4.4 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 reasonably necessary, appropriate or convenient to attain the purposes of this Agreement.

4.4.5 Arbitration and Equitable Relief. This Section shall govern the resolution of all controversies or claims between WRCOG and Renovate American that arise from this Agreement and any modifications hereto. The provisions of this Section, and the entitlement of one party to obtain damages, or other such appropriate legal or equitable remedies, for a breach by the other party, shall survive termination of this Agreement. Wherever this Agreement makes reference to any means of resolving and dispute between the Parties or termination of the Agreement, the Parties agree to follow the below arbitration procedures.

(a) Arbitration. In consideration of rights and obligations set forth by each party in this Agreement, Renovate America and WRCOG agree that any and all controversies, claims, or disputes with anyone (including WRCOG and any employee, officer, director, volunteer of WRCOG in his, her or its capacity as such or otherwise), whether brought on any individual, group or class basis, arising out of, relating to, or resulting from Renovate America's performance of the Program Administration Services under this Agreement or the termination of this Agreement, including any breach of this Agreement by either Party, shall be subject to binding arbitration in accordance with the Comprehensive Arbitration Rules & Procedures (the "Rules") of the Judicial Arbitration and Mediation Services ("JAMS"), as they may be amended from time to time where not inconsistent with the further provisions hereof. The Parties hereby agree that judgment upon the award rendered by the arbitrator(s) may be entered in Riverside Superior Court. The Parties submit to the jurisdiction of the Riverside Superior Court for purposes enforcing any such award and entering judgment thereon.

(b) Procedure. Appointment of the arbitrator pursuant to this Section shall be in accordance with the provisions of the Rules, which Rules provide a procedure for the selection of an arbitrator, or arbitration panel if agreed to by the Parties. Renovate America and WRCOG agree that the arbitrator shall have the power to decide any motions brought by any Party to the arbitration, including motions for summary judgment and/or adjudication, motions to dismiss and demurrers, and motions for class certification, prior to any arbitration hearing. Renovate America and WRCOG also agree that the arbitrator shall have the power to award any remedies available under applicable law, and that the arbitrator shall award attorneys' fees and costs to the prevailing Party except as prohibited by law. Costs shall be allocated as set forth in the Rules. Renovate America and WRCOG agree that the decision of the arbitrator shall be in writing. The written opinion of the arbitrator or arbitrators, as the case may be, shall be governed by the Rules. The arbitrator(s) shall have the powers established by JAMS, as delineated in the Rules, but shall have no authority to revise or vary the terms of this Agreement or the Parties' respective rights and obligations hereunder. Except as provided by the Rules and this Agreement, arbitration shall be the sole, exclusive and final remedy for any dispute between Renovate America and WRCOG. Accordingly, except as provided for by the Rules and this Agreement, neither Renovate America nor WRCOG will be permitted to pursue court action regarding claims that are subject to arbitration.

(c) Availability of Injunctive Relief. Renovate America and WRCOG agree that either Renovate America or WRCOG may petition a court for provisional relief, including injunctive relief. Renovate America and WRCOG understand that any breach or threatened breach of such an agreement (including this Agreement) will cause irreparable injury and that money damages will not provide an adequate remedy therefor and both WRCOG and Renovate America hereby consent to the issuance of an injunction.

4.4.6 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. However, the Parties acknowledge that the Master Bond Purchase Agreement executed between the Parties is dated concurrently herewith and contains related subject matter, which the Parties intend to respect and be bound by.

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

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

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

4.4.10 Assignment or Transfer. Renovate America 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, provided, however, Renovate America may assign this Agreement in connection with a merger or the sale of all or substantially all of its assets provided that the successor entity expressly assumes all of the obligations and confirms all of the representations and warranties of Renovate America hereunder. 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.

4.4.11 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 workdays. All references to Renovate America include all personnel, employees, agents, and subcontractors of Renovate America, 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.

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

4.4.13 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.

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

4.4.15 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.

4.4.16 Prohibited Interests. Renovate America maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Renovate America or independent contractors and consultants engaged by Renovate America to perform services of the nature of those included on the Schedule of Responsibilities attached hereto to solicit or secure this Agreement. Further, other than its outside counsel, Renovate America 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 Renovate America, 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.

4.4.17 Equal Opportunity Employment. Renovate America 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.

4.4.18 Labor Certification. By its signature hereunder, Renovate America 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 Program Administration Services.

4.4.19 Authority to Enter Agreement. Renovate America 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.

4.5 Subcontracting.

4.5.1 Prior Approval Required. Renovate America shall not subcontract any portion of Program Administration Services, except as expressly stated herein, without prior written approval of WRCOG; *provided that* Renovate America is not prohibited from hiring

individuals that act as independent contractors or consultants with respect to the work such individuals perform for Renovate America. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

4.6 Insurance.

4.6.1 Time for Compliance. Renovate America shall not commence Program Administration Services under this Agreement until it has provided evidence satisfactory to WRCOG that it has secured all insurance required under this Section. In addition, Renovate America 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.

4.6.2 Minimum Requirements. Renovate America 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 Renovate America, its agents, representatives, employees or subcontractors. Renovate America 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 Employers Liability*: Workers Compensation insurance as required by the State of California and Employers Liability Insurance.

(b) **Minimum Limits of Insurance.** Renovate America 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 Employers Liability*: Workers Compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

4.6.3 Professional Liability. Renovate America shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of three (3) years following completion of Program Administration Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

4.6.4 Privacy/Network Security (Cyber) Liability Coverage. Renovate America shall procure and maintain insurance providing protection against liability for (1) privacy breaches (2) system breach (3) denial or loss of service (4) introduction, implantation, or spread of malicious software code (5) unauthorized access to or use of computer systems with limits of \$2 million. No exclusion/restriction for unencrypted portable devices/media may be on the policy.

4.6.5 Insurance Endorsements. The insurance policies shall contain the following provisions, or Renovate America 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 Program Administration Services or operations performed by or on behalf of Renovate America, 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 Renovate America's scheduled underlying coverage. Any insurance or self-insurance maintained by WRCOG, its directors, officials, officers, employees, agents and volunteers shall be excess of Renovate America'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 Renovate America or for which Renovate America 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 Renovate America's scheduled underlying coverage. Any insurance or self-insurance maintained by WRCOG, its directors, officials, officers, employees, agents and volunteers shall be excess of Renovate America'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 Renovate America.

(d) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (1) the respective insurer (or in the case of professional liability insurance provided pursuant to Section 4.6.3, the respective insurer or Renovate America) shall provide WRCOG with written notice within thirty (30) days of any suspension, voiding or cancellation of the insurance policy; and (2) 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.

4.6.6 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.

4.6.7 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions in an amount greater than \$10,000 must be declared to and approved by the WRCOG. Renovate America 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) Renovate America shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

4.6.8 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Bests rating no less than A:VII, licensed to do business in California.

4.6.9 Verification of Coverage. Renovate America 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.

4.7 Indemnification.

Renovate America shall defend, indemnify and hold 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 allegedly negligent or wrongful acts or omissions or willful misconduct of Renovate America, its officials, officers, employees, agents, consultants, contractors and subcontractors, arising out of or in connection with the performance of the Program Administration Services, the HERO Commercial Programs or this Agreement, including without limitation, the negligent disclosure of Data Compilations under Section 4.4.3(a) of this Agreement. Such costs, expenses, liability, loss, damage or injury shall include without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Renovate America shall defend, at Renovate America'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. Renovate America 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. Renovate America 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. Renovate America'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.

WRCOG shall defend, indemnify and hold Renovate America, 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 reckless acts or omissions or willful misconduct of WRCOG, its officials, officers, employees, agents, consultants, contractors and subcontractors, arising out of or in connection with the performance of the Program Administration Services, the HERO Commercial Programs or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. WRCOG shall defend, at WRCOG'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 Renovate America, its directors, officials, officers, employees, agents or volunteers. WRCOG shall pay and satisfy any judgment, award or decree that may be rendered against Renovate America or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. WRCOG shall reimburse Renovate America 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. WRCOG's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Renovate America, its directors, officials, officers, employees, agents or volunteers.

No third party shall be a direct beneficiary of this Section 4.7.

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

WESTERN RIVERSIDE COUNCIL OF
GOVERNMENTS

RENOVATE AMERICA, INC.

By: _____
Rick Bishop, Executive Director

By: _____
Authorized Officer

APPROVED AS TO FORM:

By: _____
General Counsel
Best Best & Krieger LLP

Exhibit “A”

**WRCOG
ADMINISTRATIVE GUIDELINES
AND
PROGRAM REPORT**

and

CALIFORNIA HERO PROGRAM REPORT

Exhibit A

EXHIBIT “B”

SCOPE OF PROGRAM ADMINISTRATION SERVICES

Renovate America shall provide the following Program Administrative Services:

Program Design

As part of Program Administration Services, Renovate America shall provide program design services which include: (1) review and edit all policies relating to commercial projects; (2) provide documentation, processes and procedures required for registering contractors, accepting, processing and approving property owner applications, reviewing eligibility of and approving proposed improvements, providing and tracking all financing disclosures and accepting, processing and approving funding requests, issuing and executing contractual assessment agreements (property owner and issuer), recording or causing to be recorded lien documents, issuing and executing Bond documents, and instructing the bond trustee when to issue payment for funding requests, including HERO Commercial Program Guidelines, Eligible Improvement Lists, contractor registration/approval forms, commercial applications, all financing disclosure forms, all forms required to approve improvements, , funding request form(s), and contractual assessment agreement and lien recordation documents (unless provided by municipality); (3) design and build the HERO Commercial Programs’ website; (4) integration of Renovate America’s origination systems with the HERO Commercial Programs website.

Origination

As part of Program Administration Services, Renovate America shall provide origination services which include: (1) process all commercial applications, including accepting applications (online and hard copy), entering hard copy applications into online system, pulling all credit, title, valuation and other reports, reviewing eligibility of proposed property, applicants, equipment and contractors, tracking all financing disclosures, application and authorization forms, contacting applicants, contractors and other parties as needed, providing notifications of approval, denial or incomplete status; (2) obtaining or assisting property owners to obtain consent of the first mortgage holder, if any; (3) process all funding requests for Residential parcels participating in the HERO Commercial Programs, including accepting funding request forms, reviewing submitted forms and attachments, providing notification of funding request approval, denial or incomplete status; (4) process and finalize all contractual assessment documentation, including issuance of contractual assessment and financing disclosures; (4) provide telephone and email customer service

support; (5) track and report to WRCOG key HERO Commercial Programs statistics, including applications received, approved, assessment contracts issued and signed; (6) periodically assess and/or adjust policies and procedures of the HERO Commercial Programs as needed to resolve any recurring issues.

Marketing of Program:

As part of Program Administration Services, Renovate America shall work with WRCOG and its Member and Associate Member jurisdictions to promote the HERO Commercial Programs including notices on appropriate governmental web sites, press interviews and public meetings and announcements. Renovate America shall also publicize the HERO Commercial Programs on its web site as well as through direct contact with property owners. Renovate America shall maintain sufficient resources to answer any questions by potential participants in the HERO Commercial Programs. Renovate America shall also work with WRCOG and Members and Associate Members within the HERO Commercial Program Area in order to utilize the HERO Commercial Programs to help bring industry and developments to the areas in which the HERO Commercial Programs are offered.

Documentation:

As part of Program Administration Services, Renovate America shall work with WRCOG to develop and produce a standard set of documents suitable to the parties that shall document the legal obligations associated with the contractual assessments and the issuance of Bonds, and any other legal requirements of the transaction.

Assessment

Tax Roll Management:

Renovate America shall work with the Program Assessment Administrator, and the counties within which the HERO Commercial Programs are offered to ensure that the proper contractual assessment installment are placed on the appropriate property owners property tax bills and that the contractual assessment installments shall be collected promptly for the properties subject to such contractual assessments.

Regular reporting
Of complaints, claims
Or legal actions

Renovate shall provide weekly reports to WRCOG showing all complaints and claims made by property owners who have applied and/or are participants in the HERO Commercial Program and any resolution thereto. In addition, Renovate America shall promptly notify WRCOG of any suits that have been filed against Renovate America relating to the Program Administration Services.

EXHIBIT “C”

SCHEDULE OF RESPONSIBILITIES

Responsibilities of Renovate America

Renovate America will prepare closing package and send to owner(s) of a Commercial Property participating in one of the HERO Commercial Programs (each, a “Owner”) for signature (the “Renovate America Closing Documents”), which package shall include:

- Financing Summary
- Application
- Assessment Contract
 - Exhibit A – Description of Property
 - Exhibit B – List of Documents
- Right to Cancel
- Program Handbook

Upon receipt of signed documents from Owner, Renovate America will deliver original documents to WRCOG.

Renovate America will electronically send the Contractual Assessment Data File for each Bond or Series of Bonds to be issued, along with all Bond Documents for each Bond or Series of Bonds, to Bond Counsel, the Trustee, David Taussig and Associates, and Public Financial Management for review and set-up.

Renovate America shall execute and deliver the Renovate America Closing Documents (as such term is defined in this Exhibit C above) to Bond Counsel at the Closing Location on or before the Closing Date.

Upon receipt of verification that all Closing Documents have been properly executed and, if applicable, recorded, Renovate America or any assign, affiliate, subsidiary, or any other person or entity that Renovate America designates will purchase the Bond or Series of Bonds pursuant to the Master Bond Purchase Agreement. Said purchase will be accomplished via a wire transfer to the Trustee.

Responsibilities of WRCOG

WRCOG shall prepare, or cause to be prepared, the following documents:

- Supplemental Indenture
- Improvement Bond
- Notice of Assessment
- Payment of Contractual Assessment Required
- Omnibus Closing Certificate of WRCOG
- Certificate of Trustee
- Instructions to Trustee Regarding Disbursement of Proceeds of Bond

Receipt for Bond Proceeds
Receipt for Improvement Bond
Opinion of Bond Counsel
Supplemental Opinion of Bond Counsel
Reliance Letter of Bond Counsel

WRCOG will cause recordation of and notification to the financing team electronically of recordation of:

Notice of Assessment and Assessment Contract
Payment of Contractual Assessment Required

WRCOG will execute and deliver all WRCOG Closing Documents (as such term is defined in the Master Bond Purchase Agreement) to Bond Counsel at the Closing Location or shall cause all such WRCOG Closing Documents to be so executed and delivered, as applicable, on or before the Closing Date.

WRCOG will execute, by facsimile or original signatures, and deliver the Bond or Series of Bonds to the Trustee for authentication (with electronic copy to remainder of financing team) and delivery to Renovate America.

Item 5.A

PACE Programs Activities Update

Attachment 2

Recommend that the Executive Committee adopt Resolution Number 32-19; A Resolution of the Executive Committee of the Western Riverside Council of Governments authorizing Renovate America to administer and finance eligible improvements to be installed on commercial properties and other actions in connection thereto

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RESOLUTION NUMBER 32-19

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

AUTHORIZING RENOVATE AMERICA, INC., TO ADMINISTER AND FINANCE ELIGIBLE IMPROVEMENTS TO BE INSTALLED ON COMMERCIAL PROPERTIES, AND IN CONNECTION WITH SUCH AUTHORIZATION, APPROVING AMENDMENTS TO THE PROGRAM REPORT FOR BOTH THE WRCOG ENERGY EFFICIENCY AND WATER CONSERVATION PROGRAM FOR WESTERN RIVERSIDE COUNTY AND THE CALIFORNIA HERO PROGRAM AND THE FORMS OF A COMMERCIAL HANDBOOK, COMMERCIAL APPLICATION, ASSESSMENT CONTRACT, MASTER BOND PURCHASE AGREEMENT, ADMINISTRATION AGREEMENT AND MASTER INDENTURE AND AUTHORIZING THE ISSUANCE OF BONDS PURSUANT TO SUCH MASTER INDENTURE SECURED BY ASSESSMENTS LEVIED ON COMMERCIAL PROPERTIES TO FINANCE THE INSTALLATION OF ELIGIBLE IMPROVEMENTS ON SUCH COMMERCIAL PROPERTIES AND APPROVING OTHER ACTIONS IN CONNECTION THERETO

WHEREAS, the Executive Committee of the Western Riverside Council of Governments (“WRCOG”) has established of the Energy Efficiency and Water Conservation Program for Western Riverside County (commonly referred to as the “WRCOG PACE Program”) and the California HERO Program (the “CA HERO Program,” collectively with the WRCOG PACE Program, the “Programs”) for the purpose financing the installation of authorized improvements (“Eligible Improvements”) on commercial properties (“Commercial Properties”) located within the program area of the Programs (the “Program Area”) as authorized under and defined by the Program; and

WHEREAS, the Executive Committee previously approved Renovate America, Inc., (“Renovate America”) to provide administration and financing for residential properties for each Program; and

WHEREAS, subsequently, Renovate America created the infrastructure and developed the resources to administer and finance the installation of Eligible Improvements on Commercial Properties and offered and requested to be able to provide such administration and financing for Commercial Properties for each Program, which request was approved by the Executive Committee; and

WHEREAS, following such approval, Renovate America requested that the Executive Committee, rescind such approval, and the Executive Committee did grant such request, as Renovate America made a decision at such time not to pursue the administration and financing of Commercial Properties for the Programs; and

WHEREAS, Renovate America now desires to pursue the administration and financing of Commercial Properties for the Programs and has requested the Executive Committee re-authorize such approval; and

WHEREAS, the Executive Committee has determined that it would be in the best interests of the Programs and the owners of Commercial Properties within the Program Areas to re-authorize Renovate America to administer and finance a program as a part of each of the Programs (each, a “HERO Commercial Program” and together, the “HERO Commercial Programs”), separate and apart from the Samas Commercial Programs, to finance the installation of Eligible Improvements on Commercial Properties in each of the Program Areas; and

WHEREAS, in order to provide for and implement such re-authorization for the establishment of a HERO Commercial Program as a part of each Program, it will be necessary to modify the Program Reports for each of the Programs (together, the "Program Reports") and to approve the form of an application (the "Commercial Application"), a handbook (the "Commercial Handbook") and an assessment contract (the "Commercial Assessment Contract") to be incorporated into each Program Report; and

WHEREAS, WRCOG and Renovate America desire to enter into an Administration Agreement to establish the terms and conditions pursuant to which Renovate America will administer each HERO Commercial Program and a Master Bond Purchase Agreement to establish the terms and conditions pursuant to which WRCOG will issue and Renovate America will purchase the limited obligation improvement bonds to finance the installation of Eligible Improvements on Commercial Properties; and

WHEREAS, the Executive Committee desires to authorize the issuance of limited obligation improvement bonds to finance the installation of Eligible Improvements on Commercial Properties of such bonds to be secured by the voluntary contractual assessments levied on such Commercial Properties and to approve the form of a Master Indenture to establish the terms and conditions pursuant to which such bonds shall be issued and administered; and

WHEREAS, forms of the amended Program Reports, the Commercial Application, the Commercial Handbook, the Assessment Contract, the Administration Agreement, and the Master Bond Purchase Agreement have been presented to the Executive Committee for its review and approval; and

WHEREAS, the Executive Committee, with the aid of its staff and counsel, has reviewed the documents identified in the preceding recital and found them to be in proper order; and

WHEREAS, there has been submitted to the Executive Committee forms of a Master Indenture, including a supplemental indenture thereto contained in the Master Indenture (a "Supplement Indenture"), providing for the issuance of limited obligation improvement bonds to be designated substantially as the "Western Riverside Council of Governments Limited Subordinate Obligation Improvement Bonds (HERO Commercial Programs) (First Commercial Property Tranche) (the "Initial Limited Obligation Improvement Bonds" or "Initial LOI Bonds") in one or more series (each such series of bonds referred to as a "Series") pursuant to Chapter 29, the 1915 Act, this resolution, and the use of the proceeds of such Bonds to finance the installation of Authorized Improvements on Commercial Parcels that are participating in one of the HERO Commercial Programs and are located in the Program Area of such HERO Commercial Program; and

WHEREAS, WRCOG staff and the WRCOG HERO financing team have advised the Executive Committee that the projected volume of Limited Obligation Improvement Bonds to be issued pursuant to the Master Indenture that the owners of such bonds will desire to undertake securitization of such bonds thereby necessitating the approval of multiple master indentures on a regular basis as such securitizations occur, and have recommended that the Executive Committee delegate to the Executive Director the authority to approve, subject to the review of and concurrence by Best Best & Krieger LLP, as bond counsel to WRCOG for the HERO Programs ("Bond Counsel"), a new master indenture for each new tranche of such bonds substantially in the form of the master indenture presented to and approved by the Executive Committee by adoption of this Resolution, in order to facilitate the ongoing issuance of such bonds and administration thereof, and the subsequent securitization thereof; and

WHEREAS, Section 5852.1 of the Government Code of the State of California ("Section 5852.1") provides that the Authority obtain from an underwriter, financial advisor, or private lender and disclose, in a meeting open to the public, prior to authorization of the issuance of the bonds, good faith estimates of (a) the true interest cost of the bonds, (b) the finance charge of the bonds, meaning the sum of all fees and charges paid to third parties, (c) the amount of proceeds of the bonds received less the finance charge described above and any reserves or capitalized interest paid or funded with proceeds of the bonds, and (d) the sum total of all debt service payments on the bonds calculated to the final

maturity of the bonds plus the fees and charges paid to third parties not paid with the proceeds of the bonds, which information is contained in Exhibit A hereto; and

WHEREAS, all conditions, things, and acts required to exist, to have happened and to have been performed, precedent to and in the issuance of the Limited Obligation Improvement Bonds exist, have happened and have been performed in due time, form, and manner as required by the laws of the State of California, including Chapter 29 and the 1915 Act.

NOW, THEREFORE, BE IT RESOLVED, by the Executive Committee of the Western Riverside Council of Governments as follows:

Section 1. Approval of the Amended Program Reports, the Commercial Application, the Commercial Assessment Contract and the Commercial Handbook. The Executive Committee hereby approves the forms of the amended Program Reports, the Commercial Application and the Commercial Assessment, the final forms of which shall be incorporated in the Program Reports, and the Commercial Handbook, presented to the Executive Committee at this meeting, together with any changes therein and additions thereto approved by the Executive Director, or any designee of the Executive Director (each, an "Authorized Representative") and reviewed and concurred in by Bond Counsel.

Section 2. Approval of Forms of the Administration Agreement and the Master Bond Purchase Agreement. The Executive Committee hereby approves the forms of the Administration Agreement and the Master Bond Purchase Agreement presented to the Executive Committee at this meeting, together with any changes therein or additions thereto approved by the Executive Director or another Authorized Representative, and reviewed and concurred in by Bond Counsel, and the execution thereof by an Authorized Representative shall be conclusive evidence of the approval of any such changes or additions. The Executive Committee hereby authorizes and directs an Authorized Representative to execute the final forms of the Administration Agreement for and in the name of WRCOG.

Section 3. Authorization of Issuance of Limited Obligation Improvement Bonds. The Executive Committee hereby authorizes the issuance of one or more Series of the Limited Obligation Improvement Bonds under and pursuant to Chapter 29, the 1915 Act, and this Resolution in the maximum aggregate principal amount not to exceed \$250,000,000 to finance the installation of Eligible Improvements to be installed or caused to be installed on Commercial Properties that are participating in one of the HERO Commercial Programs and are located in the Program Area of such HERO Commercial Program.

Section 4. Approval of Master Indenture and Supplemental Indenture. With respect to the Limited Obligation Improvement Bonds to be issued on or after the effective date of this Resolution, the Executive Committee hereby approves the form of the master indenture (the "Initial Master Indenture") substantially in the form on file with the Secretary, together with any changes therein and additions thereto approved by the Executive Director or any Authorized Representative and reviewed and concurred in by Bond Counsel, and the execution thereof by an Authorized Representative shall be conclusive evidence of the approval of any such changes or additions. The Executive Committee hereby authorizes and directs an Authorized Representative to execute the final form of the Initial Master Indenture for and in the name of WRCOG for each Series (as defined in the Initial Master Indenture) of the Limited Obligation Improvement Bonds. The Executive Committee hereby authorizes the delivery and performance of the Initial Master Indenture for each Series of the Limited Obligation Improvement Bonds.

The Executive Committee hereby approves the form of the Supplemental Indenture substantially in the form contained in the Initial Master Indenture, together with any changes therein or additions thereto approved by an Authorized Representative and reviewed and concurred in by Bond

Counsel, required for the issuance of each Initial LOI Bond, and the execution thereof by an Authorized Representative shall be conclusive evidence of the approval of any such changes or additions. The Executive Committee hereby authorizes and directs an Authorized Representative to execute the final form of each Supplemental Indenture for and in the name of WRCOG for each Series of Limited Obligation Improvement Bonds. The Executive Committee hereby authorizes the delivery and performance of each Supplemental Indenture for each Series of Limited Obligation Improvement Bonds.

Section 5. Closure of the Initial Limited Obligation Improvement Bonds. The Executive Director or another Authorized Representative is hereby authorized to order the closure of the Initial Master Indenture and direct that no further bonds be issued pursuant to such master indenture by delivering an Officer's Certificate (as defined in the Initial Master Indenture) to the Trustee to such effect.

Section 6. Delegation of Authority to Approve Additional Master Indentures and Order the Closure of such Master Indentures. With respect to additional future Limited Obligation Improvement Bonds to be issued following the closure of the Initial Master Indenture (each, "Future Limited Obligation Improvement Bonds") to be issued on or after the effective date of this Resolution, the Executive Committee hereby delegates to the Executive Director or another Authorized Representative the authority to approve the master indenture for each such tranche of bonds (each, a "Future Master Indenture") so long as such master indenture is substantially in the form of the Initial Master Indenture, together with any changes therein and additions thereto approved by the Executive Director, or another Authorized Representative, and reviewed and concurred in by Bond Counsel, and the execution thereof by an Authorized Representative shall be conclusive evidence of the approval of any such changes or additions. The Executive Committee hereby authorizes and directs an Authorized Representative to execute the final form of each such Future Master Indenture for and in the name of WRCOG for each series of the Future Limited Obligation Improvement Bonds authorized to be issued pursuant to such Future Master Indenture. The Executive Committee hereby authorizes the delivery and performance of such Future Master Indenture for each series of such Future Limited Obligation Improvement Bonds.

The Executive Committee hereby delegates to the Executive Director or another Authorized Representative the authority to approve each supplemental indenture required for the issuance of each series of such Future Limited Obligation Improvement Bond (each, a "Future Supplemental Indenture") pursuant to the applicable Future Master Indenture, together with any changes therein and additions thereto approved by the Executive Director, or another Authorized Representative, and reviewed and concurred in by Bond Counsel, and the execution thereof by an Authorized Representative shall be conclusive evidence of the approval of any such changes or additions. The Executive Committee hereby authorizes and directs an Authorized Representative to execute the final form of each Future Supplemental Indenture for and in the name of WRCOG for each series of Future Limited Obligation Improvement Bonds. The Executive Committee hereby authorizes the delivery and performance of each such Future Supplemental Indenture for each series of Future Limited Obligation Improvement Bonds.

Proposed provisions of any Future Master Indenture that constitute substantive revisions to the Initial Master Indenture shall be subject to the approval of the Executive Committee.

The Executive Director or another Authorized Representative is hereby authorized to order the closure of any Future Master Indenture and direct that no further bonds be issued pursuant to such master indenture by delivering a certificate of WRCOG to such effect as provided for in the applicable Future Master Indenture to the trustee under such Future Master Indenture.

Section 7. Sale of the Limited Obligation Improvement Bonds. WRCOG hereby authorizes the negotiated sale of the Limited Obligation Improvement Bonds to Renovate America or an assignee thereof approved by Executive Director (the "Purchaser") provided that the conditions for issuance of each such Limited Obligation Improvement Bond set forth in the applicable Master Indenture and the

applicable Supplemental Indenture have been satisfied. Each Limited Obligation Improvement Bond shall be sold to the Purchaser pursuant to the applicable Master Indenture and the Supplemental Indenture applicable to such bond or Series thereof. The Executive Committee hereby delegates to the Executive Director or another Authorized Representative the authority to establish and agree with the Purchaser to the final terms for each Limited Obligation Improvement Bond or Series thereof including, but not limited to, the principal amount thereof, the interest rate on such Limited Obligation Improvement Bond or Series thereof and the redemption provisions.

Section 8. Appointment of Trustee. The Bank of New York Mellon Trust Company, N.A., is appointed as Trustee pursuant to each Master Indenture and each Supplemental Indenture, to take any and all actions provided for therein to be taken by the Trustee.

Section 9. Form of Limited Obligation Improvement Bonds. The form of Limited Obligation Improvement Bonds as set forth in the form of each Supplemental Indenture is approved. The Treasurer of WRCOG and the Secretary of the Executive Committee are authorized and directed to execute by manual or facsimile signature, in the name and on behalf of WRCOG, the Limited Obligation Improvement Bonds in either temporary or definitive form and to deliver or cause the delivery of each Limited Obligation Improvement Bond to the applicable Limited Obligation Improvement Bonds Purchaser pursuant to the applicable Master Indenture.

Section 10. No Obligation of WRCOG, its Regular Members, or Associate Members. Pursuant to Streets and Highways Code Section 8769, the Executive Committee does hereby determine that WRCOG will not obligate itself to advance funds from the WRCOG treasury to cure any deficiency in the Redemption Fund (as such term is defined in the applicable Master Indenture) for the Limited Obligation Improvement Bonds established pursuant to such Master Indenture. The Executive Committee further declares and determines that no Regular Member or Associate Member shall be obligated to advance funds from the treasury of such Regular Member or Associate Member to cure any such deficiency in such Redemption Fund.

Section 11. Conditions of Approval. The approvals, authorization and direction given by this Resolution are conditioned upon the satisfaction of the requirements hereof and of each Master Indenture with respect to the issuance and sale of the Limited Obligation Improvement Bonds. The Authorized Officers shall not take any action with respect to the execution and delivery of a Supplemental Indenture or the issuance, sale, or delivery of any Limited Obligation Improvement Bond unless and until such conditions are satisfied; provided, however, that upon satisfaction of such conditions as to any Limited Obligation Improvement Bond, this Resolution shall be fully effective and shall be carried out as to such Limited Obligation Improvement Bonds without the further approval or action of the Executive Committee.

Section 12. Official Actions. Each officer of WRCOG or Authorized Representative is hereby authorized and directed, for and in the name and on behalf of WRCOG, to do any and all things and take any and all actions, including the execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the issuance and sale of the Limited Obligation Improvement Bonds and any of the other transactions contemplated by the documents approved pursuant to this Resolution. All actions heretofore taken by the officers and agents of WRCOG with respect to the establishment of the Programs and the sale and issuance of the Limited Obligation Improvement Bonds are hereby approved, confirmed, and ratified.

Section 13. Additional Action. The Executive Director or any Authorized Representative is hereby authorized and directed to approve any other documents related to the HERO Commercial Programs necessary in the judgment of the Executive Director or such Authorized Representative to conform such documents to the actions taken by the adoption of this Resolution.

Section 14. Effective Date. This Resolution shall take effect upon the date of its adoption.

PASSED AND ADOPTED by the Executive Committee of the Western Riverside Council of Governments on December 2, 2019.

Bonnie Wright, Chair
WRCOG Executive Committee

Rick Bishop, Secretary
WRCOG Executive Committee

Warren Diven
WRCOG Bond Counsel

AYES: _____ NAYS: _____ ABSENT: _____ ABSTAIN: _____

EXHIBIT A

GOOD FAITH ESTIMATE

Good Faith Estimate. The good faith estimates set forth herein are provided with respect to the Bonds in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to WRCOG by PFM Financial Advisors LLC (the "Municipal Advisor").

Principal Amount. The Municipal Advisor has informed WRCOG that, based on the financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Bonds to be sold is \$250,000,000 (the "Estimated Principal Amount").

True Interest Cost of the Bonds. The Municipal Advisor has informed WRCOG that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Bonds, is _____%.

Finance Charge of the Bonds. The Municipal Advisor has informed WRCOG that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Bonds), is \$_____.

Amount of Proceeds to be Received. The Municipal Advisor has informed WRCOG that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by WRCOG for the sale of the Bonds, less the finance charge of the Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is \$_____.

Total Payment Amount. The Municipal Advisor has informed WRCOG that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the Authority will make to pay debt service on the Bonds, plus the finance charge for the Bonds, as described above, not paid with the proceeds of the Bonds, calculated to the final maturity of the Bonds, is \$_____ (excluding any offsets from reserves or capitalized interest).

The foregoing estimates constitute good faith estimates only. The actual principal amount of the Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom, and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Bonds being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Bonds sold being different from the Estimated Principal Amount, (c) the actual amortization of the Bonds being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Bonds being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the financing plan or finance charges, or a combination of such factors. The actual date of sale of the Bonds and the actual principal amount of Bonds sold will be determined by the Authority, on behalf of WRCOG, based on the timing of the need for proceeds of the Bonds and other factors. The actual interest rates borne by the Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of WRCOG.

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Western Riverside Council of Governments

Administration & Finance Committee

Staff Report

Subject: Alternative Compliance Program Activities Update

Contact: Christopher Tzeng, Program Manager, ctzeng@wrcog.us, (951) 405-6711

Date: November 13, 2019

The purpose of this item is to provide an update of recent activity on the development of a proposed, voluntary Alternative Compliance Program (ACP). The ACP would create a voluntary opportunity for alternative compliance with updated Municipal Separate Stormwater Sewer System (MS4) Permit requirements, which might otherwise be cost prohibitive for many developments.

Requested Action:

1. Authorize Staff to submit a grant to the Bureau of Reclamation WaterSMART Cooperative Watershed Management Program Grant.

Stormwater management is a complex issue and the MS4 Permit is the primary mechanism to regulate stormwater. New regulations have required Regional Water Quality Control Boards (RWQCB) 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, RWQCBs may enable programs that assist in complying with these new regulations. In 2016, WRCOG completed a study to understand the feasibility of a Program in the southwest area of the region. WRCOG is interested in providing local jurisdictions a framework so that they are able to implement a Program if they so choose – any resulting Program would be voluntary.

Update on WRCOG Efforts to Address Stormwater Requirements

WRCOG staff and its project team worked on an Alternative Compliance Framework to further enable the structure of a potential Alternative Compliance Program (ACP) as a voluntary one, under which jurisdictions and property owners choose to participate in a regional Program or address stormwater issues individually. This Framework is intended for jurisdictions to consider and provide an approach to follow if they so choose to participate in an ACP. It was determined along the process that the focus of WRCOG's efforts at this time should be on a Program within the San Diego RWQCB region (County of Riverside, and the Cities of Murrieta, Temecula, and Wildomar) because the San Diego RWQCB currently allows this type of Program in its MS4 Permit.

In 2019, WRCOG staff met with jurisdictions within the San Diego RWQCB region to discuss their interest and gather feedback on the Framework. The Cities of Murrieta, Temecula, and Wildomar provided feedback on the Framework which WRCOG staff has addressed. These jurisdictions have indicated that a regional Program would be beneficial for their jurisdictions to participate in and they would like to further pursue developing a Program and obtain feedback from the San Diego RWQCB. The County of Riverside provided a comment letter to WRCOG in May 2019 and WRCOG worked to provide responses to comments. The County of Riverside has requested additional analysis to explore whether an ACP would benefit the County. WRCOG staff will be working with its project team to conduct this additional analysis.

As the WRCOG subregion lies within different RWQCB areas, the team is approaching the other RWQCB areas differently. The San Diego RWQCB has indicated in its MS4 Permit that an ACP can meet the new MS4 Permit requirements but provided additional details on what an ACP must include. The MS4 Permit for the Santa Ana RWQCB region is currently on hold, so it is not certain if an ACP is eligible; however, WRCOG staff will continue working with Santa Ana RWQCB staff to enable that option in the MS4 Permit.

ACP Guidance Manual for San Diego RWQCB Region

The team drafted an ACP Guidance Manual (Attachment 1) which describes information pertinent to ACP components, such as document recording, credit / deficit recording, collecting fee-in-lieu and annual fees, and assuring ongoing maintenance and compliance. This document was provided to Riverside County Flood Control, Riverside County, and the Cities of Murrieta, Temecula, and Wildomar for review and comment. All of the agencies provided comments which were incorporated into an updated manual. Staff from Riverside County has requested a follow-on meeting to discuss the draft Guidance Manual and specific issues related to land development in Riverside County.

Bureau of Reclamation Grant

The Bureau of Reclamation has a grant program out to develop a Watershed Management Program for the Santa Margarita Watershed. WRCOG is currently preparing a grant application to implement a regional planning effort for this watershed. If this grant application is successful, WRCOG will use the funding to implement the initial phases of the ACP and position ourselves to secure future funding for this program and other efforts.

Prior Actions:

November 4, 2019: The Executive Committee received and filed.

March 15, 2018: The Technical Advisory Committee received and filed.

Fiscal Impact:

Activities for the Alternative Compliance Program are included in the Agency's adopted Fiscal Year 2019/2020 Budget under the Transportation Department.

Attachment:

1. Draft Stormwater Compliance Credit Program Guidance Manual.

Item 5.B

Alternative Compliance Program Activities Update

Attachment 1

Draft Stormwater Compliance Credit Program Guidance Manual

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Western Riverside Council of Governments

Stormwater Compliance Credit Program (SWCCP) Guidance Manual

DRAFT

October 23, 2019

Prepared for WRCOG by
Birchline Planning LLC



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DRAFT

ACRONYMS and ABBREVIATIONS

Alternative Compliance	Provision E.3.c.(3)(a) of the 2013 MS4 Permit
MS4 Permit	Municipal Separate Storm Sewer System Permit, Order No. R9-2013-0001, as amended by R9-2015-0001 and R9-2015-0100
PDP	Priority Development Project
RCFCWCD	Riverside County Flood Control and Water Conservation District
RTLMA	Riverside Transportation and Land Management Agency
SDRWQCB	San Diego Regional Water Quality Control Board
SWCCP	Stormwater Compliance Credit Program
TUMF	Transportation Uniform Mitigation Fee
WMAA	Watershed Management Area Analysis
WQE	Water Quality Equivalency Guidance Document Region 9, for Participation in Jurisdictional Offsite Alternative Compliance Programs, dated December 2015 (or as amended)
WQIP	Water Quality Improvement Plan
WQMP	Water Quality Management Plan
WRCOG	Western Riverside Council of Governments

Map of WRCOG and Santa Margarita Watershed borders

DRAFT

Credit Review Process Graphic

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Table of Contents

Table of Contents	6
EXECUTIVE SUMMARY	8
1.0 PROGRAM PURPOSE and AUTHORITY	9
1.1 Program Overview	9
1.2 Program Intent	9
1.3 Scope of Authority and Program Framework.....	10
1.4 Regional Credit Bank Structure	10
1. Tracking inter-municipal and other regional credits:	10
2. Tracking intra-municipal credits:	10
3. Maintaining a watershed credit buffer:.....	11
Figure 1. Regional Credit Bank Structure.....	11
2.0 Involved Agencies and Foundational Documents	11
2.1 Relationships of WRCOG, Co-Permittees and Foundational Documents.....	11
2.1.1 Riverside County Flood Control and Watershed Conservation District (RCFCWCD)	12
2.1.2 Riverside County Transportation and Land Management Agency (RTLMA)	12
2.1.3 Caltrans	12
2.1.4 Western Riverside Municipalities.....	12
2.1.5 Public Land Owners.....	13
2.1.6 Development Applicants/Non-Public Land Owners	13
Table 1. Co-Permittee/Agency Responsibilities	13
2.2 Foundational Documents	13
Table 2. Foundational Documents Incorporated by Reference	14
3.0 Credit-Generating Projects.....	14
3.1 Submittal Requirements for Credit-Generating Projects	14
3.2 Automatic and Voluntary Credit Banking	14
3.2.1 Automatic Credit Banking	15
3.2.2 Voluntary Credit Banking.....	15
4.0 Credit Bank Administration.....	15
4.1 Administrative Roles and Functions.....	15
4.1.1 WRCOG Responsibilities	15
4.1.2 Procedures for Program Participation	16

4.2	Involved Agency Working Group	16
4.2.1	Working Group Composition and Meetings.....	16
4.2.2	Working Group Responsibilities.....	17
4.2.3	Application Review	17
4.3	Dispute Resolution.....	17
4.4	Credit Buffer	17
4.5	Credit Pricing.....	18
4.5.1	Credit Price Setting Procedures and Administrative Fee.....	18
4.5.2	Assignment of Pricing Tiers for Credit Applications	19
	Table 3. Credit Pricing Tiers.....	19
4.6	Forms and Certifications.....	20
5.0	Procedures for Credit Use	21
5.1	Overview	21
5.2	Credit Purchase Procedures	21
5.2.1	Responsible Co-Permittee Authorization Required.....	21
5.2.2	Credit Purchase Steps	21
5.2.3	Modifying Requests for Credits.....	22
5.3	Legal Encumbrance of Assigned Credits.....	23
5.4	Payment to Credit-Generating Projects from Credit Sales	23
6.0	Credit Expiration, Retirement, and Renewal	23
6.1	Life of Credits.....	23
6.2	Annual Reporting by WRCOG.....	24

EXECUTIVE SUMMARY

This Program Guidance Manual outlines the Stormwater Compliance Credit Program (SWCCP) established by the Western Riverside Council of Governments (WRCOG). Acting in its capacity as a regional organization with a mission to serve member agencies, WRCOG has coordinated with the Riverside County Flood Control and Water Conservation District (RCFCWCD), Riverside County Transportation and Land Management Authority (RTLMA), municipal jurisdictions, and other agencies within the County to develop a voluntary, optional program for managing Alternative Compliance credits under the Municipal Separate Storm Sewer System Permit for the San Diego Region (MS4 Permit).

The Alternative Compliance provisions in the MS4 Permit reflect the technical and financial challenges of on-site stormwater compliance in the San Diego region. Providing an option for Priority Development Project (PDP) applicants to manage all or part of the required volume of stormwater off-site helps applicants overcome site-specific technical challenges, as well as the financial constraints facing development (particularly infill redevelopment, transit-oriented development, and affordable housing) in Western Riverside County communities. Under the terms of the MS4 Permit, Co-Permittees may adopt Alternative Compliance provisions that allow PDP applicants to pay a fee-in-lieu towards the cost of constructing a stormwater treatment project elsewhere in the watershed, or to construct an Alternative Compliance project themselves. However, the MS4 Permit does not address the program structure and approach needed to implement these measures in the context of the land use entitlements process.

To address this need, WRCOG will administer this SWCCP to ensure that the Co-Permittees and PDP sponsors in the Western Riverside region have a ready means of facilitating stormwater compliance and watershed enhancement projects in an efficient, cost-effective manner. WRCOG's Executive Committee, and the participating agencies in the SWCCP development process, find that this program will benefit WRCOG's member and partner agencies through the continued improvement of the region's environmental, economic and community quality. As WRCOG is not a Co-Permittee under the MS4 Permit, with no authority to review or approve stormwater projects, WRCOG will act as the administrator of a Regional Credit Bank that maintains stormwater "credits" and "debits" under the terms and conditions of the MS4 Permit and the implementing Water Quality Equivalency guidance (WQE).

Any of the legal Co-Permittees party to the MS4 Permit may choose to participate in this program by establishing a locally-adopted Alternative Compliance program and requesting participation in the SWCCP. As set forth in this Guidance Manual, program administration chiefly will be carried out by WRCOG staff supporting an Involved Agencies Working Group (Working Group). The Working Group, procedures for which are set forth in this Guidance Manual, will have policy-setting and decision-making roles; bi-annually, the Working Group will set the price for credits to be purchased by PDP applicants to achieve compliance with the MS4 Permit. Providing a consistent forum for involved agency communication, with defined responsibilities and procedures, supported by professional staff, is among the most important support WRCOG can provide to ensure the viability of Alternative Compliance in the region.

1.0 PROGRAM PURPOSE and AUTHORITY

1.1 Program Overview

WRCOG has adopted this voluntary Stormwater Compliance Credit Program (SWCCP) as a means of maintaining and managing a record of credits generated and used under the Regional MS4 permit's¹ Alternative Compliance provisions, which allow for the off-site treatment of development-related stormwater runoff using “credits” created by supplemental treatment and control on other sites. This program creates a Regional Credit Bank that facilitates the generation, management, and proper use of Alternative Compliance credits.

While each MS4 Co-Permittee has the authority to establish a locally-managed Alternative Compliance program, WRCOG member municipalities and allied agencies, including the RCFCWCD and RTLMA recognized both the tremendous opportunities and the substantial administrative challenges involved in implementing Alternative Compliance at an inter-municipal or regional scale. In response, in service to its members, WRCOG has developed the SWCCP and this Guidance Manual. This centrally-managed administrative program is intended to offer effective and efficient management and tracking of stormwater “credits” created and allocation of credits to credit “purchasers.” The SWCCP also provides a means to reimburse the sponsors of credit generating projects, and once the program is more robust, to provide a source of funds for sponsors of additional watershed enhancement (i.e. credit-generating) projects. The form of the SWCCP reflected in this Guidance Manual reflects the needs and direction expressed by participating member municipalities and agencies. It also outlines how municipalities and agencies may voluntarily “opt in” to this program to facilitate inter-municipal, inter-agency, and regional solutions.

WRCOG's role in establishing this stormwater-focused program is distinct from those of its member municipalities, RTLMA, and RCFCWCD. WRCOG is not an MS4 permittee, and has no role in managing or maintaining any of the region's MS4 systems. WRCOG does not promulgate land use or stormwater regulations, or review development projects for compliance with stormwater or land use regulations. This Guidance Manual for the SWCCP has been written in cooperation with RCFCWCD and RTLMA, along with municipalities and other regional stakeholders, and is complementary to the authorities of the Co-Permittees. Agencies and municipalities choosing to opt in to the SWCCP may do so by following the steps outlined in this Guidance Manual, and participating in the Working Group process.

1.2 Program Intent

It is the overall intent of WRCOG to use the opportunity created by Alternative Compliance, as authorized in the MS4 Permit and adopted locally by MS4 Co-Permittees, to facilitate

¹ At the present time (2018), Alternative Compliance is part of the MS4 permit for the Santa Margarita watershed only, and not for the Santa Ana watershed. If, when and as similar provisions are adopted by the Santa Ana Regional Water Quality Control Board, WRCOG anticipates extending the SWCCP to its member municipalities and affected agencies within the Santa Ana watershed.

investments in infrastructure, development, and water quality enhancement projects that benefit Western Riverside County. As is the case with many other programs and initiatives, WRCOG is providing this program as a voluntary service to members, offering an administrative framework that optimizes use of the stormwater credit capacity created by watershed enhancement projects constructed in the region. The SWCCP implements an important finding of WRCOG's *Land Use, Transportation and Water Quality Framework* (2013) that found the potential for stormwater regulations to have substantial impacts on infill development and housing in Transit Priority areas of Western Riverside County; this study promoted a regionally-managed alternative compliance option as one means of ensuring that the regulatory framework for stormwater did not conflict with the region's housing, land use, and community development goals.

1.3 Scope of Authority and Program Framework

The SWCCP, and this implementing Guidance Manual, have been formally adopted by the WRCOG Executive Committee. As such, while the program is intended to be consistent with applicable MS4 permit provisions, the actions and policies herein are governed by the WRCOG Executive Committee in accordance with WRCOG's standards and procedures (By-Laws). WRCOG's scope of authority extends only to administrative tracking measures outlined in this manual. Once this program is in place and sufficiently robust, WRCOG intends to facilitate the transfer of funds from credit purchases to support the construction of watershed enhancement projects by regional Co-Permittees.

It is important to emphasize that WRCOG's functions under this program rely on RCFCWCD and municipal staff carrying out their delegated review authority under the MS4 Permit. Co-Permittee staff are, in this program, responsible for analysis of all technical aspects of reviews of Water Quality Management Plans (WQMP), and analysis under the WQE, to determine credits generated or required by individual projects. While there is always the potential for WRCOG to expand its responsibilities at member municipalities' request, consistent with any developments in the MS4 Permit, this Guidance Manual as adopted by the WRCOG Executive Committee clearly limits WRCOG's responsibilities to managing the administrative process outlined herein.

1.4 Regional Credit Bank Structure

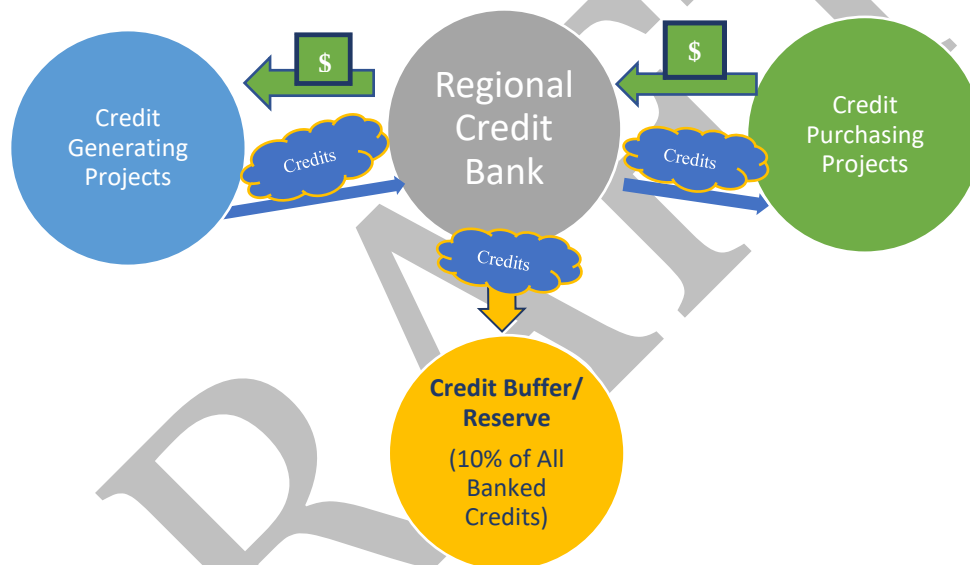
The SWCCP establishes a regional "credit bank" that enables three functions:

1. **Tracking inter-municipal and other regional credits:** The primary purpose of the SWCCP is to facilitate inter-municipal and regional credit generation and use. The SWCCP will track and manage credits generated at sites in any participating municipality or multiple municipalities (e.g. multi-city greenways, etc.), and will make those credits available to credit-purchasing projects in the same watershed (i.e. Santa Margarita River watershed).
2. **Tracking intra-municipal credits:** Any member municipality or regional agency that has authorized an Alternative Compliance program may request that WRCOG track and manage stormwater credits that are generated and used solely within its municipal

borders. While it is anticipated that most local programs of this type will be managed by the municipality, WRCOG will do so through the SWCCP if requested by the municipality or agency. An administrative fee will be charged by WRCOG for this service, consistent with the provisions set forth in this Guidance Manual.

3. ***Maintaining a watershed credit buffer:*** For each watershed area (i.e. Santa Margarita River), a credit reserve or buffer representing ten percent (10%) of the credits deposited in the Regional Credit Bank will be maintained in order to cover any potential cases of non-compliant credit-generating projects, or temporal issues with project construction.

Figure 1. Regional Credit Bank Structure



2.0 Involved Agencies and Foundational Documents

2.1 Relationships of WRCOG, Co-Permittees and Foundational Documents

By establishing the SWCCP, WRCOG is acting as an administrative hub for the many agencies involved in implementing water quality regulation and restoration in the region. Each of the Co-Permittees and other involved agencies, has different roles in project development and review, and in the preparation and implementation of various regulatory and planning documents. This Section reviews the role and function of key agencies involved in the SWCCP. Section 2.0 reviews the Foundational Documents, both regulatory and guidance, that affect implementation.

Program administration for the Regional Credit Bank chiefly will be carried out by WRCOG staff supporting the Involved Agencies Working Group. The Working Group, procedures for which are set forth in Section 4.0 of this Guidance Manual, will review and make

recommendations on policy issues; review the status of un-used or ‘expired’ credits and applications for extension; and bi-annually, set the price for credits to be purchased by PDP applicants to achieve compliance with the MS4 Permit. Providing a consistent forum for the involved agencies with defined responsibilities and procedures, supported by professional staff, is among the most important support WRCOG can provide to ensure the success of a Regional Credit Bank program.

2.1.1 Riverside County Flood Control and Watershed Conservation District (RCFCWCD)

As the lead Co-Permittee for Riverside County, RCFCWCD prepares and submits the key regulatory documents governing both PDP compliance with the MS4 Permit, and the foundational documents authorizing adoption and use of Alternative Compliance in covered jurisdictions. RCFCWCD thus has a primary role in determining the technical content of the program that WRCOG administers. RCFCWCD also led preparation, submittal and approval of the Water Quality Improvement Plan (WQIP) and Watershed Management Area Analysis (WMAA) for the Santa Margarita Watershed.

Importantly, RCFCWCD also has agreed that credits generated by the District’s capital projects will be deposited automatically in the Regional Credit Bank, as a means of creating capacity for the use of Alternative Compliance in the region.

2.1.2 Riverside County Transportation and Land Management Agency (RTLMA)

Riverside County’s governmental agencies and departments are anticipated to be active participants in the SWCCP. Regulatory review, as well as capital project development and construction, fall under the auspices of the RTLMA. RTLMA staff will review all WQMPs for the County. The Transportation Department also has authority for policy making, development and implementation of transportation and transit capital projects, and manages the County’s transportation and MS4 networks. Stormwater treatment systems built in conjunction with RTLMA projects are anticipated to generate credits for the Regional Credit Bank. RTLMA also may need to purchase credits for transportation and other capital projects where on-site treatment is cost-prohibitive or where site conditions are especially challenging.

2.1.3 Caltrans

Like RTLMA, Caltrans develops and manages portions of the transportation network in Riverside County, developing and managing substantial stormwater treatment facilities. Under this SWCCP Caltrans is eligible both to bank credits and to purchase credits in the same manner as other agencies.

2.1.4 Western Riverside Municipalities

Municipalities are eligible to participate in the program by opting in to the SWCCP, as outlined in Section 4.1.2, and may voluntarily withdraw. The SWCCP has been designed to facilitate credit-generating or credit-using projects that involve two or more municipalities. In these cases,

each involved municipality must opt in to the SWCCP, at which time WRCOG can administer and manage the credits generated.

Municipalities' legal responsibilities under the MS4 Permit are not reduced by participation in the SWCCP: Each municipality must, under the MS4 Permit, adopt locally an ordinance authorizing the use of Alternative Compliance for PDPs approved within its jurisdiction. Municipal staff (or their designees) also are responsible for the review and approval of WQMPs and determining the credits generated or required using the WQE. As outlined in this Guidance Manual, the number of credits deposited to or allocated from the Regional Credit Bank with any project will be determined by the approved WQMP.

2.1.5 Public Land Owners

Many environmental enhancement projects on public lands, such as riparian corridor restoration, trail construction, and bridge or culvert replacement, are eligible as credit-generating projects under the MS4 permit and the WQE. Under the SWCCP, projects constructed on public lands within western Riverside County may be deposited in the Regional Credit Bank, and funds from credit purchases distributed to the project sponsors, as outlined in Section 5.0.

2.1.6 Development Applicants/Non-Public Land Owners

Private-sector applicants for Priority Development Projects (PDPs) may deposit credits into the bank and may purchase credits, provided the municipality(ies) with jurisdiction over the PDP have adopted Alternative Compliance provisions locally. The purchase and use of credits must be fully consistent with the municipally-approved WQMP for the project, the associated WQE analysis, and the procedures outlined in this Guidance Manual.

Table 1. Co-Permittee/Agency Responsibilities

Co-Permittee/ Agency	Responsibility							
	Prepare / Submit WMAA	Prepare/ Submit WQIP	Prepare Model PDP WQMP	Prepare BMP Design Manual	Review PDP WQMPs	Evaluate Project- Specific WQE Analyses	Certify Credits Needed/ Generated	Monitor PDPs, AC projects for Compliance
RCFCWCD	💧	💧	💧	💧	💧	💧	💧	💧
Municipalities					💧	💧	💧	💧
Caltrans						💧	💧	💧
RTLMA					💧	💧	💧	💧

2.2 Foundational Documents

Implementation of the Alternative Compliance program involves several foundational regulatory documents and processes related to watershed planning, stormwater BMP design and evaluation, Alternative Compliance crediting, and other stipulations of the MS4 Permit. While WRCOG has neither authority nor responsibility for the preparation or content of these documents, these documents set the policy framework for Alternative Compliance and the SWCCP. Each is

incorporated by reference into this Guidance Manual. Where municipalities or other Co-Permittees participating in the SWCCP have adopted a superseding local document, ordinance or policy, these also are incorporated into this Guidance Manual. The Co-Permittees must certify to WRCOG that individual projects using the Regional Credit Bank is fully consistent with applicable provisions of these documents.

Table 2. Foundational Documents Incorporated by Reference

Document	Adoption/ Effective Date
Watershed Management Area Analysis (WMAA)	[XXXX]
Water Quality Improvement Plan (WQIP)	[XXXX]
2018 Water Quality Management Plan for the Santa Margarita Region of Riverside County	July 5, 2018
Water Quality Equivalency Guidance Document Region 9, for Participation in Jurisdictional Offsite Alternative Compliance Programs	December 2015 (and as updated)
Riverside County Santa Margarita River Watershed Region Design Handbook for Low Impact Development Best Management Practices	June 2018
MS4 Permit, Order No. R9-2013-0001, as amended by R9-2015-0001 and R9-2015-0100	Adopted May 8, 2013; Amended February 11, 2015 and November 18, 2015

3.0 Credit-Generating Projects

3.1 Submittal Requirements for Credit-Generating Projects

Under the terms of the MS4 Permit and WQE guidance, a wide range of watershed restoration projects potentially can create Alternative Compliance credits. It is WRCOG's intent to support implementation of a broad suite of private- and publicly-sponsored watershed restoration projects through the Regional Credit Bank. As such, projects properly reviewed and credited by the applicable Co-Permittee, as set forth above, can be submitted to the Regional Credit Bank. All submittals of credit projects require the following to be submitted to WRCOG:

1. Demonstration of issuance of applicable land use approvals from the applicable MS4 Co-Permittee;
2. A WQMP or equivalent approved by the applicable Co-Permittee; and
3. WQE calculations and a determination of the specific credits to be banked, and credits that will constitute the 10% credit buffer.

3.2 Automatic and Voluntary Credit Banking

The involved agencies participating in development of the Regional Credit Bank have agreed that certain types of credit-eligible projects constructed in the Santa Margarita watershed will automatically be included in the Regional Credit Bank. This is intended both to ensure the viability of a regional program, with sufficient credits deposited to meet compliance needs, and to provide assurance to the San Diego Regional Water Quality Control Board (SDRWQCB) that credit tracking will be managed effectively for multi-party, inter-municipal, and privately-sponsored projects.

3.2.1 Automatic Credit Banking

Projects constructed under RCFCWCD's Capital Improvement Program that are able to be credited under the WQE will automatically be deposited in the Regional Credit Bank, upon submittal of the approved documentation to WRCOG.

3.2.2 Voluntary Credit Banking

Inter-municipal projects and County-sponsored projects may be deposited in the Regional Credit Bank at the request of the City Manager or equivalent executive of the sponsoring jurisdiction(s). Participating municipalities must adopt Alternative Compliance locally, and request participation in the SWCCP.

Municipally-sponsored projects in jurisdictions that have otherwise chosen to administer credits locally may deposit credits in the Regional Credit Bank, upon written request to WRCOG. Certification of the intent to bank the credits through the SWCCP may be made by the City Manager or equivalent executive. Otherwise, municipalities are not required to use the SWCCP or Regional Credit Bank.

Projects sponsored by other public agencies, including the US Army Corps of Engineers and special purpose authorities may be banked at the request of the public agency to WRCOG.

Credits generated from *projects sponsored by a private entity* (whether non-profit, for-profit, or quasi-public) may be deposited in the Regional Credit Bank. To do so, the applicant must have an MS4 Co-Permittee sponsor who submits the project to the Regional Credit Bank, using the process and requirements outlined in this Guidance Manual. Technical studies (i.e. WQE and WQMP, or equivalent project documentation by a public agency) and certification of the municipality's authority to enter and maintain the credit-generating project in the event of non-compliance (detailed in Section 5.3) must be completed and approved by the responsible Co-Permittee in order for the credits to be banked.

4.0 Credit Bank Administration

4.1 Administrative Roles and Functions

4.1.1 WRCOG Responsibilities

Under the SWCCP, WRCOG will manage the Regional Credit Bank, noting again that WRCOG is a managing entity, is not an MS4 Co-Permittee, and is not an entity against which enforcement would be taken in the event of non-compliance. This section sets forth the procedures by which an internal Working Group convened by WRCOG will administer the SWCCP.

In keeping with WRCOG policies, WRCOG's management will be based on a collaborative decision-making and policy-setting process with participating municipalities and agencies to

administer the Regional Credit Bank. It is WRCOG's intention to adapt these policies over time through input of the Working Group to respond to the needs of member communities and agencies, and with the evolution of the MS4 Permit program. Therefore, this Guidance Manual may be updated from time to time to reflect these changes.

4.1.2 Procedures for Program Participation

Participation in the SWCCP shall be granted by WRCOG upon a written request of the City Manager or equivalent executive in a municipality or other participating public agency. The request to WRCOG must specify that the participating agency will abide by the procedures outlined in this Guidance Manual. Participating Co-Permittees also must make a written commitment to send an appropriate designee with authority to act on its behalf to all scheduled meetings of the Working Group.

Withdrawal from the SWCCP may be made upon a vote of the Co-Permittee or agency's governing board or elected officials, who may authorize a City Manager or equivalent executive to provide a written statement of withdrawal to WRCOG. However, in this event, projects within or sponsored by that Co-Permittee or agency that were enrolled in the Regional Credit Bank prior to the date of the written statement of withdrawal may not be removed from it. Any payments due to a withdrawing agency or municipality for credits sold (see Section 5.4) will be paid through the close of the calendar year in which the statement of withdrawal is submitted. No project located wholly or partially in a withdrawing municipality, or sponsored by a withdrawing agency, shall be eligible to apply for the assignment or banking of credits after the date of the request for withdrawal; any applications in process likewise shall be deemed withdrawn as of the date of the statement of withdrawal.

4.2 Involved Agency Working Group

4.2.1 Working Group Composition and Meetings

WRCOG will convene the Involved Agency Working Group (Working Group) to manage the Regional Credit Bank and the SWCCP. The Working Group will include representatives from RCFCWCD, RTLMA, and each municipality that has opted in to the SWCCP, along with two members at large representing the private-sector regulated community in Western Riverside County. Other agencies participating in the SWCCP or actively engaged in developing credit generating projects may petition the WRCOG Executive Committee for membership in the Working Group.

The Working Group will be the chief policy setting body for the SWCCP. Working Group meetings will be held no less than quarterly with quorum required for a meeting; all meetings shall be treated as publicly noticed meetings, and shall be open to the public. The Working Group's members may choose to meet more frequently as required.

At its meetings, the Working Group will manage the banking and assignment of credits from the Regional Credit Bank. The submittal of complete applications to WRCOG staff will trigger the Working Group's review of specific applications for credit banking and use. WRCOG staff shall

have the authority to determine the date by which complete applications must be submitted in order for the application to be heard at the next Working Group meeting.

4.2.2 Working Group Responsibilities

The Working Group will set priority for the allocation of credits, consistent with the MS4 permit, and manage the “queue” of available Alternative Compliance credits. To allocate credits to a PDP, the Working Group shall issue a *Determination of Availability* formally allocating credits to a particular PDP, and committing those credits, subject to the conditions and time limits that are further set forth in this section.

It is the intent of WRCOG and RCFCWCD to facilitate the development of credit projects in the region and to ensure that the number of available credits is sufficient to meet regional demand. In the event demand exceeds the available supply, publicly-sponsored PDPs requesting credits generally shall have priority over privately-sponsored PDPs. In the event requests for credits exceed the number available in the Regional Credit Bank, the Working Group will have discretion to establish a priority among or between projects.

4.2.3 Application Review

The Working Group shall review applications for credit banking or credit use, with the presumption that the application has been properly reviewed and certified by the responsible Co-Permittee. The Working Group will strive to achieve consensus in its decision-making; in the event consensus cannot be achieved, a vote of the majority of Working Group members present shall be sufficient to authorize or deny an application for credit banking or use. Any applications denied may be referred back to the responsible Co-Permittee for review or revision; in such case, WRCOG staff will provide a summary of the Working Group’s decision and any recommended revisions. Applications denied or remanded may be modified and re-submitted.

4.3 Dispute Resolution

WRCOG’s procedures for dispute resolution shall govern decision-making by the Working Group, applications for credit banking or use, the assignment and administration the Credit Bank, and other actions taken pursuant to this Guidance Manual. A decision of the Working Group may be appealed to WRCOG’s Executive Director, who shall make a decision and communicate the decision to the appellant and the Working Group. Decisions of the Executive Director may be appealed to the WRCOG Technical Advisory Committee, which shall render its decisions. The Technical Advisory Committee’s decision may be appealed to the WRCOG Executive Committee; decisions of the Executive Committee shall be final and binding on all parties.

4.4 Credit Buffer

To ensure that the SWCCP is consistent with the aims of the foundational documents, WRCOG will retain an un-allocated Credit Buffer or reserve of ten percent (10%) of all credits deposited in the Regional Credit Bank. The allocation of the deposited credits between pertinent categories

in the WQE (i.e. hydrologic modification and pollutant attenuation) will be determined by the Working Group when each credit-generating project is reviewed for acceptance. Maintenance of the credit buffer is intended to ensure that in the event of temporary non-compliance, damage from natural events or man-made activities, or necessary BMP replacement, additional treatment and controls have been put in place to protect watershed functions while a damaged or non-compliant BMP or project is restored by the responsible party.

At the present time the Credit Buffer will be designated for the Santa Margarita watershed; at such time as areas in the Santa Ana watershed become eligible for Alternative Compliance, a separate watershed Credit Buffer will be established.

4.5 Credit Pricing

One of WRCOG's roles as administrator of the Regional Credit Bank will be to set a price for the use of credits. As has been the practice with the Transportation Uniform Mitigation Fee (TUMF) program, pricing will be the responsibility of the Working Group, operating under the decision-making procedures set forth in this Guidance Manual. In further keeping with the approach of the TUMF program, and many other well-established impact fee systems, credit pricing will be based on a periodic review of current information regarding the cost per unit to construct stormwater treatment and control measures (BMPs) providing treatment equivalent to the treatment required in the MS4 Permit, and the model WQMP for Riverside County prepared by RCFCWCD.

4.5.1 Credit Price Setting Procedures and Administrative Fee

Credit prices will be set bi-annually. WRCOG staff will, in consultation with its consultants, make a preliminary recommendation on credit pricing to the Working Group. The Working Group shall be asked to provide input and recommendations on the proposed pricing, and a proposed final pricing structure shall be developed by WRCOG staff. The final pricing shall be approved by the Working Group; while a consensus approval is desired, in the event that consensus cannot be achieved, the Working Group shall take a vote of its members present and a majority may approve the credit pricing. This decision is appealable per the procedures in Section 4.3.

Between credit price updates, as part of its regular meetings, the Working Group will convene a sub-group or committee of the whole to evaluate the cost of stormwater-related capital improvements from a range of private, public, rural, urban and transportation projects constructed within the Santa Margarita watershed area. Should Alternative Compliance provisions be expanded to the Santa Ana watershed, a similar procedure shall be used to set credit prices for projects in that watershed.

All assignments of credits from the Regional Credit Bank will be subject to an Administrative Fee (currently 4% for other WRCOG programs). The fee will be set bi-annually by the WRCOG Executive Committee, at the same time the credit prices are updated, and will be based on a recommendation from WRCOG staff and the Working Group. As with the TUMF program, the administrative fee is intended to reflect the program's administrative cost to WRCOG.

4.5.2 Assignment of Pricing Tiers for Credit Applications

Credit prices will be set for three tiers of projects, which are determined by the nature of the ultimate end user purchasing the credits. The Working Group shall have authority to determine the appropriate pricing tier for each credit-using project. Table 3 below is intended to provide guidance to the Working Group on the types of credit purchasers/end users appropriate to each pricing tier; it is not intended to be exhaustive. PDP applicants may request a non-binding determination of the applicable pricing tier from WRCOG staff prior to filing an application; applicants also may appeal the Working Group's determination, as set forth in Section 4.3.

Table 3. Credit Pricing Tiers

Credit Pricing Tier	Type of Purchaser/ End User	Notes
Full-Price	Private buyers: Private-sector applicants for PDP approvals PDP developed for market-rate use and does not include a substantive affordable housing or TOD component	Full price credits reflect the full cost of stormwater BMP implementation in the region during the pricing period as outlined in Section 4.5.1.
Half-Price	- Private buyers: Applicants for PDPs that include a substantive (e.g. 50% or greater) component of Transit-Oriented Development or affordable housing (as defined in Health and Safety Code Sections 50079.5 (rental housing) and 50093 (for-sale housing)). - Restoration projects sponsored or transferred to the control of for-profit parties	Half-price credits are set at 50% of the full cost of stormwater BMP implementation during the pricing period.
No-Cost	- Public agencies including RCFCWCD, RTLMA, Caltrans and municipalities - Public and private non-profit educational and health care institutions - Restoration projects sponsored and managed by a public or non-profit entity	Administrative fees apply to all credit requests, including no-cost credit requests

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4.6 Forms and Certifications

WRCOG will maintain and administer a number of forms and certifications in association with the SWWCP. These forms and certifications, which will be developed by WRCOG staff and approved by the WRCOG Executive Committee, will include:

1. *Credit Bank Authorization*: Establishes the program and Working Group
2. *Request for Assignment of Credits (Application)*: Application and required information for applicants seeking to purchase/use credits from the bank; the Working Group will require 3-6 months for processing, depending on the timing of the application and upcoming Working Group meetings.
3. *Request to Bank Credits*: Application, required information, and statement of sponsorship by a public Co-Permittee (for private applicants) to submit project-generated credits to the Regional Credit Bank; the Working Group will require 3-6 months for processing, depending upon the timing of the submittal.
4. *Credit Deposit Certification*: A statement of the number and type (i.e. hydrologic modification or pollutant removal) of credits certified as deposited to the regional credit bank, and pertinent dates for determining reimbursement under Section 5.4.
5. *Determination of Availability of Credits*: Statement assigning a specific number and type of credits to an applicant and project, based on a Request for Assignment of Credits. Determinations will be time-limited and subject to conditions of approval and execution of a final Credit Purchase Agreement, as set forth in Section 5.2.2.
6. *Credit Purchase Agreement*: WRCOG will certify that a final purchase or assignment from the Regional Credit Bank is issued, that all applicable administrative and credit charges have been paid, and that the credits and associated credit reserve are legally encumbered.
7. *Credit Refund*: In the event a project to which credits were assigned and for which a Credit Purchase Agreement was executed has been formally abandoned without using all or some of the purchased credits, a credit refund will be issued by WRCOG.
8. *Notice of Credit Expiration*: Credits allocated through a Determination of Availability of Credits that have not been finalized through a Credit Purchase Agreement will expire, as set forth in Section 5.2.2. Applicants will receive this formal notice of expiration from WRCOG.
9. *Payment Receipt for Purchase of Credits*: WRCOG will issue formal receipts of all payments made in association with the SWCCP.

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5.0 Procedures for Credit Use

5.1 Overview

This section outlines the process by which applicants for PDPs may request and make use of credits, including procedures for payments and the applicable timelines for approval and use of credits.

5.2 Credit Purchase Procedures

5.2.1 Responsible Co-Permittee Authorization Required

It is essential that any request for the use of credits from the Regional Credit Bank, whether for public or private projects, be made through and with concurrence of the Co-Permittee with authority to approve a WQMP and WQE for the associated project. The signature of the municipal official with authority approve the request for credits shall be used as evidence of a municipality's sponsorship of the request for credits, or sponsorship of a credit-generating project to be added to the Regional Credit Bank.

5.2.2 Credit Purchase Steps

WRCOG recognizes the uncertainties and challenges encountered by PDP applicants in the land use approval process. The timeframes set forth are intended to coordinate with and accommodate the most common process for land use approvals.

1. Request for Assignment of Credits (Application): Requests for Assignment of Credits should be filed with WRCOG upon filing of a complete WQMP and WQE analysis with the responsible MS4 Co-Permittee. No Request for Assignment of Credits will be processed by WRCOG staff without a determination by the responsible MS4 Co-Permittee that the WQMP has been deemed complete. WRCOG will require a 3- to 6-month processing time for the Request, depending upon the timing of the filing and upcoming Working Group meetings.

2. Determination of Credit Availability: Within 30 days of the Working Group meeting at which the Request is reviewed, the applicant will be notified in writing by WRCOG staff of (1) the number and types of credits that are available, and (2) the project's proposed pricing tier, which will be determined by the Working Group. The Working Group's decision on the availability of credits is a ministerial decision determined by the number and type of credits available through the bank; this determination is not subject to applicant appeal. However, applicants have 15 days from receipt of the Working Group's determination to appeal a decision on the pricing tier determination in accordance with the procedures in Section 4.3. In cases of appeal, the requested credits will not be deemed reserved for the project until appeals are exhausted the applicant has notified WRCOG, in writing, of acceptance of the pricing tier.

3. Duration of Credit Availability and Extensions: If credits are available and the applicant has accepted in writing the final determination of the pricing tier, the credits will be reserved for

five (5) years starting from the original date of approval by the Working Group. One five-year extension, starting the first calendar day after the expiration of the original five-year period, may be requested for cause upon written application to, and approval of, the Working Group. While the pricing tier in place at the time the Assignment of Credits is issued will remain in effect throughout the credit reservation, the actual credit price to be paid will be the price per credit for that tier in effect when the applicant finalizes a Credit Purchase Agreement with WRCOG. If the project is abandoned or the WQMP is denied by the reviewing Co-Permittee, the Assignment of Credits shall be null and void.

4. Execution of Credit Purchase Agreement: Roughly three to four months before applicants holding an Assignment of Credits will apply for building permits for the activity authorized in the associated WQMP, applicants should contact WRCOG staff to develop a Credit Purchase Agreement. The Credit Purchase Agreement, and associated payments of credit and administrative fees, must be received by WRCOG or the responsible Co-Permittee prior to issuance of first grading or building permit authorizing the activity approved in the WQMP. Payments may be made to WRCOG or the responsible Co-Permittee, which must remit the fee to WRCOG within 30 days of receipt of payment. Once a Credit Purchase Agreement has been executed payment received by the Co-Permittee or WRCOG, the associated credits are deemed to be permanently allocated.

5. Refund for Unused Credits: If a project for which a Credit Purchase Agreement has been executed is not constructed (i.e. a grading or building permit is not issued for the activity authorized in the PDP), or the project is constructed in a manner that reduces the need for Alternative Compliance credits under the MS4 Permit, the applicant may apply to formally terminate or modify the Credit Purchase Agreement. In the event a project is abandoned, written notice of intent to abandon and to terminate the Credit Purchase Agreement must be submitted to WRCOG and the responsible Co-Permittee. Projects modified or partially built first must submit a modified WQMP or equivalent documentation to the responsible Co-Permittee; upon approval of the modified WQMP, the Working Group may modify the Credit Purchase Agreement reducing the number of credits assigned to the PDP.

If funds are available in the Regional Credit Bank at the time a Credit Purchase Agreement is modified or terminated, the applicant may apply to WRCOG to receive a monetary refund for the unused credits. Refunds shall be equivalent to the price the applicant paid per credit (i.e. the cost per credit in the applicable pricing tier in effect at the time of payment), less the current administrative fee set by the WRCOG Executive Committee. If funds are not available from the Regional Credit Bank, funds will be repaid over time at the original cost of purchase less WRCOG's administrative fee. The re-payment schedule will be determined by WRCOG's Executive Committee, based on availability of funds, which decision may not be appealed.

5.2.3 Modifying Requests for Credits

Any request to secure additional credits after the Working Group has issued a Determination of Credit Availability will be treated as a new request for credits. Such amendments will be subject to the procedures and priority outlined herein and will not have priority over other applications. Applicants requesting a reduction to a previously-issued Determination of Credit Availability for

which a Credit Purchase Agreement has not been executed may submit a notification of amendment to WRCOG, along with an amended WQMP and WQE deemed complete by the responsible Co-Permittee. The Determination of Credit Availability will be modified at the next Working Group meeting, and any excess credits returned to the Regional Credit Bank.

5.3 Legal Encumbrance of Assigned Credits

Prior to the review of applications for credit deposits or use, municipalities and agencies opting in to the SWCCP must provide WRCOG with the legal encumbrances the Co-Permittee will require to ensure that (1) The Assignment of Credits and Credit Purchase Agreement are part of the properly recorded land use approvals for a credit-using PDP; (2) locally-recorded encumbrances provide the Co-Permittee with sufficient enforcement authority to enter and maintain in the event a credit-generating or credit-using project is out of compliance with the associated WQMP; and (3) provisions are made for periodic inspection, and prompt reporting to WRCOG in the event of any non-compliance, failure of a BMP or project, or proposed modification of an associated WQMP or other pertinent land use approval.

5.4 Payment to Credit-Generating Projects from Credit Sales

All entities (public or private) sponsoring a project that deposited credits into the Regional Credit Bank will be eligible to receive payment for any credits sold, up to a maximum of 90% of the total credits deposited. Payment will be made only after the generated credits are sold (i.e. a Credit Purchase Agreement using those credits is executed and recorded) and the funds are received by WRCOG.

On an annual basis, WRCOG will repay sponsors of credit-generating projects whose deposited credits were purchased in the prior fiscal year. The amount received by the entity generating the credits may or may not be equivalent to the cost to the sponsoring entity of constructing the credit, or the price paid by an applicant to purchase credits generated by the sponsor's project. The basis for payment shall be 90% of the total number of credits sold, multiplied by the average amount received per credit sold from all credit purchases from the Regional Credit Bank in the prior fiscal year, less WRCOG's standard administrative fee (4% as of 2018). Payment shall be made 30 to 60 days after the close of the prior fiscal year.

6.0 Credit Expiration, Retirement, and Renewal

6.1 Life of Credits

This SWCCP operates under the assumption that credits generated and assigned through the Regional Credit Bank are in place in perpetuity. In the event of project modification, failure or required replacement, the procedures in place both under the MS4 Permit and this Guidance Manual are intended to ensure that the material conditions of the program (i.e. stormwater management measures) are maintained in a functionally equivalent manner to those authorized through the MS4 Permit, approved WQMPs, and the recorded encumbrances outlined above. It is the responsibility of the responsible Co-Permittee to notify WRCOG of any modification of

projects credited to, or using credits from, the Regional Credit Bank; these modifications shall be addressed using the procedures outlined in this Guidance Manual.

6.2 Annual Reporting by WRCOG

WRCOG staff will make an annual report of all activity of the SWCCP, the Working Group, and activity in the Regional Credit Bank to its members, in a manner substantially equivalent to annual reporting of other WRCOG programs. The report will include an accounting of the equivalency of credits generated and allocated, repayments to credit generators, the status of the credit buffer, and the credits available in the Regional Credit Bank. The report also will document the status and anticipated payments to be made to any parties who are awaiting repayment for projects abandoned or partially completed. While WRCOG anticipates this report will be provided to the SDRWQCB, WRCOG's activities are not intended to substitute for Co-Permittees reporting responsibilities to the SDRWQCB under the terms of the MS4 permit or other applicable regulations and programs.



Western Riverside Council of Governments

Administration & Finance Committee

Staff Report

Subject: Regional Streetlight Program Activities Update

Contact: Daniel Soltero, Staff Analyst, dsoltero@wrcog.us, (951) 405-6738.

Date: November 13, 2019

The purpose of this item is to provide an update on the Streetlight Operations and Maintenance services provided by Siemens, and a Regional Retrofit timeline update.

Requested Action:

1. Receive and file.

Background

The Regional Streetlight Program provides the 11 participating jurisdictions with streetlight retrofit, and operations and maintenance (O&M) services. In 2017, WRCOG released RFQ 17-04 to solicit proposals for these services, and in 2018, Siemens was selected as the provider. As jurisdictions are taking ownership of their streetlights, they are required to maintain them should any issues arise such as lamp burnouts, damaged equipment, or pole knockdowns. One of the main reasons for selecting Siemens as the O&M provider for the region is improved level of service when compared to the previous owner and operator of the streetlights, Southern California Edison (SCE).

There are 10 participating jurisdictions in the Program that are or will be utilizing Siemens O&M services. In 2018, the City of Murrieta was the first jurisdiction to acquire streetlights, and the only jurisdiction to initiate Siemens' services that year. In 2019 to date, nine more jurisdictions have acquired streetlights and are utilizing Siemens' services. As each jurisdiction initiates Siemens' services, they are provided with a log-in to the Maintenance Portal which shows all the work orders for that jurisdiction. The Portal will display all open, pending, and closed work orders, response dates and times, as well as brief descriptions of the issue and work conducted. In addition to the 10 jurisdictions utilizing Siemens, the City of Moreno Valley is utilizing their own public electric utility, Moreno Valley Utility, to retrofit, operate and maintain their acquired and city-owned streetlights.

Ongoing Operations and Maintenance (O&M) Update

Of the 11 participating jurisdictions in the Regional Streetlight Program, 10 have completed the acquisition process and have commenced with Siemens O&M services. The City of Menifee is the remaining jurisdiction to acquire its streetlights and is anticipated to commence with O&M services in Q4 2019.

This process has ultimately resulted in different O&M start dates for all jurisdictions. For example, the City of Murrieta became the first jurisdiction to commence with O&M services in September 2018, while the City of Menifee is anticipated to commence with O&M in Q4 2019.

It is important to note that O&M services for most jurisdictions in the Program starts before LED retrofit occurs, meaning most of the initial work orders are for the existing High-Pressure Sodium (HPS) and/or Low-Pressure

Sodium (LPS) streetlights. Staff expects an initial increase in work orders due to the existing lamps having shorter life span, were of varying age at acquisition, and are prone to require additional maintenance or replacement due to the lamp technology. As jurisdictions retrofit their streetlights to LED fixtures, staff anticipate a decrease in work orders as LED's have a longer lifespan, operate more efficiently, and were all new at the time of installation.

Siemens has responded to 683 work orders across the region from September 27, 2018 to October 31, 2019. The regional average response time to routine O&M work orders is currently 4.99 work days, which includes responding to lamp burnouts, cycling and flickering lights due to bad ballasts, or day burning streetlights due to photocell malfunction. Additionally, the regional average response time to Extraordinary O&M work is currently 1.84 days, which can include pole knockdowns, tracing power feed issues or securing live wires, and overhead wiring replacement. In emergency responses for pole knockdowns, Siemens responds immediately and returns public safety within an average 2.56 hours. Additionally, Siemens has responded to a total of 16 pole knockdowns since September 2018.

Currently, WRCOG staff is reviewing all work orders for each jurisdiction in order to develop a detailed O&M Report. This Report will include metrics for typical response times, most common maintenance issues, and number of routine and extraordinary O&M work orders. Staff will bring a more detailed Report (City level data) at a later Committee Meeting.

Regional Streetlight Retrofit Update

The below table reflects the streetlight retrofit progress or anticipated retrofit start of each jurisdiction in the Program. The 3 jurisdictions highlighted in green in the table below, Cities of Eastvale, Murrieta, and Wildomar, have substantially completed the major portion of their streetlight retrofit. Currently, the 3 jurisdictions are working with SCE to review any poles missed during the initial SCE true-up and missed during the sale, as well as identifying any remaining poles for conversion. Moreover, the 5 jurisdictions highlighted in yellow in the table below, the Cities of Hemet, Lake Elsinore, Moreno Valley, and San Jacinto, as well as the Jurupa Community Services District, are still undergoing the streetlight retrofit and/or installing pole tags. Once these jurisdictions complete the major portion of streetlight retrofit, they will enter a project closeout phase which includes working with SCE to discuss remaining streetlights for acquisition, as well as identifying any remaining streetlights for retrofit. The remaining 3 jurisdictions without highlighting, Cities of Menifee, Perris, and Temecula, are anticipated to start retrofitting streetlights by the end of 2019, and in Q1 of 2020.

Milestone Descriptive	Streetlight Count	Progress	Start
Eastvale	4,107	99%	6/4/2019
Hemet	3,993	90%	8/15/2019
JCSD	1,905	97%	9/30/2019
Lake Elsinore	3,739	38%	10/7/2019
Menifee	Est. 6,780		Q4 2019
Moreno Valley	11,257	85%	12/18/2018
Murrieta	6,436	99%	2/11/2019
Perris	4,581		Q1 2020
San Jacinto	1,945	95%	9/19/2019
Temecula	7,279		Est. 11/15/2019
Wildomar	1,405	99%	7/19/2019

Prior Actions:

November 4, 2019: The Executive Committee received and filed.

September 19, 2019: The Technical Advisory Committee received and filed.

Fiscal Impact:

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

Attachment:

None.

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Western Riverside Council of Governments

Administration & Finance Committee

Staff Report

Subject: TUMF Nexus Study Principles and Goal Discussion

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The purpose of this item is to engage members of the Committee regarding key principles and goals related to an upcoming update of the Transportation Uniform Mitigation Fee (TUMF) Nexus Study.

Requested Action:

1. Discuss and provide input.

WRCOG's 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.

Nexus Study Principles & Goals

WRCOG anticipates that it will initiate a comprehensive update of the TUMF Nexus Study in the summer of 2020. The update process will follow the Southern California Association of Governments (SCAG) update of the Regional Transportation Plan / Sustainable Communities Strategy (RTP/SCS) document since the TUMF Nexus Study will be using the same growth forecasts as the SCAG RTP/SCS for consistency purposes. This schedule is also consistent with previous direction from the WRCOG Executive Committee.

As part of this Nexus Study, staff will be soliciting input from member agencies regarding facilities to include in the TUMF Program, which is a key determinant in the overall program cost and resulting fee levels. Prior to meeting with member agencies, staff believe it is advisable to first obtain direction on key principles, which will then be refined and adopted by the various WRCOG Committees prior to the formal beginning of the Nexus Study.

The following topics are presented for discussion and described in further detail below.

Topic #1 - Should TUMF continue to focus on higher value regional projects?

TUMF does not fund every roadway within an Agency's boundaries, instead focusing on regional projects. Criteria used to identify TUMF eligible roadways includes the following:

- Traffic volume
- Whether the project is projected to operate beyond its capacity in future years
- Regional connectivity

The criteria used to define roadways for inclusion in the TUMF Network have not significantly changed since the adoption of the first Nexus Study in 2003. Given these criteria, three possible options present themselves as listed below:

1. The criteria can be made more stringent, which would reduce the number of eligible projects for inclusion in the Network. This change would reduce the overall share of projects funded by TUMF and shift more of the costs to the local agencies.
2. The criteria can remain as currently defined, which would keep many of the existing facilities in the Network. Some increase in the fee is still likely to occur given the continual increase in labor and materials associated with construction of transportation infrastructure.
3. The criteria can be made less stringent, which could significantly increase the fee level given how much the criteria are changed.

Topic #2 - Should TUMF provide a higher or lower level of funding for each individual project?

Currently, TUMF funds both pre-construction and construction activities. We estimate that the current reimbursement level can fund most of the pre-construction activities including Planning, Environment, and Design Studies. Agencies usually only require significant amounts of additional funding when studies are significantly delayed or have to be updated for various reasons. The level of Construction funding varies depending on the facility with TUMF providing between 1/3 and 2/3 of the total construction cost for a project. TUMF is specifically designed to only fund those elements of a project related to roadway capacity. For example, landscaped medians, roadway lighting, and landscaping are not currently reimbursable through the TUMF Program.

This approach has also not varied since the inception of the Program. If a change is desired, three options present themselves as described below:

1. The use of TUMF Funds can be limited to fund either only construction activities or limit funding for pre-construction activity. This change could result in a reduction in the current fee levels by approximately 1/3 since this amount reflects the portion of TUMF fees which go towards these types of activities. The downside to this approach is that it would make it difficult for local agencies to fund these activities as there is often limited funding available. Many of WRCOG's member agencies often require more TUMF funding for these pre-construction activities since there are often limited funds available. Construction funding is generally more available once an agency has secured the necessary entitlements from outside sources such as the Riverside County Transportation Commission (RCTC), the State of California, and federal funds.
2. The current status quo can be maintained, under which most of the pre-construction activities are funded and the same portion of construction activity can be funded by TUMF. Because of continual increases in roadway costs, leaving the current process in place would automatically lead to an increase in fee levels without some offsetting change in other elements of the Program.
3. Higher levels of funding could be provided for pre-construction, construction, or both, by allowing higher levels of reimbursement. Such a change would likely significantly increase the current fee levels, unless offsetting changes were made to the Program such as reducing the number of projects eligible for inclusion in the Program.

Topic #3 - How stringent should the process be for an agency to add a project to the TUMF Network?

Prior to the 2016 Nexus Study Update, WRCOG implemented a policy making it difficult for agencies to add roadways to the Nexus Study without removing an existing roadway, essentially "swapping" one project for another. While this approach created some challenges for WRCOG and the local agency, it also limited the amount of new projects being added to the TUMF network and resulted in a limited increase in the fee for most land use categories.

There are two options available in terms of this item as described below:

1. A similar practice could be required in which projects are added to the TUMF Network only if it replaces a completed project or a proposed project with a focus on creating a "no-net" cost increase scenario. Under this approach, if an agency wishes to add a \$50 million project, it must identify another \$50 million project or two \$25 million projects, etc. This approach would limit increases in the overall fee amounts since the TUMF Network would not significantly expand.

2. The requirement to swap projects could be removed, which would result in an expanded TUMF Network. This expansion would likely increase the overall fee levels, unless other changes are made to the Program eligibility criteria or other procedures are put in place to reduce the level of funding for specific projects.

Topic #4 - Should WRCOG evaluate the use of TUMF to mitigate project-level VMT impacts?

With the passage of SB 743, development projects will be required to mitigate impacts to vehicle miles traveled (VMT) in lieu of providing additional roadway capacity to mitigate impacts under the California Environmental Quality Act (CEQA). This change would mean that payment of TUMF could no longer be used to mitigate project-related traffic impacts under CEQA.

Since SB 743 is a significant departure from the existing CEQA process, WRCOG completed a study with funding from SCAG to look at how member agencies can implement the requirements of SB 743. This study was completed in spring of 2019. The study had three key findings:

1. It is possible to develop legally accepted thresholds and screening criteria so that a majority of projects are able to demonstrate they have no impact to VMT.
2. Larger projects, such as single-family residential developments and industrial projects, are likely to have impacts which cannot be mitigated under CEQA. These projects will therefore have to prepare more complex and costly environmental documents unless some method to mitigate their impacts is found.
3. WRCOG should explore ways to develop a regional mitigation approach for VMT, either through the payment of a fee or development of a mitigation bank.

WRCOG is currently undertaking a feasibility study to determine how best to implement either a fee-based approach or a mitigation bank.

Given the information above, three options present themselves for consideration:

1. The TUMF Program already funds transit improvements and some bicycle / pedestrian infrastructure through the existing fee structure. These projects currently represent a nominal share of all TUMF fees and revenue (less than 5%). It would be possible to develop a separate fee program which would include these improvements and other similar improvements so that the overall fee levels do not change. This approach would require some changes to the TUMF administrative structure, such as modifying the TUMF ordinances and changing the current agreement with the Riverside Transit Agency. The process of actually collecting the fees and reimbursing agencies for costs would not likely change significantly.
2. The second option would be to create a sub-set of improvements in TUMF for VMT reduction projects within the current fee program. This approach would require fewer changes to the TUMF administrative structure.
3. The final option would be to create a new program, outside of TUMF, which would use a voluntary mitigation banking approach. Under this approach, agencies could develop credits that are transferred to a public agency serving as the bank, such as WRCOG. A number of agencies in California are currently exploring mitigation banks including SCAG, LA Metro, OCTA, CCTA, and Fresno COG.

Topic #5 - Should WRCOG Implement an Automatic CCI?

One issue with TUMF Nexus Studies is the need to do updates on a regular basis, since there has been limited support for adjusting construction costs in those years between Nexus Study adoptions. One reason by the adoption of the 2016 Nexus Study was so challenging is that there had not been a comprehensive update since 2009 and construction costs had escalated significantly between 2009 and 2016. WRCOG's TUMF Program does not have a comprehensive CCI adjustment built into the program. Instead, WRCOG calculates the CCI and brings the fee adjustment forward for consideration by the WRCOG Committees. These CCI adjustments often have limited support.

One way to limit the fee increases associated with each Nexus Study is to implement an Automatic CCI process by which the fees would be increased automatically without WRCOG having to take action. Implementing this approach could reduce the amount of fee increases in each Nexus Study, thereby making it more palatable for our member agencies to adopt the Nexus Study as there would be less of a fee increase to consider.

Prior Action:

None.

Fiscal Impact:

Transportation Department activities are included in the Agency's adopted Fiscal Year 2019/2020 Budget under the Transportation Department.

Attachment:

None.