



Western Riverside Council of Governments Public Works Committee

AGENDA

**Thursday, June 10, 2021
2:00 p.m.**

**Western Riverside Council of Governments 3390 University Avenue, Suite 200
Riverside, CA 92501**

**WRCOG's OFFICE IS CURRENTLY CLOSED TO THE PUBLIC DUE TO COVID-19
AND STAFF ARE WORKING REMOTELY**

**Members of the public are encouraged to participate in this meeting via Zoom
(see meeting information below)**

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SPECIAL NOTICE – COVID-19 RELATED PROCEDURES IN EFFECT

Due to the state and local State of Emergency resulting from the threat of Novel Coronavirus (COVID-19), Governor Newsom has issued Executive Order N-29-20 (issued March 17, 2020) in which Section 3 supersedes Paragraph 11 of Executive Order N-25-20 (issued on March 12, 2020). This new order states that WRCOG does not need to make a physical location available for members of the public to observe a public meeting and offer public comment. The Order allows WRCOG to hold Committee meetings via teleconferencing and allows for members of the public to observe and address the meeting telephonically or electronically.

To follow the Order issued by the Governor, the Public Works Committee meeting scheduled for Thursday, June 10, 2021, at 2:00 p.m. will be held via video and teleconference and any members of the public can attend electronically. Members of the public may send public comments by emailing snelson@wrcog.us, or calling (951) 405-6703 before or during the meeting, prior to the close of public comment.

Any member of the public requiring a reasonable accommodation to participate in this meeting in light of this announcement shall contact Suzy Nelson prior to 2:00 p.m. on June 8, 2021, at (951) 405-6703 or snelson@wrcog.us.

The Public Works Committee may take any action on any item listed on the agenda, regardless of the Requested Action.

1. CALL TO ORDER (Sam Nelson, Chair)

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PUBLIC COMMENTS

At this time members of the public can address the Public Works Committee regarding any items with the subject matter jurisdiction of the Committee that are not separately 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.

5. CONSENT CALENDAR

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

A. Summary Minutes from the May 13, 2021, Public Works Committee Meeting P. 1

Requested Action: 1. *Approve the Summary Minutes from the May 13, 2021, Public Works Committee meeting.*

6. REPORTS / DISCUSSION

A. TUMF Credit Agreement Update Cameron Brown, WRCOG P. 5

Requested Action: 1. *Recommend that the Executive Committee approve the revised 2021 TUMF Credit Agreement Template.*

B. RIVCOM Update Jason Pack, Fehr & Peers P. 43

Requested Action: 1. *Receive and file.*

C. Introduction to the TUMF Nexus Study Darren Henderson, WSP P. 53

Requested Action: 1. *Receive and file.*

7. REPORT FROM THE INTERIM EXECUTIVE DIRECTOR

8. ITEMS FOR FUTURE AGENDAS Members

Members are invited to suggest additional items to be brought forward for discussion at future Public Works Committee meetings.

9. GENERAL ANNOUNCEMENTS Members

Members are invited to announce items / activities which may be of general interest to the Public Works Committee.

10. NEXT MEETING: The next Public Works Committee meeting will be held on Thursday, July 8, 2021, at 2:00 p.m., on the Zoom platform.

11. ADJOURNMENT

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1. CALL TO ORDER

The meeting of the Public Works Committee was called to order at 2:00 p.m. by Chair Sam Nelson on the Zoom platform.

2. PLEDGE OF ALLEGIANCE

Chair Nelson led members and guests in the Pledge of Allegiance.

3. ROLL CALL

Members present:

Art Vela, City of Banning
Michael Thornton, City of Calimesa (3:30 p.m. departure)
Jimmy Chung, City of Eastvale (2:08 p.m. arrival)
Steve Loriso, City of Hemet (3:00 p.m. departure)
Mike Myers, City of Jurupa Valley
Remon Habib, City of Lake Elsinore
Carlos Geronimo, City of Menifee
Michael Wolfe, City of Moreno Valley
Bob Moehling, City of Murrieta
Sam Nelson, City of Norco, Chair
Stuart McKibbin, City of Perris (2:23 p.m. arrival)
Gil Hernandez, City of Riverside
Patrick Thomas, City of Temecula
Dan York, City of Wildomar
Alvin Medina, County of Riverside
Lauren Sotelo, March JPA
Jillian Guizado, Riverside County Transportation Commission (RCTC) (2:36 p.m. arrival)
Kristin Warsinski, Riverside Transit Agency

4. PUBLIC COMMENTS

There were no public comments.

5. CONSENT CALENDAR *(Moreno Valley / Murrieta) 14 yes; 0 no; 1 abstention. Item 5.A was approved. Representatives from the Cities of Beaumont, Canyon Lake, Corona, Eastvale, Perris, and San Jacinto, and RCTC were not present.*

A. Summary Minutes from the April 8, 2021, Public Works Committee Meeting

Action: 1. *Approved Summary Minutes from the April 8, 2021, Public Works Committee meeting.*

6. REPORTS / DISCUSSION

A. 2021 TUMF CCI Adjustment Update

Ivana Medina, WRCOG Senior Analyst, presented on the proposed Construction Cost Index (CCI) to the TUMF network. Staff is required to bring information on an annual CCI adjustment through the WRCOG Committees structure for discussion and recommendation for consideration by the Executive

Committee. The CCI is an administrative element of the TUMF Program and is intended to keep the dollar value of the TUMF Program whole. In recent years, the Executive Committee has not approved a CCI adjustment to the TUMF, except for the 2019 CCI adjustment. Staff did not bring forward a CCI adjustment in 2020 due to the COVID-19 pandemic.

Since the adoption of the 2016 TUMF Nexus Study, construction, labor, and land costs have demonstrated an increasing trend. Though the Caltrans CCI is not a factor in determining the adjustment to the TUMF, there has been a sharp increase in costs. Factors contributing to the increase include tariffs and the rebounding economy placing competition on transportation construction from other sectors for materials and labor. This is intended to demonstrate the rising costs of transportation improvements throughout the state, including a handful of interchange projects that are currently underway in the WRCOG subregion. The Executive Committee adopted two indices in the 2016 Nexus Study as the basis for completing CCI adjustments to the TUMF schedule of fees. The TUMF CCI adjustment is based on the percentage increase in the Engineering News Record (ENR) CCI for the 12-month period from January 2020 to January 2021, and the percentage increase in the National Association of Realtors (NAR) Median Sales Price of Existing Single-Family homes in the Riverside / San Bernardino Metropolitan Statistical Area for the 12-month period from the 3rd Quarter of 2019 to the 3rd Quarter of 2020 (to coincide with the publication of the most recently updated index).

The ENR CCI has increased approximately 2% and the NAR Median Sales Price of existing Single-Family homes in the Riverside / San Bernardino Metropolitan Statistical Area has increased 12%.

WRCOG is requesting a recommendation to forward to the Executive Committee for its approval at the next appropriate meeting. Staff will also be providing a presentation on this item at the May Technical Advisory Committee meeting. Staff notes that during the 2016 Nexus Study update process the Executive Committee approved a reduction to the TUMF retail land use fee in response to comments from stakeholders regarding retail developments in Western Riverside County. The Fee Analysis Study completed by WRCOG in 2017, and updated in 2019, confirmed that, on average, the impact fee costs to develop a retail project is higher in Western Riverside County than in surrounding areas. The actual retail CCI adjustment fee should be \$14.23 per square foot. It is staff's recommendation to continue the retail freeze at \$7.50 per square foot. Staff added that the retail fee generates approximately 3% of all TUMF revenues or approximately \$1 million – \$2 million per year.

Additionally, as part of the adoption of the 2016 Nexus Study, the Executive Committee approved a two-year freeze, followed by a two-year phase-in, to the Single-Family residential TUMF. The first portion of the phase-in was implemented July 1, 2019. The 2019 CCI fee adjustment was then implemented in a phase-in approach, with all land uses increased on July 1, 2020. Lastly, the Single-Family residential fee was raised to its full fee on January 1, 2021. A similar approach can be taken on this CCI adjustment at the discretion of the Executive Committee.

Action: 1. *Recommended that the Executive Committee approve the 2021 Construction Cost Index adjustment for each land use type.*

(Wildomar / Lake Elsinore) 14 yes; 2 no; 1 abstention. Item 6.A was approved. Representatives from the Cities of Beaumont, Canyon Lake, Corona, and San Jacinto were not present. There was no response from RTA. The Cities of Menifee and Murrieta voted no and RCTC abstained.

B. ITS TUMF Program Eligibility

Cameron Brown, WRCOG Program Manager, presented an outline of changes to the upcoming Nexus Study update to allow Intelligent Transportation System (ITS) projects as TUMF eligible expenses. Eligibility is proposed for two scenarios. One for ITS enhancements to current and future TUMF projects where ITS would become an eligible expense. Another scenario would be for ITS projects to be stand-alone projects on facilities on the TUMF network in which widening is no longer feasible. ITS improvements on these facilities would be added to the TIP through the annual TIP update process.

The benefit of adding ITS projects is that it helps TUMF continue to be relevant into the future as some areas of the subregion are experiencing build out and can no longer widen roads. ITS provides an opportunity to improve conditions where costly widenings cannot take place. Additionally, TUMF funding for ITS can be used to leverage other funding that is becoming increasingly available from federal, state, and regional agencies. ITS eligibility would be proposed to be added to the Nexus Study update.

Further discussion on this item was continued to a future meeting where more background will be provided to understand the scope of the projects and the cost estimates for implementing this into the TUMF Nexus Study.

Action: 1. *Received and filed.*

C. VMT Mitigation Program for Development Projects

Chris Gray, WRCOG Deputy Executive Director, presented on how active transportation projects would assist in Vehicle Miles Travelled (VMT) mitigation for development projects. A major challenge with VMT mitigation is that appropriate mitigation measures could include purchasing transit passes for employees, improving bicycle / pedestrian facilities, or funding improvements to the regional bus network. These improvements present additional questions and potential issues.

Staff evaluated other potential mitigation approaches: Fee-based approach would be a fee which mitigates a project's impacts. Under this approach, a project would pay a fee that would fund regional transit, bicycle / pedestrian, and other travel demand management strategies; and mitigation bank approach quantifies the cost of VMT improvements and project applicants can choose to purchase VMT credits from the bank. The types of projects funded by a bank would be like those in a fee program, and a VMT exchange approach, which is similar to a bank but does not have a set cost for VMT reducing improvements. Under this approach, a project applicant goes to the exchange and requests a certain amount of VMT reduction.

Staff is evaluating an approach to incorporate a VMT mitigation program into the TUMF Program and will provide additional information at future Committee meetings as this develops.

Action: 1. *Received and filed.*

D. 2020-2021 Community Transportation Needs Assessment

Kyle Rodriguez, WRCOG Senior Analyst, provided an update on the Clean Cities Coalition's Community Transportation Needs Assessment (CTNA) Voucher awarded by the California Air Resources Board Clean Mobility Options (CMO) Voucher Pilot Program.

The CTNA seeks to identify the unmet community mobility needs of low-income and disadvantaged communities and develop sustainable solutions in partnership with its residents. WRCOG has partnered with the zero-emission carshare, EViaShare, to conduct the CTNA. EViaShare will be seeking input from community members through July in three cities: Corona, Moreno Valley, and San Jacinto, as well as neighboring California Native American Tribes such as the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, and the Soboba Band of Luiseño Indians. The CMO Program is part of California Climate Investments, a statewide initiative that puts billions of Cap-and-Trade dollars to work reducing greenhouse gas emissions, strengthening the economy, and improving public health and the environment – particularly in disadvantaged communities.

The Assessment will illustrate underlying causes in transportation within the project area and potential solutions through community clean mobility options such as Carshare. Staff continue to work with the community to receive participation on surveys and workshops.

Action: 1. *Received and filed.*

7. REPORT FROM THE DEPUTY EXECUTIVE DIRECTOR

Chris Gray shared that TUMF Zone meetings with the Public Works Committee have been completed. Executive Committee Zone meetings plan to be scheduled in early- to mid-June 2021. WRCOG will be setting up a brief TUMP TIP process overview with the new Executive Committee members prior to the Executive Committee Zone meetings.

Mr. Gray shared that the 30th Annual General Assembly will take place Thursday, June 24, 2021, from 4:00 p.m. to 5:00 p.m. with a theme of “Celebrating Resilience.” The featured speaker is Daymond John, Founder and CEO of FUBU and Star of ABC’s Shark Tank.

WRCOG has started to resume in-person meetings for smaller committees. As it stands, all meetings going forward will offer a virtual option for members, presenters, and guest to attend.

8. ITEMS FOR FUTURE AGENDAS

There were no items for future agendas.

9. GENERAL ANNOUNCEMENTS

There were no general announcements.

10. NEXT MEETING

The next Public Works Committee meeting is scheduled for Thursday, June 10, 2021, 2:00 p.m., on the Zoom platform.

11. ADJOURNMENT

The meeting of the Public Works Committee adjourned at 3:43 p.m.



Western Riverside Council of Governments Public Works Committee

Staff Report

Subject: 2021 TUMF Credit Agreement Template Update

Contact: Cameron Brown, Program Manager, cbrown@wrcog.us, (951) 405-6712

Date: June 10, 2021

The purpose of this item is to request approval of the revised TUMF Credit Agreement template.

Requested Action:

1. Recommend that the Executive Committee approve the revised 2021 TUMF Credit Agreement Template.

WRCOG's Transportation Uniform Mitigation Fee (TUMF) Program is a regional fee program designed to provide transportation and transit infrastructure that mitigates the impact of new growth in Western Riverside County. Each of WRCOG's member agencies and the March JPA participates in the Program through an adopted ordinance, collects fees from new development, and remits the fees to WRCOG. WRCOG, as administrator of the TUMF Program, allocates TUMF to the Riverside County Transportation Commission (RCTC), groupings of jurisdictions – referred to as TUMF Zones – based on the amounts of fees collected in these groups, the Western Riverside County Regional Conservation Authority (RCA), and the Riverside Transit Agency (RTA).

Background

WRCOG staff has revised the template for the TUMF Credit Agreement. This revised template was provided to this Committee for review and comment at its April 2021 meeting. The TUMF Credit Agreement is an agreement made between the local agency and the developer for TUMF credit to be given towards the developer's TUMF obligation as defined by the current TUMF fee schedule. With a Credit Agreement, developers can receive credits on the facilities built as a condition for the approval of their development with a local jurisdiction. If these facilities are part of the TUMF network, the developer can receive this amount as credit towards its TUMF obligation.

Changes to the Credit Agreement Template

WRCOG is updating the Credit Agreement template so that WRCOG becomes a third party on the Credit Agreement. By becoming a third party, WRCOG can verify the estimated TUMF obligation on a development and confirm the maximum amount of credit that can be given on the construction of a TUMF facility. Also, upon reconciliation of a credit agreement, whereas the developer shows all invoices for TUMF-eligible work and the development constructed, WRCOG can confirm the amount a developer can be repaid, and/or how much a developer owes on their project. WRCOG can then also legally make direct payments to the developer on costs beyond their TUMF obligation, rather than having to move through multiple parties to make final payment.

Other updates to the Credit Agreement template clarify that WRCOG can be assigned the task to perform the Credit Agreement reconciliation at the request of a local agency. Also, the developer may take their TUMF

credits and sell them to another developer or use them towards another of their own development within the WRCOG subregion.

It should also be noted that in order to execute a Credit Agreement, the Agreement must be authorized by the WRCOG Executive Committee, to be signed by the WRCOG Executive Director. Once this is complete, the local jurisdiction should sign the agreement as authorized by its own City Council / Board.

Next Steps

WRCOG is requesting a recommendation from this Committee to forward to the Executive Committee for its consideration in July. The revised TUMF Credit Agreement template has been provided as Attachment 1 to this Staff Report.

Prior Action:

April 8, 2021: The Public Works Committee received and filed.

Fiscal Impact:

TUMF activities are allocated in the Fiscal Year 2020/2021 Budget.

Attachment:

1. Revised TUMF Credit Agreement Template.

Item 6.A

2021 TUMF Credit Agreement
Template Update

Attachment 1

Revised TUMF Credit Agreement
Template

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WHEREAS, AGENCY, WRCOG and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for the timely delivery of the TUMF Improvements, (2) to ensure that delivery of the TUMF Improvements is undertaken as if the TUMF Improvements were constructed under the direction and authority of the AGENCY, (3) to provide a means by which the Developer's costs for project delivery of the TUMF Improvements and related right-of-way is offset against Developer's obligation to pay the applicable TUMF for the Project in accordance with the TUMF Administrative Plan adopted by WRCOG, and (4) to provide a means, subject to the separate approval of WRCOG, for Developer to be reimbursed to the extent the actual and authorized costs for the delivery of the TUMF Improvements exceeds Developer's TUMF obligation.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and AGENCY hereby agree as follows:

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Construction of TUMF Improvements. Developer shall construct or have constructed at its own cost, expense, and liability certain street and transportation system improvements generally described as INSERT TUMF IMPROVEMENTS

_____, and as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of Developer and approved by AGENCY, and which are incorporated herein by this reference ("TUMF Improvements"). Construction of the TUMF Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any existing public or private improvement in conflict with the construction or installation of the TUMF Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of AGENCY and the owner of such improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the TUMF Improvements.

2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the TUMF Improvements until all plans and specifications for the TUMF Improvements have been submitted to and approved by AGENCY. Approval by AGENCY shall not relieve Developer from ensuring that all TUMF Improvements conform with all other requirements and standards set forth in this Agreement.

2.2 Permits and Notices. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the TUMF Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work

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in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Public Works Requirements. In order to insure that the TUMF Improvements will be constructed as if they had been constructed under the direction and supervision, or under the authority of, AGENCY, Developer shall comply with all of the following requirements with respect to the construction of the TUMF Improvements:

(a) Developer shall obtain bids for the construction of the TUMF Improvements, in conformance with the standard procedures and requirements of AGENCY, with respect to its public works projects, or in a manner which is approved by the Public Works Department.

(b) The contract or contracts for the construction of the TUMF Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the TUMF Improvements.

(c) Developer shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of AGENCY with respect to the construction of its public works projects or as otherwise directed by the Public Works Department.

(d) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the TUMF Improvements which they will construct in conformance with AGENCY's standard procedures and requirements.

(e) Developer and all such contractors shall comply with such other requirements relating to the construction of the TUMF Improvements which AGENCY may impose by written notification delivered to Developer and each such contractor at any time, either prior to the receipt of bids by Developer for the construction of the TUMF Improvements, or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof.

Developer shall provide proof to AGENCY, at such intervals and in such form as AGENCY may require that the foregoing requirements have been satisfied as to the TUMF Improvements.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the TUMF Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The TUMF Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with AGENCY, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the TUMF Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to TUMF Improvements. All work shall be done and the TUMF Improvements completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation it is determined that the public interest requires alterations in the TUMF Improvements, Developer shall undertake such design and construction changes as may be reasonably required by AGENCY. Any and all alterations in the plans and specifications and the TUMF Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of TUMF Improvements. AGENCY shall not be responsible or liable for the maintenance or care of the TUMF Improvements until AGENCY approves and accepts them. AGENCY shall exercise no control over the TUMF Improvements until accepted. Any use by any person of the TUMF Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to AGENCY's acceptance of the TUMF Improvements. Developer shall maintain all of the TUMF Improvements in a state of good repair until they are completed by Developer and approved and accepted by AGENCY, and until the security for the performance of this Agreement is released. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by AGENCY. If Developer fails to properly prosecute its maintenance obligation under this section, AGENCY may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. AGENCY shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the TUMF Improvements or their condition prior to acceptance. In no event shall WRCOG be responsible for the maintenance, operation or care of the TUMF Improvements

4.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the construction of the TUMF Improvements, including, but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by AGENCY.

5.0 AGENCY Inspection of TUMF Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the TUMF Improvements, maintain reasonable and safe facilities and provide safe access for inspection by AGENCY of the TUMF Improvements and areas where construction of the TUMF Improvements is occurring or will occur.

6.0 Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to the TUMF Improvements, Developer shall provide to AGENCY such evidence or proof as AGENCY shall require that all persons, firms

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and corporations supplying work, labor, materials, supplies and equipment to the construction of the TUMF Improvements, have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to AGENCY a title insurance policy or other security acceptable to AGENCY guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7.0 Acceptance of TUMF Improvements; As-Built or Record Drawings. If the TUMF Improvements are properly completed by Developer and approved by AGENCY, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, AGENCY shall be authorized to accept the TUMF Improvements. AGENCY may, in its sole and absolute discretion, accept fully completed portions of the TUMF Improvements prior to such time as all of the TUMF Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the TUMF Improvements. Upon the total or partial acceptance of the TUMF Improvements by AGENCY, Developer shall file with the Recorder's Office of the County of Riverside a notice of completion for the accepted TUMF Improvements in accordance with California Civil Code sections 8182, 8184, 9204, and 9208 ("Notice of Completion"), at which time the accepted TUMF Improvements shall become the sole and exclusive property of AGENCY without any payment therefore. Notwithstanding the foregoing, AGENCY may not accept any TUMF Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the AGENCY for all such TUMF Improvements. The drawings shall be certified and shall reflect the condition of the TUMF Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the TUMF Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the TUMF Improvements, for a period of one (1) year following completion of the work and acceptance by AGENCY ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the TUMF Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of AGENCY, and to the approval of AGENCY. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any TUMF Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following AGENCY's acceptance of the repaired, replaced, or reconstructed TUMF Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any TUMF Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

9.0 Administrative Costs. If Developer fails to construct and install all or any part of the TUMF Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to AGENCY for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining

compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Default; Notice; Remedies.

10.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if AGENCY determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, AGENCY may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within five (5) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, AGENCY may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon AGENCY's issuance of the Notice, Developer and its surety shall be liable to AGENCY for all costs of construction and installation of the TUMF Improvements and all other administrative costs or expenses as provided for in this Section 10.0 of this Agreement.

10.2 Failure to Remedy; AGENCY Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to AGENCY within the time frame contained in the Notice, AGENCY may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. AGENCY's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the TUMF Improvements at the time of AGENCY's demand for performance. In the event AGENCY elects to complete or arrange for completion of the remaining work and the TUMF Improvements, AGENCY may require all work by Developer or its surety to cease in order to allow adequate coordination by AGENCY.

10.3 Other Remedies. No action by AGENCY pursuant to this Section 10.0 et seq. of this Agreement shall prohibit AGENCY from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. AGENCY may exercise its rights and remedies independently or cumulatively, and AGENCY may pursue inconsistent remedies. AGENCY may institute an action for damages, injunctive relief, or specific performance.

11.0 Security; Surety Bonds. Prior to the commencement of any work on the TUMF Improvements, Developer or its contractor shall provide AGENCY with surety bonds in the amounts and under the terms set forth below ("Security"). The amount of the Security shall be based on the estimated actual costs to construct the TUMF Improvements, as determined by AGENCY after Developer has awarded a contract for construction of the TUMF Improvements to the lowest responsive and responsible bidder in accordance with this Agreement ("Estimated Costs"). If AGENCY determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by

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AGENCY. Developer's compliance with this Section 11.0 et seq. of this Agreement shall in no way limit or modify Developer's indemnification obligation provided in Section 12.0 of this Agreement.

11.1 Performance Bond. To guarantee the faithful performance of the TUMF Improvements and all the provisions of this Agreement, to protect AGENCY if Developer is in default as set forth in Section 10.0 et seq. of this Agreement, and to secure the one-year guarantee and warranty of the TUMF Improvements, Developer or its contractor shall provide AGENCY a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The AGENCY may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the TUMF Improvements are accepted by AGENCY, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than _____ (___%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 11.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement.

11.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the TUMF Improvements and this Agreement, Developer or its contractor shall provide AGENCY a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section may be released by written authorization of AGENCY after six (6) months from the date AGENCY accepts the TUMF Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which AGENCY is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of AGENCY's anticipated administrative and legal expenses arising out of such claims.

11.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to do business in California, and shall be satisfactory to AGENCY. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by AGENCY in enforcing the obligations of this Agreement. Developer, its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the TUMF Improvements, or the plans and specifications for the TUMF Improvements shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "B", unless other forms are deemed acceptable by the AGENCY, and when such forms are completed to the satisfaction of AGENCY, the forms and evidence of the Security shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

12.0 Indemnification. Developer shall defend, indemnify, and hold harmless AGENCY, the Western Riverside Council of Governments (WRCOG), their elected officials, board members, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed

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by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its employees, contractors, or agents in connection with the performance of this Agreement, or arising out of or in any way related to or caused by the TUMF Improvements or their condition prior to AGENCY's approval and acceptance of the TUMF Improvements ("Claims"). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorney fees, and related costs or expenses, and the reimbursement of AGENCY, WRCOG, their elected officials, board members, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of AGENCY as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by AGENCY, WRCOG, their elected officials, board members, employees, or agents.

13.0 Insurance.

13.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. Occurrence form general liability insurance at least as broad as Insurance Services Office Form CG 00 01, or equivalent form, with an occurrence limit of Two Million Dollars (\$2,000,000) and aggregate limit of Four Million Dollars (\$4,000,000) for bodily injury, personal injury, and property damage.

13.1.2 Business Automobile Liability. Business automobile liability insurance at least as broad as Insurance Services Office Form CA 00 01 (coverage symbol 1 – any auto), or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

13.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

13.1.4 Professional Liability. For any consultant or other professional who will engineer or design the TUMF Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the TUMF Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by AGENCY. At the option of AGENCY, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AGENCY, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to AGENCY guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name AGENCY, WRCOG, their elected officials, board members, officers, employees, and agents as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. For Required Insurance provided by Developer's contractors, WRCOG shall be added as an additional insured using ISO CG 2038 or an exact equivalent. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to AGENCY, WRCOG, their elected officials, board members, officers, employees, or agents.

13.4 Primary Insurance; Waiver of Subrogation. The Required Insurance, except for the professional liability and workers' compensation insurance shall be primary with respect to any insurance or self-insurance programs covering AGENCY, WRCOG, their elected officials, board members, officers, employees, or agents. The Required Insurance, except for the professional liability insurance, shall provide that the insurance company waives all right of recovery by way of subrogation against AGENCY and WRCOG in connection with any damage or harm covered by such policy.

13.5 Certificates; Verification. Developer and its contractors shall furnish AGENCY with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by AGENCY before work pursuant to this Agreement can begin. AGENCY reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to AGENCY. If such notice of cancellation endorsements are unavailable, Developer shall provide such thirty (30) days' written notice of cancellation.

13.7 Insurer Rating. Unless approved in writing by AGENCY, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A" and FSC-VIII.

14.0 TUMF Credit.

14.1 Developer's TUMF Obligation. Developer hereby agrees and accepts that as of the date of this Agreement, the amount Developer is obligated to pay to AGENCY _ pursuant to Ordinance No. (insert appropriate reference for city or county) as part of the TUMF Program is **[INSERT DOLLAR VALUE OF TUMF REQUIREMENT]** (\$ _____) ("TUMF Obligation"). This TUMF Obligation shall be initially determined under the TUMF fee schedule in effect for the AGENCY at the time the Developer submits a building permit application for the TUMF Improvement. Notwithstanding, this TUMF Obligation does not have to be paid until the Certificate of Occupancy is obtained.

14.2 Fee Adjustments. Notwithstanding the foregoing, Developer agrees that this Agreement shall not estop AGENCY from adjusting the TUMF in accordance with the provisions of Ordinance No. (insert appropriate reference for city or county).

14.3 Credit Offset Against TUMF Obligation. Pursuant to Ordinance No. (insert appropriate reference for city or county) and in consideration for Developer's obligation under this Agreement for the delivery of TUMF Improvements, credit shall be applied by AGENCY to offset the TUMF Obligation ("Credit") subject to adjustment and reconciliation under Section 14.5 of this agreement. Developer hereby agrees that the amount of the Credit shall be applied after Developer has initiated the process of project delivery of TUMF Improvements to the lowest responsible bidder in accordance with this Agreement. Developer further agrees that the dollar amount of the Credit shall be equal to the lesser of: (A) the bid amount set forth in the contract awarded to the lowest responsible bidder, or (B) the unit cost assumptions for the TUMF Improvement in effect at the time of the contract award, as such assumptions are identified and determined in the most recent TUMF Nexus Study and the TUMF Administrative Plan adopted by WRCOG ("Unit Cost Assumptions").

The bid amount and the Unit Cost Assumptions shall hereafter be collectively referred to as "Estimated Credit". At no time will the Credit exceed the Developer's TUMF Obligation. If the dollar amount of the Estimated Credit exceeds the dollar amount of the TUMF Obligation, Developer will be deemed to have completely satisfied its TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. If the dollar amount of the Estimated Credit is less than the dollar amount of the TUMF Obligation, the Developer agrees the Credit shall be applied to offset the TUMF Obligation as follows:

(i) For residential units in the Project, the Credit shall be applied to all residential units to offset and/or satisfy the TUMF Obligation. The residential units for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to each unit, shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

(ii) For commercial and industrial structures in the Project, the Credit shall be applied to all commercial and industrial development to offset and/or satisfy the TUMF Obligation. The commercial or industrial structure(s) for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to such

structure(s), shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section, including how the Credit is applied to offset the TUMF Obligation as described above.

14.4 Verified Cost of the TUMF Improvements. Upon recordation of the Notice of Completion for the TUMF Improvements and acceptance of the TUMF Improvements by AGENCY, Developer shall submit to the AGENCY Public Works Director the information set forth in the attached Exhibit "C". The AGENCY Public Works Director, or his or her designee, shall use the information provided by Developer to calculate the total actual costs incurred by Developer in delivering the TUMF Improvements covered under this Agreement ("Verified Costs"). The AGENCY Public Works Director will use his or her best efforts to determine the amount of the Verified Costs and provide Developer written notice thereof within thirty (30) calendar days of receipt of all the required information from Developer. The Agency may request that WRCOG calculate the amount of the Verified Cost. In this case, the AGENCY shall provide WRCOG written notice and all necessary documentation and allow WRCOG fifteen (15) days to determine costs. Agency will notify the Developer within the previous thirty (30) day deadline

14.5 Reconciliation; Final Credit Offset Against TUMF Obligation. The Developer is aware of and accepts the fact that Credits are speculative and conceptual in nature. The actual amount of Credit that shall be applied by AGENCY to offset the TUMF Obligation shall be equal to the lesser of: (A) the Verified Costs or (B) Unit Cost Assumptions for the TUMF Improvements as determined in accordance with Section 14.3 of this Agreement ("Actual Credit"). No Actual Credit will be awarded until the Verified Costs are determined through the reconciliation process. Please be advised that while a Developer may use an engineer's estimates in order to estimate Credits for project planning purposes, the Actual Credit awarded will only be determined by the reconciliation process.

(a) TUMF Balance. If the dollar amount of the Actual Credit is less than the dollar amount of the TUMF Obligation, the AGENCY Public Works Director shall provide written notice to Developer of the amount of the difference owed ("TUMF Balance") and Developer shall pay the TUMF Balance in accordance with (insert appropriate reference for city or county) to fully satisfy the TUMF Obligation (see Exhibit "F" - Example "A").

(b) TUMF Reimbursement. If the dollar amount of the Actual Credit exceeds the TUMF Obligation, Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section (see Exhibit "F" - Example "B").

(c) TUMF Overpayment. If the dollar amount of the Actual Credit exceeds the Estimated Credit, but is less than the TUMF Obligation, but the Actual Credit plus additional monies collected by AGENCY from Developer for the TUMF Obligation exceed the

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TUMF Obligation ("TUMF Overpayment"), Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may be entitled to a refund. The AGENCY's Public Works Director shall provide written notice to WRCOG and the Developer of the amount of the TUMF Overpayment and AGENCY shall direct WRCOG to refund the Developer in accordance with (insert appropriate reference for city or county) (see Exhibit "F" - Example C)-

14.6 Reimbursement Agreement. If authorized under either Section 14.3 or Section 14.5 Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the Actual Credit exceeds the TUMF Obligation, as determined pursuant to Section 14.3 of this Agreement, Ordinance No. (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement Agreement"). If AGENCY and WRCOG agree to a Reimbursement Agreement with Developer, the Reimbursement Agreement shall be executed on the form set forth in Exhibit "D," and shall contain the terms and conditions set forth therein. The Parties agree that the Reimbursement Agreement shall be subject to all terms and conditions of this Agreement, and that upon execution, an executed copy of the Reimbursement Agreement shall be attached hereto and shall be incorporated herein as a material part of this Agreement as though fully set forth herein.

~~14.6~~14.7 Selling of Credit Agreement. The Developer may sell credits under this Agreement, but only if authorized by and in conformance with the WRCOG Administrative Plan.

15.0 Miscellaneous.

15.1 Assignment. Developer may, as set forth herein, assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Property ("Assignment"). Developer and such purchaser and assignee ("Assignee") shall provide to AGENCY such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property. Any assignment pursuant to this Section shall not be effective unless and until Developer and Assignee have executed an assignment agreement with AGENCY in a form reasonably acceptable to AGENCY, whereby Developer and Assignee agree, except as may be otherwise specifically provided therein, to the following: (1) that Assignee shall receive all or a portion of Developer's rights pursuant to this Agreement, including such credit as is determined to be applicable to the portion of the Property purchased by Assignee pursuant to Section 14.0 et seq. of this Agreement, and (2) that Assignee shall be bound by all applicable provisions of this Agreement.

15.2 Relationship Between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between or among AGENCY, WRCOG and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of AGENCY. This Agreement shall be interpreted and administered in a manner consistent with the TUMF Administrative Plan in effect at the time this Agreement is executed.

15.3 Warranty as to Property Ownership; Authority to Enter Agreement. Developer hereby warrants that it owns fee title to the Property and that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

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15.4 Prohibited Interests. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Developer, to solicit or secure this Agreement. Developer also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Developer, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon the making of this Agreement. For breach of this warranty, AGENCY shall have the right to rescind this Agreement without liability.

15.5 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To AGENCY: [INSERT "CITY" OR "COUNTY"] OF _____

Western Riverside Council of Governments
3390 University Avenue, Suite 200
Riverside, CA 92501
Attention: Executive Director
Telephone: (951) 405-6700
Fax No. (951) 223-9720

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To Developer: _____

Attn: _____

Fax No. () _____

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

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

15.7 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to AGENCY 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.

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

15.9 Termination. This Agreement shall terminate 10 years after the Effective Date, unless extended in writing by the Parties. In addition, this Agreement shall terminate 5 years after the Effective Date in the event that the TUMF Improvements as specified in the Credit Agreement is not commenced within 5 years of the Effective Date.

15.9.1 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 right by custom, estoppel, or otherwise.

15.9.2 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

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

15.9.4 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.

15.9.5 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.9.6 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.9.7 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

15.9.8 Entire Agreement. This Agreement contains the entire agreement between AGENCY and Developer and supersedes any prior oral or written statements or agreements between AGENCY and Developer.

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[SIGNATURES OF PARTIES ON NEXT PAGE]

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER:

[**INSERT NAME OF DEVELOPER**]

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

[**INSERT "CITY" OR "COUNTY" OF
WESTERN RIVERSIDE COUNCIL OF
GOVERNMENT _____**]:

By: _____

Its: Executive Director-_____

ATTEST:

By: _____

Its: _____

EXHIBIT “A”
LEGAL DESCRIPTION OF PROPERTY
[ATTACH BEHIND THIS PAGE]

EXHIBIT A-1

EXHIBIT “B”
FORMS FOR SECURITY
[ATTACHED BEHIND THIS PAGE]

EXHIBIT B-1

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DRAFT 02/09/21

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

PERFORMANCE BOND

WHEREAS, the [INSERT "City" OR "County"] of _____ ("AGENCY") has executed an agreement with _____ (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter the "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain TUMF Improvement and Credit/Reimbursement Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, the Agreement is hereby referred to and incorporated herein by this reference; and

WHEREAS, Developer or its contractor is required by the Agreement to provide a good and sufficient bond for performance of the Agreement, and to guarantee and warranty the Work constructed thereunder.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the AGENCY in the sum of _____ (\$ _____), said sum being not less than one hundred percent (100%) of the total cost of the Work as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Developer and its contractors, or their heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless AGENCY, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by AGENCY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Agreement or to the Work to be performed

EXHIBIT B-2

thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 20__.

Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

EXHIBIT B-3

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE §1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me,

_____ ,
Date

Here Insert Name and Title of the Officer

personally appeared _____ ,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

ture of Notary Public Signa

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title of Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

☐ Corporate Officer – Title(s): _____ ☐ Corporate Officer – Title(s): _____

☐ Partner - ☐ Limited ☐ General	☐ Partner - ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator

EXHIBIT B-4

☐ Other: _____

Signer is Representing: _____

☐ Other: _____

Signer is Representing: _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ Secretary of the _____ corporation named as principal in the attached bond, that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

EXHIBIT B-5

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

LABOR & MATERIAL BOND

WHEREAS, the [INSERT "City" OR "County"] of _____ ("AGENCY") has executed an agreement with _____ (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain Improvement and Credit / Reimbursement Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, Developer or its contractor is required to furnish a bond in connection with the Agreement providing that if Developer or any of his or its contractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the AGENCY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid, the sum of (\$ _____), said sum being not less than 100% of the total amount payable by Developer under the terms of the Agreement, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Developer or its contractors, or their heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the

EXHIBIT B-6

Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, necessary disbursements and other consequential damages. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Sections 8024, 8400, 8402, 8404, 8430, 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 20__.

Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

EXHIBIT B-7

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE §1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me,

_____ ,
Date

Here Insert Name and Title of the Officer

personally appeared _____ ,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

ture of Notary Public Signa

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title of Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Corporate Officer – Title(s): _____

☐ Partner - ☐ Limited ☐ General

☐ Partner - ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Trustee ☐ Guardian or Conservator

EXHIBIT B-8

☐ Other: _____

Signer is Representing: _____

☐ Other: _____

Signer is Representing: _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ Secretary of the corporation named as principal in the attached bond, that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

EXHIBIT B-9

EXHIBIT "C"

DOCUMENTATION TO BE PROVIDED TO AGENCY BY DEVELOPER FOR DETERMINATION OF ~~VERIFIED CONSTRUCTION~~ COSTS

To assist AGENCY in determining the ~~Verified-Construction~~ Costs for a completed TUMF Improvement, Developer shall provide the following documents to AGENCY:

1. Plans, specifications and Developer's civil engineer's cost estimate;
2. If Developer is seeking Credit for such costs, documentation evidencing cost of any required environmental studies, preparation of designs, plans and specifications, required right of way acquisition, and other costs directly related to the development of the TUMF Improvement. Only actual, documented and reasonable costs directly related to the TUMF Improvement will be considered. Costs should be documented as specified below.
3. Costs claimed for right of way acquisition must be accompanied by an appraisal (no more than two years old at the time of acquisition) completed by an MAI appraiser, and documentation of transfer of such right of way to the AGENCY, or applicable public agency. The appraisal must be approved by the AGENCY as valid and acceptable.
- ~~2.4.~~ List of bidders from whom bids were requested;
- ~~3.5.~~ Construction schedules and progress reports;
- ~~4.6.~~ Contracts, insurance certificates and change orders with each contractor, consultant, service provider or vendor;
- ~~5.7.~~ Invoices received from all contractors, consultants, service providers and vendors;
- ~~6.8.~~ Canceled checks for payments made to contractors, consultants, -service providers and vendors (copy both front and back of canceled checks);
- ~~7.9.~~ Spreadsheet showing total costs incurred in and related to the construction of each TUMF Improvement and the check number for each item of cost and invoice;
- ~~8.10.~~ Final lien releases from each contractor and vendor; and
- ~~9.11.~~ Such further documentation as may be reasonably required by AGENCY to evidence the completion of construction and the payment of each item of cost and invoice.

EXHIBIT C-1

EXHIBIT “D”

REIMBURSEMENT AGREEMENT TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

THIS REIMBURSEMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 20____, by and between the [INSERT “City” OR “County”] of _____, [**INSERT “a California municipal corporation” FOR CITY OR “a subdivision of the State of California” FOR COUNTY**] (“AGENCY”), the Western Riverside Council of Governments (“WRCOG”), a Joint Powers Agency and _____, a California [**INSERT TYPE OF ENTITY - corporation, partnership, sole proprietorship or other legal entity**], with its principal place of business at [**ENTER ADDRESS**] (“Developer”). AGENCY and Developer are sometimes hereinafter referred to individually as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, AGENCY, WRCOG and Developer are parties to an agreement dated _____, 20____, entitled “Improvement and Credit Agreement - Transportation Uniform Mitigation Fee Program” (hereinafter “Credit Agreement”);

WHEREAS, Sections 14.1 through 14.3 of the Credit Agreement provide that Developer is obligated to pay AGENCY the TUMF Obligation, as defined therein, but shall receive credit to offset the TUMF Obligation if Developer constructs and AGENCY accepts the TUMF Improvements in accordance with the Credit Agreement;

WHEREAS, Section 14.5 of the Credit Agreement provides that if the dollar amount of the credit to which Developer is entitled under the Credit Agreement exceeds the dollar amount of the TUMF Obligation, Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the credit exceeds the TUMF Obligation;

WHEREAS, Section 14.5 additionally provides that a reimbursement agreement executed pursuant to the Credit Agreement (i) shall be executed on the form attached to the Credit Agreement, (ii) shall contain the terms and conditions set forth therein, (iii) shall be subject to all terms and conditions of the Credit Agreement, and (iv) shall be attached upon execution to the Credit Agreement and incorporated therein as a material part of the Credit Agreement as though fully set forth therein; and

WHEREAS, AGENCY and WRCOG have consented to execute a reimbursement agreement with Developer pursuant to the Credit Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

EXHIBIT D-1

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Effectiveness. This Agreement shall not be effective unless and until the Credit Agreement is effective and in full force in accordance with its terms.

3.0 Definitions. Terms not otherwise expressly defined in this Agreement, shall have the meaning and intent set forth in the Credit Agreement.

4.0 Amount of Reimbursement. Subject to the terms, conditions, and limitations set forth in this Agreement, the Parties hereby agree that Developer is entitled to receive the dollar amount by which the Actual Credit exceeds the dollar amount of the TUMF Obligation as determined pursuant to the Credit Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement"). The Reimbursement shall be subject to verification by WRCOG. AGENCY and Developer shall provide any and all documentation reasonably necessary for WRCOG to verify the amount of the Reimbursement. The Reimbursement shall be in an amount not exceeding [INSERT DOLLAR AMOUNT] ("Reimbursement Amount"). ~~AGENCY shall be responsible for obtaining the Reimbursement Amount from WRCOG and shall, upon receipt and approval of information requested by WRCOG, shall be responsible for~~ transmitting the Reimbursement Amount to the Developer. In no event shall the dollar amount of the Reimbursement exceed the difference between the dollar amount of all credit applied to offset the TUMF Obligation pursuant to Section 14.3, 14.4, and 14.5 of the Credit Agreement, and one hundred (100%) of the approved unit awarded, as such assumptions are identified and determined in the Nexus Study and the TUMF Administrative Plan adopted by WRCOG.

5.0 Payment of Reimbursement; Funding Contingency. The payment of the Reimbursement Amount shall be subject to the following conditions:

5.1 Developer shall have no right to receive payment of the Reimbursement unless and until (i) the TUMF Improvements are completed and accepted by AGENCY in accordance with the Credit Agreement, (ii) the TUMF Improvements are scheduled for funding pursuant to the five-year Transportation Improvement Program adopted annually by WRCOG, (iii) WRCOG has funds available and appropriated for payment of the Reimbursement amount.

5.2 Developer shall not be entitled to any interest or other cost adjustment for any delay between the time when the dollar amount of the Reimbursement is determined and the time when payment of the Reimbursement is made to Developer by WRCOG through AGENCY.

6.0 Affirmation of Credit Agreement. AGENCY and Developer represent and warrant to each other that there have been no written or oral modifications or amendments of the Credit Agreement, except by this Agreement. AGENCY and Developer ratify and reaffirm each and every one of their respective rights and obligations arising under the Credit Agreement. AGENCY and Developer represent and warrant that the Credit Agreement is currently an effective, valid, and binding obligation.

EXHIBIT D-2

7.0 Incorporation Into Credit Agreement. Upon execution of this Agreement, an executed original of this Agreement shall be attached as Exhibit “D” to the Credit Agreement and shall be incorporated therein as a material part of the Credit Agreement as though fully set forth therein.

8.0 Terms of Credit Agreement Controlling. Each Party hereby affirms that all provisions of the Credit Agreement are in full force and effect and shall govern the actions of the Parties under this Agreement as though fully set forth herein and made specifically applicable hereto, including without limitation, the following sections of the Credit Agreement: Sections 10.0 through 10.3, Section 12.0, Sections 13.0 through 13.7, Sections 14.0 through 14.6, and Sections 15.0 through 15.17.

[SIGNATURES OF PARTIES ON NEXT PAGE]

EXHIBIT D-3

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

("Developer")

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

[INSERT "City" OR "County") of _____

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

EXHIBIT D-4

EXHIBIT “E”

TUMF CREDIT / REIMBURSEMENT ELIGIBILITY PROCESS

1. Prior to the construction of any TUMF Improvement, Developer shall follow the steps listed below:

- (a) Prepare a separate bid package for the TUMF Improvements.
- (b) The plans, cost estimate, specifications and contract document shall require all contractors to pay prevailing wages and to comply with applicable provisions of the Labor Code, Government Code, and Public Contract Code relating to Public Works Projects.
- (c) Bids shall be obtained and processed in accordance with the formal public works bidding requirements of the AGENCY.
- (d) The contract(s) for the construction of TUMF Improvements shall be awarded to the lowest responsible bidder(s) for the construction of such facilities in accordance with the AGENCY’s requirements and guidelines.
- (e) Contractor(s) shall be required to provide proof of insurance coverage throughout the duration of the construction.

2. Prior to the determination and application of any Credit pursuant to a TUMF Improvement and Credit Agreement executed between AGENCY and Developer ("Agreement"), Developer shall provide the AGENCY and WRCOG with the following:

- (a) Copies of all information listed under Item 1 above.
- (b) Surety Bond, Letter of Credit, or other form of security permitted under the Agreement and acceptable to the AGENCY and WRCOG, guaranteeing the construction of all applicable TUMF Improvements.

3. Prior to the AGENCY’s acceptance of any completed TUMF Improvement, and in order to initiate the construction cost verification process, the Developer shall comply with the requirements as set forth in Sections 7, 14.2 and 14.3 of the Agreement, and the following conditions shall also be satisfied:

- (a) Developer shall have completed the construction of all TUMF Improvements in accordance with the approved Plans and Specifications.
- (b) Developer shall have satisfied the AGENCY’s inspection punch list.
- (c) After final inspection and approval of the completed TUMF Improvements, the AGENCY shall have provided the Developer a final inspection release letter.

(d) AGENCY shall have filed a Notice of Completion with respect to the TUMF Improvements pursuant to Section 3093 of the Civil Code with the County Recorder's Office, and provided a copy of filed Notice of Completion to WRCOG.

(e) Developer shall have provided AGENCY a copy of the As-Built plans for the TUMF Improvements.

(f) Developer shall have provided AGENCY copies of all permits or agreements that may have been required by various resource/regulatory agencies for construction, operation and maintenance of any TUMF Improvements.

(g) Developer shall have submitted a documentation package to the AGENCY to determine the final cost of the TUMF Improvements, which shall include at a minimum, the following documents related to the TUMF Improvements:

(i) Plans, specifications, and Developer's Civil Engineer's cost estimates; or Engineer's Report showing the cost estimates.

(ii) If DEVELOPER is seeking Credit for such costs, documentation evidencing cost of any required environmental studies, preparation of designs, plans and specifications, required right of way acquisition, and other costs directly related to the development of the TUMF Improvements. Only actual, documented and reasonable costs directly related to the TUMF Improvements will be considered. Costs should be documented as specified below.

(iii) Costs claimed for right of way acquisition must be accompanied by an appraisal (no more than two years old at the time of acquisition) completed by an MAI appraiser, and documentation of transfer of such right of way to the AGENCY, or applicable public agency. The appraisal must be approved by the AGENCY as valid and acceptable.

(iv) Contracts/agreements, insurance certificates and change orders with each vendor or contractor.

(v) Invoices from all ~~contractors, consultants, vendors and~~ service providers ~~and vendors~~.

(vi) Copies of cancelled checks, front and back, for payments made to contractors, ~~consultants, vendors and~~ service providers ~~and vendors~~.

(vii) Final lien releases from each contractor and vendor (unconditional waiver and release).

(viii) Certified contract workers payroll for AGENCY verification of compliance with prevailing wages.

(ix) A total cost summary, in spreadsheet format (MS Excel is preferred) and on disk, showing a breakdown of the total costs incurred. The summary should include for each item claimed the check number, cost, invoice numbers, and name of payee. See

attached sample for details. [ATTACH SAMPLE, IF APPLICABLE; OTHERWISE DELETE
REFERENCE TO ATTACHED SAMPLE



Western Riverside Council of Governments Public Works Committee

Staff Report

Subject: RIVCOM Update

Contact: Jason Pack, Principal, J.Pack@fehrandpeers.com, (951) 405-6711

Date: June 10, 2021

The purpose of this item is to provide an update on the development of the Riverside County Transportation Analysis Model (RIVCOM).

Requested Action:

1. Receive and file.
-

Update

Development of RIVCOM kicked-off in August 2018. The project team includes Fehr & Peers and WSP. The project team has developed the TransCAD-based, 4-step model and has finalized a validated 2018 base year, including both static and dynamic validation, and a 2045 fiscally constrained future year scenario. The model is ready to be used for roadway volume forecasts.

RIVCOM, which will replace RIVTAM, has a base year of 2018 and a future year of 2045. The model focuses on Riverside County but includes travel to and from San Bernardino, Orange, Los Angeles and San Diego Counties. The goal of the new model is to have base year and future year data that accurately reflects Riverside County networks and employment / population centers, and that will generate regional travel forecasts sensitive to the planned land-use and network changes in the County.

RIVCOM will also include an EMFAC post-processor tool, an Active Transportation analysis tool, and a user-friendly Vehicle Miles Traveled (VMT) calculator. WRCOG included the VMT tool to make it easy to calculate VMT for SB 743 requirements after model runs. These tools are currently being finalized and are estimated to be ready for dissemination in July 2021.

RIVCOM Distribution and User Fee

RIVCOM will be maintained by WRCOG but will be provided to the jurisdictions upon request. Jurisdictions and WRCOG partner agencies are able to request access to files. WRCOG will need to complete updates to RIVCOM as needed to ensure the data the model is utilizing is up to date, so WRCOG is proposing a fee structure to non-jurisdiction users who will utilize RIVCOM for profit purposes, i.e., consultants, to enable updates and maintenance of the model. Based on discussions with the partner agencies that developed RIVCOM, WRCOG will charge an initial fee of \$5,000 to access RIVCOM and an annual fee of \$1,000 every year thereafter.

RIVCOM User Agreement

A RIVCOM User Agreement has been established for all users of the model, as is industry standard. A draft RIVCOM User Agreement is provided as Attachment 1 to this Staff Report. The User Agreement will be

provided when a request for RIVCOM is made, and the model will only be provided after execution of the User Agreement. The User Agreement is needed to establish parameters of the model, such as the Agreement provides the user a non-exclusive access and use of RIVCOM and the data therein and establishes that RIVCOM and the data therein is the sole property of WRCOG and/or third-party providers of data. The User Agreement is also needed to ensure that the sale and distribution of RIVCOM and its data sets are prohibited. The conditions of which the RIVCOM is provided to the user is also established in the User Agreement, as well as any technical assistance provided. One of the more important aspects of the longevity of RIVCOM is user feedback on model improvements and enhancements, so the User Agreement also establishes an understanding of the feedback users should provide. Finally, the User Agreement establishes the parameters of the user fee and renewal.

Prior Action:

May 14, 2020: The Public Works Committee received and filed.

Fiscal Impact:

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

Attachment:

1. Draft RIVCOM User Agreement.

Item 6.B

RIVCOM Update

Attachment 1

Draft RIVCOM User Agreement

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**Western Riverside Council of Governments
Riverside County Travel Analysis Model (RIVCOM)
User Agreement**

This User Agreement is made and entered into this _____ day of _____, _____ by and between the Western Riverside Council of Governments ("WRCOG") and _____ ("User") for WRCOG's release to User of a copy of RIVCOM. User agrees to establish a representative as designated below.

RIVCOM User:

- Main Contact Name:
- Contact Phone:
- Contact Email:

The User hereby acknowledges and agrees as follows:

1.0 User Fee

RIVCOM has a User Fee structure for non-government entities as follows:

- First year of access to RIVCOM files: \$5,000
- Annual maintenance fee after first year: \$1,000

Non-government entity User agrees to pay the User Fee Structure. Please contact Cameron Brown (cbrown@wrcog.us) to initiate an invoice from WRCOG for the User Fee. WRCOG will provide the invoice to the User and the User will receive the RIVCOM files once the User Fee is received by WRCOG.

2.0 User Agreement Term

This Agreement establishes that the User is licensed to utilize RIVCOM for 12-months, from _____ to _____ after payment of the specified fees above. The User is responsible for establishing a new User Agreement with WRCOG once the current User Agreement expires.

3.0 Current version of RIVCOM

3.1 WRCOG updates RIVCOM on an annual basis. The User shall check with WRCOG staff regarding the latest version of RIVCOM and verify the proper TransCAD version required for the model's operation. RIVCOM 1.0 became available in June 2021. It was calibrated to run using TransCAD Version 8.0 Build 22355 64-bit. If a different TransCAD version is to be used, note below:

RIVCOM: _____

TransCAD: _____

SQL Server: (is optional if the User requires to export model results to a SQL database)

Initial of WRCOG representative: _____

2.2 RIVCOM versions are calibrated to operate using specific versions of TransCAD, due to ongoing updates made by Caliper Corporation to the software platform. Users seeking to use RIVCOM with other versions of TransCAD, shall be responsible for insuring the model's calibration against various observed travel measures. WRCOG reserves the right to review such calibration efforts.

2.3 This User Agreement gives User solely a non-exclusive revocable license to access and use, as limited herein, RIVCOM and the data therein. User agrees that RIVCOM is the sole property of RIVCOM and that the data therein is the sole property of WRCOG and/or third-party providers of data. Sale and distribution of RIVCOM and data sets is prohibited.

3.0 Conditions for Release

As consideration for the release to User of RIVCOM and the technical assistance provided by WRCOG described below, the User agrees to all terms and conditions of release described in this User Agreement.

3.1 RIVCOM is the property of WRCOG. WRCOG shall be properly credited in any report.

3.2 The User is responsible, at its own expense, for the purchase and maintenance of TransCAD from Caliper Corporation, and, if needed, SQL Server from Microsoft Corporation. The User agrees to abide by all copyright use restrictions, and other conditions of sale of TransCAD by Caliper Corporation, and SQL Server by Microsoft Corporation.

3.3 The User shall limit disclosure of the model within its own organization to the parties explicitly identified below as contractors or agents of User, as initialed by an authorized representative of WRCOG. The User and the parties explicitly identified below shall not disclose RIVCOM to others unless required to do so by law.

These contractors and agents agree to be bound by the same terms of this release as the User. Authorized representatives of contractors and agents will execute a copy of this release agreement providing the same information requested of User.

1. TRC Engineers, Inc.

2.

3.

Initials of WRCOG representative: _____

2.5 The User will not make any changes to RIVCOM software or parameters without the prior written consent of WRCOG, other than minor software customizations necessary to allow RIVCOM to operate on the User's hardware (such as software installation paths, or number of processing cores available), and any modifications explicitly listed below and initialed by an authorized representative of WRCOG.

Initials of CRPC representative: _____

Any request for further modifications shall be limited to the changes as presented in writing by the User to WRCOG for its consent. No consent for changes not outlined herein is given or implied by this Release Agreement.

2.6 User shall provide/return all data sets, original RIVCOM and modified RIVCOM including any assumptions made for project modeling and analysis back to WRCOG when this User Agreement ends.

2.7 To the extent permitted by law, the User shall indemnify and hold harmless WRCOG, its officers, employees and agents, against any and all claims, damages, liability and court awards, including all costs, expenses, and attorney's fees, arising out of User's performance or non- performance of this User Agreement or from the User's use of RIVCOM and any data or information therein.

2.8 At WRCOG's option, all results of User's modeling will be submitted to WRCOG for review and concurrence before release of the results to any other parties. WRCOG will, at its option, re- run any of the User's models to verify proper use of the travel model.

2.9 In the event that WRCOG has authorized modifications to RIVCOM software or parameters, User agrees to provide WRCOG the modified RIVCOM software and to document any changes, edits, upgrades or updates to the copy of the RIVCOM provided by this User Agreement. WRCOG reserves the right to review and re-test any third party's use of the regional travel model, using the latest network and socio-economic input data sets for trip modeling.

The documentation of changes, edits, upgrades or updates must be documented on the RIVCOM Github site of which the RIVCOM software is provided.

3.0 Technical Assistance; No Warranty

3.1 WRCOG will provide to the User copies of RIVCOM network, zone system, demographic data set, program control batch files, and any other files necessary to operate RIVCOM.

3.2 WRCOG retains the right to change, update, or withdraw permission to use RIVCOM and to terminate this User Agreement without notice at any time for any or no reason. In the event of termination, User shall return to WRCOG all copies of RIVCOM and any other files and information released pursuant to hereto without penalty or right to cause of action or recourse against WRCOG.

3.3 WRCOG makes no warranty or representation as to the accuracy or suitability for a particular purpose of RIVCOM or data sets provided for use with RIVCOM, and WRCOG disclaims all warranties, specifically the warranties of merchantability and particular purpose. User releases WRCOG from any claims, judgements, or damages, consequential or directly arising from any errors or omissions contained within RIVCOM and the data provided, or any part thereof, or arising from any reliance upon RIVCOM or data or omissions therefrom.

3.4 Any opinions expressed by the User or representations made by the User based upon RIVCOM output data are the sole responsibility of the User. Should User make any modification to the transportation networks, demographic data sets, software, or model parameters, User shall not characterize the resulting forecasts as originating from, belonging to, or being endorsed by WRCOG, unless such modifications are formally adopted by WRCOG. Instead, User shall characterize such results as based on User's modifications of RIVCOM.

4.0 Miscellaneous Terms and Conditions

4.1 All terms and conditions of this User Agreement shall be binding upon User and any employee, agent or third-party of User. Any breach of any other duties or obligations specified herein by any of User's employees, agents or third parties shall be deemed to be a breach on the part of the User.

4.2 This User Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment signed by both parties. Any WRCOG waiver of any alleged breach of confidentiality by the User or third-party agents of the User is not to imply a waiver of any subsequent breach.

4.3 All notices required and permitted pursuant to this User Agreement shall be in writing and shall be deemed given when personally served or three days after deposit in the United States Mail, postage prepaid, registered or certified, return receipt requested, and addressed to the party to whom notice is intended to be given.

4.4 The User warrants that it possesses the legal authority to enter into this User Agreement. The undersigned also warrants that she/he is duly authorized to enter into this agreement on behalf of the User and to bind the User to its terms and conditions.

5.0 Remedies

5.1 In the event of breach of this Agreement, the sole and exclusive remedies are termination of this Agreement pursuant to Section 3.2 of this agreement or WRCOG may seek an injunction or pursue an action for damages in the event that WRCOG believes that User's use of the Data is not in accordance with the terms of this Agreement.

Authorized model User NAME and TITLE (Print)

SIGNATURE

User Company name, address and phone number

Date

WRCOG Executive Director

Date

DRAFT

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Western Riverside Council of Governments Public Works Committee

Staff Report

Subject: Introduction to TUMF Nexus Study Update

Contact: Darren Henderson, Vice President, WSP, darren.henderson@wsp.com, (480)449-4623

Date: June 10, 2021

The purpose of this item is to provide an introduction to the TUMF Nexus Study Update.

Requested Action:

1. Receive and file.

WRCOG's Transportation Uniform Mitigation Fee (TUMF) Program is a regional fee program designed to provide transportation and transit infrastructure that mitigates the impact of new growth in Western Riverside County. Each of WRCOG's member agencies and the March JPA participates in the Program through an adopted ordinance, collects fees from new development, and remits the fees to WRCOG. WRCOG, as administrator of the TUMF Program, allocates TUMF to the Riverside County Transportation Commission (RCTC), groupings of jurisdictions – referred to as TUMF Zones – based on the amounts of fees collected in these groups, the Western Riverside County Regional Conservation Authority (RCA), and the Riverside Transit Agency (RTA).

Update

WRCOG plans to conduct a TUMF Nexus Study beginning in the fall 2021. The Study will take between 12 and 18 months to complete and at the conclusion will propose a new TUMF fee structure that reflects the evaluation of the TUMF Network and project costs, as well as current economic factors such as construction costs. This item is reserved for an in-depth presentation from the TUMF project team on items the Committee should consider as WRCOG embarks on the TUMF Nexus Study.

Prior Action:

None.

Fiscal Impact:

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

Attachment:

None.

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