







-  Creating jobs
-  Saving energy
-  Improving properties
-  Lowering utility bills



A bit of background...

- ✓ Fresno County will continue to grow; 340,000+ more by 2035!
- ✓ Providing sufficient energy supplies will be critical for continued economic expansion and prosperity
- ✓ Relying solely on new generation and transmission facilities is risky
- ✓ Utility bills will continue to rise
- ✓ Energy and water conservation regulations are largely limited to new properties ... NEWER PROPERTIES ARE PRETTY ENERGY EFFICIENT
- ✓ OLDER PROPERTIES ARE PRETTY ENERGY INEFFICIENT
- ✓ One of the best ways to guarantee energy supply is to conserve what we already have
- ✓ Retrofitting these older, inefficient properties is a good strategy
- ✓ *The big question: How can this be accomplished?*



Program partners

- Public Financial Management, Inc. – Financial Advisor
- Best Best & Krieger – Bond Counsel
- David Taussig & Associates – Assessment Administrator
- U.S. Bank / Deutsche Bank – Trustee
- Westhoff, Cone & Holmstedt – Placement Agent
- Renovate America – Residential Funding Partner
- Samas Capital – Commercial Funding Partner



Saving energy and water through property retrofits: The California HERO Program

- California HERO is a residential and commercial Property Assessed Clean Energy (PACE) Program
- Authorized by state law (AB 811 and AB 474)
- Allows jurisdictions to offer financing to property owners for the purchase and installation of energy efficiency, renewable energy, and water conservation improvements
- Financing to property owners is repaid over time through voluntary annual assessments on the property tax bill



California HERO Program: Guiding Principles

- Based on successful Program in Western Riverside County: Proven track record of experience
- PACE is a funding tool
- Regional / Statewide Program provides economies of scale
- Consistent funding is vital for Program success
- Simplicity of use is vital for broad acceptance
- Contractors in region familiar based on existing Program success
- Summary: Avoid duplication of effort with a single program instead of multiple and costly individual efforts
Provide a turnkey program at no cost to jurisdictions



Benefits to property owners

- ✓ Provides access to financing that might not be available through traditional means such as equity loans, etc.
- ✓ Provides “no-money-down” approach to financing improvements
- ✓ Provides savings on utility bills and mitigation to future increase
- ✓ Repayment stays with property (most cases)
- ✓ Improve Net Operating Income (NOI) for non-residential properties
- ✓ No refinance risk (funding term matches expected life of project)
- ✓ Off balance sheet

Benefits to participating jurisdictions



Economy

Creates / maintains construction-related jobs



Energy

Reduces / delays the need for costly construction of energy generation / transmission facilities



Environment

emissions

Improves air quality and reduces greenhouse gas



Financial

replenishing

No local jurisdictional debt; funding is self-



Examples of eligible improvements

- Heating and air conditioning
- Cool roofs
- Natural gas storage water heater
- Tankless water heater
- Windows and glass doors
- Outside irrigation
- Insulation
- Window filming
- Home sealing
- Lighting control systems
- Solar thermal systems (hot water)
- Solar thermal systems for pool heating
- Photovoltaic systems
- Low flush toilets



Results (January 2012 thru September 22, 2013)

Approved Apps: 10,700+

Approved Financing: \$342,000,000+ (residential program)

Commercial program just launching

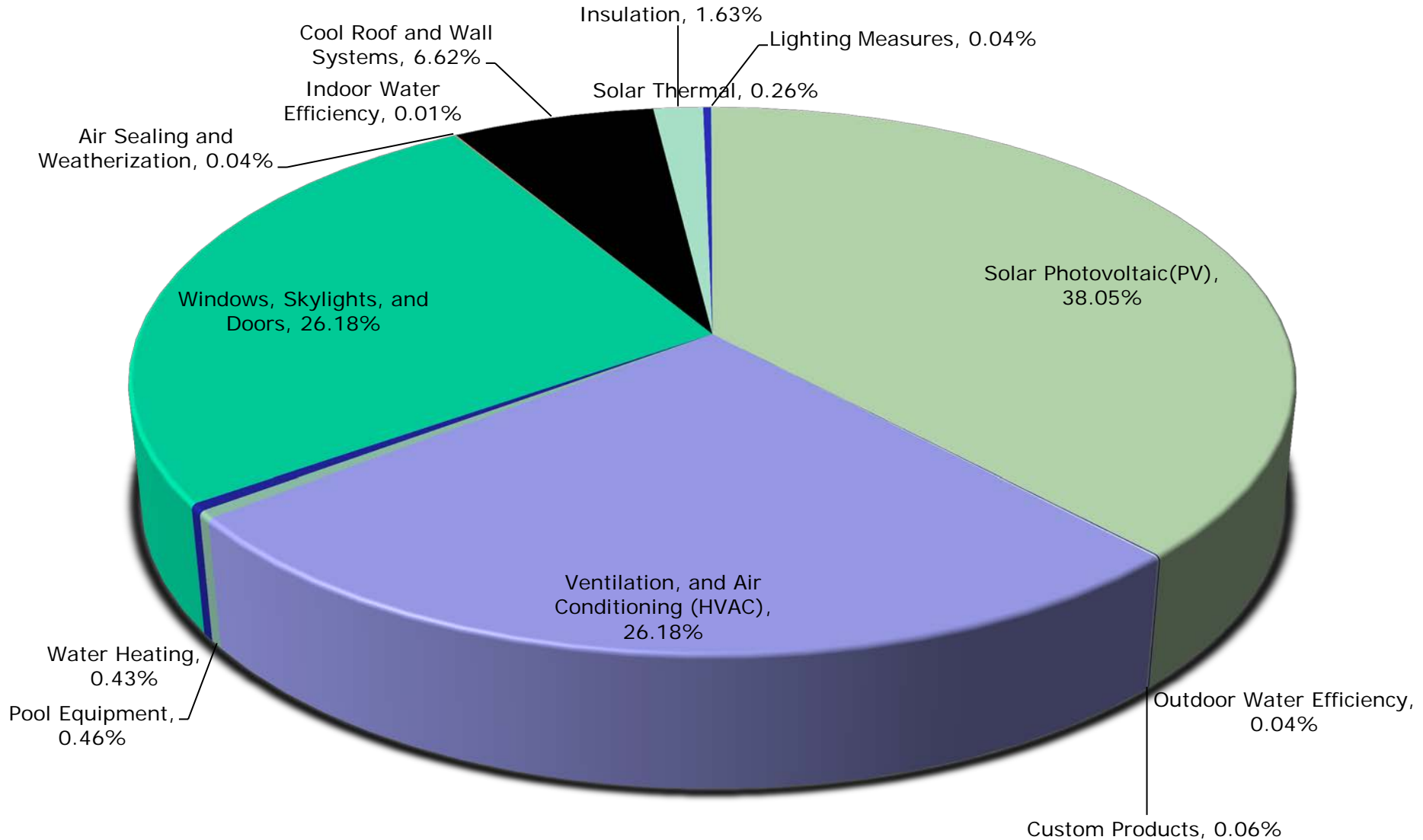
Projects Completed: 4,900+

Projects Funded: \$89,000,000+

Largest Program in United States



Types of projects being funded



Economic and Energy Benefits

KW Installed Solar	11.4 MW
kWh Saved - Annually	51 GW
kWh Saved over Life of Installed Products	856 GW
GHG Reductions - Annually	12,650 Tons
GHG Reductions over life of Installed Products	219,000 Tons
\$ Saved over Life of Installed Products	\$195 Million
Projected Annual Economic Impact	\$303 Million
Projected Annual Job Creation	1,469 Jobs



Who qualifies to participate?

- Property owners may be individuals, associations, business entities, cooperatives, non-profits
- Bottom line: Any qualifying owner paying property taxes
 - have clear title to property
 - be current on property taxes
 - be current on mortgage payments
 - have some equity in the property
 - no bankruptcies
 - lender consent (commercial only)



How does it work for the property owner?

- It's a voluntary program
- (google herofinancing): Property owners apply for Program coverage and select improvements desired
- If approved, property owner enters into contract with administrator; all up-front costs are paid and assessment lien is placed on property
- Property owner / subsequent property owner repays through property tax assessment over a period of years



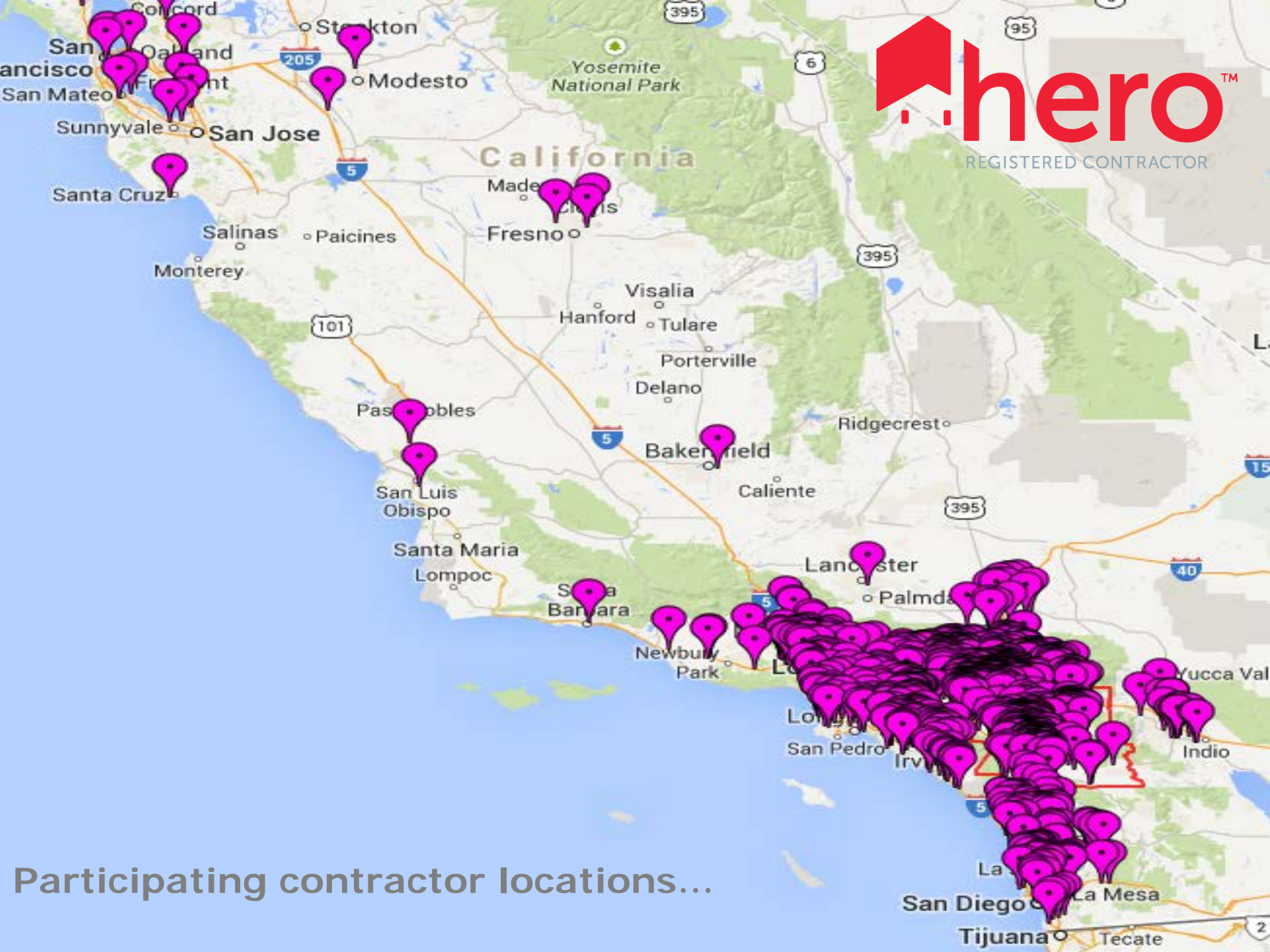
Contractors are key...



More than 1,100 participating in the Program

- Must have an active California State License Board (CSLB) license
- Must meet CSLB's bond and workers' compensation insurance requirements
- Must provide evidence of jurisdictional business license if no jurisdictional permit is required for project
- Must register on the website





Participating contractor locations...

How do jurisdictions join the California HERO Program?

Step 1: Jurisdiction needs to adopt a Resolution of Participation to join California HERO Program

- Initiation of validation process
- Once the validation is complete, property owners can begin applying
- 3 – 4 months to launch

Step 2: There is no Step 2!

- Your jurisdiction staff time requirements: Only related to normal permit processing



Administration Partnership with Fresno Council of Governments

FCOG serves as a point of contact in the subregion



California HERO Program

- 40 Cities/counties have adopted Resolutions

Alhambra	La Verne	San Marcos
Azusa	Lomita	San Marino
Baldwin Park	Monrovia	Santa Ana
Bradbury	Montebello	Solano County
Brea	Monterey Park	South El Monte
Citrus Heights	Newport Beach	South Pasadena
Covina	Oceanside	Temple City
Diamond Bar	Pomona	Torrance
El Segundo	Rancho Palos Verdes	Turlock
Glendaora	Rolling Hills Estates	Tustin
Hawthorne	Rosemead	Vista
Hermosa Beach	San Diego County	West Covina
Industry	San Dimas	
La Canada Flintridge	San Gabriel	

To summarize: The California Hero Program...

- Expands on a proven and successful program
- Boosts the economy through job creation
- Saves energy and utility costs
- Reduces greenhouse gases
- Partners with the private sector
- Requires no city/county staff or financial resources
- Has no liability for participating agencies
- *Is really easy to join!*



Questions?

Contact Information:

Laura Franke, Public Financial Management, Inc.
(213) 404-0077 or email frankel@pfm.com

Rick Bishop, Western Riverside Council of Governments
(951) 955-8303 or e-mail bishop@wrcog.cog.ca.us

Barbara Spoonhour, Western Riverside Council of Governments
(951) 955-8313 or e-mail spoonhour@wrcog.cog.ca.us

Mark Aarvig, Samas Capital
(909) 342-4414 or email maarvig@samascapital.com

John Law, Renovate America
(209) 602-8990 or email jlaw@herofinancing.com



RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF [REDACTED], CALIFORNIA, CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN THE CALIFORNIA HERO PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY AND WATER EFFICIENCY IMPROVEMENTS AND ELECTRIC VEHICLE CHARGING INFRASTRUCTURE AND APPROVING THE AMENDMENT TO A CERTAIN JOINT POWERS AGREEMENT RELATED THERETO

WHEREAS, the Western Riverside Council of Governments ("Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the "Authority JPA"); and

WHEREAS, Authority has established the California HERO Program to provide for the financing of renewable energy distributed generation sources, energy and water efficiency improvements and electric vehicle charging infrastructure (the "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") within counties and cities throughout the State of California that elect to participate in such program; and

WHEREAS, City of [REDACTED] (the "City") is committed to development of renewable energy sources and energy efficiency improvements, reduction of greenhouse gases, protection of our environment, and reversal of climate change; and

WHEREAS, in Chapter 29, the Legislature has authorized cities and counties to assist property owners in financing the cost of installing Improvements through a voluntary contractual assessment program; and

WHEREAS, installation of such Improvements by property owners within the jurisdictional boundaries of the counties and cities that are participating in the California HERO Program would promote the purposes cited above; and

WHEREAS, the City wishes to provide innovative solutions to its property owners to achieve energy and water efficiency and independence, and in doing so cooperate with Authority in order to efficiently and economically assist property owners the City in financing such Improvements; and

WHEREAS, Authority has established the California HERO Program, which is such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into April 1, 1991, as amended to date, and the Amendment to Joint Powers Agreement Adding the City of [REDACTED] as an Associate Member of the Western Riverside Council of Governments to Permit the Provision of Property Assessed Clean Energy (PACE) Program Services within the City (the "JPA Amendment"), by and between Authority and the City, a copy of which is

attached as Exhibit "A" hereto, to assist property owners within the jurisdiction of the City in financing the cost of installing Improvements; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of any bonds issued in connection with the California HERO Program.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. This City Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the California HERO Program to finance the installation of the Improvements.

2. This City Council consents to inclusion in the California HERO Program of all of the properties in the jurisdictional boundaries of the City and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.

3. The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the California HERO Program and authorizes Authority, 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.

4. This City Council hereby approves the JPA Amendment and authorizes the execution thereof by appropriate City officials.

5. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the California HERO Program within the City, and report back periodically to this City Council on the success of such program.

6. This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this resolution to the Secretary of the Authority Executive Committee.

(Insert Voting Block for the City)

EXHIBIT A

**AMENDMENT TO THE JOINT POWERS AGREEMENT
ADDING CITY OF _____ AS
AS AN ASSOCIATE MEMBER OF THE
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
TO PERMIT THE PROVISION OF PROPERTY ASSESSED CLEAN
ENERGY (PACE) PROGRAM SERVICES WITHIN SUCH CITY**

This Amendment to the Joint Powers Agreement (“JPA Amendment”) is made and entered into on the ____ day of _____, 2013, by City of _____ (“City”) and the Western Riverside Council of Governments (“Authority”) (collectively the “Parties”).

RECITALS

WHEREAS, Authority is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the “Joint Exercise of Powers Act”) and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the “Authority JPA”); and

WHEREAS, as of October 1, 2012, Authority had 18 member entities (the “Regular Members”).

WHEREAS, Chapter 29 of the Improvement Act of 1911, being Division 7 of the California Streets and Highways Code (“Chapter 29”) authorizes cities, counties, and cities and counties to establish voluntary contractual assessment programs, commonly referred to as a Property Assessed Clean Energy (“PACE”) program, to fund certain renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure (the “Improvements”) that are permanently fixed to residential, commercial, industrial, agricultural or other real property; and

WHEREAS, Authority has established a PACE program to be known as the “California HERO Program” pursuant to Chapter 29 which authorizes the implementation of such PACE financing program for cities and counties throughout the state; and

WHEREAS, City desires to allow owners of property within its jurisdiction to participate in the California HERO Program and to allow Authority under Chapter 29, as it is now enacted or may be amended hereafter, to finance Improvements to be installed on such properties; and

WHEREAS, this JPA Amendment will permit City to become an Associate Member of Authority and to participate in California HERO Program for the purpose of facilitating the implementation of such program within the jurisdiction of City; and

WHEREAS, pursuant to the Joint Exercise of Powers Act, the Parties are approving this JPA Agreement to allow for the provision of PACE services through the California

HERO Program, including the operation of such PACE financing program, within the incorporated territory of City; and

WHEREAS, the JPA Amendment sets forth the rights, obligations and duties of City and Authority with respect to the implementation of the California HERO Program within the incorporated territory of City.

MUTUAL UNDERSTANDINGS

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

A. JPA Amendment.

1. The Authority JPA. City agrees to the terms and conditions of the Authority JPA, attached.

2. Associate Membership. By adoption of this JPA Amendment, City shall become an Associate Member of Authority on the terms and conditions set forth herein and the Authority JPA and consistent with the requirements of the Joint Exercise of Powers Act. The rights and obligations of City as an Associate Member are limited solely to those terms and conditions expressly set forth in this JPA Amendment for the purposes of implementing the California HERO Program within the incorporated territory of City. Except as expressly provided for by the this JPA Amendment, City shall not have any rights otherwise granted to Authority's Regular Members by the Authority JPA, including but not limited to the right to vote on matters before the Executive Committee or the General Assembly, the right to amend or vote on amendments to the Authority JPA, and the right to sit on committees or boards established under the Authority JPA or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee. City shall not be considered a member for purposes of Section 9.1 of the Authority JPA.

3. Rights of Authority. This JPA Amendment shall not be interpreted as limiting or restricting the rights of Authority under the Authority JPA. Nothing in this JPA Amendment is intended to alter or modify Authority Transportation Uniform Mitigation Fee (TUMF) Program, the PACE Program administered by Authority within the jurisdictions of its Regular Members, or any other programs administered now or in the future by Authority, all as currently structured or subsequently amended.

B. Implementation of California HERO Program within City Jurisdiction.

1. Boundaries of the California HERO Program within City Jurisdiction. The boundaries within which contractual assessments may be entered into under the California HERO Program (the "Program Boundaries") shall include the entire incorporated territory of City.

2. Determination of Eligible Improvements. Authority shall determine the types of distributed generation renewable energy sources, energy efficiency or water

conservation improvements, electric vehicle charging infrastructure or such other improvements as may be authorized pursuant to Chapter 29 (the “Eligible Improvements”) that will be eligible to be financed under the California HERO Program.

3. Implementation of California HERO Program Within the Program Boundaries. Authority will undertake such proceedings pursuant to Chapter 29 as shall be legally necessary to enable Authority to make contractual financing of Eligible Improvements available to eligible property owners within the Program Boundaries.

4. Financing the Installation of Eligible Improvements. Authority shall implement its plan for the financing of the purchase and installation of the Eligible Improvements under the California HERO Program within the Program Boundaries.

5. Ongoing Administration. Authority shall be responsible for the ongoing administration of the California HERO Program, including but not limited to producing education plans to raise public awareness of the California HERO Program, soliciting, reviewing and approving applications from residential and commercial property owners participating in the California HERO Program, establishing contracts for residential, commercial and other property owners participating in such program, establishing and collecting assessments due under the California HERO Program, adopting and implementing any rules or regulations for the California HERO Program, and providing reports as required by Chapter 29.

City will not be responsible for the conduct of any proceedings required to be taken under Chapter 29; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the California HERO Program.

6. Phased Implementation. The Parties recognize and agree that implementation of the California HERO Program as a whole can and may be phased as additional other cities and counties execute similar agreements. City entering into this JPA Amendment will obtain the benefits of and incur the obligations imposed by this JPA Amendment in its jurisdictional area, irrespective of whether cities or counties enter into similar agreements.

C. Miscellaneous Provisions.

1. Withdrawal. City or Authority may withdraw from this JPA Amendment upon six (6) months written notice to the other party; provided, however, there is no outstanding indebtedness of Authority within City. The provisions of Section 6.2 of the Authority JPA shall not apply to City under this JPA Amendment.

2. Mutual Indemnification and Liability. Authority and City shall mutually defend, indemnify and hold the other party and its directors, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of the willful misconduct or negligent acts, errors or omissions of the indemnifying party or its

directors, officials, officers, employees and agents in connection with the California HERO Program administered under this JPA Amendment, including without limitation the payment of expert witness fees and attorneys fees and other related costs and expenses, but excluding payment of consequential damages. Without limiting the foregoing, Section 5.2 of the Authority JPA shall not apply to this JPA Amendment. In no event shall any of Authority's Regular Members or their officials, officers or employees be held directly liable for any damages or liability resulting out of this JPA Amendment.

3. Environmental Review. Authority shall be the lead agency under the California Environmental Quality Act for any environmental review that may required in implementing or administering the California HERO Program under this JPA Amendment.

4. Cooperative Effort. City shall cooperate with Authority by providing information and other assistance in order for Authority to meet its obligations hereunder. City recognizes that one of its responsibilities related to the California HERO Program will include any permitting or inspection requirements as established by City.

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

Authority:

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

City:

[TO BE INSERTED]

6. Entire Agreement. This JPA Amendment, together with the Authority JPA, constitutes the entire agreement among the Parties pertaining to the subject matter hereof. This JPA Amendment 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.

7. Successors and Assigns. This JPA Amendment 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 JPA Amendment with prior written approval of the other Party, which approval shall not be unreasonably withheld.

8. 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.

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

10. No Third Party Beneficiaries. This JPA Amendment 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 JPA Amendment to maintain a suit for personal injuries or property damages under the provisions of this JPA Amendment. The duties, obligations, and responsibilities of the Parties to this JPA Amendment with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

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

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

13. Amendment. This JPA Amendment 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 JPA Amendment shall be of no effect.

14. Effective Date. This JPA Amendment shall become effective upon the execution thereof by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this JPA Amendment to be executed and attested by their officers thereunto duly authorized as of the date first above written.

[SIGNATURES ON FOLLOWING PAGES]

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

By: _____
Executive Committee Chair
Western Riverside Council of Governments

Date: _____

CITY OF _____

By: _____

Date: _____

Title: _____

AGENDA ITEM No. _____

DATE: _____, 20__

TO: City Council

SUBJECT: Adopt Resolution 201_-_____ Consenting to the Inclusion of Properties within the City's Jurisdiction in the California HERO Program to Finance Distributed Generation Renewable Energy Sources, Energy and Water Efficiency Improvements and Electric Vehicle Charging Infrastructure and Approving an Amendment to a Certain Joint Powers Agreement Related Thereto.

BACKGROUND:

Assembly Bill (AB) 811 was signed into law on July 21, 2008, and AB 474, effective January 1, 2010, amended Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California ("Chapter 29") and authorizes a legislative body to designate an area within which authorized public officials and free and willing property owners may enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources, energy efficiency, and/or water conservation improvements that are permanently fixed to real property, as specified. The financing for these improvements has come to be known as PACE, which stands for Property Assessed Clean Energy.

The HERO Program (for PACE financing) has been very successful in Western Riverside County, since its launch in late 2011; the Program has approved over \$130 million in applications and has funded over \$30 million in projects. . Because of its success, the California HERO Program is now being offered to provide additional California cities and counties with a turnkey program that saves significant time, cost and local resources that would otherwise be needed to develop a new local program. Jurisdictions only need to adopt the form of resolution accompanying this staff report and approve an amendment to the joint exercise of powers agreement, related to the California HERO Program, and provided as an attachment to the resolution.

ANALYSIS:

The California HERO Program is being offered to allow property owners in participating cities and counties to finance renewable energy, energy and water efficiency improvements, and electric vehicle charging infrastructure on their property. If a property owner chooses to participate, the installed improvements will be financed by the issuance of bonds by a joint powers authority, Western Riverside Council of Governments ("WRCOG"). The bonds are secured by a voluntary contractual assessment levied on such owner's property, with no recourse to the local government or other participating jurisdictions. Participation in the program is 100% voluntary. Property owners who wish to participate in the program agree to repay the amount borrowed through the voluntary contractual assessment collected together with their property taxes. This financing is available for eligible improvements on both residential and non-residential properties.

The benefits to the property owner include:

- Eligibility: In today's economic environment, alternatives for property owners to finance renewable energy/energy efficiency/water efficiency improvements or electric vehicle charging infrastructure may not be available. As such many property owners do not have

financing options available that would provide funding for improvements that lower their utility bills.

- Savings: Energy prices continue to rise and selecting in energy efficient, water efficient and renewable energy improvements reduces utility bills.
- 100% voluntary. Property owners can choose to participate in the program at their discretion. Improvements and properties must meet eligibility criteria in order to qualify for financing.
- Payment obligation stays with the property. Under Chapter 29, a voluntary contractual assessment stays with the property upon transfer of ownership. Certain residential conforming mortgage providers will, however, require the assessment be paid off at the time the property is refinanced or sold.
- Prepayment option. The property owner can choose to pay off the assessments at any time, subject to applicable prepayment penalties.
- Customer oriented program. Part of the success of the program is the prompt customer service. Committed funding partners provide funding promptly upon project completion resulting in both property owner and contactor satisfaction.

The benefits to the City include:

- Increase local jobs.
- An increase in property values (energy efficient homes and buildings are worth more money).
- An increase in sales, payroll and property tax revenue
- As in conventional assessment financing, the City is not obligated to repay the bonds or to pay any delinquent assessments levied on the participating properties.
- All California HERO Program and assessment administration, bond issuance and bond administration functions are handled by California HERO. Little, if any, City staff time is needed to participate in the California HERO Program.
- By leveraging the already successful HERO Program, the City can offer financing to property owners more quickly, easily and much less expensively than establishment of a new local Program.

The proposed resolution enables the California HERO Program to be available to owners of property within our City to finance renewable energy, energy efficiency and water efficiency improvements and electric vehicle charging infrastructure. The resolution approves an Amendment to the WRCOG Joint Powers Agreement to add the City as an Associate Member in order to enable the California HERO Program to be offered to the owners of property located within the City who wish to participate in the California HERO Program

Federal Housing Finance Agency (FHFA), Fannie Mae and Freddie Mac

PACE enabling legislation was adopted by the State of California to encourage the adoption of energy efficiency, renewable energy and water efficiency measures on homes and businesses. When the legislation was enacted, many people believed PACE was an attractive financing option due to its ability to automatically transfer payments to a new owner if the property sold.

In response to the Directive issued by the FHFA on July 6, 2010 and implemented, in part, by Fannie and Freddie (Government Sponsored Entities, GSEs) on August 31, 2010, mortgage originators were informed that the GSEs would not be purchasing any mortgages with PACE liens.

In response to this, the State of California and other entities filed lawsuits against FHFA. The original intent of the lawsuit was to amend or dismiss the Directive by requiring that FHFA follow the rulemaking procedures as set forth under the Administrative Procedure Act. On October 16, 2010, the District Court issued a judgment which required FHFA to go through the rule making procedures. However, the trial court ruled that the FHFA's Directive would continue in effect.

FHFA filed an appeal with the Ninth Circuit Court of Appeal, seeking to overturn the judgment requiring the FHFA to go through the rule making procedures. On March 19, 2013, the Ninth Circuit Court of Appeals ruled that the FHFA did not have to follow the rule making procedures in order to issue the Directive and dismissed the case. Thus, the FHFA does not need to go through the rule making procedures.

In the July 6, 2010 statement issuing the Directive, FHFA supported PACE programs whose assessments are junior/subordinate to Fannie/Freddie's mortgage interests. The statement also directed Fannie/Freddie to implement the following additional actions:

- Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
- Ensuring that loan covenants require approval/consent for any PACE loan;
- Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
- Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance.

FHFA stated that "Nothing in this Statement affects the normal underwriting programs of the regulated entities or their dealings with PACE programs that do not have a senior lien priority." To date neither Fannie nor Freddie have taken action to implement any of the additional actions contained in the Directive.

The PACE enabling legislation in California provides that PACE assessments, like traditional assessments levied by public agencies in California, are equal in priority as general property taxes and as such are senior to private debt on the property and thus have first liens/senior liens priority. However under federal law, the Ninth Circuit Court of Appeal, which includes California, in *Rust v. Johnson* (9th Circuit (1979) 597 F.2d 174) ruled that local government cannot collect payment of assessments if they impair loans insured or owned by Freddie/Fannie ("Conforming Loans"). The court ruled that if a federal government entity has a mortgage interest on a parcel subject to assessments or special taxes, the property cannot be sold at a foreclosure sale unless it can be sold for an amount sufficient to preserve the federal government mortgage interest. Thus under federal law as set forth in the opinion under *Rust v. Johnson*, assessments, including PACE assessments, placed on the property are not "first liens" or "senior liens" with respect to Conforming Loans. Disclosure of *Rust v. Johnson* has been provided for in Official Statements of Municipal Bond issuances for traditional assessment district and community facilities district bond issues since 1979, in a form similar to the following:

Portions of the property within the Assessment District may now or in the future secure loans. Any such loan is subordinate to the lien of the Assessments. However, (a) in the event that any of the financial institutions making the loan that is secured by real property within the Assessment District is taken by the Federal Deposit Insurance Corporation ("FDIC"), (B) the FDIC or another federal entity acquires a parcel subject to the Assessment lien, (C) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or similar federal agency or instrumentality has a mortgage interest in a loan on property subject to the Assessment lien, and, prior thereto or thereafter, the loan or loans go into default, the ability of the City to collect the interest and penalties specified by state law and to foreclose the lien of a delinquent unpaid assessment may be limited.

Additionally, under federal law, subordinate liens to mortgages are permitted and cannot be blocked (See U.S. Code Title 12 Banks and Banking, Section 1701j-3). Thus, the impact of a PACE assessment being subordinate in effect to the interests of Fannie/Freddie by virtue of the

ruling in Rust v. Johnson and the inability to prevent a person from putting a subordinate lien on their property may make it difficult for FHFA/Fannie/Freddie to impose additional Directives adversely affecting the property owner's mortgage.

FISCAL AND STAFF IMPACTS:

There is no negative fiscal impact to the City's general fund will be incurred by consenting to the inclusion of properties within the City limits in the California HERO Program. All California HERO Program administrative costs are covered through an initial administrative fee included in the property owner's voluntary contractual assessment and an annual administrative fee which is also collected on the property owner's tax bill.

RECOMMENDED ACTION:

Adopt the attached Resolution approving an Amendment to the WRCOG Joint Powers Agreement to add the City as an Associate Member in order to authorize the City's participation in the California HERO Program, which will enable property owners to finance permanently fixed renewable energy, energy and water efficiency improvements and electric vehicle charging infrastructure on their properties.

ATTACHMENTS:

1. Resolution.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
AND
[INSERT PARTICIPANT]
REGARDING PARTICIPATING IN THE CALIFORNIA HERO PROGRAM**

This Memorandum of Understanding Regarding Participating in the California HERO Program (“MOU”) is made and entered into as of this ___ day of _____, 20___ (“Effective Date”), by and between the Western Riverside Council of Governments, a joint exercise of powers authority (“WRCOG”), and [Insert Participant] (“Participant”). WRCOG and Participant are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, WRCOG is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California; and

WHEREAS, WRCOG has established the California HERO program (the “California HERO Program”) to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently fixed to real property; and

WHEREAS, California HERO Program is being made available to every city and county in California to encourage installation of distributed generation renewable energy sources and energy efficiency and water efficiency improvements for residential and commercial property owners; and

WHEREAS, Participant desires to inform its member agencies about the California HERO Program and serve as a point of contact for the Program in the subregion. WRCOG desires to receive Participant’s assistance in providing information about the California HERO Program to Participant’s member agencies and in serving as a point of ongoing contact for the Program in the future; and

WHEREAS, the purpose of this MOU is to set forth the mutual understandings, terms, and conditions related to partnering with the California HERO Program.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties hereby agree, as follows:

TERMS

1. WRCOG.

1.1 WRCOG shall pay Participant fees (“Fees”) equal to 0.05% of the aggregate cost of issuance for the bonds issued to fund the installation of renewable energy, energy efficiency and water efficiency improvements for which assessment contracts are entered into after the Effective Date by Participant’s member agencies within Participant’s jurisdiction pursuant to the California HERO Program.

1.2 WRCOG shall make the payments required herein to Participant on a quarterly basis.

2. Participant.

2.1 Participant will, at Participant’s first regular meeting held after the Effective Date, begin providing information and facilitating meetings to its member agencies for the California HERO Program, which includes doing each of the following:

(a) Participant will inform each eligible city and county member agency about the procedures for participating in the California HERO Program, which include obtaining approval from WRCOG, adopting a Resolution of Participation, and entering into a JPA Amendment with WRCOG, in substantially the same form as the Template Resolution of Necessity and JPA Amendment attached hereto as Exhibit “A”.

(b) Participant will inform each of its member agencies of the benefits available from participating in the California HERO Program, including but not limited to informing each member that (i) the California HERO Program is an economic development program available at no cost to participating cities and counties; (ii) the California HERO Program finances improvements which decrease energy or water consumption or create clean renewable energy; and (iii) the California HERO Program helps create local jobs, save money, and lower greenhouse gas emissions.

(c) Participant will inform each of its member agencies of the increased Fee that is available to Participant from the California HERO Program based on increased assessment costs of issuance within Participant’s jurisdiction.

2.2 Participant will serve as the main point of contact for the subregion within Participant’s jurisdiction and, as such, will coordinate with Participant’s member agencies on behalf of WRCOG, as needed, to facilitate the efficient coordination of the California HERO Program. Participant will fully cooperate with WRCOG, and shall take additional acts or sign additional documents as may be necessary, appropriate or convenient to attain the purposes of this MOU, including but not limited to assisting with introductions to Participant’s member agencies.

2.3 Participant will obtain and provide a copy of each member agency’s Resolution of Participation in the California HERO Program.

2.4 Participant will arrange for presentations regarding the California HERO Program at committee meetings.

2.5 Participant will regularly provide information about the California HERO Program in its newsletters, which will include but not be limited to providing a description of the California HERO Program, other contact information for the California HERO Program, and any additional reference sources that are necessary to provide readers with information for participating in the California HERO Program.

2.6 Participant will place a regular reminder of the California HERO Program in its correspondence and a conspicuous and recognizable link to the California HERO Program website on the main page of Participant's website, if any.

3. Term. The term of this agreement shall begin on the Effective Date and terminate five (5) years thereafter.

4. Governing Law and Venue. This MOU shall be governed by and construed with the laws of the State of California. Venue shall be in Riverside County.

5. Attorneys Fees. If either of the Parties commences an action against the other party arising out of or in connection with this MOU, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

6. Amendment. This MOU may be amended in writing by mutual agreement of the Parties.

7. Entire Agreement. This MOU contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

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

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

10. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this MOU as though fully set forth herein.

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

12. Notices. All payments, notices hereunder and communications regarding interpretation of the terms of this MOU or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed, as follows:

If to Participant:

Telephone: _____
Facsimile: _____

If to WRCOG:

Western Riverside Council of Governments
Riverside County Administrative Center
4080 Lemon Street, Third Floor
Riverside, California 92501-3609
Attention: Deputy Executive Director
Telephone: (951) 955-7985
Facsimile: (951) 787-7991

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

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE TO
MEMORANDUM OF UNDERSTANDING
BETWEEN
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
AND
[INSERT PARTICIPANT]
REGARDING PARTICIPATING IN THE CALIFORNIA HERO PROGRAM

IN WITNESS WHEREOF, the Parties have caused this MOU to be effective as of the day first above written.

WESTERN RIVERSIDE COUNCIL OF
GOVERNMENTS

[INSERT PARTICIPANT]

By: _____
Rick Bishop
Executive Director
APPROVED AS TO FORM

By: _____
[INSERT]
[INSERT]
APPROVED AS TO FORM

By: _____
Best Best & Krieger LLP
General Counsel

By: _____
[INSERT]
[INSERT]