



BACKGROUND:

In 2010, the City established the Energy High Efficiency Loan Program (E-HELP) to allow the City to provide low-interest loans to property owners for installing energy efficiency and renewable generation measures on their properties. The new, special tax district would be citywide but would apply only to those property owners who chose to “opt-in” to the program in order to borrow money for the installation of these energy efficiency measures. However, the Federal Housing and Financing Authority (FHFA) issued a statement, as the overseeing governmental entity of Fannie Mae and Freddie Mac, stating they would not recognize the seniority of the loans financed under programs like the City’s. Accordingly, the City halted the E-HELP program pending resolution of this issue.

Recently, WRCOG obtained funding from Renovate America and approached the City about participating in its program that would allow residents and commercial entities to borrow money for the installation of renewable energy as well as energy and water efficiency measures. To address the issue pertaining to Fannie Mae and Freddie Mac, WRCOG has issued a disclaimer for their residential programs warning of the issue for all potential participants to address the concern of the FHFA’s proclamation. The disclaimer states, “Before completing a Program Application, a property owner should carefully review any mortgage agreement(s) or other security instrument(s) which affect the Property or to which the property owner is a party. Entering into a program assessment contract without the consent of the owner’s existing lender(s) could constitute an event of default under such agreements or security instruments. Defaulting under an existing agreement or security instrument could have serious consequences to the property owner, which could include the acceleration of the repayment obligations due under such agreement or security instrument. In addition, on August 31, 2010, Fannie Mae and Freddie Mac issued statements that they will not purchase home loans with PACE liens and that prepayment of the lien at the time of refinancing or sale of property would be required for loans they have already purchased”. Therefore, some Riverside residents may choose not to participate in the program based upon this disclaimer.

To accomplish the development of this assessment district, WRCOG is using AB 811 and AB 474. AB 811 is the enabling legislation that allows local municipalities to form such financing districts for energy efficiency. AB 474 allows local municipalities to form such financing districts for water efficiency. Sonoma County has successfully implemented a program for its citizens. Their program operates similarly to the E-HELP plan but instead of altering City Charter it alters Chapter 29 of the Streets and Highway Code. Consequently, instead of creating a special tax district, as the case would be in E-HELP, there is the creation of a special assessment district. Both would collect payments via property tax. Using the Streets and Highway Code requires a judicial validation but the process has a shorter timeframe.

RPU is encouraging the City to enter into this relationship because it will allow access to an additional financing mechanism to assist city property owners to conserve energy and water. While the City may be able to continue to pursue its own program, staff recommends that the City not move forward with its own program as there is too much risk with a City-run program in that the FHFA could cause significant issues with home loans by City residents. Given the circumstances, staff sees WRCOG’s program as the best available means to accomplish an energy efficiency program for Riverside.

Should Riverside participate in this program, all property owners in the City will go through WRCOG for these loans. Qualifying rules and processing procedures will be under their jurisdiction. Neither the City, nor Riverside Public Utilities will administer any portion of the program.

Resolution and Implementation Agreement are the initial steps in beginning the City's participation in the Energy Efficiency and Water Conservation Loan Program. This project meets with the Seizing Our Destiny Route 5 "Becoming a Green Machine".

WRCOG's program will offer three programs to property owners, based on eligibility and intentions that are listed below:

Financing Loans

The three different financing programs:

1) *Home Energy Renovation Opportunity (HERO) Financing Plan*

Available for both Residential and Commercial Customers:

WRCOG intends to utilize HERO financing provided by Renovate America to finance eligible Improvements for residential property owners when the Program is launched and may utilize HERO financing to finance certain eligible Improvements for commercial property at a later date.

2) *Standard Financing Plan*

Available for both Residential and Commercial Customers:

WRCOG further intends to preserve the ability to issue other municipal bonds pursuant to Chapter 29 to finance eligible Improvements for commercial property not encompassed by the Structured Finance Financing Plan when the Program launches and it may finance eligible Improvements for residential property not encompassed by the Renovate America Financing Plan in the future.

3) *Structured Finance Financing Plan*

Available only for Commercial Customers:

The Program intends to utilize Structured Finance to provide financing for 125 kW or larger alternative energy projects for all types of commercial properties.

Program Requirements

Eligible Property Owners: Varies depending on the type of program. The fundamentals are laid out below and the significant differences from E-HELP are italicized and underlined. See attached report for further details. Overall, the requirements are very stringent to protect participants' from further risk of default and meet lenders requirements for funding.

Eligible Properties:

Property owners may be individuals, associations, business entities, cooperatives, and virtually any property owner which pays real property taxes. Certain eligibility criteria must be satisfied and financing may be approved only if certain criteria are met for each of the programs: An example of criteria is listed below for the first track. Requirements of the programs are similar to one another but may require greater or lesser degrees of certain criteria.

1) *Home Energy Renovation Opportunity (HERO) Financing Plan*

Property owners may be individuals, associations, business entities, cooperatives, and virtually any owner which pays real property taxes. Certain eligibility criteria must be satisfied and financing may be approved only if the following criteria are met:

For Residential:

- Property owner(s) must be the property owner(s) of record;
- Property owner(s) must be current on their property taxes and must not have a late payment on their property taxes more than once during the prior three (3) years (or since purchase if the property has been owned less than three (3) years by the current owner(s));
- Property owners must be current on all property debt from twelve (12) months prior to the application through funding (or since purchase if the property has been owned less than twelve (12) months by the current owner(s)), through funding;
- Property must not have any liens other than lender debt or liens recorded by community facilities districts or similar financing districts;
- Property owner(s) have not declared bankruptcy in the past seven (7) years and the property is not currently an asset in a bankruptcy proceeding;
- Mortgage-related debt on the property plus the principal amount of the contractual assessment must not exceed 80% of the market value of the property (20% equity);
- Improvement costs are reasonable in relation to property value. Proposed Improvements must not exceed 10% of the market value of the property; and
- The total annual property tax and assessments, including the contractual assessment, on the property will not exceed 5% of the property's market value, as determined at the time of approval of the contractual assessment.

For Commercial:

HERO financing may be available in the future for commercial property owners and will only finance alternative energy systems 125 kW or smaller but may finance energy efficiency and water conservation equipment and systems of any size.

- Applicant property owner(s) must be the property owner(s) of record;
- Mortgage lender(s) have given consent to Program financing;
- Property owner(s) must be current on property taxes and must not have a late payment on their property taxes more than once during the prior three (3) years (or since purchase if the property has been owned less than three (3) years by the current owner(s));
- Property owners must be current on all property debt for a period of twelve (12) months prior to the application, including no payment defaults or technical defaults (or since purchase if the property has been owned less than twelve (12) months by the current owner(s)), through funding;
- Property owner(s) or their affiliated companies have not been involved in a bankruptcy proceeding during the past seven (7) years and the property proposed to be subject to the contractual assessment must not currently be an asset in a bankruptcy proceeding;
- All individual property owners must sign the application, assessment contract and all required notices. For properties owned by corporations, LLC's or LLP's, signatures by authorized representatives and/or corporate resolutions are required;
- Property must not have any liens other than lender debt or liens recorded by community facility districts or similar financing districts;
- Improvement costs are reasonable in relation to property value. Proposed Improvements must not exceed 10% of the market value of the property;
- Property has a debt service coverage ratio of 140% or higher;
- Mortgage-related debt on the property plus the principal amount of the contractual assessment does not exceed 80% of the market value of the property; and

- The total annual property tax and assessments, including the contractual assessment, on the property will not exceed 5% of the property's market value, as determined at the time of approval of the contractual assessment.

A detailed explanation of program specifics is available at RPU's main office and will be available at the Board meeting.

Creation of the Special Assessment District:

The creation of the Assessment District is about a five-month process, starting with an amendment to Chapter 29 of the Streets and Highway Code to allow for the creation of such district. The district will be similar in form to the special tax districts created under the Mello-Roos Act known as community facilities district. A community facilities district is created by a vote of property owners to impose a special tax on their properties to build public facilities such as streets, traffic signals, storm drains, sewers, landscaping, etc. Here, the proposed amendment to Chapter 29 of the Streets and Highway Code would add the legal authority to finance solar, water and energy efficiency improvements through the district. The boundaries of the proposed district would be across WRCOG's service territory, but no property owner would be taxed unless that property owner consents to be annexed into that district.

FISCAL IMPACT:

There is no fiscal impact to the City, as no City funds will be used to finance the WRCOG program.

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| Prepared by: | David H. Wright, Public Utilities General Manager |
| Certified as to availability of funds: | Paul C. Sundeen, Assistant City Manager/CFO/Treasurer |
| Approved by: | Belinda J. Graham, Assistant City Manager for Bradley J. Hudson, City Manager |
| Approved as to form: | Gregory P. Priamos, City Attorney |

Approved by:



WILLIAM "RUSTY" BAILEY
Land Use Committee Chair

Attachments:

1. City Council Resolution
2. Implementation Agreement with WRCOG
3. Board of Public Utilities Minutes of March 4, 2011

1 RESOLUTION NO.

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERSIDE,
3 CALIFORNIA, CONSENTING TO INCLUSION OF PROPERTIES WITHIN
4 THE CITY'S INCORPORATED AREA IN THE WESTERN RIVERSIDE
5 COUNCIL OF GOVERNMENTS CONTRACTUAL ASSESSMENT
6 PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE
7 ENERGY SOURCES, ENERGY EFFICIENCY, AND WATER EFFICIENCY
8 IMPROVEMENTS

9 WHEREAS, the City of Riverside (the "City") is committed to the development of renewable
10 energy sources, energy efficiency improvements, water conservation, reduction of greenhouse gases,
11 and protection of our environment; and

12 WHEREAS, in Chapter 29 of Part 3 of Division 7 of the California Streets and Highways
13 Code (the "Act"), the Legislature has authorized cities and counties to assist property owners in
14 financing the cost of installing distributed generation renewable energy sources or making energy or
15 water efficient improvements that are permanently fixed to their property (the "Improvements")
16 through a contractual assessment program; and

17 WHEREAS, installation of such Improvements by property owners within the jurisdictional
18 boundaries of the jurisdictions that are members of the Western Riverside Council of Governments
19 ("WRCOG") would promote the purposes cited above and assist the member agencies of WRCOG
20 (each, a "Member Agency" or, together, "Member Agencies"), including the City in reducing its
21 greenhouse gas emissions; and

22 WHEREAS, the City wishes to provide innovative solutions and cost-effective methods for
23 its property owners to achieve greater energy efficiency and independence, and in doing so
24 cooperate with WRCOG in order to efficiently and economically assist property owners in financing
25 such Improvements; and

26 WHEREAS, WRCOG has authority to establish a contractual assessment program ("the
27 Program") as permitted by the Act, the Joint Powers Agreement of the Western Riverside Council of
28 Governments, originally made and entered into April 1, 1991, as amended to date, and the
Implementation Agreement by and between WRCOG and the affected Member Agencies related to
the Program to assist property owners in financing the cost of installing distributed generation

1 renewable energy sources or making energy or water efficient improvements that are permanently
2 affixed to real property; and

3 WHEREAS, WRCOG conducted an analysis to determine the feasibility of the Program, and
4 developed parameters pursuant to the Act for implementation and administration of the Program;
5 and

6 WHEREAS, the City wishes to participate with WRCOG in the Program, under terms and
7 conditions to be agreed to by the City and WRCOG; and

8 WHEREAS, state law permits WRCOG to offer participation in the Program to property
9 owners in incorporated areas of any Member Agency so long as the City Council or Board of such
10 Member Agency approves the proposed Resolution of Intention (defined below) to establish the
11 Program, consents to the inclusion in the Program of properties in the incorporated area within such
12 Member Agency and consents to the Improvements to be done within such incorporated area and the
13 assumption of jurisdiction thereover by WRCOG for the purposes described above; and

14 WHEREAS, this City Council has reviewed WRCOG's proposed Resolution of Intention to
15 establish the Program entitled "Resolution of the Western Riverside Council of Governments
16 Declaring its Intention to Finance Distributed Generation Renewable Energy Sources and Energy
17 and Water Efficiency Improvements Through the Use of Contractual Assessments" ("Resolution of
18 Intention") attached hereto as Exhibit A.

19 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Riverside,
20 California, as follows:

21 Section 1: This City Council finds and declares that property in the City's incorporated
22 area will be benefited by the Improvements proposed in the Resolution of Intention.

23 Section 2: This City Council hereby supports WRCOG's development of the Program.

24 Section 3: Before the Program is implemented in the City, the City and WRCOG shall
25 reach an agreement addressing any conditions the City wishes to impose on participating properties
26 within the City.

27 Section 4: This City Council hereby approves the proposed Resolution of Intention,
28 substantially in the form attached hereto as Exhibit A.

Section 5: This City Council hereby finds and determines that in the event it is necessary for the Executive Committee to make minor, nonsubstantive changes to the Resolution of Intention; such minor, nonsubstantive changes do not require the approval of this City Council.

Section 6: This City Council consents to inclusion in the Program of all of the properties in the incorporated area within City and to the Improvements proposed in the Resolution of Intention within the City limits, upon the request and agreement of the property owner, in compliance with applicable laws, rules and regulations; and to the assumption of jurisdiction thereover by WRCOG for the purposes aforesaid.

Section 7: The consent of this City Council constitutes assent to the assumption of jurisdiction by WRCOG for all purposes of the Program and authorizes WRCOG, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent such contractual assessments.

Section 8: Staff is authorized and directed to coordinate with WRCOG staff to facilitate operation of the Program, and report back periodically to this City Council on the success of the Program.

Section 9: The City Clerk is directed to send a certified copy of this resolution to the Secretary of the

ADOPTED by the City Council this _____ day of _____, 2011.

RONALD O. LOVERIDGE
Mayor of the City of Riverside

Attest:

COLLEEN J. NICOL
City Clerk of the City of Riverside

1 I, Colleen J. Nicol, City Clerk of the City of Riverside, California, hereby certify that the
2 foregoing resolution was duly and regularly adopted at a meeting of the City Council of said City at
3 its meeting held on the _____ day of _____, 2011, by the following vote, to wit:

4 Ayes:

5 Noes:

6 Absent:

7 Abstain:

8
9 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the
10 City of Riverside, California, this _____ day of _____, 2011.

11
12 _____
13 COLLEEN J. NICOL
14 City Clerk of the City of Riverside
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EXHIBIT 'A'



Western Riverside Council of Governments

County of Riverside • City of Banning • City of Beaumont • City of Calimesa • City of Canyon Lake • City of Corona • City of Hemet • City of Lake Elsinore
City of Menifee • City of Moreno Valley • City of Murrieta • City of Norco • City of Perris • City of Riverside • City of San Jacinto • City of Temecula
City of Wildomar • Eastern Municipal Water District • Western Municipal Water District

WRCOG RESOLUTION OF INTENTION Amended December 7, 2009

RESOLUTION NUMBER 07-10

RESOLUTION OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS DECLARING ITS INTENTION TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY IMPROVEMENTS THROUGH THE USE OF CONTRACTUAL ASSESSMENTS PURSUANT TO CHAPTER 29 OF PART 3 OF DIVISION 7 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE AND SETTING A PUBLIC HEARING THEREON

WHEREAS, pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the "Act"), the Joint Powers Agreement of the Western Riverside Council of Governments (WRCOG), originally made and entered into April 1, 1991, as further amended to date, and the Implementation Agreement by and between WRCOG and the affected Member Agencies related to the Program (defined below), the Western Riverside Council of Governments proposes to establish a contractual assessment program to assist property owners within the jurisdictional boundaries of WRCOG's member agencies (each, a "Member Agency" and, together, the "Member Agencies") with the cost of installing distributed generation renewable energy sources or making energy efficient improvements that are permanently fixed to their property ("Program"); and

WHEREAS, in the opinion of this Executive Committee, property in the Member Agencies would be benefited by including such properties in the Program, subject to the approval/consent of the City Council or Board of any Member Agency; and

WHEREAS, WRCOG is willing to extend the program into the incorporated or unincorporated areas of any Member Agency provided that the governing body of such Member Agency and WRCOG reach agreement on any conditions on operation of the Program requested by such Member Agency, prior to the Program being offered in such jurisdiction;

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

Section 1: The Executive Committee hereby finds and declares all of the following:

- A. All of the above recitals are true and correct.
- B. Energy conservation efforts, including the promotion of energy efficiency improvements to residential, commercial, industrial, or other real property, can reduce energy consumption, energy bills, and maximize existing energy production and transmission facilities.
- C. Energy efficiency improvements include improvements that promote water efficiency. The California Energy Commission prepared a staff report in November 2005 regarding California's water-energy relationship. The report states:

"As California continues to struggle with its many critical energy supply and infrastructure challenges, the state must identify and address the points of highest stress. At the top of this list is California's water-energy relationship; water-related energy use consumes 19 percent of the state's electricity, 30 percent of its natural gas, and 88 billion gallons of diesel fuel every year – and this demand is growing. . . . [A]

major portion of the solution is closer coordination between the water and energy sectors. . . . The state can meet energy and demand reduction goals . . . by simply recognizing the value of the energy saved for each unit of water saved."

The direct relationship between water use and energy use means that improvements to residential, commercial, industrial, or other real property which promote water efficiency also result in energy efficiency.

D. The upfront cost of making residential, commercial, industrial, or other real property more energy efficient prevents many property owners from making those improvements. To make those improvements more affordable and to promote the installation of those improvements, the Legislature has authorized an alternative procedure pursuant to the Act for authorizing contractual assessments to finance the cost of energy efficiency improvements.

E. A public purpose will be served by a contractual assessment program whereby WRCOG is authorized to finance the installation of distributed generation renewable energy sources and energy efficiency improvements that are permanently fixed to residential commercial, industrial, or other real property.

F. Property located in the jurisdictional territory of Member Agencies within WRCOG will benefit from inclusion in the Program; and, subject to the approval/consent of the governing board of any Member Agency, including such property in the Program will serve the public purpose of promoting conservation efforts and addressing the issue of global climate change.

Section 2. The Executive Committee hereby determines that it would be convenient, advantageous and in the public interest to designate the entire area of the Member Agencies as an area within which authorized WRCOG officials and property owners may enter into contractual assessments pursuant to the Act to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property.

Section 3. The Executive Committee hereby declares that while the proposed distributed generation renewable energy sources and energy efficiency improvements are of such a character that they directly and peculiarly affect property in the Member Agency jurisdictions within WRCOG and that the purposes sought to be accomplished by establishing a program to finance the installation of such improvements can best be accomplished by a single, comprehensive program rather than by separate programs administered by each Member Agency. Therefore, WRCOG proposes to make contractual assessment financing available to the owners of property in any Member Agency to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property.

Section 4. The Executive Director of WRCOG (the "Executive Director") shall prepare or direct the preparation of, as part of the report required in Section 8 of this Resolution, and update, as the Executive Director deems necessary, a list of the distributed generation renewable energy sources or energy efficiency improvements that may be financed through WRCOG's contractual assessment financing program. The types of distributed generation renewable energy sources or energy efficiency improvements eligible for financing through contractual assessments include, but are not limited to: high efficiency air conditioning and ventilation systems, high performance windows, high efficiency and tankless water heating equipment, photovoltaic and thermal solar energy systems, cool roof systems, geothermal exchange heat pumps, zoning control and energy management control systems, high efficiency irrigation pumps and controls, natural gas fuel cells, wind and geothermal energy systems, and wall, ceiling and roof insulation upgrades.

Section 5. The area within which contractual assessments may be entered into pursuant to the Act is all land within the defined boundaries of the Member Agencies of WRCOG.

Section 6. No contractual assessment will be levied on a parcel situated within a Member Agency area and no assessment contract will be entered into with the owner(s) of any such parcel unless and until (1) the City Council or Board of such Member Agency has, prior to the adoption of this resolution of intention, adopted a resolution consenting to inclusion of parcels within such Member Agency in the contractual assessment program and authorizing WRCOG to levy assessments, to impose the contractual assessment liens and to finance the eligible improvement on such parcels; and (2) the City Council or Board of such Member Agency has entered into an agreement with WRCOG addressing any conditions such Member Agency wishes to impose on participating properties in its jurisdiction.

Section 7. The proposed arrangements for financing the contractual assessment financing program are briefly described as follows: WRCOG may issue bonds, notes, receive lines of credit, and enter into other financing instruments or relationships pursuant to the Act, the principal and interest of which would be repaid by contractual assessments. Alternatively or in the interim, WRCOG, may advance its own funds to finance work, or enter into agreements with other public entities, including but not limited to the cities within WRCOG, to advance their funds to WRCOG to finance work. Such advances shall be repaid through contractual assessments and WRCOG may sell bonds or other forms of indebtedness to reimburse such advances. The proposed financing arrangements may include the lease-purchase of public facilities pursuant to a lease or other contractual arrangement with a public financing authority or non profit entity or other financing elements as may be determined necessary or useful to the financing of the contractual assessment program.

In the event improvement bonds will be issued pursuant to Streets and Highways Code Section 5898.28 to represent assessments, all of the following will apply to the extent not in conflict with the Act:

- (a) Provision is hereby made for the issuance of improvement bonds, in one or more series;
- (b) Notice is hereby given that serial bonds or term bonds or both to represent unpaid assessments, and to bear interest at the rate of not to exceed 12 percent per year, or such other amount authorized by law, payable semiannually, shall be issued hereunder in one or more series in the manner provided by the Division 10 (to the extent not in conflict with the Act), and the last installment of bonds shall mature a maximum of 39 years from the second day of September next succeeding 12 months from their date.
- (c) WRCOG hereby determines and declares that WRCOG shall not obligate itself to advance available funds from WRCOG treasury to cure any deficiency which may occur in the bond redemption fund.
- (d) WRCOG hereby determines that the principal amount of bonds maturing or becoming subject to mandatory prior redemption each year shall be other than an amount equal to an even annual proportion of the aggregate principal amount of the bonds, and the amount of principal maturing or becoming subject to mandatory prior redemption in each year plus the amount of interest payable in that year shall be an aggregate amount that is substantially equal each year, except for the moneys falling due on the first maturity or mandatory prior redemption date of the bonds which shall be adjusted to reflect the amount of interest earned from the date when the bonds bear interest to the date when the first interest is payable on the bonds.

- (e) With respect to the procedures for collection of assessments and the advance retirement of bonds, WRCOG proposes to proceed under the provisions of Part 11.1 of Division 10 (commencing with Section 8760 of the Streets and Highways Code).

Section 8. The Executive Committee hereby directs the Executive Director to prepare, or direct the preparation of, and file with the Board of Supervisors a report pursuant to Section 5898.22 of the California Streets and Highways Code at or before the time of the public hearing described in Section 8 hereof (the "Report"). The Report shall contain all of the following:

- (a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered.
- (b) A draft contract specifying the terms and conditions that would be agreed to by a property owner within the contractual assessment area and WRCOG.
- (c) A statement of WRCOG policies concerning contractual assessments including all of the following:
 - (i) Identification of types of facilities, distributed generation renewable energy sources, or energy efficiency improvements that may be financed through the use of contractual assessments;
 - (ii) Identification of a WRCOG official authorized to enter into contractual assessments on behalf of WRCOG,
 - (iii) A maximum aggregate dollar amount of contractual assessments; and
 - (iv) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.
- (d) A plan for raising a capital amount required to pay for work performed pursuant to contractual assessments. The plan may include amounts to be advanced by WRCOG through funds available to it from any source. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Streets and Highways Code Section 5898.28. The plan shall include a statement of or method for determining the interest rate and time period during which contracting property owners would pay any assessment. The plan shall provide for any reserve fund or funds. The plan shall provide for the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the contractual assessment program among the consenting property owners and WRCOG.

Section 9. The Executive Committee hereby calls a public hearing to be held on _____, 2009 at _____ a.m., or as soon thereafter as feasible, in the First Floor Board Chambers, County of Riverside Administrative Center, 4080 Lemon Street, Riverside, California, on the proposed Report and the Program. At the public hearing all interested persons may appear and hear and be heard and object to or inquire about the proposed Program or any of its particulars.

Section 10. The Secretary of the Executive Committee is hereby directed to provide notice of the public hearing by publishing this Resolution once a week for two weeks, pursuant to Section 6066 of the California Government Code, in the [_____] and the first publication shall not occur later than 20 days before the date of such hearing.

Section 11. The contractual assessments levied pursuant to the Act, and the interest and any penalties thereon, shall constitute a lien against the lots and parcels of land on which they are made, until they are paid. The contractual assessments shall be collected in the same manner and at the same time as the general taxes of WRCOG on real property are payable and shall be subject to the same penalties, remedies and lien priorities in the event of delinquency and default. As a cumulative remedy, if any contractual assessment or installment thereof, or of any interest thereon, together with any penalties, costs, fees and other accrued charges are not paid when due, the Executive Committee may order that the same be collected by an action brought in superior court to foreclose the lien thereof as provided in Division 10 of the California Streets and Highways Code.

Section 12. The Executive Committee hereby directs the Executive Director to determine and discuss in the Report what additional fees, if any, will be charged, annually, by the Auditor Controller's office for incorporating the proposed contractual assessments on the tax roll.

PASSED AND ADOPTED at a Meeting of the Executive Committee of the Western Riverside Council of Governments held this 7th day of December, 2009.


Robin Lowe, Chair
WRCOG Executive Committee

AYES: 19

NOES: 0

ABSENT: 2


Rick Bishop, Secretary
WRCOG Executive Committee

ABSTAIN: 0

**IMPLEMENTATION AGREEMENT
BETWEEN THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
AND THE CITY OF RIVERSIDE TO IMPLEMENT A CONTRACTUAL ASSESSMENT
PROGRAM TO FINANCE THE INSTALLATION OF DISTRIBUTED GENERATION
RENEWABLE ENERGY SOURCES
OR ENERGY OR WATER EFFICIENCY IMPROVEMENTS**

This Implementation Agreement ("Agreement") is entered into as of March __, 2011 between the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS ("WRCOG"), a joint powers authority formed under Government Code sections 6500 et seq., and the City of Riverside ("Member Agency"), a California charter city and municipal corporation, formed under the laws of the State of California. WRCOG and the Member Agency are sometimes collectively referred to in this Agreement as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, various cities within Riverside County and the County of Riverside entered into a Joint Powers Agreement on April 1, 1991, as amended from time to time, to create WRCOG ("JPA"); and

WHEREAS, Member Agency is a signatory to the JPA; and

WHEREAS, Article VIII of JPA permits any WRCOG member agency, when authorized by the Executive Committee, to execute an Implementation Agreement for the purpose of authorizing WRCOG to implement, manage and administer area-wide and regional programs in the interest of the local public welfare; and

WHEREAS, the JPA permits WRCOG, when authorized by an Implementation Agreement, to make and enter into such contracts, incur such debts and obligations, assess contributions from the members, and perform such other acts as are necessary to the accomplishment of the purposes of such agreement; and

WHEREAS, on June 30, 2008, the State Legislature enacted Assembly Bill 811 to amend Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (commencing with Section 5898.12) ("Chapter 29") to permit cities and counties to assist property owners who desire to undertake energy-efficient improvements, such as high-efficiency air conditioners, or install renewable energy projects, such as solar panels; and

WHEREAS, on September 10, 2009, the State Legislature, intending to address chronic water needs throughout California by permitting voluntary individual efforts to improve water efficiency, enacted Assembly Bill No. 474, which became effective on January 1, 2010, to further amend Chapter 29 to authorize Chapter 29 to be used to finance the installation of water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property,

including but not limited to, recycled water connections, synthetic turf, cisterns for storm water recovery, and permeable pavement; and

WHEREAS, WRCOG member agencies have the common power to implement and administer contractual assessment programs pursuant to Chapter 29 (the "Program") to finance installation of distributed generation renewable energy sources or energy or water efficiency improvements within their jurisdictions; and

WHEREAS, WRCOG and Member Agency desire to enter into this Agreement in order to authorize WRCOG to implement and administer the Program on behalf of Member Agency; and

WHEREAS, the Executive Committee has authorized Member Agency to enter into this Agreement.

NOW, THEREFORE, the Parties hereby understand and agree as follows:

AGREEMENT

Section 1: Establishing the Program

WRCOG will undertake proceedings pursuant to AB 811 to establish the Program to make contractual assessment financing available to eligible property owners within the jurisdictional boundary of Member Agency.

Section 2: Establishing Eligible Improvements

WRCOG shall identify the kinds of distributed generation renewable energy sources or energy or water efficiency improvements that may be financed ("Eligible Improvements") under the Program.

Section 3: Boundary of Program

WRCOG, in coordination with Member Agency, shall describe the boundaries of the area within which contractual assessments under the Program may be entered into, which may include the entire jurisdictional area of Member Agency or a lesser portion thereof.

Section 4: Financing the Installation of Eligible Improvements

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

Section 5: Ongoing Administration

WRCOG shall be responsible for the ongoing administration of the Program, including but not limited to producing education plans to raise public awareness of the Program, soliciting, reviewing and approving applications from residential and commercial property owners participating in the Program, establishing contracts for residential and commercial property owners participating in

Program, establishing and collecting assessments due under the Program, and providing reports as required by Chapter 29. The Program will be administered in accordance with WRCOG JPA.

Section 6: Phased Implementation

The Parties recognize and agree that implementation of the Program as a whole can and may be phased as other WRCOG member agencies execute similar Implementation Agreements. The Member Agency entering into this Agreement will obtain the benefits of and incur the obligations imposed by this Agreement in its jurisdictional area, irrespective of whether other WRCOG member agencies enter into similar Implementation Agreements.

Section 7: Term

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

Section 8: Termination

Upon ninety (90) days written notice, either Party may terminate this Agreement. Termination shall not relieve the Party of its proportionate share of any debts or other liabilities incurred under this Agreement prior to the effective date of the Party's notice of termination.

Section 9: Environmental Review

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

Section 10: Cooperative Effort

Member Agency shall cooperate with WRCOG by providing information and other assistance in order for WRCOG to meet its obligations hereunder. Member Agency recognizes that one of its responsibilities related to the Program will include any permitting or inspection requirements as established by the Member Agency.

Section 11: Miscellaneous Provisions

11.1 Notice. Any and all communications and/or notices in connection with this Agreement shall be either hand-delivered or sent by United States first class mail, postage prepaid, and addressed as follows:

WRCOG:

Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor, MS1032
Riverside, CA 92501-3609
Att: Executive Director

MEMBER AGENCY:

City of Riverside
3900 Main Street
Riverside, California 92522
Att: General Manager, Riverside Public Utilities

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

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

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

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

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

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

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

11.9 Amendment. This Agreement may be modified or amended by the Parties at any time. Such modifications or amendments must be mutually agreed upon and executed in writing by both Parties. Verbal modifications or amendments to this Agreement shall be of no effect.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Agreement to be in effect as of the date last signed below.

By: _____
Executive Committee Chair
Western Riverside Council of Governments

Date: _____

CITY OF RIVERSIDE, a California
charter city and municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

Approved as to Form:

By: Susan Wilson
Deputy City Attorney

DISCUSSION CALENDAR

5. SEIZING OUR DESTINY - APPROVAL TO PARTICIPATE IN THE ENERGY EFFICIENCY AND WATER CONSERVATION LOAN PROGRAM FOR WESTERN RIVERSIDE COUNTY

Barbara Spoonhour, program manager at WRCOG (Western Riverside Council of Governments), answered any questions related to the program. The majority of related questions were in regards to the seniority of their loan relative to the banks' loan as the mortgage.

Following discussion, the Board of Public Utilities recommended that the City Council:

1. Approve participation in the Energy Efficiency and Water Conservation Loan Program for Western Riverside County;
2. Adopt a Resolution consenting to the inclusion of properties within the City of Riverside into the Energy Efficiency and Water Conservation Loan Program and its jurisdictional boundaries; and
3. Approve the Implementation Agreement with WRCOG for administration of the Energy Efficiency and Water Conservation Loan Program.

Motion – Scott-Coe. Second – Ament.

Ayes: Elliott, Titus, Davidson, Scott-Coe, Ament, Cash, and Sutter.

Absent: Mary Curtin (excused absence due to business)
Gustavo Segura (unexcused absence)