

Transportation Uniform Mitigation Fee

ADMINISTRATIVE PLAN

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PREPARED BY THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
RIVERSIDE COUNTY ADMINISTRATIVE CENTER ANNEX
4080 LEMON STREET, 3RD FLOOR, MS 1032
RIVERSIDE, CALIFORNIA, 92501-3609
PHONE (951) 955-7985
FAX (951) 787-7991

Western Riverside Council of Governments (WRCOG)

Administrative Plan for the

*Western Riverside County Transportation Uniform Mitigation Fee
(TUMF) Program*

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Administrative Plan for the

Western Riverside County Transportation Uniform Mitigation Fee (TUMF) Program

Preamble

Future development within Western Riverside County will result in traffic volumes exceeding the capacity of the Regional System of Highways and Arterials (RSHA or Regional System) as it presently exists. The Regional System needs to be expanded to accommodate anticipated future growth; current funds are inadequate to construct the Regional System needed to avoid the unacceptable levels of traffic congestion and related adverse impacts.

The TUMF Program will provide significant additional funds from new development to make improvements to the Regional System, complementing funds generated by Measure A and the Reauthorized Measure A, local transportation fee programs, and other potential funding sources. By establishing a fee on new development in the sub-region, local agencies can establish a mechanism by which developers will effectively contribute their "fair share" toward sustaining the regional transportation system. This is a twenty-year program and will be influenced by a variety of market factors that could cause a shortfall or surplus in the revenue projections. The TUMF Program shall be reviewed at fewer than five-year intervals to ensure the integrity of the program with the first review occurring in June of 2005. The program is not designed to be the only source of revenue to construct the identified facilities, and it will be necessary for matching funds from a variety of available sources to be provided.

It is the intent that TUMF requirements may be met by paying cash, building eligible facilities or through public financing, such as Community Facility Districts and Assessment Districts, or private financing vehicles consistent with local jurisdiction policies.

General TUMF Program parameters, definitions and procedures are described in the TUMF Program Ordinance adopted by participating Western Riverside County jurisdictions. The Western Riverside Council of Governments (WRCOG) is designated as the TUMF Program Administrator, and as such will work closely with member jurisdictions, the Riverside County Transportation Commission, and the Riverside Transit Agency to coordinate transportation expenditure programs to maximize the effectiveness of future transportation investments. The Program Administrator, WRCOG, agrees to indemnify, defend and hold harmless any TUMF Program participant, and its respective agents, officers, members, officials, employees, and attorneys, whose TUMF Ordinance is challenged in court, from and against all claims, liabilities, damages, or costs of any kind whatsoever, including attorneys' fees and court costs; provided, however, that such indemnity and defense shall not extend or apply to challenges alleging procedural defects in the adoption of the TUMF Ordinance.

"TUMF Administrative Plan" means the Administrative Plan for the Western Riverside County TUMF Program prepared by WRCOG dated March 24, 2003, in substantially the form approved by the WRCOG Executive Committee on April 7, 2003, as may be amended from time to time, provided that, any material amendments to the TUMF Administrative Plan shall be approved by WRCOG Executive Committee."

This Administrative Plan serves as the guideline to implement the TUMF Program and will be amended as needed to address changing conditions over the life of the program.

- I. **Purpose** - The Purpose of this Administrative Plan is to provide those jurisdictions and agencies that are participants in TUMF Program with guidelines and policies for implementation of the TUMF Program. This Administrative Plan specifies implementation and responsibilities for the TUMF Program.

TUMF Program funds may only be used for capital expenditures associated with the Regional System of Highways and Arterials and for capital expenditures for transit system improvements consistent with the TUMF Nexus Study. These purposes include expenditures for the planning, environmental review, engineering and design costs, right of way acquisition, and administrative costs.

- II. **Authority** - The TUMF Program applies to those jurisdictions in Western Riverside County (County of Riverside and the Cities of Banning, Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, Temecula, Wildomar and the March JPA) that have adopted and are implementing the TUMF Program Ordinance. The TUMF Program has been developed pursuant to and consistent with authority provided in the requirements of California Government Code Chapter 5 Section 66000-66008 Fees for Development Projects (also known as California Assembly Bill 1600 (AB 1600 or the Mitigation Fee Act) which governs the assessment of development impact fees in California. The Mitigation Fee Act requires that all local agencies in California, including cities, counties, and special districts follow two basic rules when instituting impact fees as follows:

- A. Establish a nexus or reasonable relationship between the development impact fee's use and the type of project for which the fee is required;
- B. The fee must not exceed the project's proportional "fair share" of the proposed improvement and cannot be used to correct current problems or to make improvements for existing development.

- III. **Imposition of and Participation in the TUMF Program** - Participating jurisdictions in Western Riverside County are responsible for collecting the fees on new development within their jurisdictions. To be considered a participant in the TUMF Program a jurisdiction must have an effective date for the TUMF Ordinance of no later than June 1, 2003 and adopt any amendment of the TUMF Ordinance within ninety (90) days of approval by the WRCOG Executive Committee unless otherwise directed by the WRCOG Executive Committee. The local jurisdictions must adopt the Model TUMF Ordinance and any amendments as prepared by WRCOG staff and approved by the WRCOG Executive Committee. Participating jurisdictions shall not modify the Model TUMF Ordinance, except to meet local municipal codes and references. Further, in order to be considered a participating jurisdiction, local jurisdictions shall collect the full TUMF and transmit the fee to WRCOG as provided herein.

Those jurisdictions that have ordinances with an effective date after June 1, 2003 or opt out of the TUMF Program and decide to participate at a later date must remit to WRCOG the amount of TUMF Program fees for new development that were not collected by the jurisdiction. In order to verify the amount of revenue that would have been collected during the period in which a jurisdiction did not participate, said jurisdiction shall provide WRCOG with an annual report of building permit activity by the land uses identified in the Nexus Study. The remittance of the fee can be accomplished either in a lump sum or through a separate MOU with WRCOG with a repayment schedule. Those jurisdictions that are not considered participants in the TUMF Program

shall not be eligible to participate in the TUMF Program or the decision-making processes as more fully described in this document.

Non-participating jurisdictions will be ineligible to vote on any TUMF Program item and to receive their share of an estimated \$970 million in local streets and roads funds that will be allocated from the Reauthorized Measure A.

- A. Expiration Of Building Permits** - If a building permit should expire, is revoked, or is voluntarily surrendered and is, therefore voided and no construction or improvement of land or construction has commenced, then the applicant is entitled to a refund of the TUMF (Fee) collected which was paid as a condition of approval, less administration. The fee payer shall submit an application for a refund to the local jurisdiction who will forward it to WRCOG for processing.

The applicant must pay the appropriate TUMF in full if he reapplies for the permit.

If a development project is partially under construction at the time of the effective date of the TUMF Ordinance, the TUMF shall be paid only on that portion of the development for which a building permit is next issued.

- B. Calculation of the TUMF** - Each participating jurisdiction shall calculate and collect the TUMF for projects as outlined in the Fee Calculation Handbook. For residential, the fee is based on the number of units and for non-residential the fee is based on the square footage. This method of calculation may be different from how the local development impact fee is determined.

The TUMF shall be calculated using the most current fee schedule in effect at the time the fee is due. Participating jurisdictions are prohibited from freezing TUMF by such means as “locking” a fee rate by paying a deposit or a portion of the fee prior to the date the fee is due or by entering into a Development Agreement or other agreement with a developer that freezes the fee at a certain level

Partial Payments or Deposits: WRCOG discourages the use of deposits and partial payments as it will create additional reporting requirements for the jurisdictions and may give the developer the impression that the fees are not subject to change. However, if a jurisdiction allows for deposits or partial payments, it will transmit the partial payment/deposit to WRCOG in accordance with the TUMF ordinance along with a remittance report. In the variance column of the Remittance report, the jurisdiction shall indicate that the fee collected is a portion of the total due. When the balance is paid, the jurisdiction will calculate the total fee for the project based on the TUMF fee schedule in place at the time the balance is paid and deduct the partial payment against the total. The balance will be transmitted in accordance with the TUMF ordinance and this Administrative Plan. The variance column of the Remittance report shall indicate that the balance is paid. If there is a fee adjustment between the deposit/partial payment and the payment of the balance, the fee which is required to be paid will be based on the most current TUMF fee schedule.

- C. March Joint Powers Authority** - The March Joint Powers Authority (JPA) has land use authority and will need to adopt the TUMF Program in the same manner as the cities and county. The March JPA will not have a separate vote at the WRCOG Executive Committee as it has representation by elected officials from the County of Riverside and cities of Riverside, Moreno Valley and Perris. The

Executive Director of the March JPA shall be a voting member of the WRCOG TAC for TUMF Program items only.

IV. Allocation of Funds – After administrative costs are allocated as specified in Section IX herein, TUMF funds shall be distributed in accordance with WRCOG Executive Committee actions, the Nexus Study, this Administrative Plan and any future amendments thereto

A. Allocation to Regional Transit Improvements - Of the TUMF funds received by WRCOG, 2.6% shall be allocated to the Riverside Transit Agency for making regional transit improvements.

B. Allocation to Regionally Significant Transportation Improvements - Of the TUMF funds received by WRCOG, 48.7% shall be allocated to the Riverside County Transportation Commission (RCTC) for programming improvements to the arterials of regional significance on the Regional System of Highways and Arterials.

C. Allocation to Zones - Of the TUMF funds received by WRCOG, 48.7% shall be allocated to the five Zones for programming improvements to the Regional System of Highways and Arterials as determined by the respective Zone Committees. The amount of TUMF funds allocated to each Zone shall be proportionate to the amount of TUMF revenue generated from the zone.

V. Administration of the Plan - WRCOG shall administer the TUMF Program as described in the enabling Ordinance adopted by participating jurisdictions and further defined in this Administrative Plan.

VI. Administration of Credits - Each jurisdiction shall be responsible for the administration of TUMF credit agreements. Each jurisdiction shall transmit all TUMF credit agreements to WRCOG within 60 days of execution by that jurisdiction. WRCOG may administer credit agreements upon written request from that jurisdiction. The credit agreements shall be in accordance with the following:

A. Developer Credits - If a developer constructs improvements identified on the RSHA, the developer shall receive credit for all costs associated with the improvements based on approved unit cost assumptions for the RSHA. Typically, major infrastructure, such as rail grade separations, interchanges, transit projects, etc., is constructed by the local jurisdiction rather than the developer, and involves multiple parties, as such; this section makes the distinction between credit agreements for major infrastructure and the standard arterial improvements.

The amount of the development fee credit shall not exceed the maximum amount determined by the most current unit cost assumptions for the RSHA, or actual costs, whichever is less. This shall be known as the maximum TUMF credit. The maximum TUMF credit shall be determined based on approved Improvement Plans and after Conditions of Approval have been determined. The maximum TUMF credit shall identify, at a minimum, the facility, the dimensions of the facility, the number of lanes, and applicable unit costs components as identified in Appendix F in the adopted Nexus Study. The credit /reimbursement eligibility process is outlined in Exhibit "B" of this document.

Any improvement made to the RSHA that is obligated through an existing fee district (prior to June 1, 2003) shall not be eligible for TUMF credit.

Should it be determined that a jurisdiction granted credits exceeding the maximum TUMF credit, that jurisdiction shall provide WRCOG payment in the amount equal to the excess credit amount.

1. **Credits** - Prior to receiving any credit, a written credit agreement shall be executed between the jurisdiction or and the developer.
2. **Credit for Right of Way (ROW) Dedication** – A developer may receive credit for dedication of ROW for RSHA improvements. This section addresses the crediting of ROW dedications which are not part of construction projects. The ROW component in the current Nexus Study determines the maximum share of credit available. An appraisal is required to determine the value of the ROW being dedicated. The appraisal of the ROW is determined by one of the following methods:
 - a. The developer provides to the jurisdiction a current appraisal (no more than two years old), of the ROW to be dedicated. The jurisdiction reviews it and determines if the appraisal is valid and acceptable. or
 - b. The developer accepts the appraisal of the jurisdiction.

B. Local Development Impact Fees and other funding programs - The local jurisdiction shall compare facilities in local fee programs against the RSHA and eliminate any overlap in its local fee program.

1. New Financing Districts and Bond Issues:

For a financing district created or bonds or other evidence of indebtedness issued on or after June 1, 2003, the local jurisdiction may allow a property owner, in lieu of the payment of the TUMF, to participate in such a financing district for the following facilities: (i) a Regionally Significant Transportation Improvement, as defined as those facilities that typically are proposed to have six lanes at build out and extend between multiple jurisdictions, or discrete useable segment thereof, as determined by WRCOG, (ii) any interchange on an interstate or state highway with an estimated construction cost of fifteen million dollars (\$15,000,000) or more, (iii) any railroad crossing with an estimated construction cost of more than ten million dollars (\$10,000,000), and (iv) any bridge located on a regionally significant arterial as defined in (i) of this section.

1. Prior to excusing payment under this Section VI.B. the local jurisdiction must do both of the following:
 - (a) Sell bonds in an amount sufficient to construct the improvement for which the financing district is created; and
 - (b) Receive written approval from the WRCOG Executive Director, or designee.
 - (c) In the event that a local jurisdiction is unable to satisfy the

requirements of section I (a), above, the local jurisdiction may still excuse the payment of bonds if the local jurisdiction enters into an agreement with WRCOG in which it commits to pay the full amount of any excused Fee, plus interest at the average rate earned by WRCOG over the past twelve months, in the event that the bonds maybe extended up to an additional 5 years with the approval of the WRCOG Executive Committee.

2. If a local jurisdiction proposes to excuse payment of the TUMF as provided in this Section VI.B, then the jurisdiction shall provide WRCOG reasonable information to account for the credit.
3. If payment is excused as provided in this Section VI.B, then the jurisdiction shall be responsible for construction of the improvements and those improvements shall not be eligible for TUMF Program prioritization or funding.
4. As used in this section, a financing district means a community facilities district, a local road and bridge district, or an assessment district.
5. Where there is an existing financing district or an existing fee program established prior to June 1, 2003, with bonded indebtedness, then the local jurisdiction may excuse payment of the TUMF for that portion of the facility identified in both programs. Notwithstanding the previous sentence, a local jurisdiction shall not excuse fee payment for any facilities for which bonds have been issued after February 4, 2008, regardless of when the financing district was first created.
6. Any dispute regarding this implementation of this Section VI.B. may be appealed by the local jurisdiction to the WRCOG Executive Committee for a final determination.
7. This Section VI.B is not intended to impact the administration of credits under Section VI.A. of the Administrative Plan.

C. Use of Credit by Developer – Any TUMF credit shall be used first by the developer to offset any obligation of the developer to pay TUMF impact fees of the same development project.

- Credits may not be transferred or sold to other development projects.
- Developers must exhaust all credits before they are eligible for reimbursements.
- Credits shall run with the sale of the land.

VII. Administration of Reimbursements - Local jurisdictions/agencies and developers are eligible for reimbursement for construction of TUMF facilities. The processes for both are different and are described below.

1. **Developer Reimbursements:** Each jurisdiction shall be responsible for the administration of reimbursement agreements. WRCOG may administer reimbursement agreements upon written request from the jurisdiction.

Should the developer construct RSHA improvements in excess of the TUMF obligation the developer may be reimbursed based on actual costs or the approved unit cost assumptions, whichever is less at the time of the agreement. A development that is exempt from paying the TUMF is not eligible for a reimbursement. Reimbursements shall be made through an agreement between the developer, and the local jurisdiction, and contingent upon funds being available. In all cases reimbursements under such agreements must coincide with construction of the transportation improvements as scheduled in the five year Transportation Improvement Program (TIP) adopted annually by WRCOG.

The developer may enter into a reimbursement agreement with the jurisdiction to reimburse the developer/owner for the direct and verifiable costs of constructing improvements to the RSHA when all of the following conditions are met:

- a. All available credits are exhausted;
- b. The improvements received prior approval from the jurisdiction and WRCOG based on the review of the TUMF project priority list;
- c. The jurisdiction and WRCOG have reviewed and approved the scope of the project to be constructed.

In no event shall the developer be reimbursed for improvements to the RSHA in excess of the most current approved unit cost assumptions for the TUMF at the time of the agreement.

2. **Local Jurisdictions/Agencies:** Local jurisdictions are exempt from paying TUMF as such there are no credits given for projects constructed by a local jurisdiction, however the contribution to the RSHA maybe considerable. In such cases where a local jurisdiction constructs TUMF facilities it is eligible for reimbursement up to the maximum share identified in the Nexus Study or actual cost whichever is less, in accordance with the prioritization schedule in the adopted Transportation Improvement Plan.

Local jurisdictions are required to enter into a reimbursement agreement with WRCOG in order to be eligible to receive TUMF revenue.

VIII. Administrative Responsibilities

- A. **Program Administration** - As set forth in Section II above, WRCOG is designated as the TUMF Program Administrator. As Administrator, WRCOG will receive all fees generated from the TUMF as collected by local jurisdictions. WRCOG shall invest, account for and expend such fees in accordance with the TUMF Ordinance and applicable state laws.

For jurisdictions that are not participating in the TUMF Program, the representative for that jurisdiction shall not be eligible to vote on any matter related to the TUMF Program that goes before the WRCOG TAC and WRCOG Executive Committee.

1. **The WRCOG Executive Director** - Reporting to the WRCOG Executive Committee, the Executive Director shall be responsible for the following TUMF Program activities:

- a. Administration of the TUMF Program, including development of credit and reimbursement agreements, fee collection process and processing Program appeals;
- b. An independent fiscal audit conducted to report on the evidence that the expenditure of funds collected is in accordance with the Mitigation Fee Act. The audit shall be presented to the WRCOG Executive Committee and made available to the public.
- c. Establishment and management of the "TUMF Program Trust Fund" for the purposes of depositing TUMF revenues and income interest earned on Trust Fund deposits;
- d. Preparation of an Annual Report for consideration by the WRCOG Executive Committee detailing the status of the TUMF Program including but not limited to fees collected and disseminated, capital projects planned for, prioritized, and built, reimbursement and credit agreements, appeals, and recommendations for TUMF Program adjustments;
- e. Preparation of periodic comprehensive TUMF program review reports that provide, in concert with requirements of the California Mitigation Fee Act, an analysis of the TUMF Program, including review of the various Nexus Study inputs and assumptions, and preparation of recommendations on potential TUMF Program revisions for consideration by the WRCOG Executive Committee. Such reports may include, but are not limited to recommended fee adjustments based on changes in the facilities required to be constructed, and revenues received pursuant to the Ordinance;
- f. Preparation of technical studies/analysis required to select and prioritize Regionally Significant Arterial projects;
- g. Development of a 10-year Strategic Plan that identifies long term planning goals and objectives for implementation of the TUMF Program;
- h. Development of a five year TIP that identifies projects that are scheduled and funded for construction over a specified period of time and is reviewed on an annual basis;
- i. Staff support to and coordination with each of the TUMF Zone Committees as necessary;
- j. Other related activities as directed by the WRCOG Executive Committee.
- k. Approve Zone and RTA TIP Administrative Amendments;
- l. Execute all Amendments to TUMF reimbursement agreements.

2. **The WRCOG Executive Committee** - The WRCOG Executive Committee shall be responsible for reviewing and acting on recommendations for project selection and prioritization of the Regionally Significant Arterials, 10-year Strategic Plan, and the TIP. The WRCOG Executive Committee shall review and consider recommendations on projects from the Public Works Committee and WRCOG TAC. The WRCOG Executive Committee shall also be responsible for approval of the TUMF Program Administrative Plan and any subsequent amendments thereto. From time to time, the WRCOG Executive Committee shall recommend changes to the Ordinance for consideration by participating jurisdictions.

In developing recommendations on Regionally Significant Arterials for consideration by the WRCOG Executive Committee, WRCOG staff and the Committee structure shall work with RCTC to coordinate compatibility with Measure A project priorities and schedules of area transportation improvements. WRCOG staff and the WRCOG Executive Committee shall also work with WRCOG jurisdictions and each Zone Committee for the same purposes.

For jurisdictions that are not participating in the TUMF Program, the WRCOG Executive Committee representative for that jurisdiction shall not be eligible to vote on any matter related to the TUMF that goes before the WRCOG Executive Committee.

3. **The WRCOG Technical Advisory Committee (TAC)** - The WRCOG TAC shall review the technical documents and recommendations for Regionally Significant Arterials developed by the Public Works Committee and other committees that may be convened by the WRCOG Executive Committee. The WRCOG TAC shall forward any recommendations to the WRCOG Executive Committee for its consideration. The WRCOG TAC shall also provide additional assistance to the TUMF Program as requested by the WRCOG Executive Committee. For jurisdictions that are not participating in the TUMF Program, the WRCOG TAC representative for that jurisdiction shall not be eligible to vote on any matter related to the TUMF Program that goes before the WRCOG Executive Committee.
4. **The Public Works Committee/TUMF PWC (PWC)** - The PWC shall be comprised of the Public Works Director or designee from each participating jurisdiction of WRCOG, RCTC, RTA and WRCOG and shall be responsible for the following:
 - a. Developing objective criteria for project selection and prioritization including but not limited to the following factors: traffic safety issues potentially created by growth, regional significance, availability of matching funds, mitigation of congestion created by new development, system continuity, geographic balance, project readiness, and completed projects with reimbursement agreements;
 - b. Providing additional assistance to the TUMF Program as requested by the WRCOG Executive Committee, RCTC and/or the WRCOG TAC;
 - c. Preparing the 10 year Strategic Plan;
 - d. Preparing the five year TIP which will be reviewed annually and amended every two years;
 - e. Review and recommend the RCTC Regional Arterial TUMF Program of Projects; to the WRCOG TAC, WRCOG Executive Committee and RCTC;
 - f. Select a lead agency for each of the projects in the TIP;
 - g. Review Annual Report prepared by WRCOG;
 - h. Review and revise the RSHA as may be necessary (at a minimum every 5 years);
 - i. Review and revise Unit Cost Assumptions to the RSHA as may be necessary (at a minimum every 5 years);

- B. Regional Arterial Administration** - RCTC, through an MOU with WRCOG (effective October 1, 2008) is the responsible agency for programming and delivering the Regionally Significant Arterials as defined in the Nexus Study. WRCOG and RCTC have established a committee structure that incorporates the Public Works Directors, City Manager and WRCOG Executive Committee and the RCTC Board for the development, review and approval of the Regional Arterial TUMF Program of projects.
1. **The RCTC Executive Director-** Reporting to the RCTC, the Executive Director shall be responsible for the following TUMF Program activities:
 - a. Establishment and management of the “TUMF Program Trust Fund” for the purposes of depositing TUMF revenues and income interest earned on Trust Fund deposits;
 - b. Development of the RCTC Regional Arterial TUMF Program that identifies projects that are scheduled and funded for construction over a specified period of time and is reviewed on an annual basis;
 - c. Staff support to and coordination with the TUMF Committees as necessary;
 - d. Other related activities as directed by the RCTC Board.
 2. **The RCTC Board** - The RCTC Board shall be responsible for reviewing and acting on recommendations for project selection and prioritization of the RCTC Regional Arterial TUMF Program. The RCTC Board shall review and consider recommendations on projects from the TUMF Public Works Committee, WRCOG TAC and WRCOG Executive Committee.
- C. Zone Administration** - Each Zone shall establish a committee structure, similar to the one outlined in Exhibit A, for the purpose of developing a Transportation Improvement Plan (TIP) consistent with the Strategic Plan for the project prioritization scheduling, and construction of zonal RSHA projects using TUMF funds returned to each zone. Each zone shall also be responsible for selecting a lead agency for each project listed in the TIP. All zones shall approve their TIP by consensus and forward their recommendations to WRCOG for review and approval to ensure compatibility with the intent of the 10 year Strategic Plan. Zone dollars are to be allocated by the Zone Committee only and can not be utilized or borrowed for projects located outside the zone unless such projects are: 1) proposed and approved by the Zone Committee and 2) it is consistent with the Nexus Study. In furtherance of this Section VIII.B, each Zone shall abide by the Guidelines set forth in Exhibit “C”.

The Riverside County Transportation Improvement Plan approved by Riverside County voters on November 5, 2002 states “Funding which is not allocated to a city or county because it is not a participant in the TUMF Program in the Coachella Valley area and the TUMF and MSHCP in the Western County area shall be allocated to the Regional Arterial Program in the geographic area in which the city or portion of the county is located”.

Each City and a portion of the unincorporated area of Riverside County are assigned to each of the zones. The five Zones are as follows:

1. Northwest Zone – The Cities of Riverside, Corona, Norco and the County of Riverside, March JPA;
2. Southwest Zone – The Cities of Temecula, Lake Elsinore, Murrieta, Canyon Lake, Wildomar and the County of Riverside;
3. Central Zone – The Cities of Moreno Valley and Perris, and the County of Riverside, March JPA;
4. Pass Zone – The Cities of Banning, Beaumont, Calimesa, and the County of Riverside;
5. Hemet/San Jacinto Zone – The Cities of Hemet and San Jacinto and the County of Riverside.

D. Local Administration - As described in the TUMF Ordinance, participating jurisdictions are responsible for collecting the TUMF. Fees collected and a corresponding Remittance Report are required to be transmitted to the Executive Director of WRCOG. In accordance with the TUMF Ordinance and the Mitigation Fee Act, WRCOG will deposit, investment, account and expend the transmitted fees. Participating jurisdictions are required to transmit reports as set forth below to WRCOG which shall include, but not be limited to the following information regarding the TUMF Program status.

1. **Monthly Remittance Reports** – Participating jurisdictions are required to submit the standard Remittance Report to WRCOG by the close of the month for the previous month's activity, for example; June's Remittance report is due August 1. The report will contain information necessary for WRCOG to determine the total amount of fees collected within each fee category as it relates to the number of building permits, certificates of occupancy, or final inspections issued during the same period of time. Remittance reports are required even when no fees have been collected, provided building permits or certificates of occupancy have been issued. In addition the participating jurisdiction shall provide WRCOG the following information: the name of the developer or payee, project address, APN, total square feet, credits issued, and such other information as requested by WRCOG. This information will assist WRCOG in tracking new development, total revenue received and revenue projections for purposes of program audits and program updates.
2. **Remittance Delays** - If a participating jurisdiction does not transmit the fees along with a corresponding Remittance Report by the close of the month for the previous month in which fees were collected, the following fiscal policy shall be applied:

On the first working day after the close of the month WRCOG staff will notify, in writing, the delinquent jurisdiction of the delinquency and request that said jurisdiction remit by the fifteenth (15th), the fees and the required Remittance Report;

If fees and Remittance Report have not been received, by the forty-fifth (45th) day, WRCOG staff will invoice the jurisdiction for the approximate

amount owed plus interest and penalties from the first day of the month following the closing of the month being reported;

WRCOG staff will continue this notification until sixty (60) days after the close of the month. At which time, WRCOG will determine if an audit is necessary of the jurisdiction's TUMF account, general ledger and any other financial data. If an audit is conducted, WRCOG will investigate the amount owed and the cause of delay. Upon completion of the audit, WRCOG staff shall make any recommendations to resolve any outstanding issues;

If an audit is required due to reporting and remittance irregularities, the jurisdiction could incur the cost of the audit.

- E. Riverside Transit Agency (RTA)** – In accordance with the Nexus Study 2.6% of funds received will be made available to the RTA to make capital facilities improvements for transit purposes as identified in the Nexus Study. The RTA shall provide a report to the WRCOG Executive Committee each year, which has been reviewed by the City Managers/County Executives and the technical committees, detailing its expenditures of TUMF Program funds received, as well as future commitments for transit facilities using TUMF Program revenues as determined by the RTA Board of Directors.

IX. Administrative Costs. The TUMF Ordinance authorizes WRCOG to expend funds generated from TUMF that are necessary and reasonable to carry out its responsibilities. The WRCOG Executive Committee adopted a series of policies that clarify the expenditure and retention of program funds for the Administration of the Program and they are as follows:

1. WRCOG will budget no more than one percent (1%) of the TUMF Program revenue for administration salaries and benefits;
2. Administration costs will be budgeted at whatever is reasonable and necessary, but not to exceed four percent (4%) of the TUMF revenues (inclusive of the one percent administrative salaries and benefit cap).
3. Beginning July 1, 2006, WRCOG shall take the administrative component from the revenue collected based on the total fee obligation inclusive of executed credit agreements.
4. Beginning July 1, 2006, all CFD's, SCIP and other financing mechanisms will pay the maximum (4%) administrative component in cash to WRCOG. When the administrative component is less than 4% then the surplus revenue will be allocated in accordance to their adopted percentages to the Multi-species Habitat Conservation Plan, RCTC, RTA and the Zones.
5. For refunds, whether it is because the project is no longer going forward or expiration of building permits (where no construction has commenced), the applicant is entitled to a refund less the administrative component.

X. Appeals. Appeals shall only be made in accordance with the provisions of this Section X.

- A. Persons or Entities Who Having Standing to Appeal.** No person or entity shall have standing to avail themselves of this Section X, except those persons or individuals who are responsible for paying the TUMF and have an unresolved appealable issue or matter.

B. Appealable Issues and Matters. No issue or matter shall be heard or reviewed under this Section X unless the issue or matter is appealable. An issue or matter is appealable, if a qualified person or entity (“Appellant”) has a good-faith dispute directly related to Appellant’s Property (“TUMF Dispute”) regarding (i) the amount of Appellant’s TUMF obligation; (ii) the administration of TUMF Credits; (iii) exemption of Appellant’s property from the TUMF Program; (iv) administration of TUMF reimbursements; or (v) TUMF refunds.

C. Appeal Process.

1. If a qualified person or entity has a TUMF Dispute, he or she shall first attempt to resolve the dispute informally with the staff of the local jurisdiction. If the TUMF Dispute remains unresolved after a reasonable attempt to address it at the local level, the qualified person or entity may submit a written appeal to the appropriate department of the local jurisdiction. The written appeal shall thoroughly identify the TUMF Dispute. If the staff of the local jurisdiction determines the issue or matter is not a TUMF Dispute, the written appeal shall be rejected. Staff’s decision shall be provided in writing to the Appellant. In such cases, if the Appellant desires further review from the Board of Supervisors/City Council of the affected local jurisdiction, the Appellant must submit a written request for review to the Clerk of the Board/City Council within five (5) days of receiving staff’s written decision. The decision of the Board/City Council shall be forwarded to the WRCOG Executive Committee in the same manner set forth in Paragraph 3 of this Section.
2. If the written appeal identifies a TUMF Dispute, the Appellant and staff from the local jurisdiction shall attempt to resolve the issue within thirty (30) days of the local jurisdiction’s receipt of the appeal. At the request of the local jurisdiction, or on its own accord, WRCOG staff may also participate in such discussions. At the conclusion of the thirty (30) day period, staff of the local jurisdiction shall render a written decision on the appeal.
3. The issue or matter shall be heard by the Board of Supervisors/City Council of the affected local jurisdiction; provided, the Appellant submits a written request for further review to the Clerk of the Board/City Council within five (5) days of Appellant’s receipt of the local jurisdiction’s written decision regarding the Appellant’s appeal. The Board/City Council shall forward its written decision to WRCOG for review and concurrence. If the WRCOG Executive Committee disagrees with the decision of the City Council/Board of Supervisors the WRCOG Executive Committee shall determine a proper course of action and notify the jurisdiction of its findings.

XI. Arbitration. When there is a dispute among the Zone members that can not be resolved and prevents the adoption of a project prioritization schedule, the matter shall be forwarded to the WRCOG TAC and WRCOG Executive Committee for a determination. Once the WRCOG Executive Committee takes action on the issue the decision is final.

If there is a dispute at the WRCOG Executive Committee level regarding project prioritization of a specific project(s) and a consensus cannot be reached, that project

shall be tabled until such time as new information is presented and the matter can be resolved.

XII. TUMF Program Amendments. WRCOG shall undertake a review of all components of the TUMF Program in accordance with AB 1600 and other applicable laws, and, if necessary, recommend Program amendments and/or adjustments. Amendments to the Administrative Plan will be subject to the approval of the WRCOG Executive Committee. Amendments required to the TUMF Program Ordinance shall be approved by each participating jurisdiction, acting on recommendations provided by the WRCOG Executive Committee. The review shall consider whether future administration costs to participating jurisdictions are needed.

XIII. CEQA. The TUMF Program currently is a financing mechanism dependent on future actions of the WRCOG Executive Committee for improvements to the RSHA. WRCOG and its associated committees will be prioritizing and scheduling improvements on the RSHA, as such, the appropriate environmental documentation, shall be completed before a project can commence construction.

The TUMF Program was developed to mitigate the cumulative impacts of future growth on the RSHA. It was not developed to mitigate project-specific traffic impacts. Accordingly the program does not relieve any development project of the responsibility to mitigate project-specific impacts identified in the environmental analysis prepared for the project. When a development project is required to construct RSHA facilities as project-specific mitigation, it shall be eligible for credit and or reimbursement.

EXHIBIT "A"

TUMF Decision Making

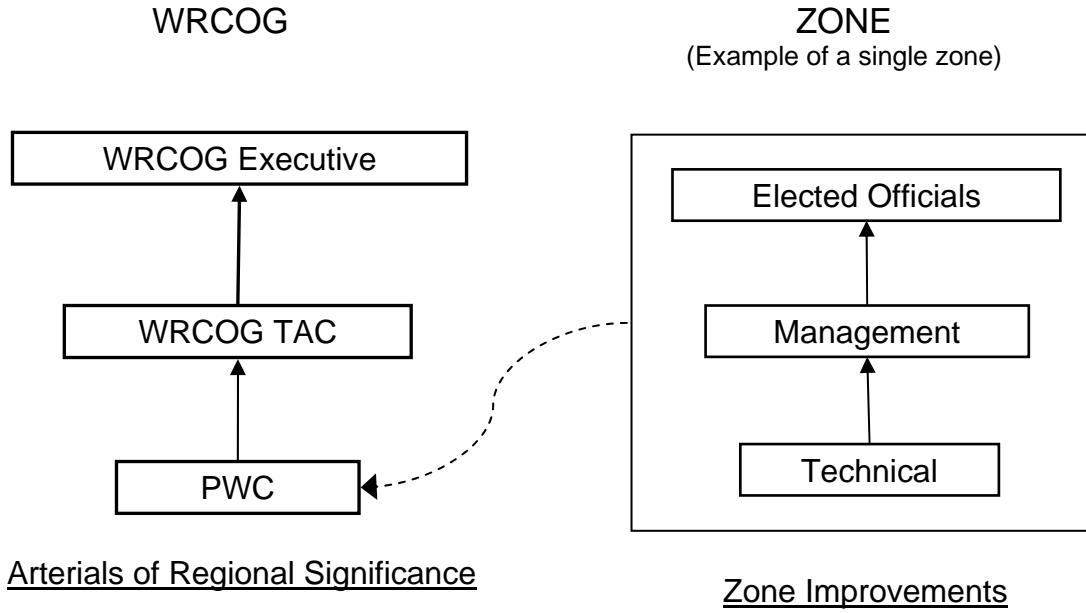


EXHIBIT "B"

TUMF Credit / Reimbursement Eligibility Process

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

2. Prior to the determination and application of any Credit pursuant to a TUMF Improvement and Credit Agreement executed between City/County and Developer ("Agreement"), Developer shall provide the City/County and WRCOG with the following:
 - a. Copies of all information listed under Item 1 above.
 - b. Surety Bond, Letter of Credit, or other form of security permitted under the Agreement and acceptable to the City/County and WRCOG, guaranteeing the construction of all applicable TUMF Improvements.

3. Prior to the City's/County's acceptance of any completed TUMF Improvement, and in order to initiate the construction cost verification process, the Developer shall comply with the requirements as set forth in Sections 7, 14.3 and 14.4 of the Agreement, and the following conditions shall also be satisfied:
 - a. Developer shall have completed the construction of all TUMF Improvements in accordance with the approved Plans and Specifications.
 - b. Developer shall have satisfied the City's/County's inspection punch list.
 - c. After final inspection and approval of the completed TUMF Improvements, the City/County shall have provided the Developer a final inspection release letter.
 - d. City/County shall have filed a Notice of Completion with respect to the TUMF Improvements pursuant to Section 3093 of the Civil Code with the County Recorder's Office, and provided a copy of filed Notice of Completion to WRCOG.
 - e. Developer shall have provided City/County a copy of the As-Built plans for the TUMF Improvements.
 - f. Developer shall have provided City/County copies of all permits or agreements that may have been required by various resource/regulatory agencies for construction, operation and maintenance of any TUMF Improvements.
 - g. Developer shall have submitted a documentation package to the City/County to determine the final cost of the TUMF Improvements, which shall include at a minimum, the following documents related to the TUMF Improvements:

- i. Plans, specifications, and Developer's Civil Engineer's cost estimates; or Engineer's Report showing the cost estimates.
 - ii. Contracts/agreements, insurance certificates and change orders with each vendor or contractor.
 - iii. Invoices from all vendors and service providers.
 - iv. Copies of cancelled checks, front and back, for payments made to contractors, vendors and service providers.
 - v. Final lien releases from each contractor and vendor (unconditional waiver and release).
 - vi. Certified contract workers payroll for City/County verification of compliance with prevailing wages.
 - vii. A total cost summary, in spreadsheet format (MS Excel is preferred) and on disk, showing a breakdown of the total costs incurred. The summary should include for each item claimed the check number, cost, invoice numbers, and name of payee. See attached sample for details.
4. The amount of the development credit shall not exceed the maximum amount determined by the most current unit cost assumptions for the RSHA in the adopted Nexus Study, or actual costs whichever is less. This shall be known as the maximum credit. The maximum TUMF credit shall be determined based on an approved Improvement Plan and after the Conditions of Approval have been determined.

Exhibit “C”

Guidelines for Administration of Programmed Projects in Zone’s Adopted 5-Year TIP

Once each Zone’s 5-Year Transportation Improvement Program (TIP) is adopted by the WRCOG Executive Committee, said TIPs shall be incorporated into and governed by these guidelines, the Administrative Plan, and 10-Year Strategic Plan in accordance with AB 1600. Annually, WRCOG staff meets with the Zone Technical Advisory Committees to review the status of all programmed projects on the 5-Year TIPs and bring the subsequent project adjustment requests to the Zone Committees for approval. The goals of the annual review process are as follows: (i) to update project cost estimates; (ii) to review project status; (iii) to determine the continued viability of projects; (iv) review the backlog of reimbursement projects;(v) to address local jurisdiction issues; and (vi) address compliance with AB 1600.

Adjustments:

In accordance with the 10-Year Strategic Plan and the original reimbursement agreement entered into with the lead jurisdiction, all approved projects’ funding and schedules are directly tied to critical milestones. As such, requests to change a project’s funding or schedule shall necessitate an amendment to the original agreement and the adopted TIP.

Annual 5-Year TIP adjustments could include, but are not limited to:

- Scope of work reductions or additions,
- project or phase delays,
- project or phase cancellations,
- new shelf-ready network projects being added as replacement projects,
- project or phase advances, and
- request to transfer funding beyond a programmed project’s limits within a Zone

Levels of Approval:

A. Zone Committee/WRCOG Executive Committee

The following shall be approved by the Zone Committee and adopted by the WRCOG Executive Committee as required in the Administrative Plan:

- 1) Annual updates to the Zone TIP.
- 2) Requests to increase total TUMF funding allocations to projects in the Zone TIP. These requests may be made by the local jurisdiction administratively outside of the annual TIP update cycles if deemed necessary by one of the Zone participating jurisdictions and WRCOG management due to unforeseen circumstances that necessitate immediate action. Such unforeseen circumstances shall include, but not be limited to, higher than expected bid prices, Might want to give more examples] WRCOG staff will obtain action from the Zone Committee in these cases either by calling for a Special Zone Committee meeting or through individual consultation.

- 3) Administrative requests to advance funds or adjust project schedules on TIP approved projects, upon the recommendation of the Public Works Committee. Such advancements are subject to:
 - Jurisdiction's proof of readiness to move forward with project,
 - Zone's current cash flow can support the advancement or change.

B. WRCOG Executive Director

The WRCOG Executive Director shall be responsible for the review and approval of the following changes to an approved Zone TIP, including the review and approval of any agreements, for:

- 1) Change in Lead Jurisdiction, with the written consent of the transferring and accepting Lead Jurisdiction.
- 2) Cancellation of project upon request of the local jurisdiction. In the event of cancellation, all funds shall revert to the Zone TIP Trust account.
- 3) Approval of final completion of the project. Upon notification from the Jurisdiction that the Project has been completed, all unused funds programmed for that Project shall revert to the Zone TIP Trust account.
- 4) All other administrative requests, upon consultation with the Public Works Committee.

C. Public Works Committee

The Public Works Committee shall be responsible for the review and approval of the following:

- 1) Requests to move funds within project categories (environmental, design, etc.) administratively, contingent upon participating jurisdiction's certification of viability of all phases.
- 2) Provide recommendations to the WRCOG Executive Director on any other requests that are deemed administrative in nature by the Director.

All administrative adjustments will be submitted to the WRCOG Executive Committee as part of the next Annual Review Report for final adoption.

D. Obligating Programmed Funds

The TUMF Program has established the policy that construction projects take priority and therefore WRCOG limits the obligation of TUMF dollars. WRCOG has two options by which to obligate TUMF. In both options, steps 1, 2 and 3 (Option A) or 6 (Option B) must be completed by the local jurisdiction to ensure TUMF funding can be made available for use on an eligible project. Since TUMF project funds are generally obligated on a first come first served basis, failure to follow the prescribed steps for either option may preclude a project sponsor from receiving TUMF payments for completed work until sufficient funds are available to be obligated.

Option A:

Funding for a project programmed on Zone 5-Year TIPs is not considered obligated by WRCOG until certain steps outlined below have been accomplished by the local jurisdiction.

1. Ensure that funding for the project phase is **programmed in the current year** of an adopted 5-Year TIP.
2. Ensure that there is a **signed (executed) reimbursement agreement** that matches the funding amount with the funding amount of the project phase in the adopted TIP.
3. Submit **an invoice for TUMF eligible work** prior to the end of the fiscal year to obligate the project phase funding. At the time of submitting the first invoice, the project sponsor will be required to submit all necessary supporting documentation (not previously submitted) in accordance with the provisions of the reimbursement agreement.
4. WRCOG will obligate the entire phase of the project if there is available revenue at the time the invoice is submitted.

Option B:

Funding for a project programmed on Zone 5-Year TIPs is not considered obligated by WRCOG until the steps outlined below have been accomplished by the local jurisdiction.

1. Ensure that funding for the project phase is **programmed in the current year** of an adopted 5-Year TIP.
2. Ensure that there is a **signed (executed) reimbursement agreement** that matches the funding amount with the funding amount of the project phase in the adopted TIP.
3. Send WRCOG a letter of **notice of intent** to issue RFP, solicit bids, make offer to purchase ROW or other similar action to verify that sufficient funding is available and that funds are obligated and reserved exclusively for the particular project phase.
4. Receive a **notice of obligation** from WRCOG within fourteen working days of receipt of the notice of intent confirming the amount of funding that is obligated and reserved exclusively for the particular project phase. Alternatively, the project sponsor will receive a notice of deferred obligation if WRCOG determines that insufficient funds are currently available for the project phase to be obligated.
5. Award the project and execute a contract within four months of receipt of the notice of obligation from WRCOG and send a letter of **confirmation of award** to WRCOG including evidence of a Board/Council action relating to the project award and contract execution.
6. Commence project work and submit the **first invoice** for payment within nine months of receipt of letter of obligation by WRCOG to preserve fund obligation. At the time of submitting the first invoice, the project sponsor will be required to submit all necessary supporting documentation (not previously submitted) in accordance with the provisions of the reimbursement agreement.

If a contract has not been executed within four months of receipt of the notice of obligation from WRCOG (step 5), there will be a review of the project status. Based on the review of project status, WRCOG will either:

- i) extend the fund obligation for up to a total of nine months from the notice of obligation if the project sponsor can demonstrate a realistic expectation that the project will be awarded and a confirmation of award can be provided to WRCOG within that time frame; or
- ii) de-obligate the funds.

Similarly, if the first invoice has not been submitted to WRCOG within nine months of receipt of the letter of obligation (step 6), there will be a review of the project status. Based on the review of project status, WRCOG will either:

- i) extend the fund obligation for up to an additional nine months if the project sponsor can demonstrate a realistic expectation that the project work will commence and a first invoice is submitted within that time frame; or
- ii) de-obligate the funds.