



# City of La Quinta

**CITY / SA/ HA/ FA MEETING DATE:** January 20, 2015

**ITEM TITLE:** ADOPT RESOLUTION TO APPROVE AMENDMENT TO WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS' JOINT POWERS AGREEMENT ADDING CITY OF LA QUINTA AS AN ASSOCIATE MEMBER TO PARTICIPATE IN THE CALIFORNIA HOME ENERGY RENOVATION OPPORTUNITY PROGRAM

**AGENDA CATEGORY:**

**BUSINESS SESSION:** \_\_\_\_\_

**CONSENT CALENDAR:** 3 \_\_\_\_\_

**STUDY SESSION:** \_\_\_\_\_

**PUBLIC HEARING:** \_\_\_\_\_

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## **RECOMMENDED ACTION:**

Adopt City Council Resolution No. 2015-\_\_\_ to approve an amendment to the Western Council of Governments' Joint Powers Agreement adding La Quinta as an associate member to participate in the California Home Energy Renovation Opportunity program.

## **EXECUTIVE SUMMARY:**

- On December 1, 2014, the Coachella Valley Association of Governments' (CVAG) Executive Committee adopted an Administration Agreement authorizing a California Home Energy Renovation Opportunity (HERO) Program.
- The HERO program is a property assessed clean energy (PACE) program that provides financing for residential property owners who want to undertake energy efficiency projects and be able to pay for them over 15 to 20 years through a special tax on their property tax bill.
- The program would be funded and managed by Renovate America with local oversight by CVAG and overall administration by the Western Riverside Council of Governments (WRCOG).
- Member agencies are being asked to approve the attached Administration Agreement ("Agreement") (Attachment 1), by resolution, which would authorize CVAG to create HERO for the Coachella Valley.
- To fully implement HERO, member cities must "opt-in" via resolution between December 15, 2014 through March 31, 2015, which would allow residents to participate in the program beginning this summer.

## **FISCAL IMPACT:**

None. Private financing will be provided to participating property owners through Renovate America (approved by CVAG to administer and finance HERO).

## **BACKGROUND/ANALYSIS:**

Beginning in 2011, CVAG's Executive Committee directed CVAG staff to research a regional program that would allow property owners in all member cities and the unincorporated areas within the Coachella Valley to take advantage of PACE financing. CVAG directed staff to initiate a regional PACE program in April 2013, and developed specific criteria for both the Ygrene Energy Fund and HERO programs. The criteria included: Ygrene/HERO to have a physical presence/local address in the Coachella Valley; CVAG Executive Committee to have the lead in making changes to the PACE program; and CVAG to maintain its own 'stand-alone' HERO program separate from WRCOG's program. During the selection period, only Ygrene Energy Fund indicated that they would meet all criteria and subsequently were selected to provide the PACE program in the CVAG region.

In May 2013, the City adopted a resolution to implement a regional PACE program as a member city of CVAG. The program, CV Upgrade, is currently operational and funded in part by the Ygrene Energy Fund. In 2014, the CV Upgrade program conducted two workshops for La Quinta residents (October and December) and approved over one million dollars in applicant funding. In response to the severe flooding in September, Ygrene reduced program fees by half for storm victims; offered a five hundred dollar cash back incentive for the first two hundred property owners using the CV Upgrade program for repairs; and established a special fund to assist homeowners who did not meet program requirements.

At the end of 2014, the HERO program was reintroduced to CVAG through Renovate America after the Cities of Indio and Desert Hot Springs approved it locally. CVAG wanted to provide the same program to its members. In order to implement a HERO program, an Administration Agreement is required by and between CVAG, Renovate America and WRCOG, with CVAG providing a 'local presence' for Renovate America and WRCOG as the overall HERO administrator. In order for residents to participate, municipalities are required to 'opt in' as an associate member of the JPA with WRCOG Joint Powers Agreement specifically and exclusively for the purposes of the HERO program.

CVAG's Executive Committee approved an Administration Agreement by and among CVAG, Renovate America and the Western Council of Governments (WRCOG) to implement the HERO program for the Coachella Valley. CVAG provides the local oversight of the program, while WRCOG is the overall program administrator. The resulting relationship would require Coachella Valley cities to 'opt in' to WRCOG's Joint Powers Agreement as an associate member specifically and exclusively for the HERO program. Renovate America's role would be to market the program under parameters set by CVAG and to finance the HERO program. Upon member cities "opting in," a judicial validation process is required before the program is available to member city residents. The judicial validation process is estimated to be a four month process.

Renovate America's Agreement with CVAG also includes provisions that are consistent with Ygrene Energy Fund's agreement that include:

1. Provide all administration and financing of the program at no cost to member agencies;
2. Provide a mechanism for CVAG program oversight including:
  - a. Review and approval of projects submitted by property owners; and
  - b. Coordinate with Ygrene Energy Fund and Renovate America on program marketing and outreach, ensuring compatibility with both vendors of the PACE program.
3. CVAG would receive 1.0% of all principal from bonds issued to fund eligible improvements in the region as cost recovery for administrative costs.

Recent changes to state law enabled CVAG to set up financing programs in which property owners may obtain financing for the acquisition, installation and improvement of energy efficiency, water conservation and renewable energy improvements to homes and/or commercial buildings (a list of eligible improvements is included as Attachment 2). Approving the proposed resolution and agreement would allow La Quinta property owners access to both the existing CV Upgrade program and the HERO program to work with PACE applicants and local contractors to facilitate improvements.

Property owners who choose to obtain financing can repay it through assessments or special taxes on their property tax bills over a set period of time. HERO program financing requires little or no up-front cost to the property owner, and if the property is sold before the investors are repaid, the new owner will, unless a prepayment is arranged, assume responsibility for the remaining assessments or special taxes as part of the property's annual tax bill. HERO financing enables opportunity to generate savings on utility bills for property owners, stimulate construction and building activity, reduce peak energy demand, and increase property values.

### **ALTERNATIVES**

As the HERO program would benefit City residents at no cost to the City, staff has no alternatives.

Report prepared by: Ted Shove, Business Analyst

Report approved for submission by: Frank J. Spevacek, City Manager

- Attachments:
1. Administration Agreement
  2. List of eligible improvements



**RESOLUTION NO. 2015 -**

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

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

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

**WHEREAS**, the City of La Quinta ("City") has determined that it is in the best interests of La Quinta and is beneficial to its residents to execute and deliver an implementation agreement (the "Implementation Agreement") authorizing CVAG to implement, manage and administer one or more clean energy programs (each, a "Clean Energy Program"):

**WHEREAS**, the City is committed to development of renewable energy sources and energy efficiency improvements, reduction of greenhouse gases, protection of our environment, and reversal of climate change; and

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

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

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

**WHEREAS**, the Authority has authority to establish the California HERO Program, which will be such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into April 1, 1991, as amended to date, and the Amendment to Joint Powers Agreement Adding the City as an Associate Member of the Western Riverside Council of Governments to Permit the Provision of Property Assessed Clean Energy (PACE) Program Services within the City (the "JPA Amendment"), by and between Authority and the City, a copy of which is attached as Exhibit "A" hereto, to assist property owners within the incorporated area of the City in financing the cost of installing Improvements; and

**WHEREAS**, the City is a member of the Coachella Valley Association of Governments ("CVAG") and CVAG has contracted with the Authority and Renovate America, Inc. to provide the California HERO program to its member agencies, whereby portions of the administration of the California HERO Program in Eastern Riverside County shall be delegated to CVAG; and

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

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of La Quinta, California, as follows:

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

**SECTION 2.** The City Council consents to inclusion in the California HERO Program of all of the properties in the incorporated area within the City and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to such program.

**SECTION 3.** The consent of the City Council constitutes assent to the assumption of jurisdiction by Authority to take each and every step required for or suitable for

financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent and be secured by such contractual assessments.

SECTION 4. The City Council hereby approves the JPA Amendment and authorizes the execution thereof by the City Manager.

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

SECTION 6. This Resolution shall take effect from and after its adoption.

**PASSED, APPROVED, and ADOPTED** at a regular meeting of the La Quinta City Council held on this 20th day of January, 2015, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Linda Evans, Mayor  
City of La Quinta, California

**ATTEST:**

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Susan Maysels, City Clerk  
City of La Quinta, California

(CITY SEAL)

**APPROVED AS TO FORM:**

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William H. Irhke, City Attorney  
City of La Quinta, California



## **EXHIBIT "A"**

### **AMENDMENT TO THE JOINT POWERS AGREEMENT ADDING CITY OF LA QUINTA AS AN ASSOCIATE MEMBER OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS TO PERMIT THE PROVISION OF THE CALIFORNIA HERO PROGRAM SERVICES WITH SUCH CITY**

This Amendment to the Joint Powers Agreement ("JPA Amendment") is made and entered into on the 20th day of January, 2015, by the City of La Quinta ("City") and the Western Riverside Council of Governments ("Authority") (collectively the "Parties").

#### **RECITALS**

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

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

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

WHEREAS, the Authority has established a PACE program to be known as the "California HERO Program" pursuant to Chapter 29 as now enacted or as such legislation may be amended hereafter, which authorizes the implementation of a PACE financing program for cities and counties throughout the state; and

WHEREAS, the City is a member of the Coachella Valley Association of Governments ("CVAG") and CVAG has contracted with the Authority and Renovate America, Inc. to provide the California HERO program to its member agencies, whereby portions of the administration of the California HERO Program in Eastern Riverside County shall be delegated to CVAG;

WHEREAS, the City desires to allow owners of property within its jurisdiction to participate in the California HERO Program and to allow the Authority to conduct proceedings under Chapter 29 to finance Improvements to be installed on such properties; and

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

WHEREAS, pursuant to Government Code sections 6500 et seq., the Parties are approving this JPA Agreement to allow for the provision of PACE services, including the operation of a PACE financing program, within the incorporated territory of City; and

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

### **MUTUAL UNDERSTANDINGS**

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

**A. JPA Amendment.**

1. The Authority JPA. Except as provided herein, City agrees to the terms and conditions of the Authority's Amendment to JPA.

2. Associate Membership. By adoption of this JPA Amendment, the City shall become an Associate Member of Authority on the terms and conditions set forth herein and the Authority JPA and consistent with the requirements of the Joint Exercise of Powers Act. The rights and obligations of the City as an Associate Member are limited solely to those terms and conditions expressly set forth in this JPA Amendment for the purposes of implementing the California HERO Program within the incorporated territory of City. Except as expressly provided for by the

this JPA Amendment, the City shall not have any rights otherwise granted to the Authority's Regular Members by the Authority JPA, including but not limited to the right to vote on matters before the Executive Committee or the General Assembly, right to amend or vote on amendments to the Authority JPA, and right to sit on committees or boards established under the Authority JPA or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee. The City shall not be considered a member for purposes of Sections 3.4, 8.1, and 9.1 of the Authority JPA. The City shall not be bound by any subsequent amendments of the Authority JPA not expressly agreed to by the City.

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

4. Rights of City. This JPA Amendment shall be not interpreted as limiting or restricting the rights of the City to establish parameters or limitation on the HERO Program as it is conducted within the City's jurisdiction.

## **B. Implementation of California HERO Program within City Jurisdiction.**

1. Boundaries of the California HERO Program within City Jurisdiction. The City shall determine and notify the Authority of the boundaries of the incorporated territory within the City's jurisdiction within which contractual assessments may be entered into under the California HERO Program (the "Program Boundaries"), which boundaries may include the entire incorporated territory of the City or a lesser portion thereof, upon approval of same by the City Council.

2. Determination of Eligible Improvements. Subject to any parameters or limitations adopted by the City, the Authority shall determine the types of distributed generation renewable energy sources, energy efficiency or water conservation improvements, electric vehicle charging infrastructure or such other improvements as may be authorized pursuant to Chapter 29 (the "Eligible Improvements") that will be eligible to be financed under the California HERO Program.

3. Establishment of California HERO Program. The Authority will undertake such proceedings pursuant to Chapter 29 as shall be legally necessary to enable

the Authority to make contractual financing of Eligible Improvements available to eligible property owners with the California HERO Program Boundaries and will be solely responsible for the conduct of such proceedings.

4. Financing the Installation of Eligible Improvements. Upon approval of the conduct of the HERO Program within the City's jurisdiction, the Authority shall be solely responsible to develop and implement a plan for the financing of the purchase and installation of the Eligible Improvements under the California HERO Program.

5. Ongoing Administration. Subject to that portion of the administration delegated to CVAG pursuant to the agreement among the Authority, CVAG and Renovate America, Inc., the Authority shall be responsible for the ongoing administration of the California HERO Program, including but not limited to producing education plans to raise public awareness of the California HERO Program, establishing contracts for residential, commercial and other property owners participating in the California HERO Program who have met the Program Criteria and who have not been deemed by CVAG to be ineligible, establishing and collecting assessments due under the California HERO Program, adopting and implementing any rules or regulations for the PACE program, and providing reports as required by Chapter 29.

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

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

### **C. Miscellaneous Provisions.**

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

jurisdictional limits of the City upon thirty (30) written notice to WRCOG without liability to the Authority, City or any affiliated entity. The City's membership in WRCOG shall automatically terminate upon the thirty first (31) day following tender of said notice and/or upon termination of the Administration Agreement among the Authority, CVAG and Renovate America, Inc.; however, that withdrawal from WRCOG and the HERO Program shall not affect the validity of any voluntary assessment contracts (a) entered prior to the date of such withdrawal or (b) entered into after the date of such withdrawal so long as the applications for such voluntary assessment contracts were submitted to and approved by WRCOG prior to the date of the City's notice of withdrawal.

2. Indemnification and Liability. Authority shall defend, indemnify and hold the City and its directors, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of the acts, errors or omissions of the Authority or its directors, officials, officers, employees and agents in connection with the California HERO Program administered under this JPA Amendment, including without limitation the payment of expert witness fees and attorney's fees and other related costs and expenses, but excluding payment of consequential damages, provided that the Authority shall not be required to defend or indemnify the City and its directors, officials, officers, employees and agents for City's sole negligence or willful misconduct. Without limiting the foregoing, Section 5.2 of the Authority JPA shall not apply to this JPA Amendment. In no event shall any of the Authority's Regular Members or their officials, officers or employees be held directly liable for any damages or liability resulting out of this JPA Amendment.

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

4. Cooperative Effort. The City shall cooperate with the Authority by providing information and other assistance in order for the Authority to meet its obligations hereunder. The City recognizes that one of its responsibilities related to the California HERO Program will include any permitting or inspection requirements as established by the City. The City's cooperation shall not be interpreted to require any approvals without appropriate review or that any discretionary authority of the City be exercised other than as provided by law.

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

Authority:

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

City:

City of La Quinta  
78-495 Calle Tampico  
La Quinta, CA 92253  
Attn: City Manager

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

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

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

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

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

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

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

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

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

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

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

By: \_\_\_\_\_  
Executive Committee Chair  
Western Riverside Council of Governments

Date: \_\_\_\_\_

CITY OF LA QUINTA

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_



**ADMINISTRATION AGREEMENT BY AND AMONG COACHELLA VALLEY  
ASSOCIATION OF GOVERNMENTS, WESTERN RIVERSIDE COUNCIL OF  
GOVERNMENTS AND RENOVATE AMERICA, INC.**

**1. PARTIES AND DATE.**

This Administration Agreement is effective as of the 1<sup>st</sup> day of December, 2014 (“the Effective Date”), by and among the Coachella Valley Association of Governments, a California Joint Powers Authority (“CVAG”), the Western Riverside Council of Governments, a California Joint Powers Authority (“WRCOG”) and Renovate America, Inc., a Delaware corporation (“Renovate America”). CVAG, WRCOG and Renovate America are sometimes individually referred to as a “Party” and collectively as “Parties.” This agreement may be referred to herein as the “Administration Agreement” or the “Agreement.”

**2. RECITALS.**

**2.1** WRCOG has established a voluntary contractual assessment program designated as the California HERO Program (the “California HERO Program”) pursuant to the provisions of Chapter 29 of Part 3, Division 7 of the California Streets and Highways Code (commencing at Section 5898.12) (“Chapter 29”), the Joint Powers Agreement of WRCOG originally made and entered into April 1, 1991, as further amended to date (as amended, the “JPA”), and separate amendments to the JPA (each such agreement, a “JPA Amendment”) entered into pursuant to the JPA by and between WRCOG and the cities and counties throughout California that have elected to become Associate Members of WRCOG and to participate in the California HERO Program, to assist owners of residential properties within the jurisdictional boundaries of such Associate Members to finance the cost of installation of distributed generation renewable energy sources or energy efficiency or water conservation improvements or electric vehicle charging infrastructure (the “Eligible Products”) that are permanently fixed to the properties of such owners.

**2.2** In establishing the California HERO Program, WRCOG has pursuant to Chapter 29 approved and subsequently amended a report addressing the matters specified in Streets and Highways Code Sections 5898.22 and 5898.23 supplemented by a residential handbook that is incorporated in such report by reference (such report and handbook, each as amended, are collectively referred to as the “California HERO Program Report”). The California HERO Program Report governs the administration of the California HERO Program and establishes, among other terms, the eligibility requirements applicable to property owners, properties, contractors and Eligible Improvements, financial terms applicable to property owners and the administrative process for property owner participation in the California HERO Program.

**2.3** WRCOG and Renovate America have entered into an agreement establishing the terms and conditions pursuant to which Renovate America shall provide administration services to WRCOG for the California HERO Program for residential properties participating in the California HERO Program (the “California HERO Program Administration Agreement”).

**2.4** CVAG would like to add to the options available to owners of residential properties within the Coachella Valley to obtain financing for the installation of Eligible Products that are permanently fixed to the properties of such owners.

**2.5** In April 2013, the CVAG Executive Committee directed staff to explore the option of encouraging competition by offering PACE programs provided by both Ygrene Energy Fund and the HERO program. The Executive Committee identified requirements to be part of any PACE program. Ygrene was selected as the only entity meeting these requirements at the time and CVAG already offers a PACE program with Ygrene Energy Fund. It is the intent of this agreement to provide for the requirements established by the CVAG Executive Committee regarding participation in the HERO program: 1) a local presence or office, 2) CVAG Executive Committee lead in making changes to the PACE program, and 3) a stand-alone CVAG HERO program.

**2.6** CVAG, WRCOG and Renovate America desire to enter into this agreement to establish the terms and conditions pursuant to which administration services for the California HERO Program will be provided to CVAG and all cities and that portion of Riverside County located in the CVAG region which have elected to participate in the California HERO Program (each such participating city or county, a "CVAG Jurisdiction").

### **3. THE PURPOSE OF THE AGREEMENT.**

CVAG, WRCOG and Renovate America desire to enter into the Agreement to establish the terms and conditions pursuant to which administration services (the "Program Administration Services") pertaining to the California HERO Program will be provided to CVAG and all cities located in the CVAG region which have elected to participate in the California HERO Program administered by Renovate America in Riverside County. In respect to such services, Renovate America desires to perform and assume responsibility for the provision of such Program Administration Services on the terms and conditions set forth in this Agreement. Renovate America represents that it is legally qualified to provide such Program Administration Services, and has or will obtain all necessary licenses and authorizations from the State of California and any agency of the federal government with the authority to regulate the provision of such Program Administration Services.

### **4. TERMS.**

#### **4.1 Scope of Program Administration Services and Term of Agreement.**

**4.1.1 General Scope of Program Administration Services.** Renovate America promises and agrees to provide Program Administration Services and to furnish financing necessary to provide labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately implement the provision of the Program Administration Services. All Program Administration Services shall be subject to, and performed in accordance with, the California HERO Program Administration Agreement, the exhibits attached thereto and incorporated therein by reference, except as otherwise provided in this Agreement, and all applicable local, state and federal laws, rules and regulations.

**4.1.2 Term.** The term of this Agreement shall correspond to the term of the California HERO Program Administration Agreement, unless terminated as provided herein.

## **4.2 Responsibilities of Renovate America and CVAG.**

**4.2.1 Control and Payment of Subordinates; Independent Contractor.** The Program Administration Services shall be performed by Renovate America or under its supervision in accordance with the California HERO Program Administration Agreement and this Agreement (collectively, the “Agreements”). Renovate America will determine the means, methods and details of performing the Program Administration Services subject to the requirements of the Agreements. Renovate America retains the right to perform services similar to Program Administration Services authorized to be provided under the Agreements for other public agencies implementing similar programs. Any personnel performing Program Administration Services under the Agreements on behalf of Renovate America shall also not be employees of CVAG and shall at all times be under Renovate America’s exclusive direction and control. Renovate America shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Program Administration Services under the Agreements and as required by law. Renovate America shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers compensation insurance.

**4.2.2 Renovate America Responsibilities.** Renovate America shall perform Program Administration Services as set forth in the California HERO Program Administration Agreement except as such Program Administration Services are modified as set forth in Exhibit A. Renovate America represents that it has the professional and technical personnel and financial resources required to perform Program Administration Services in conformance hereto.

**4.2.3 CVAG Responsibilities.** In order to facilitate Renovate America’s performance of Program Administration Services, CVAG shall respond to Renovate America’s requests and submittals in a timely manner including reviewing and approving projects as set forth in the Schedule of Responsibilities attached as Exhibit A. Bonds issued to finance improvements pursuant to this Program shall be issued through the California HERO Program. In order for bonds to be issued through the California HERO Program, member agencies of CVAG must adopt the resolution as set forth in Exhibit B. CVAG represents that it has the professional personnel and financial resources required to perform the CVAG Responsibilities in conformance hereto. CVAG has also contracted with Ygrene Energy Fund California, LLC to provide a PACE program pursuant to Senate Bill 555 (Statutes of 2011, chapter 493) within its member jurisdictions, and reserves the right to implement similar and any other programs with other contractors.

### **4.2.4 Compensation.**

(a) CVAG has no responsibility to directly pay Renovate America for the provision of Program Administration Services and the only payment to Renovate America for the provision or the performance of its Program Administration Services shall be from the proceeds of the Bonds to be issued to finance the Eligible Improvements for a property participating in the California HERO Program.

(b) At the time of the issuance of a bond to fund Eligible Products for a residential property located within a CVAG Jurisdiction participating in the California HERO Program, CVAG will receive from Renovate America 1.0% of the principal amount of such bond representing the assessment levied against such property.

(c) The Parties agree that all program fees for the California HERO Program charged to the property owner and/or the contractor shall be designed to minimize up-front costs for property owners. In furtherance of this objective, WRCOG shall consult with CVAG prior to increasing any such program fee. Fees charged to property owners in the CVAG region shall be no more than comparable fees charged to property owners in other cities and counties participating in the California HERO Program.

**4.2.5 Conformance to Applicable Requirements.** Prior to launch and no less frequently than once a quarter, Renovate America shall meet with the CVAG Representative and other CVAG representatives to review and approve Renovate America's marketing and customer service plans for the California HERO Program in the Coachella Valley. To the extent there are material changes to the marketing and customer service plans, Renovate America shall meet with the CVAG Representative and other CVAG representatives to review and approve the revised marketing and customer service plans for the Coachella Valley. Renovate America and CVAG shall schedule quarterly meetings at Renovate America offices or CVAG's offices for an update on the California HERO Program.

**4.2.6 The CVAG Representative.** CVAG hereby designates Thomas Kirk, or his or her designee, to act as its representative for the performance of this Agreement (the "CVAG Representative"). The CVAG Representative shall have the power to act on behalf of CVAG for all purposes under this Agreement. Renovate America shall not accept direction or orders from any person on behalf of CVAG other than the CVAG Representative or his or her designee. The CVAG Representative shall provide written notice to Renovate America and WRCOG of the appointment or the rescission of the appointment of any designee of the CVAG Representative hereunder.

**4.2.7 The WRCOG Representative.** WRCOG hereby designates Rick Bishop, or his or her designee, to act as its representative for the performance of this Agreement (the "WRCOG Representative"). The WRCOG Representative shall have the power to act on behalf of WRCOG for all purposes under this Agreement. Renovate America shall not accept direction or orders from any person on behalf of WRCOG other than the WRCOG Representative or his or her designee. The WRCOG Representative shall provide written notice to CVAG and Renovate America of the appointment or the rescission of the appointment of any designee of the WRCOG Representative hereunder.

**4.2.8 The Renovate America Representative.** Renovate America hereby designates John Paul McNeill, or his designee, to act as its representative for the performance of this Agreement (the "Renovate America Representative"). The Renovate America Representative shall have full authority to represent and act on behalf of Renovate America for all purposes under this Agreement. The Renovate America Representative shall supervise and direct Program Administration Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the

satisfactory coordination of all portions of Program Administration Services under this Agreement. The Renovate America Representative shall provide written notice to CVAG and WRCOG of the appointment or the rescission of the appointment of any designee of the Renovate America Representative hereunder.

**4.2.9 Coordination of Program Administration Services.** Renovate America agrees to work closely with CVAG staff in the performance of Program Administration Services and shall be reasonably available to CVAG's staff.

**4.2.10 Standard of Care.** Renovate America shall perform all Program Administration Services under the Agreements in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Renovate America represents and maintains that it is skilled in the professional calling and has the financial resources necessary to perform Program Administration Services. Renovate America warrants that all employees and/or agents of Renovate America shall have sufficient skill and experience to perform Program Administration Services assigned to them. Further, Renovate America represents that it, its employees and agents have, or will have prior to the performance of Program Administration Services, all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform Program Administration Services, and that such licenses and approvals shall be maintained throughout the term of the Agreements. Renovate America shall perform, at its own cost and expense and without reimbursement from CVAG, any services necessary to correct errors or omissions which are caused by Renovate America's failure to comply with the standard of care provided for herein.

**4.2.11 Laws and Regulations.** Renovate America shall keep itself fully informed of and in material compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the California HERO Program or Program Administration Services, including without limitation, all Cal/OSHA requirements and all applicable federal and state securities laws and regulations, and shall give all notices required by law. Renovate America shall be liable for all violations of such laws, rules and regulations in connection with Program Administration Services. If Renovate America performs or fails to perform any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the CVAG, Renovate America shall be solely responsible for all costs arising therefrom. Renovate America shall defend, indemnify and hold CVAG, its officials, directors, members, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure by Renovate America to comply with such laws, rules or regulations.

### **4.3 Accounting Records – Maintenance and Inspection.**

Renovate America shall maintain complete and accurate records, consistent with its records retention policy, but in no event for less than three years after repayment of any installation financed under this Program. All such records shall be clearly identifiable. Renovate America shall, at reasonable times and upon reasonable notice, allow a representative of CVAG and/or its agent during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Renovate America

shall, at reasonable times and upon reasonable notice, allow inspection of all work, data, documents, proceedings, and activities related to the Agreement.

#### **4.4 General Provisions.**

**4.4.1 Termination of Agreement for Cause.** Should Renovate America breach one or more of its material obligations as outlined herein in a material way, CVAG may, by written notice to Renovate America, terminate the whole or any part of this Agreement by giving written notice to Renovate America of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Notwithstanding anything to the contrary in the immediately preceding sentence, CVAG shall provide Renovate America with at least thirty (30) days advance written notice within which to cure any such potential breach. If the matter is cured, as determined by CVAG in the exercise of its reasonable discretion, within this thirty (30) day period, then CVAG shall not be entitled to terminate this Agreement, and if the matter is not so cured, CVAG may proceed with the process outlined in the first sentence of this Section 4.4.1.

**4.4.2 Termination Without Cause:** CVAG, WRCOG or Renovate America may terminate this Agreement, without cause, effective 90 days after giving written notice of such termination to each of the other Parties.

**4.4.3 Transition Period Upon Termination:** Upon notification of termination Renovate America shall be required to notify CVAG and WRCOG of all pending applications for Program Assessment Contracts to fund Eligible Improvements to be installed on Residential properties originated by Renovate America during the course of Renovate America's provision of Program Administrative Services hereunder (each, a "Pending Program Assessment Contract") and Renovate America shall have the right to close such Pending Program Assessment Contracts subject to the review of the appropriate documentation by CVAG and WRCOG.

**4.4.4 Effect of Termination on California HERO Program Administration Agreement.** The termination of this Agreement by CVAG pursuant to the provisions hereof shall not result in the termination of the California HERO Program Administration Agreement as such agreement applies to the provision of Program Administrative Services outside of the CVAG Jurisdictions.

**4.4.5 Delivery of Notices.** All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Renovate America: Renovate America, Inc.  
15073 Avenue of Science, Suite 200  
San Diego, CA 92128  
Attn: John Paul McNeill, CEO  
With copies to: Scott D. McKinlay, CLO &  
Thomas E. Hemmings, CFO  
Facsimile: (619) 923-2761

CVAG: Coachella Valley Association of Governments  
73710 Fred Waring Drive, Suite 200  
Palm Desert, CA 92260  
Attn: Tom Kirk  
Facsimile: (760) 340-5949

WRCOG: Western Riverside Council of Governments  
4080 Lemon Street, 3rd Floor, MS 1032  
Riverside, CA 92373  
Attention: Rick Bishop  
Facsimile: (951) 787-7991

With copy to: Best Best & Krieger LLP  
3390 University Avenue  
Riverside, CA 92502  
Attn: Steven DeBaun, Esq., General Counsel  
Facsimile: (951) 686-3083

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

#### **4.4.6 Confidentiality, Intellectual Property and Data Compilation.**

(a) *Confidentiality.* Except as otherwise set forth in this Agreement, all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data provided by either Party to the other Party (including any copies or manuscripts of such information produced by a Party pursuant to this Agreement) or otherwise including any financial structure and financing approach of Program Assessments in connection with the performance of this Agreement shall be held confidential by the other Party. Nothing furnished to either Party which is otherwise known to the receiving Party prior to such disclosure or is generally known, or has become known, to the related industry, and nothing that is subject to the California Public Records Act, shall be deemed confidential. Renovate America shall not use CVAG's name or insignia in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CVAG. Notwithstanding the above, any documents prepared for the California HERO Program that are intended to be provided to the public shall not be subject to the limitations of this Section 4.4.5.

(b) *Intellectual Property.* CVAG expressly acknowledges and agrees that any and all computer software and all source code thereof, used or developed by Renovate America ("Proprietary Software") in performing the Services is proprietary and Renovate America, or its licensors, shall at all times exclusively own all rights, title, and interest in such software and Proprietary Software, including all intellectual property rights contained therein. However, such software shall be made available to CVAG to the extent necessary to examine, review or audit Program records and documents.

(c) Data Compilation. CVAG acknowledges and agrees that Renovate America, or its licensors, will have spent substantial time and effort in collection and compiling data and information (the “Data Compilations”) in connection with the California HERO Program Administration Services and that such Data Compilations may be used by Renovate America (or such licensors) for their own purposes, including, without limitation, sale or distribution to third parties; provided, however, that Renovate America will not, and shall ensure that its licensors will not, sell or distribute any of CVAG’s confidential information that may be contained in such Data Compilations, unless such confidential information is used only on an aggregated and anonymous basis.

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

**4.4.8 Arbitration and Equitable Relief.**

(a) Arbitration. In consideration of Renovate America’s rights under this Agreement, CVAG’s promise to arbitrate disputes under this Agreement, and the receipt of compensation paid to Renovate America, at present and in the future, Renovate America and CVAG agree that any and all controversies, claims, or disputes with anyone (including CVAG and any employee, officer, director, volunteer of CVAG in its capacity as such or otherwise), whether brought on an individual, group, or class basis, arising out of, relating to, or resulting from Renovate America’s performance of Program Administration Services under this Agreement or the termination of this Agreement, including any breach of this Agreement by either Party, shall be subject to binding arbitration under the Arbitration Rules set forth in California Code of Civil Procedure Section 1280 through 1294.2, including Section 1283.05 (the “Rules”) and pursuant to California law. Disputes which Renovate America and CVAG agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under state or federal law, the California Labor Code, claims of harassment, discrimination and wrongful termination and any statutory claims. Renovate America and CVAG further understand that this Agreement to arbitrate also applies to any disputes that Renovate America or CVAG may have with each other.

(b) Procedure. Renovate America and CVAG agree that any arbitration will be administered by the American Arbitration Association (“AAA”), and that the neutral arbitrator will be selected in a manner consistent with AAAs National Rules for the Resolution of Contract Disputes. Renovate America and CVAG agree that the arbitrator shall have the power to decide any motions brought by any Party to the arbitration, including motions for summary judgment and/or adjudication, motions to dismiss and demurrers, and motions for class certification, prior to any arbitration hearing. Renovate America and CVAG also agree that the arbitrator shall have the power to award any remedies available under applicable law, and that the arbitrator shall award attorneys’ fees and costs to the prevailing Party except as prohibited by law. Renovate America agrees that the arbitrator shall administer and conduct any arbitration in a manner consistent with the Rules and that to the extent that the AAAs National Rules for the Resolution of Contract Disputes conflict with the Rules, the Rules shall take precedence. Renovate America and CVAG agree that the decision of the arbitrator shall be in writing.



(c) Remedy. Except as provided by the Rules and this Agreement, arbitration shall be the sole, exclusive and final remedy for any dispute between Renovate America and CVAG. Accordingly, except as provided for by the Rules and this Agreement, neither Renovate America nor CVAG will be permitted to pursue court action regarding claims that are subject to arbitration except to have a arbitration award entered as a judgment for enforcement purposes.

(d) Availability of Injunctive Relief. Renovate America and CVAG agree that either Renovate America or CVAG may petition a court for provisional relief, including injunctive relief, as permitted by the Rules, including, but not limited to, where either Renovate America or CVAG alleges or claims a violation of this Agreement between CVAG and Renovate America. Renovate America and CVAG understand that any breach or threatened breach of such an agreement (including this Agreement) will cause irreparable injury and that money damages will not provide an adequate remedy therefor and both CVAG and Renovate America hereby consent to the issuance of an injunction.

**4.4.9** Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

**4.4.10** Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in the County of Riverside.

**4.4.11** Time of Essence. Time is of the essence for each and every provision of this Agreement.

**4.4.12** Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

**4.4.13** Assignment or Transfer. Renovate America shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of CVAG and WRCOG, provided, however, Renovate America may assign this Agreement in connection with a merger or the sale of all or substantially all of its assets provided that the successor entity expressly assumes all of the obligations and confirms all of the representations and warranties of Renovate America hereunder. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

**4.4.14** Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. All references to Renovate America include all personnel, employees, agents, and subcontractors of Renovate America, except as otherwise specified in this Agreement. All references to CVAG include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. All references to WRCOG include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of

reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

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

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

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

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

**4.4.19 Prohibited Interests.** Renovate America warrants and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Renovate America or independent contractors and consultants engaged by Renovate America to perform services of the nature of those included on the Schedule of Responsibilities attached hereto to solicit or secure this Agreement. Further, other than its outside counsel, Renovate America warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Renovate America, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CVAG shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CVAG, during the term of his or her service with CVAG, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**4.4.20 Equal Opportunity Employment.** Renovate America represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or other protected class. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

**4.4.21 Labor Certification.** By its signature hereunder, Renovate America certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of Program Administration Services.

**4.4.22 Authority to Enter Agreement.** Renovate America has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each

Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

#### **4.5 Subcontracting.**

**4.5.1 Prior Approval Required.** Renovate America shall not subcontract any portion of Program Administration Services, except as expressly stated herein, without prior written approval of CVAG; *provided that* Renovate America is not prohibited from hiring individuals that act as independent contractors or consultants with respect to the work such individuals perform for Renovate America. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

#### **4.6 Insurance.**

**4.6.1 Time for Compliance.** Renovate America shall not commence Program Administration Services under this Agreement until it has provided evidence satisfactory to CVAG that it has secured all insurance required under this Section. In addition, Renovate America shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to CVAG that the subcontractor has secured all insurance required under this section.

**4.6.2 Minimum Requirements.** Renovate America shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by Renovate America, its agents, representatives, employees or subcontractors. Renovate America shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(a) **Minimum Scope of Insurance.** Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers Compensation and Employers Liability*: Workers Compensation insurance as required by the State of California and Employers Liability Insurance.

(b) **Minimum Limits of Insurance.** Renovate America shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers Compensation and Employers Liability*: Workers Compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

**4.6.3 Professional Liability.** Renovate America shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of three (3) years following

completion of Program Administration Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

**4.6.4 Insurance Endorsements.** The insurance policies shall contain the following provisions, or Renovate America shall provide endorsements on forms supplied or approved by CVAG to add the following provisions to the insurance policies:

(a) General Liability. The general liability policy shall be endorsed to state that: (1) CVAG, its directors, members, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to Program Administration Services or operations performed by or on behalf of Renovate America, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects CVAG, its directors, members, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Renovate America's scheduled underlying coverage. Any insurance or self-insurance maintained by CVAG, its directors, members, officials, officers, employees, agents and volunteers shall be excess of Renovate America's insurance and shall not be called upon to contribute with it in any way.

(b) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) CVAG, its directors, members, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Renovate America or for which Renovate America is responsible; and (2) the insurance coverage shall be primary insurance as respects CVAG, its directors, members, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Renovate America's scheduled underlying coverage. Any insurance or self-insurance maintained by CVAG, its directors, members, officials, officers, employees, agents and volunteers shall be excess of Renovate America's insurance and shall not be called upon to contribute with it in any way.

(c) Workers Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against CVAG, its directors, members, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Renovate America.

(d) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (1) the respective insurer (or in the case of professional liability insurance provided pursuant to Section 4.6.3, the respective insurer or Renovate America) shall provide CVAG with written notice within thirty (30) days of any suspension, voiding or cancellation of the insurance policy; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to CVAG, its directors, members, officials, officers, employees, agents and volunteers.

**4.6.5 Separation of Insureds; No Special Limitations.** All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance

shall not contain any special limitations on the scope of protection afforded to CVAG, its directors, members, officials, officers, employees, agents and volunteers.

**4.6.6 Deductibles and Self-Insurance Retentions.** Any deductibles or self-insured retentions in an amount greater than \$10,000 must be declared to and approved by CVAG. Renovate America shall guarantee that, at the option of CVAG, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CVAG, its directors, members, officials, officers, employees, agents and volunteers; or (2) Renovate America shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

**4.6.7 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Bests rating no less than A:VII, licensed to do business in California.

**4.6.8 Verification of Coverage.** Renovate America shall furnish CVAG with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to CVAG. The Certificates of Insurance shall not only name the type of policy provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by CVAG if requested. All certificates and endorsements must be received and approved by CVAG before work commences. CVAG reserves the right to require complete, certified copies of all required insurance policies, at any time.

#### **4.7 Indemnification.**

Renovate America shall defend, indemnify and hold CVAG, its directors, members, officials, officers, 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 incident to any alleged negligent or wrongful acts or omissions or willful misconduct of Renovate America, its directors, officials, officers, employees, agents, consultants, contractors and subcontractors, arising out of or in connection with the performance of the Program Administration Services, the California HERO Program or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Renovate America shall defend, at Renovate America'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 CVAG, its directors, members, officials, officers, employees, agents or volunteers. Renovate America shall pay and satisfy any judgment, award or decree that may be rendered against CVAG or its directors, members, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Renovate America shall reimburse CVAG and its directors, members, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Renovate America's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by CVAG, its directors, officials, officers, employees, agents or volunteers.

CVAG shall defend, indemnify and hold Renovate America, its officials, officers, 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 incident to any reckless acts or omissions or willful misconduct of CVAG, its officials, officers, employees, agents, consultants, contractors and subcontractors, arising out of or in connection with the performance of the Program Administration Services, the California HERO Program or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. CVAG shall defend, at CVAG'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 Renovate America, its directors, officials, officers, employees, agents or volunteers. CVAG shall pay and satisfy any judgment, award or decree that may be rendered against Renovate America or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. CVAG shall reimburse Renovate America and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CVAG's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Renovate America, its directors, officials, officers, employees, agents or volunteers.

No third party shall be a direct beneficiary of this Section 4.7.

**4.8** Application of this Agreement. This Agreement shall apply solely to the provision of Program Administrative Services within those cities within CVAG that have elected to participate in the California HERO Program.

**4.9** Conflict with California HERO Program Report. If any provision of this Agreement shall conflict with the provisions of the California HERO Program Report, the provisions of the California HERO Program Report shall prevail.

**4.10** No Amendment to the California HERO Program Administrative Agreement. Except as expressly provided for herein, all terms of the California HERO Program Administrative Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereby have made and executed this Agreement as of the date first written above.

COACHELLA VALLEY  
ASSOCIATION OF GOVERNMENTS

RENOVATE AMERICA, INC.

By: \_\_\_\_\_  
Title: Jan Harnik  
Chair

By: \_\_\_\_\_  
Title: John Paul McNeill  
Chief Executive Officer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Toni Eggebraaten  
General Counsel

WESTERN RIVERSIDE COUNCIL  
OF GOVERNMENTS

By: \_\_\_\_\_  
Title: Rick Bishop  
Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General and Bond Counsel  
Best Best & Krieger LLP





## **EXHIBIT “A”**

### **CVAG SCHEDULE OF RESPONSIBILITIES**

CVAG will be responsible for coordination with Renovate America, WRCOG and California HERO Program, and the CVAG member agencies to implement the California HERO program in the Coachella and Palo Verde Valleys. Consequently, CVAG shall timely take the following actions:

a. Assist CVAG member agencies with the process of adoption of resolutions and/or other actions necessary to participate in the California HERO program.

b. Adopt resolutions and approve documents authorizing the California HERO program;

c. Review, at CVAG’s discretion, projects submitted by property owners participating in the California HERO Program within the CVAG Jurisdictions. Within two (2) business days following projects submittal by Renovate America to CVAG, CVAG reserves the right to deny a project to the extent CVAG deems there is insufficient consumer protection. A “business day” is defined as any day in which Renovate America’s call center is open. Renovate America’s call center is open seven days a week, but closed on some national holidays. All projects in the CVAG Jurisdictions will have deemed to be approved on the 3<sup>rd</sup> business day if Renovate America has not received communication from CVAG.

d. The CVAG Representative may, from time to time, recommend to the WRCOG Representative and the Renovate America Representatives revisions to the Program Criteria and the CVAG Representative, the WRCOG Representative and the Renovate America Representative shall meet and consult, either in person or by conference call, regarding such recommendations. CVAG acknowledges that revisions to the Program Criteria are subject to the approval of WRCOG as required pursuant to Chapter 29.

e. Coordinate with Renovate America on program marketing and outreach, to ensure that such marketing and outreach is compatible with existing PACE programs offered in the CVAG region and property owners in the CVAG region are aware of the options for PACE programs, including the Ygrene Energy Fund program and the California HERO program.

f. Provide Renovate America with a “local presence” at the CVAG offices. This can be accomplished with Renovate American employees or representatives or by training CVAG staff.

**EXHIBIT B**  
**RESOLUTION**

## ATTACHMENT 2

### CVAG List of Eligible Improvements: Ygrene Energy Fund

The following are the Eligible Improvements that will be available under the CVAG regional Clean Energy (PACE) Program. Additional and/or alternative improvements may be added on a case-by-case basis, by mutual agreement of both parties, or the list may be modified to comply with state law.

**i. Energy Efficiency. The following energy-efficiency measures are approved for all building types:**

- Air Sealing and Ventilation
- Air Filtration
- Building Envelope
- Duct Leakage and Sealing
- Bathroom, ceiling, attic, and whole house fans
- Insulation
- Defect Correction
- Attic, floor, walls, roof, ducts
- Weather-Stripping
- Home Sealing
- Geothermal Exchange Heat Pumps
- HVAC Systems
- Evaporative Coolers
- Cooler must have a separate ducting system from air conditioning and heating ducting system
- Natural gas storage water heater
- Tank-less water heater
- Solar water heater system
- Reflective insulation or radiant barriers
- Cool roof
- Windows and glass doors
- U value of 0.40 or less and solar heat gain coefficient of 0.40 or less
- Window filming
- Skylights
- Solar tubes
- Additional building openings to provide additional natural light
- Lighting
- Energy Star listed (no bulb, only retrofits)
- Pool equipment
- Pool circulating pumps

**ii. Non-residential Building Measures.** The following measures are allowed for commercial and non-residential buildings, in addition to all applicable energy efficiency measures listed above:

- Occupancy-Sensor Lighting Fixtures
- SMART Parking Lot Bi-Level Fixture
- SMART Parking Garage Bi-Level Fixtures
- SMART Pathway Lighting
- SMART Wall Pack Fixtures
- Task Ambient Office Lighting
- Classroom Lighting
- Refrigerator Case LED Lighting with Occupancy Sensors
- Wireless, daylight lighting controls
- Kitchen Exhaust Variable Air Volume Controls
- Wireless HVAC Controls & Fault Detection

**iii. Solar Equipment.** Eligible solar equipment for both residential and commercial properties includes:

- Solar thermal hot water systems
- Solar thermal systems for pool heating
- Photovoltaic systems (electricity)
- Emerging technologies – following the Custom Projects track and subject to CVAG approval.

**iv. Custom Projects.** The below measures are examples of Custom Projects that will be considered for program funding:

- Building energy-management controls
- HVAC duct zoning-control systems
- Irrigation pumps and controls
- Lighting controls
- Industrial- and process-equipment motors and controls
- Fuel cells
- Wind-turbine power system
- Natural gas
- Hydrogen fuel
- Other fuel sources (emerging technologies)
- Co-generation (heat and energy)

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