

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

624



FROM: Executive Office

SUBMITTAL DATE:

March 1, 2011

SUBJECT: Agreement for Professional Consultant Services for Western Riverside County Clean Cities Program

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Agreement between the County of Riverside (County) and the Western Riverside Council of Governments (WRCOG)
2. Authorize the County Executive Officer to distribute on an annual basis through June 30, 2013, a contribution of \$40,000, from AB2766 Subvention Funds to WRCOG.

BACKGROUND: The WRCOG provides professional consultant services to the County for the Clean Cities Program by providing outreach to the community on air quality issues such as alternative fuels, emerging technologies, mobile source air pollution reduction strategies and providing assistance with AB2766 reporting requirements.

(Continued on Page 2)

Michael R. Shetler
Michael R. Shetler, Senior Management Analyst

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 40,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/2011- 2012/2013

SOURCE OF FUNDS: AB2766 Subvention Fund	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature BY: *Dean Deines*
Dean Deines

Prev. Agn. Ref.: | **District:** 1,2,3 & 5 | **Agenda Number:** 3.4

FORM APPROVED COUNTY COUNSEL
BY: *Neal R. Kipnis* DATE: 2/25/11
Departmental Concurrence

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD
Per Exec. Ofc.: Consent Policy

**SUBMITTAL TO THE BOARD OF SUPERVISORS
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SUBJECT: Agreement for Professional Consultant Services for Western Riverside County Clean Cities Program

Background Continued:

The County as a member of Western Riverside Clean Cities Coalition provides a leadership role in coordinating efforts between government and industry to recognize the value of partnerships to achieve air quality, energy security, economic development and transportation goals. Through the Clean Cities Program the County participates in planning and implementation activities including the development of clean fuel infrastructure, vehicle fleet conversion, grant development, and dissemination of information, as well as program monitoring.

The WRCOG provides staff support services and has the required expertise to ensure that the Clean Cities program is managed effectively. See Exhibits A, B and C for additional detail.

The term of this agreement will remain in effect until June 30, 2013, unless otherwise amended or terminated pursuant to the provisions of the agreement.

If AB2766 funds become restricted or are terminated, then that will be considered as grounds for termination of this agreement.

The agreement has been reviewed by County Counsel and is approved as to form.

**AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES
FOR WESTERN RIVERSIDE COUNTY CLEAN CITIES PROGRAM**

(Western Riverside Council of Governments)

THIS AGREEMENT is made and entered into this first day of March, 2011, by and between the County of Riverside and the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS, a joint powers authority, located at 4080 Lemon Street, Riverside, California, hereinafter referred to as "WRCOG", with respect to the following facts:

RECITALS:

WHEREAS, County's mission is to take a leadership role in coordinating efforts between government and industry to recognize the value of partnership in achieving air quality, energy security, economic development, and transportation goals; and

WHEREAS, County participates in planning and implementation activities including, preparation of agendas, meetings, minutes, newsletters, dissemination of information, program monitoring, status reports to the Department of Energy; grant applications for vehicle fleet conversion, and development of clean fuel infrastructure; and

WHEREAS, WRCOG will furnish staff support services to County with respect to the Clean Cities Program; and

WHEREAS, County is in need of continuing to receive the expertise of WRCOG staff support for this program; and

WHEREAS, WRCOG has the required expertise to provide such services and is willing and able to perform such work for compensation.

NOW, THEREFORE, County and Consultant agree as follows:

1. Retention of Consultant. County retains WRCOG to perform, and WRCOG agrees to render, those services (hereinafter "the services") defined in the Scope of Work attached hereto as Exhibit "A," and incorporated herein by this reference in accordance with the terms and conditions set forth herein.
2. Term. The term of this Agreement shall become effective on the date first written above, and shall remain in effect until June 30, 2013, unless otherwise amended or terminated pursuant to the provisions stated herein.
3. Personnel. WRCOG shall furnish all personnel necessary to perform the services and shall be responsible for their performance and compensation. WRCOG recognizes that the qualifications and experience of the personnel to be used are vital to professional and timely completion of the services. The key personnel listed in Exhibit "B" attached hereto and incorporated herein by this reference and assigned to perform portions of the services shall remain assigned through completion of the services,

unless otherwise mutually agreed by the parties in writing.

4. Contract Administration. A designee of the County will be appointed in writing by the County Manager to administer this Agreement on behalf of County and shall be referred to herein as Contract Administrator.

5. Compensation - Payment. In consideration for the performance of the services, County shall pay WRCOG in accordance with the terms and conditions as set forth in the attached Exhibit "C", for a total not to exceed \$40,000 per fiscal year. The County may withhold payment if the County Manager reasonably finds the performance of WRCOG's services incomplete or inadequate under this Agreement and first provides WRCOG with a written explanation to WRCOG of the determination of incomplete or inadequate work and a reasonable cure period. . Only that portion of the invoice under dispute may be withheld from payment during the cure period.

6. Independent Contractor. WRCOG shall at all times during its performance of the services retain its status as independent contractor. WRCOG's employees and agents shall under no circumstances be considered or held to be employees or agents of County and County shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them.

No agent, officer or employee of the County is to be considered an employee of WRCOG. It is understood by both WRCOG and County that this agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or joint venture.

7. Mutual Indemnification. WRCOG and County shall each defend, indemnify and hold the other party and its officials, officers, employees, consultants, subcontractors, volunteers and agents 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, to the extent arising out or incident to any negligent acts, omissions or willful misconduct of the indemnifying party or its officials, officers, employees, consultants, subcontractors, volunteers and agents arising out of or in connection with the performance of this Agreement, including without limitation, the payment of all consequential damages and attorneys fees and other related costs and expenses.

The parties expressly agree that any payment, attorney's fee, costs or expense County incurs or makes to or on behalf of an injured employee under the County's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

8. Workers' Compensation Insurance. By executing this Agreement, WRCOG certifies that their agency is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any of the work. WRCOG shall carry the insurance or provide for self-insurance required by California law to protect WRCOG from claims under the Workers Compensation Act. WRCOG's Workers' Compensation Insurance shall be issued by an insurance company authorized to transact insurance business in the State of California with a policy holder's rating of B+ or higher and a Financial Class of VII or larger.

9. Insurance. Prior to County's execution of this Agreement, WRCOG shall obtain, and shall thereafter maintain during the term of this Agreement, such commercial general and automobile liability insurance as reasonably determined by WRCOG to be necessary to insure against damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations by WRCOG, or by anyone directly or indirectly employed by, connected with, or acting for or on behalf of WRCOG related to the services provided by this agreement.
10. Accounting Records. WRCOG shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be clearly identifiable. WRCOG shall allow a representative of County during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. WRCOG shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.
11. Time of Essence. Time is of the essence for each and every provision of this Agreement.
12. County's Right to Employ Other Consultants. County reserves the right to employ other consultants in connection with the project.
13. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, description, computer program data, input record data, written information, and other materials either created by or provided to WRCOG in connection with the performance of this Agreement shall be held confidential by WRCOG, except as otherwise directed by the Contract Administrator or mandated by other applicable law such as the California Public Records Act. Nothing furnished to WRCOG, which is otherwise known to WRCOG or is generally known, or has become known, to the related industry shall be deemed confidential. WRCOG shall not use County's name or insignia, photographs of the project, or any publication pertaining to the services or the project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the County.
14. General Compliance with Laws. WRCOG shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by WRCOG, or in any way affect the performance of services by WRCOG pursuant to this Agreement. WRCOG shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of WRCOG's services with all applicable laws, ordinances and regulations.
15. Amendments. This Agreement may be amended or supplemented only by written documents signed by both parties.
16. Termination. This Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party.

In the event of a substantial failure of performance by WRCOG, County may terminate this Agreement upon a ten (10) day written notice to WRCOG. The ten-day notice period shall be used by both parties in an attempt to negotiate resolution of disputes and remedy any breach.

This Agreement may be terminated by County at any time upon written notice to WRCOG if County decides to abandon or indefinitely postpone the project.

In the event of termination, County shall determine and pay to WRCOG as full payment for all work performed and all expenses incurred hereunder the amount which bears the same ratio to the maximum fee otherwise payable under this Agreement as the ratio which the work actually rendered bears to the totality of the services which would have been rendered had the Agreement been fully performed. In ascertaining the work actually rendered through the termination date, County shall consider completed work, work in progress and complete and incomplete reports and other documents only after delivery to County.

17. Venue. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

18. Notices. Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

COUNTY

Bill Luna
County Executive Officer
County of Riverside
4080 Lemon Street, 4th Floor
Riverside, CA 92501

WRCOG

Rick Bishop
Executive Director
Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor
Riverside, CA 92501

19. Successors and Assigns. It is mutually understood and agreed that this Agreement shall be binding upon County and WRCOG and their respective successors. Neither this Agreement nor any part hereof nor any monies due or to become due hereunder may be assigned by WRCOG without the prior consent of the Contract Administrator.

20. Nondiscrimination. During WRCOG's performance of this Agreement, WRCOG shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation, in the selection and retention of employees and subconsultants and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, WRCOG agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

21. Severability. Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid,

unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

22. Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of WRCOG each represent and warrant that they have the legal power, right and actual authority to bind WRCOG to the terms and conditions hereof and thereof.

29. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by, nor neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

IN WITNESS WHEREOF County and WRCOG have caused this Agreement to be duly executed on the day and year first above written.

COUNTY OF RIVERSIDE

WRCOG

By: _____
BOB BUSTER, CHAIRMAN
Riverside County Board of Supervisors

By: _____

[Printed Name]

[Title]

Attest: _____
Clerk of the Board

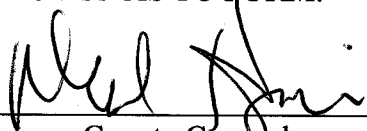
By: _____

[Printed Name]

[Title]

APPROVED AS TO FORM:

CERTIFIED AS TO FUND AVAILABILITY:*

By:  _____
County Counsel

By: _____
Finance Director

*Not necessary if City Council approval required.

EXHIBIT "A"

SCOPE OF SERVICES

- Outreach to the community on alternative fuels, technologies, and vehicles.
- Administer the Regional Air Quality Task Force.
- Access to a regional network of air quality, alternative fuels and technical experts.
- Access to grants and partnership opportunities among members and vendors.
- Access to fleet workshops and annual educational opportunities free or at a low cost.
- Monthly Newsletters.
- Access to vehicle and alternative fuels performance data.
- Legislative Alerts as they relate to air quality and alternative fuels.
- Economic development opportunities.
- Leveraging of resources and support in federal and state legislative matters, and infrastructure development.
- Grant writing assistance.
- Assistance with SCAQMD's AB2766 annual reporting.
- Updates regarding South Coast Air Quality Management District's Fleet Rules, how they apply to local jurisdictions and the technology available to meet compliance.
- E-mail updates on the latest developments in vehicle technology and alternative fuels.
- Bi-monthly meetings and networking opportunities providing a forum to exchange ideas and information.
- Host one of the Coalition's Stakeholder meetings.
- County's name and logo on Coalition's letterhead, brochures, outreach materials.
- County's link on Western Riverside County Clean Cities website.
- Outreach to middle schools (presentations or participation in school's environmental fair (minimum one (1) per school year).

- Provide representation at annual Clean Cities Conference and Peer Review, and provide staff report on events.

EXHIBIT "B"

KEY PERSONNEL

**From the office of
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG)
4080 LEMON STREET, 3RD FLOOR
RIVERSIDE, CA 92501-3679**

Main Contact:

**Julie Goodson, Staff Analyst assigned to
Western Riverside County Clean Cities Coalition
Phone (951) 955-8379
FAX (951) 787-7991**

Alternate Contact:

**Barbara Spoonhour, Program Manager
Phone (951) 955-8313
FAX (951) 787-7991**

Signatory Powers

**Ruthanne Taylor Berger, Deputy Executive Director
Western Riverside Council of Governments
(951) 955-8304
FAX (951) 787-7991**

**Rick Bishop, Executive Director
Western Riverside Council of Governments
(951) 955-7985**

EXHIBIT "C"

COMPENSATION SCHEDULE

The proposed Air Quality budget for the Clean Cities Agreement between the County of Riverside and Western Riverside Council of Governments (WRCOG) is \$40,000 per fiscal year.

The Fund will be reviewed annually to determine expenditures. WRCOG will submit to the County an annual year-end statement of activities.

WRCOG will invoice the County for the full amount of the contract or a portion thereof.

County will pay full or partial payment as fund balance allows within 30 days of receipt of invoice. If payment of the invoice is delayed the Contract Administrator will notify WRCOG in writing with a revised payment date.

WRCOG will maintain records of the tasks accomplished under the agreement, documenting acceptable expenditure of AB2766 funds, by the South Coast Air Quality Management District.

WRCOG will allow access of records for audit, as necessary.