



# Western Community Energy WCE Joint Board of Directors and Technical Advisory Committee

## REVISED AGENDA

Wednesday, October 12, 2022  
1:15 PM

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

[Join Zoom Meeting](#)

Meeting ID: 841 9803 3553

Passcode: 494792

Dial in: (669) 900 9128 U.S.

### SPECIAL NOTICE – COVID-19 RELATED PROCEDURES IN EFFECT

Due to the State and local recommendations for social distancing resulting from the threat of Novel Coronavirus (COVID-19), this meeting is being held via Zoom under Assembly Bill (AB) 361 (Government Code Section 54953). Pursuant to AB 361, WCE does not need to make a physical location available for members of the public to observe a public meeting and offer public comment. AB 361 allows WCE to hold Board meetings via teleconferencing or other electronic means and allows for members of the public to observe and address the Board telephonically or electronically.

In addition to commenting at the Board meeting, members of the public may also submit written comments before or during the meeting, prior to the close of public comment to [jleonard@wrcog.us](mailto:jleonard@wrcog.us).

Any member of the public requiring a reasonable accommodation to participate in this meeting in light of this announcement shall contact Suzy Nelson 72 hours prior to the meeting at (951) 405-6703 or [jleonard@wrcog.us](mailto:jleonard@wrcog.us). Later requests will be accommodated to the extent feasible.

The Board of Directors may take any action on any item listed on the agenda, regardless of the Requested Action.

1. CALL TO ORDER (Ted Hoffman, Chair)
2. PLEDGE OF ALLEGIANCE

### 3. ROLL CALL

### 4. PUBLIC COMMENT

At this time members of the public can address the Board of Directors regarding any items within the subject matter jurisdiction of the Board of Directors 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 Board of Directors in writing and only pertinent points presented orally.

### 5. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - Existing Litigation pursuant to Government Code Section 54956.9(d)(1):

- Case numbers: 6:21-12821, 6:21-12821-SY (U.S. Bankruptcy Court, Central Division)

CONFERENCE WITH LEGAL COUNSEL - Anticipated Litigation. Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2):

- Unknown number of potential cases

### 6. 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 Board of Directors, any public comments on any of the Consent Items will be heard. There will be no separate action unless members of the Board of Directors request specific items be removed from the Consent Calendar.

#### A. Assembly Bill 361 Findings

**Requested Action(s):**

1. Affirm the findings of the Western Community Energy Board of Directors in Resolution Number 2022-03, adopted on April 13, 2022, which are:
  - a. The Governor proclaimed a State of Emergency on March 4, 2020, related to the COVID-19 pandemic, which State of Emergency continues to exist today; and
  - b. State or local officials have recommended measures to promote social distancing.

#### B. Summary Minutes from the September 14, 2022, Joint Meeting of the WCE Board of Directors and Technical Advisory Committee

**Requested Action(s):**

1. Approve the Summary Minutes from the September 14, 2022, Joint Meeting of the WCE Board of Directors and Technical Advisory Committee.

### 7. REPORTS / DISCUSSION

Members of the public will have an opportunity to speak on agenda items at the time the item is called for discussion.

#### A. Western Community Energy Joint Board of Directors and Technical Advisory Committee Meeting Schedule for 2023

**Requested Action(s):**

1. Approve the proposed meeting schedule of the Board of Directors and Technical Advisory Committee for 2023.

**B. Termination of WCE Management Services Agreement**

**Requested Action(s):**

1. Direct the WCE Executive Director to take all necessary steps to terminate the Management Services Agreement between WCE and WRCOG on behalf of WCE.

**8. REPORT FROM THE EXECUTIVE DIRECTOR**

Dr. Kurt Wilson

**9. ITEMS FOR FUTURE AGENDAS ~ Members**

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

**10. GENERAL ANNOUNCEMENTS ~ Members**

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

**11. NEXT MEETING**

The next Joint Meeting of the Board of Directors and Technical Advisory Committee is scheduled for Wednesday, November 9, 2022, at 1:15 p.m., on the Zoom platform with the option for Board members to attend in person.

**12. ADJOURNMENT**



# Western Community Energy WCE Joint Board of Directors and Technical Advisory Committee

## Staff Report

**Subject:** Assembly Bill 361 Findings  
**Contact:** Dr. Kurt Wilson, Executive Director, [kwilson@wrcog.us](mailto:kwilson@wrcog.us), (951) 405-6701  
**Date:** October 12, 2022

### **Requested Action(s):**

1. Affirm the findings of the Western Community Energy Board of Directors in Resolution Number 2022-03, adopted on April 13, 2022, which are:
  - a. The Governor proclaimed a State of Emergency on March 4, 2020, related to the COVID-19 pandemic, which State of Emergency continues to exist today; and
  - b. State or local officials have recommended measures to promote social distancing.

### **Purpose:**

The purpose of this item is to authorize virtual Committee meetings pursuant to Assembly Bill (AB) 361.

### **Background:**

*Since the onset of the COVID-19 in early 2020, California government agencies have been able to continue to discharge their legal responsibilities through the use of virtual teleconferencing platforms such as Zoom to hold public meetings that enabled agencies to meet and conduct business, comply with social distancing orders, and most importantly, provide access to the public. WCE has been meeting on Zoom since March of 2020, when many Executive Orders were issued by Governor Newsom in response to the pandemic. One such order altered Brown Act requirements to allow for virtual meetings.*

Although transmission, hospitalization, and death rates from COVID-19 have sharply declined since the original onset of the pandemic and subsequent Delta and Omicron Variant surges, an air of uncertainty remains regarding the pandemic and many counties continue to recommend masking inside and social distancing. Given that environment and a desire to continue allowing for the flexibility of holding virtual meetings, the Legislature recently approved, and Governor Newsom signed, AB 361 to temporarily allow for virtual meetings under proscribed circumstances.

AB 361 amends the Brown Act to allow local legislative bodies to continue using teleconferencing and virtual meeting technology in certain circumstances. Under the Bill, legislative bodies can continue to meet remotely as long as there is a "proclaimed state of emergency" and the Board of Directors can make either of the following findings: (a) state or local officials have imposed or recommended measures to promote social distancing, or (b) whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. Even though cases have dropped, AB 361 is

expressly intended "to protect the health and safety of civil servants and the public and does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location" because of physical status.

The Governor proclaimed a State of Emergency on March 4, 2020, related to the COVID-19 pandemic, which continues to exist to this day.

AB 361 requires specific procedural safeguards for the public. To accommodate individuals during these teleconferences and virtual meetings, a public comment period will be offered where the public can address the legislative body directly in real time. Additionally, public comments will be allowed up until the public comment period is closed at the meetings. The agenda will include information on the manner in which the public may access the meeting and provide comments remotely. If technical problems arise that result in the public's access being disrupted, the legislative body will not take any vote or other official action until the technical disruption is corrected and public access is restored.

The attached Resolution allows the Board of Directors to implement AB 361 by making the findings discussed above. These findings will be in effect for 30 days or until the Board of Directors makes findings that the conditions listed therein no longer exist, whichever is shorter. The findings can be extended by the Board of Directors upon a finding that conditions supporting the findings included in the Resolution still exist. The authorization to meet remotely will also apply to any Committees that meet during the 30-day effective period.

AB 361 will allow for virtual meetings during other state-proclaimed emergencies, such as earthquakes or wildfires, where physical attendance may present a risk. AB 361 is scheduled to sunset January 1, 2024.

**Prior Action(s):**

**September 14, 2022, July 13, 2022, June 8, 2022, May 11, 2022:** The Board of Directors affirmed the findings of the Western Community Energy Board of Directors in Resolution Number 2022-03, adopted on April 13, 2022, which are: a. The Governor proclaimed a State of Emergency on March 4, 2020, related to the COVID-19 pandemic, which State of Emergency continues to exist today; and b. State or local officials have recommended measures to promote social distancing.

**April 13, 2022:** The Board of Directors adopted Resolution Number 2022-03; A Resolution of the Board of Directors of Western Community Energy Authorizing Virtual Committee Meetings Pursuant to AB 361.

**Fiscal Impact:**

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

**Attachment(s):**

[Attachment 1 - Resolution Number 2022-03 AB 361 findings](#)


**RESOLUTION NO. 2022-03**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF WESTERN COMMUNITY ENERGY  
AUTHORIZING VIRTUAL COMMITTEE MEETINGS PURSUANT TO AB 361**

**WHEREAS**, the Western Community Energy (“WCE”) is committed to preserving and nurturing public access and participation in meetings of the Board of Directors and Technical Advisory Committee; and

**WHEREAS**, all meetings of WCE’s legislative bodies, including its Board of Directors and Technical Advisory Committee, are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend and participate in WCE’s meetings; and

**WHEREAS**, starting in March 2020, in response to the spread of COVID-19 in the State of California, the Governor issued a number of executive orders aimed at containing the COVID-19 virus; and

**WHEREAS**, among other things, these orders waived certain requirements of the Brown Act to allow legislative bodies to meet virtually; and

**WHEREAS**, pursuant to the Governor’s executive orders, WCE has been holding virtual meetings during the pandemic in the interest of protecting the health and safety of the public, WCE staff, and WCE’s Board of Directors and Technical Advisory Committee members; and

**WHEREAS**, the Governor’s executive order related to the suspension of certain provisions of the Brown Act expired on September 30, 2021; and

**WHEREAS**, on September 16, 2021, the Governor signed AB 361 (in effect as of October 1, 2021 – Government Code Section 54953(e)), which allows legislative bodies to meet virtually provided there is a state of emergency, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees; and

**WHEREAS**, such conditions now exist in WCE, specifically, a state of emergency has been proclaimed related to COVID-19 and state or local officials are recommending measures to promote social distancing.

**NOW, THEREFORE, THE WESTERN COMMUNITY ENERGY BOARD OF DIRECTORS DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:**

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Findings. Consistent with the provisions of Government Code Section 54953(e), the Board of Directors finds and determines that (1) a state of emergency related to COVID-19 is currently in effect and (2) state or local officials have recommended measures to promote social distancing in connection with COVID-19.

Section 3. Remote Teleconference Meetings. Based on the findings and determinations included herein, the Board of Directors authorizes and directs any of its legislative bodies, including, without limitation, its Board of Directors and Technical Advisory Committee, to conduct remote teleconference meetings under the provisions of Government Code Section 54953(e) and that such bodies shall provide public access to their meetings as provided in Section 54953(e).

Section 4. Effective Date of Resolution. This Resolution shall take effect upon adoption and shall be effective for 30 days unless extended by a majority vote of the Board of Directors in accordance with Section 5 of this Resolution.

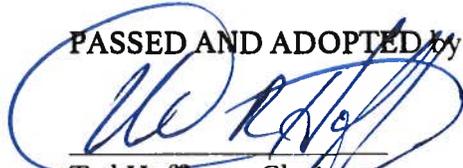
Section 5. Extension by Motion; Supersede. The Board of Directors may extend the application of this Resolution by motion and majority vote by up to 30 days at a time, provided that it makes all necessary findings consistent with and pursuant to the requirements of Section 54953(e)(3). Any such extension may be made before or after the expiration of the preceding 30-day period. This Resolution supersedes Resolution Number 2021-16.

Section 6. Full and Fair Access. In making the findings included herein, the Board of Directors specifically relies on Section 8(b) of Statutes 2021, c.165 (AB 361, § 3, effective September 16, 2021) which provides as follows:

- (b) The Legislature finds and declares that [the changes made by AB 361 to] Section 54953 of the Government Code, all increase and potentially limit the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:
  - (1) By removing the requirement that public meetings be conducted at a primary physical location with a quorum of members present, this act protects the health and safety of civil servants and the public and does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location.

- (2) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

**PASSED AND ADOPTED** by the Board of Directors on April 13, 2022:

  
 Ted Hoffman, Chairperson  
 Western Community Energy

  
 Dr. Kurt Wilson, Secretary  
 Western Community Energy

Approved as to form:

  
 Steven DeBaun  
 Western Community Energy Legal Counsel

AYES: 6      NAYS: 0      ABSENT: 1      ABSTAIN: 0

# WCE Board of Directors

## Minutes

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### 1. CALL TO ORDER

The Joint Meeting of the WCE Board of Directors and Technical Advisory Committee was called to order by Chair Ted Hoffman at 1:21 p.m., on September 14, 2022, on the Zoom platform.

### 2. PLEDGE OF ALLEGIANCE

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

### 3. ROLL CALL

#### Board of Directors:

- City of Eastvale - Todd Rigby
- City of Hemet - Russ Brown
- City of Jurupa Valley - Chris Barajas
- City of Norco - Ted Hoffman (Chair)
- City of Perris - Rita Rogers
- City of Wildomar - Ben Benoit

#### Technical Advisory Committee Members:

- City of Eastvale - Marc Donohue
- City of Perris - Clara Miramontes

### 4. PUBLIC COMMENTS

There were no public comments.

**5. CONSENT CALENDAR** – (Eastvale / Wildomar) 6 yes; 0 no; 0 abstention. Items 5.A and 5.B were approved. Item 5.A was pulled for discussion by Director Todd Rigby.

#### A. Assembly Bill 361 Findings

Director Rigby asked if this Board was okay to continue holding meetings remotely.

Glen Price, WCE legal counsel, indicated that WCE is in compliance with its AB 361 findings.

Chair Hoffman asked staff to agendize this matter for discussion at the next meeting.

#### **Action:**

1. Affirmed the findings of the Western Community Energy Board of Directors in Resolution Number

2022-03, adopted on April 13, 2022, which are:

- a. The Governor proclaimed a State of Emergency on March 4, 2020, related to the COVID-19 pandemic, which State of Emergency continues to exist today; and
- b. State or local officials have recommended measures to promote social distancing.

## **B. Summary Minutes from the July 13, 2022, Joint Meeting of the WCE Board of Directors and Technical Advisory Committee**

### **Action:**

1. Approved the Summary Minutes from the July 13, 2022, Joint Meeting of the WCE Board of Directors and Technical Advisory Committee.

## **6. REPORTS / DISCUSSION**

There were no reports for discussion.

## **7. REPORT FROM THE EXECUTIVE DIRECTOR**

Chris Gray, WRCOG Deputy Executive Director, reported that at the next meeting, staff will present a 2023 meeting schedule for approval.

## **8. ITEMS FOR FUTURE AGENDAS**

Director Ben Benoit asked about sharing the status of the Agency to members of the public.

Mr. Gray responded that staff can prepare a written summary for sharing with members of the public.

## **9. GENERAL ANNOUNCEMENTS**

Director Russ Brown announced that he is not running for re-election so his last meeting with this Board will be in December.

Chair Hoffman announced that the City of Norco has a new City Manager, Lori Sassoon.

## **10. NEXT MEETING**

The next Joint Meeting of the WCE Board of Directors and Technical Advisory Committee is scheduled for Wednesday, October 12, 2022, at 1:15 p.m., on the Zoom platform with the option for Board members to attend in-person at the WRCOG office.

## **11. CLOSED SESSION**

CONFERENCE WITH LEGAL COUNSEL - Existing Litigation pursuant to Government Code Section 54956.9(d)(1):

- Case Numbers: 6:21-12821, 6:21-12821-SY (U.S. Bankruptcy Court, Central Division)

There were no reportable actions.

## **12. ADJOURNMENT**

The Joint Meeting of the WCE Board of Directors and Technical Advisory Committee adjourned at 2:14 p.m.



# Western Community Energy WCE Joint Board of Directors and Technical Advisory Committee

## Staff Report

**Subject:** Western Community Energy Joint Board of Directors and Technical Advisory Committee Meeting Schedule for 2023

**Contact:** Chris Gray, Deputy Executive Director, [cgray@wrcog.us](mailto:cgray@wrcog.us), (951) 405-6710

**Date:** October 12, 2022

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**Requested Action(s):**

1. Approve the proposed meeting schedule of the Board of Directors and Technical Advisory Committee for 2023.
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**Purpose:**

The purpose of this item is to present a meeting schedule for the WCE Board of Directors and TAC for 2023.

**Background:**

As WCE winds down operations, it is likely that there will be a limited need for regular meetings. Therefore, a quarterly meeting schedule is proposed for the Board of Directors and Technical Advisory Committee (TAC). As such, staff is proposing that the meeting format be in-person with the option for the Directors and TAC members to participate in meetings remotely, as needed.

**Prior Action(s):**

None.

**Fiscal Impact:**

Expenses associated with the administration of WCE including meetings and staff time to prepare for these meetings are paid by funds held by WCE.

**Attachment(s):**

[Attachment 1 - WCE Meeting Schedule 2023](#)



## WESTERN COMMUNITY ENERGY SCHEDULE OF MEETINGS FOR 2023

Meeting	Day	Time	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
WCE Board of Directors & Technical Advisory Committee	2nd Wed.	1:30 p.m.	-	-	9	-	-	8	-	-	14	-	-	14



# Western Community Energy WCE Joint Board of Directors and Technical Advisory Committee

## Staff Report

**Subject:** Termination of WCE Management Services Agreement  
**Contact:** Chris Gray, Deputy Executive Director, [cgray@wrcog.us](mailto:cgray@wrcog.us), (951) 405-6710  
**Date:** October 12, 2022

**Requested Action(s):**

1. Direct the WCE Executive Director to take all necessary steps to terminate the Management Services Agreement between WCE and WRCOG on behalf of WCE.

**Purpose:**

The purpose of this item is to provide direction to WCE staff to terminate the Management Services Agreement between WCE and WRCOG.

**Background:**

*Since its inception, WRCOG has provided services to WCE through a Management Services Agreement. Given the termination of the CCA Program and the conclusion of the Bankruptcy Process, one administration step which should be considered is termination of the Management Services Agreement. This agreement, which was first implemented in 2018, allows WRCOG to provide staff and administrative support to WCE without the need for WCE to have dedicated staff.*

**Termination of Agreement**

The Agreement contains the following language regarding termination:

TERM; TERMINATION. This Agreement shall be effective for a three-year term as of the effective date of the certain document entitled Western Community Energy Joint Powers Agreement, dated August 23, 2018, and only upon execution by both WCE and WRCOG. Once effective, this Agreement shall continue thereafter for successive three-year terms without further action by the WCE Board or WRCOG. This Agreement may be terminated at any time by either party giving the other party 6 months prior written notice. This Agreement shall be subject to an initial review of the WCE Board of Directors in or about September, 2019.

Staff is requesting authorization for WCE to provide a Notice of Termination, which would initiate the termination process. After the six months, the agreement would be automatically terminated.

**Prior Action(s):**

None.

**Fiscal Impact:**

The Management Services Agreement allows WCE to reimburse WRCOG for staffing, administrative, and other expenses related to WCE's operations. The approved WCE Plan of Adjustment provides for \$200,000 for post-petition expenses incurred by WCE. Upon termination of the Management Services Agreement, WRCOG will cease providing services to WCE.

**Attachment(s):**

[Attachment 1 - Implementation and Management Services Agreement between WRCOG and WCE](#)

IMPLEMENTATION AND MANAGEMENT SERVICES AGREEMENT  
BETWEEN THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS  
AND WESTERN COMMUNITY ENERGY

This Management Services Agreement (“**Agreement**”) is made and entered into as of 23rd day of August, 2018, by and between the Western Riverside Council of Governments (“**WRCOG**”) and the Western Community Energy (“**WCE**”) and shall become effective upon the terms set forth herein. WRCOG and WCE are sometimes referred to in this Agreement individually as a “**Party**,” or collectively as “**Parties**.”

RECITALS

A. WHEREAS, WRCOG is a public agency formed by a Joint Powers Agreement (“**WRCOG JPA**”) made and entered into on the 1st day of April, 1991, pursuant to Government Code section 6500 *et seq.* and other pertinent provisions of law, by and between numerous cities located within Western Riverside County and the County of Riverside; and

B. WHEREAS, the purpose of the formation of WRCOG is, among other things, to provide an agency to conduct studies and projects designed to improve and coordinate the common governmental responsibilities and services on an area-wide and regional basis through the establishment of an association of governments; and

C. WHEREAS, WRCOG now consists of the following member agencies: County of Riverside, City of Banning, City of Beaumont, City of Calimesa, City of Canyon Lake, City of Corona, City of Eastvale, City of Hemet, City of Jurupa Valley, City of Lake Elsinore, City of Menifee, City of Moreno Valley, City of Murrieta, City of Norco, City of Perris, City of Riverside, City of San Jacinto, City of Temecula, and City of Wildomar, and the following participating agencies: Eastern Municipal Water District, Western Municipal Water District, Morongo Band of Mission Indians, and Riverside County Superintendent of Schools; and

D. WHEREAS, under the WRCOG JPA, the functions of WRCOG include, among other things:

- i. Serving as a forum for consideration, study and recommendations on area-wide and regional problems; and
- ii. Assembling information helpful in the consideration of problems peculiar to Western Riverside County; and
- iii. Exploring practical avenues for intergovernmental cooperation, coordination and action in the interest of local public welfare and means of improvements in the administration of governmental services.

E. WHEREAS, WRCOG has the power to make and enter into contracts under Section 1.2.2 of the WRCOG JPA and Implementation Agreements pursuant to Article VIII of the WRCOG JPA; and

F. WHEREAS, as the Western Community Energy (“WCE”) is a public agency formed by a Joint Powers Agreement (“**WCE JPA**”) made and entered into on the 23rd day of August, 2018, pursuant to Government Code section 6500 *et seq.* and other pertinent provisions of law, by and between the County of Riverside and numerous cities located within Western Riverside County; and

G. WHEREAS, the purpose of the formation of WCE is to establish an independent public agency in order to exercise powers common to each Member Agency to study, promote, develop, conduct, operate, and manage, energy, energy efficiency and conservation, and other energy-related and climate change programs related to a Community Choice Aggregation (“CCA”) program (“**CCA Program**”),” and to exercise all other powers necessary and incidental to accomplishing this purpose; and

H. WHEREAS, Section 3.3 of the WCE JPA sets forth numerous powers of WCE in carrying out its purposes, including the power to make and enter into contracts and to employ agents, consultants, attorneys and employees. Section 2.12 of the WCE JPA authorizes WCE, through its Board of Directors (“**Board**”), to appoint an Executive Director (“**Executive Director**”) and an attorney. Under Section 2.13, the WCE Board may also contract with its

member agencies for the provision of administrative services on mutually agreeable terms and conditions; and

I. WHEREAS, Section 2.12 of the WCE JPA sets forth certain powers and duties of such Executive Director or other employees of WCE to whom the Board delegates authority; and

J. WHEREAS, as the WCE now desires to contract with WRCOG to provide executive director services and such other administrative services and consultants as required to assist WCE in its obligations to implement the CCA Program to ensure a regional perspective.

### **AGREEMENT**

NOW, THEREFORE, the Parties agree as follows:

1. APPOINTMENT. WCE hereby retains WRCOG, acting through its Executive Director and/or his or her designees, to serve as the WCE Executive Director and administer this Agreement on its behalf. Further, WCE retains WRCOG to provide such other administrative services as are necessary through WRCOG's staff and/or consultants to fulfill the needs and requirements of WCE, and WRCOG agrees to provide such services as may be required by WCE, all upon the terms set forth below.

2. DUTIES OF WRCOG. WRCOG shall administer, coordinate, and supervise the activities of WCE as set forth in the WCE JPA, and shall act for WCE in accomplishing its purposes set forth in Section 1.4 of the WCE JPA. WRCOG, acting through such WRCOG personnel, attorneys and consultants as WRCOG shall from time to time contract with and/or appoint, is authorized to exercise all of those powers and responsibilities of the WCE enumerated in Sections 1.5 and 2.14 of the WCE JPA and of the WCE Executive Director enumerated in Section 2.12 of the WCE JPA. Any WRCOG employees appointed by WRCOG to serve under this Agreement shall be under the exclusive direction of WRCOG.

3. OTHER PERSONNEL SERVICES. WRCOG may retain, contract with and appoint additional staff, which shall serve under the exclusive direction of WRCOG, as may

from time to time be necessary or convenient to fulfill WRCOG's obligations as the WCE Executive Director. Such additional staff may be retained as WRCOG employees or contractors.

4. TERM; TERMINATION. This Agreement shall be effective for a three-year term as of the effective date of the certain document entitled Western Community Energy Joint Powers Agreement, dated August 23, 2018, and only upon execution by both WCE and WRCOG. Once effective, this Agreement shall continue thereafter for successive three-year terms without further action by the WCE Board or WRCOG. This Agreement may be terminated at any time by either party giving the other party 6 months prior written notice. This Agreement shall be subject to an initial review of the WCE Board of Directors in or about September, 2019.

5. COMPENSATION AND REPAYMENT OF CREATION COSTS.

A. In consideration of WRCOG's performance of the services as set forth herein, including consultant and staff time fees and costs incurred by WRCOG which are attributable to this Agreement, WCE shall pay to WRCOG the sums specified in Exhibit A attached hereto. Such sums shall be paid at the times and in the manner specified in Exhibit A, except that WCE may hold any payments due under this Section 5 in abeyance until 90 days after WCE begins to serve electrical load, which is currently anticipated to be on or about January 1, 2020 (the "Start-Up Date"). Notwithstanding the above, any amounts due under this Section 5.A for services attributable to a WCE Member Agency which withdraws from WCE prior to the Start-Up Date shall be borne solely by WRCOG.

B. In addition to costs incurred pursuant to Section 5.A, following the Start-Up Date, WCE shall commence repaying WRCOG for costs incurred by WRCOG prior to the formation of WCE to evaluate the feasibility of WCE and facilitate the creation of WCE. The reimbursement shall occur in accordance with a schedule agreed to between WCE and WRCOG which shall result in full reimbursement to WRCOG in no later than 18 months after the Start-Up Date.

6. INDEMNIFICATION AND INSURANCE.

A. WCE shall defend, indemnify and hold the WRCOG, its officials,

officers, consultants, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or in connection with this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses, except for losses ultimately determined to be the result of the sole negligence or willful misconduct of WRCOG. WCE shall defend, at WCE's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against WRCOG, its directors, officials, officers, consultants, employees, agents or volunteers in any manner arising out of or in connection with this Agreement. WCE and WRCOG shall reasonably cooperate in all aspects involving any defense made pursuant to this section. WCE shall pay and satisfy any judgment, award or decree that may be rendered against WRCOG or its directors, officials, officers, consultants, employees, agents or volunteers, in any such suit, action or other legal proceeding in any manner arising out of or in connection with this Agreement. WCE shall reimburse WRCOG and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. WCE's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the WRCOG, its directors, officials, officers, consultants, employees, agents or volunteers. This section shall survive any expiration or termination of this Agreement.

B. During the term of the Agreement, WCE shall maintain Commercial General Liability Insurance with limits not less than \$2,000,000 per occurrence. The policies shall be endorsed to state that WRCOG, its directors, officials, officers and employees shall be covered as additional insured under such policy and that such policy shall be primary to any policies held by WRCOG.

7. ADMINISTRATION. The WCE Board, or designee, shall administer this Agreement on behalf of WCE. The WRCOG Executive Committee shall administer this

Agreement on behalf of the WRCOG.

8. COMMON INTEREST. To further their common interests in the CCA Program, the Parties and their respective counsel have shared, and desire to continue to share, orally, in writing, and by other means, information concerning the CCA Program and other material that is subject to the attorney-client privilege, the attorney work product doctrine, and other related or applicable privileges and protections (collectively, “**Common Interest Materials**”) without in any way waiving any applicable privilege, protection, or immunity, or diminishing the confidentiality of the Common Interest Materials. With these goals in mind, the Parties agree as follows:

A. Exchange of Information. In consideration of their common interests, the Parties agree that any exchanges among the Parties, their counsel, consultants and/or experts acting on their behalf (collectively, “**Party Affiliates**”) of Common Interest Materials does not waive any privilege, protection, or confidentiality applicable to such materials. The Parties intend that all privileges, protections, and confidentiality applicable to Common Interest Materials shared amongst the Parties and/or Party Affiliates under this Agreement will apply to the same extent as if the Common Interest Materials had not been shared. Without limiting the foregoing, this Agreement and any drafts thereof are Common Interest Materials.

B. Confidentiality. Each Party will keep all Common Interest Materials in strict confidence, and will use such materials only as permitted under this Agreement or as otherwise permitted by the disclosing Party. No Party may disclose Common Interest Materials to any third party for any purpose, except as otherwise permitted by the disclosing Party. For the avoidance of doubt, this Agreement does not restrict a Party from disclosing Common Interest Materials to its own counsel. Nothing in this Agreement obligates any Party to disclose to another Party any privileged or confidential information.

C. Injunctive Relief. The Parties agree that the disclosure of any Common Interest Materials in violation of this Agreement may cause irreparable harm for which

there is no adequate remedy at law. Each Party agrees that immediate injunctive relief is an appropriate and necessary remedy for violation of this Agreement.

D. Relationship. Nothing in this Agreement creates either: (a) a fiduciary duty among the Parties or with any third party or (b) an attorney-client relationship between any attorney and any Party that is not represented by that attorney as its counsel.

9. ASSIGNMENT. This Agreement shall not be assigned by either party, in whole or in part, without the prior written consent of the other party.

10. NOTICE. A party giving notice as required in this Agreement shall provide for personal delivery of such notice or shall send such notice by United States mail, postage prepaid, to the agent and address of the other party as set forth below:

If to WCE:	Attn: Executive Director 3390 University Ave Suite 450 Riverside, CA 92501 United States Phone: (951) 405-6700 Fax: (951) 223-9720
If to the WRCOG:	Attn: Executive Director 3390 University Ave Suite 450 Riverside, CA 92501 United States Phone: (951) 405-6700 Fax: (951) (951) 223-9720

11. AMENDMENT; ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties with respect to personnel provided by WRCOG to WCE. Any amendment or modification of the provisions of this Agreement must be in writing and signed by each of the parties hereto.

12. WAIVER. Any waiver by either party of a breach of any of the terms of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other term of this Agreement.

13. SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

14. GOVERNING LAW AND VENUE. This Agreement and its construction and interpretation as to validity, performance and breach shall be construed under the laws of the State of California applicable to agreements both entered into and to be performed in California.

The provisions of the Government Claims Act (Government Code section 900 et seq.) shall be applicable for any disputes under this Agreement.

Venue shall be within the County of Riverside for any legal or equitable action to enforce the terms of this Agreement, to declare the rights of the parties under this Agreement, or for any action which relates to this Agreement in any manner.

15. APPROVAL / COUNTERPARTS. This Agreement must be approved by the WCE Board of Directors and WRCOG. Each party has had the opportunity to participate in drafting and preparation of this Agreement. Any construction to be made in the Agreement of any of its terms or provisions shall not be construed against any one party.

This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same Agreement.

16. STATUS OF WRCOG EMPLOYEES. When appropriate, WRCOG shall assign any of its employees to perform the obligations set forth in this Agreement (“WRCOG Employees”) as part of their regular duties for WRCOG. The Parties acknowledge and agree that at all times WRCOG Employees shall remain under the exclusive control of the WRCOG Executive Committee or a supervisor that reports directly to a management employee subject to

the exclusive control of the WRCOG Executive Committee. The WCE shall not have any right to control the manner or means in which WRCOG Employees perform services under this Agreement. Any concerns regarding performance shall be addressed to WRCOG. To this end, WRCOG shall have the sole and exclusive authority to do the following:

(a) Make decisions regarding the hiring, retention, discipline or termination of WRCOG Employees.

(b) Determine the wages to be paid to WRCOG Employees, including any pay increases. These amounts shall be determined in accordance with published publicly available pay schedule and shall be subject to changes thereto approved by the WRCOG Executive Committee.

(c) Set the benefits of WRCOG Employees, including health and welfare benefits, retirement benefits, and leave accruals in accordance with WRCOG policies.

(d) Evaluate the performance of WRCOG Employees through performance evaluations performed by a management level employee that reports directly to the WRCOG Executive Committee or otherwise provided in the personnel rules adopted by WRCOG.

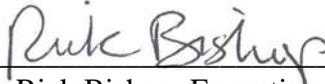
(e) Perform all other functions related to the service, compensation, or benefits of the WRCOG Employees assigned to perform services under this Agreement.

17. CERTIFICATION TO EXECUTE THIS AGREEMENT. WRCOG and WCE certify that the individuals signing below on behalf of the party has authority to execute this Agreement on behalf of the party, and may legally bind the party to the terms and conditions of this Agreement, and any attachments hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date or dates indicated below.

WESTERN RIVERSIDE COUNCIL OF  
GOVERNMENTS

WESTERN COMMUNITY ENERGY

BY:   
NAME: Rick Bishop, Executive Director

BY:   
NAME: Ben Benoit, Chairperson

## EXHIBIT A

Compensation shall be paid to WRCOG by the WCE for the services provided under this agreement. These include:

1. The cost of the WRCOG Executive Director and other WRCOG staff while performing the services under this Agreement. Those costs shall include the recapture of overhead costs in the amount of the then current Indirect Cost Allocation Plan (“ICAP”), which will be updated annually.

2. The reimbursement of non-employee / consultant fees and costs incurred by WRCOG while performing the services hereunder, which may include, but not be limited to, supplies, legal services, consultant services, equipment, Board member stipends and Board member and staff expense reimbursements. The reimbursement of these costs will be provided at the same rate charged to WRCOG unless otherwise approved in writing by the Parties.

WRCOG shall periodically, but no more frequently than monthly nor less frequently than quarterly, provide an invoice to WCE itemizing charges for the billing period. WCE shall provide prompt payment to WRCOG by means of Journal Vouchers transferring funds from WCE to WRCOG.