

**FIRST AMENDMENT TO THE IMPLEMENTATION AGREEMENT
BETWEEN THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
AND THE CITY OF MENIFEE TO IMPLEMENT MAINTENANCE AND REPAIR
PROGRAM FOR STREETLIGHTS**

This First Amendment to Maintenance Agreement (“First Amendment”) is entered into as of December 1, 2023 between the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (“WRCOG”), a joint powers authority formed under Government Code sections 6500 et seq., and the CITY OF MENIFEE (“Member Agency”), a public agency formed under the laws of the State of California. WRCOG and the Member Agency are sometimes collectively referred to in this First Amendment as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, on March 27, 2018, WRCOG entered into an “Amended and Restated Western Riverside Council of Governments Professional Services Agreement” with Siemens Industry, Inc. (the “Original Professional Services Agreement”), for the provision of retrofitting services and regular maintenance and repair services (the “Services”), which was subsequently amended; and

WHEREAS, WRCOG and the Member Agency entered into the “Implementation Agreement between the Western Riverside Council of Governments and City of Menifee to Implement the Maintenance and Repair Program for Streetlights” on June 27, 2019, in order to authorize WRCOG to enter into one or more agreements with third party providers for the provision of maintenance, repair, retrofitting and replacement services of streetlights and acquisition of retrofit equipment on behalf of the Member Agency within the Member Agency’s jurisdiction and to administer such agreements; and

WHEREAS, the Original Professional Services Agreement expired on December 1, 2023 and WRCOG has entered into a “Western Riverside Council of Governments Professional Services Agreement” with Yunex LLC dated October 2, 2023 (the “Professional Services Agreement”), to provide professional services for the installation of LED street lights and the ongoing operations and maintenance of the street light systems for member agencies; and

WHEREAS, the Parties desire enter into this First Amendment to amend the Implementation Agreement, as permitted pursuant to the provisions of thereof, to replace the Original Professional Services Agreement attached as Exhibit A to the Implementation Agreement with the Professional Services Agreement, attached as Exhibit A hereto; and

WHEREAS, the City Council has authorized the Member Agency to enter into this First Amendment.

NOW, THEREFORE, the Parties hereby understand and agree as follows:

AGREEMENT

Section 1: Amendment to the Implementation Agreement.

Exhibit A of the Implementation Agreement shall be replaced with the Professional Services Agreement attached hereto as Exhibit A.

Section 2: Effect of this First Amendment on the Other Terms and Provisions of the Implementation Agreement.

All terms and provisions of the Implementation Agreement, shall remain in full force and legal effect except as expressly modified by the provisions of this First Amendment.

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

WESTERN RIVERSIDE COUNCIL
OF GOVERNMENTS

CITY OF MENIFEE

By: _____
Dr. Kurt Wilson
Executive Director

By: _____
Armando G. Villa,
City Manager

APPROVED AS TO FORM:

ATTEST:

By: _____
General Counsel

Best Best & Krieger LLP

By: _____
Sarah Manwaring,
City Clerk

APPROVED AS TO FORM:

By: _____
Jeffrey T. Melching,
City Attorney

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this day 2nd of October, 2023, by and between the Western Riverside Council of Governments, a California public agency ("WRCOG"), and **Yunex, LLC**, a Delaware limited liability company ("Consultant"). WRCOG and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Lease Agreement.

Banc of America Leasing & Capital, LLC (together with its successors and assigns, "Lessor") entered into an Equipment Lease/Purchase Agreement with each of the Member Agencies (as defined herein) in order to finance the acquisition, installation and retrofitting of streetlights within the Member Agency's jurisdiction (as amended, the "Lease Agreement"). The Parties expressly hereby agree that the Lease Agreement is not being incorporated into this Agreement and shall not be deemed a part of this Agreement.

- City of Perris
- City of San Jacinto
- City of Wildomar

2.2 Member Agency.

"Member Agency" means any and all member agencies participating in WRCOG's street light program in accordance with an Implementation Agreement. The following local agencies are Member Agencies for the purposes of this Agreement:

- City of Eastvale
- City of Hemet
- City of Lake Elsinore
- City of Menifee
- City of Murrieta
- City of Perris
- City of San Jacinto
- City of Wildomar
- Jurupa Community Services District

2.3 Incorporated Documents.

2.2.1 Request for Proposal. The Request for Proposal No. 23-02 ("RFP") issued by WRCOG on July 12, 2023 and the Consultant's response to the RFP dated August 2, 2023 are incorporated herein by this reference.

2.2.2 Appendices and Exhibits. Each Member Agency shall execute its own Appendix, which shall cover the following for that Member Agency: Scope of Services (Exhibit A) and Compensation (Exhibit B). The following Appendices, including their Exhibits, are attached hereto and incorporated herein by this reference:

Exhibit A

- Appendix 1 – City of Eastvale
- Appendix 2 – City of Hemet
- Appendix 3 – Jurupa Community Services District
- Appendix 4 – City of Lake Elsinore
- Appendix 5 – City of Menifee
- Appendix 6 – City of Murrieta
- Appendix 7 – City of Perris
- Appendix 8 – City of San Jacinto
- Appendix 9 – City of Wildomar

2.4 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by WRCOG and its Member Agencies on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **LED streetlight installation and ongoing operations and maintenance of street light systems** is licensed in the State of California, and is familiar with the plans of WRCOG and its Member Agencies.

2.5 Project.

WRCOG desires to engage Consultant to render such professional services for the **installation of LED street lights and the ongoing operations and maintenance of the street light systems for Member Agencies** ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to WRCOG and the applicable Member Agencies all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the **LED street light installation and ongoing operations and maintenance of street light systems** necessary for the Project ("Services"). The Services are more particularly described in the RFP and in Exhibit "A" to each Appendix attached hereto and incorporated herein by reference, and which are stated in the proposal to WRCOG and approved by WRCOG's Executive Committee. All Services shall be subject to, and performed in accordance with, this Agreement, the Appendices and exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **December 1, 2023** to **December 31, 2026**, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. WRCOG shall have the option to extend the term of this Agreement for one (1) additional one (1) year period, and two (2) additional six (6) month periods ("Option Term") by notifying Consultant in writing prior to the end of the term of this Agreement, or any then-current Option Term, of its election to exercise its option. The Option Term may be exercised by WRCOG on behalf of all or any number of Member Agencies, subject to prior written approval from the relevant Member Agency with respect to the extension of its respective Appendix. Compensation for work during any Option Term shall be at the rates set forth in Exhibit "B", but otherwise all other

terms and obligations of this Agreement shall continue during any Option Term.

3.1.3 Assignability of Agreement. WRCOG reserves the right to assign this Agreement to other entities, subject to prior written approval from the relevant Member Agency with respect to an assignment of its respective Appendix. Assignment(s) will be subject to the same terms and conditions included in this Agreement. Other entities shall negotiate the pricing for the Services and supplies with the Consultant and include necessary provisions for management of their specific projects. WRCOG shall have no responsibility for the Consultant's performance under any assignments.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. WRCOG retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of WRCOG or any Member Agency and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall install replacement poles within 20 business days of a reported knockdown of a pole or upon approval from WRCOG or a Member Agency. At WRCOG and the Member Agency's discretion, if such pole is not replaced within the initial 20 days, a one hundred dollar (\$100) bill credit will be applied to the Consultant's invoice. An additional \$100 bill credit will be applied for every 15 business days thereafter that the Consultant fails to replace such pole. Consultant shall perform the Services for WRCOG and the applicable Member Agency expeditiously, within the term of this Agreement. Consultant understands and agrees that in the event that the schedule for delivery of Services to any Member Agency is delayed, for any reason whatsoever including through the fault of WRCOG or the Member Agency, the delay shall not be used as a reason for delay on the part of the Contractor in meeting the schedule for delivery of Services to any other Member Agency. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the schedule, WRCOG and the applicable Member Agency shall respond to Consultant's submittals in a timely manner. Upon request of WRCOG or any Member Agency, Consultant shall provide a more detailed schedule of anticipated performance.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of WRCOG and the applicable Member Agency.

3.2.4 Substitution of Key Personnel. Consultant has represented to WRCOG that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of WRCOG. In the event that WRCOG and Consultant cannot agree as to the substitution of key personnel, WRCOG shall be entitled to

Exhibit A

terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to WRCOG, or who are determined by the WRCOG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the WRCOG. The key personnel for performance of this Agreement are as follows: Michael J. Hutchens, Steven Teal, Robert Paquette, and Candace Gallaher.

3.2.5 WRCOG's Representative. WRCOG hereby designates Daniel Soltero or his or her designee, to act as its representative for the performance of this Agreement ("WRCOG's Representative"). WRCOG's Representative shall have the power to act on behalf of WRCOG for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than WRCOG's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Steven Teal or his or her designee, to act as its Representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his 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 the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with WRCOG staff in the performance of Services and shall be available to WRCOG's staff, consultants, and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement 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. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub- contractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and sub-contractors have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense, and without reimbursement from WRCOG or any Member Agency, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by WRCOG or the applicable Member Agency to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to WRCOG, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules, and/or regulations, and without giving written notice to WRCOG, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend,

Exhibit A

indemnify, and hold WRCOG, its Member Agencies, and WRCOG's and the Member Agencies' Directors, officials, officers, employees, volunteers 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 to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to WRCOG that it has secured all insurance required under this section, in a form and with insurance companies acceptable to WRCOG. In addition, Consultant shall not allow any sub-contractor to commence work on any subcontract until it has provided evidence satisfactory to WRCOG that the sub-contractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant 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 the Consultant, its agents, representatives, employees or sub-contractors. Consultant shall also require all of its sub-contractors 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 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$5,000,000 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*: \$5,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$5,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors, or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by WRCOG to add the following provisions to the insurance policies:

Exhibit A

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury / Advertising Injury; (3) Premises / Operations Liability; (4) Products / Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(iii) The policy shall give WRCOG, its Directors, officials, officers, employees, volunteers and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be "primary and non-contributory" and will not seek contribution from WRCOG's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability.

(i) The automobile liability policy shall be endorsed to state that: (1) WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' Directors, 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 the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' Directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by WRCOG, its Member Agencies, and WRCOG and its Member Agencies' Directors, officials, officers, employees, agents, and volunteers shall be in excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage.

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' Directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Defense costs shall be payable in addition to the limits set forth hereunder. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to WRCOG, its Member Agencies, and WRCOG and its Member Agencies' Directors, officials, officers, employees, volunteers and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of WRCOG and each Member Agency (if agreed to in a written contract or agreement) before WRCOG's or any Member Agency's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella / excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(ii) Consultant shall provide WRCOG at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to WRCOG at least ten (10) days prior to the effective date of cancellation or expiration.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by WRCOG, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(v) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, WRCOG and its Member Agencies have the right but not the duty to obtain the insurance they deem necessary, and any premium paid by WRCOG and its Member Agencies will be promptly reimbursed by Consultant or WRCOG (and the applicable Member Agency) will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, WRCOG may cancel this Agreement. WRCOG may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

Exhibit A

(vi) Neither WRCOG, its Member Agencies, nor any of its Member Agencies' directors, officials, officers, employees, volunteers or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.2.10.5 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 WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' directors, officials, officers, employees, agents, and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by WRCOG. Consultant shall guarantee that, at the option of WRCOG, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, licensed to do business in California, and satisfactory to WRCOG and each member Agency.

3.2.10.8 Verification of Coverage. Consultant shall furnish WRCOG and each Member Agency with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to WRCOG. 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 WRCOG if requested. All certificates and endorsements must be received and approved by WRCOG before work commences. WRCOG reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.9 Sub-consultant Insurance Requirements. Consultant shall not allow any sub-contractors or sub-consultants to commence work on any sub-contract until they have provided evidence satisfactory to WRCOG that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such sub-contractors or sub-consultants shall be endorsed to name WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' directors, officers, officials, employees, agents and volunteers as an additional insured using ISO Form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, WRCOG may approve different scopes or minimum limits of insurance for particular sub-contractors or sub-consultants.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state, and federal laws, rules, and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and sub-contractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment, and other safety devices, equipment and wearing

apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Surety Bonds. Consultant shall provide each Member Agency with a payment and performance bond ("Surety Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to the Member Agency and naming the Member Agency as a co-obligee in a sum equal to the entire amount to become payable under the Appendix to this Agreement applicable to the Member Agency. Each bond shall be conditioned on the completion of the Services for that Member Agency and upon payment of all claims of subconsultants and suppliers. Consultant shall cause the surety company to add WRCOG and Banc of America Leasing & Capital LLC as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to WRCOG and Banc of America Leasing & Capital LLC promptly upon receipt thereof by Consultant. Any proceeds from a Surety Bond shall be applied in accordance with such Surety Bond to the payment and performance of the Consultant's obligations in accordance with this Agreement and all Appendices and, if for whatever reason such proceeds are not so applied, then first to amounts due Lessor (as defined in the Lease Agreement) pursuant to Section 4.05 and 7.04 of the Lease Agreement, and any remaining amounts shall be payable to Lessee (as defined in the Lease Agreement).

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. Compensation does not include costs for extraordinary street light maintenance services, described in Exhibit "A." The total compensation for Services, with the exception of extraordinary street light maintenance services described in Exhibit "A," shall not exceed **seven million two hundred ninety-five thousand two hundred forty-four dollars (\$7,295,244)** without written approval of WRCOG's **Executive Director** and the applicable Member Agency. Extra Work may be authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to WRCOG a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The monthly statement shall be submitted to WRCOG within 20 days from the end of the billing period, and individual billing for claims or special projects shall be submitted within 30 business days from the date of completion. The statement shall contain the invoice number and date; remittance address; Agreement Number 2024-80-2026-001, and invoice total. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. At a minimum, Consultant shall provide a statement with sufficient detail to enable WRCOG or the Member Agency to make payment to Consultant from the appropriate account in accordance with the Paying Agent Agreement (as defined in the Lease Agreement) and/or Escrow Agreement (as defined in the Lease Agreement), as applicable (i.e., retrofit specific costs to be identified separately from other Services under this Agreement). WRCOG shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by WRCOG.

Exhibit A

3.3.4 Extra Work. At any time during the term of this Agreement, WRCOG may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by WRCOG to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from WRCOG's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. WRCOG shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Services available to interested parties upon request, and post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify, and hold WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' elected officials, officers, employees, volunteers, and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.6 CPI Increase. In recognition of the general increase in the cost of doing business, the parties agree to an increase in the compensation rates as of July 1st of each calendar year, in an amount equal to the increase in the U.S. Department of Labor Consumer Price Index "CPI" for the previous calendar year (January 1 through December 31) for all urban consumers in the Riverside County, California area; provided that the CPI adjustment shall be rounded up to the nearest full dollar, and further provided that the CPI adjustment shall not exceed five percent (5%) for any year. Notwithstanding any provision herein to the contrary, Consultant may request, on or before March 31st of each year, an increase in the rates over and above the CPI adjustment upon a showing of good cause for such increase; provided that the approval or disapproval of any such request shall be made by the WRCOG in its sole and absolute discretion.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of WRCOG or any applicable Member Agency during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant 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.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. WRCOG may, subject to prior written

Exhibit A

approval from the relevant Member Agency and by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In addition, each Member Agency may, by written notice to WRCOG and Consultant, terminate its Appendix to this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to WRCOG or the applicable Member Agency, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, WRCOG may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, WRCOG and its Member Agencies may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 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:

Consultant: Yunex LLC
9225 Bee Cave Rd, Building B, Suite 201
Austin, TX 78733
Attn: Steven Teal

WRCOG: Western Riverside Council of Governments
3390 University Avenue, Suite 200
Riverside, CA 92501
Attn: Daniel Soltero

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.

3.5.3 Inspection of Installation Data and Maintenance Records

3.5.3.1 Documents & Data; Licensing of Intellectual Property. During the course of this Agreement, and upon reasonable advance notice and during normal business hours, WRCOG and its Member Agencies may inspect and examine the installation data and maintenance records specifically created or collected by Consultant under this Agreement. Upon termination or expiration of this Agreement, Consultant will provide to WRCOG and its Member Agencies the installation data and maintenance records specifically created or collected by Consultant under this Agreement. The installation data and maintenance records shall include all final installation data, customer service reports and inquiry activity, and maintenance records, but

Exhibit A

shall not be deemed to include any proprietary, confidential, or protected information, programs, platforms, and/or materials of Consultant.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of WRCOG and the relevant Member Agency, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use WRCOG's or any member Agency's name or insignia, photographs of the Project, or any publicity 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 WRCOG or the applicable Member Agency.

3.5.3.3 Infringement Indemnification. Consultant shall defend, indemnify, and hold WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' directors, officials, officers, employees, volunteers, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by WRCOG or any Member Agency of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.4 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 necessary, appropriate, or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify, and hold WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' Directors, officials, officers, consultants, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors, arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense, and risk, any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' directors, officials, officers, consultants, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award, or decree that may be rendered against WRCOG or its Directors, officials, officers, consultants, employees, agents, or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse WRCOG, its Member Agencies, and WRCOG and its Member Agencies' directors, officers, consultants, employees, agents, or volunteers, for any and

all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' directors, officials, officers, consultants, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.7 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. This Agreement may only be modified by a writing signed by both Parties.

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

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

3.5.10 WRCOG's Right to Employ Other Consultants. WRCOG reserves the right for itself and its Member Agencies to employ other consultants in connection with this Project.

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

3.5.12 Assignment or Transfer. Consultant 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 WRCOG, subject to prior written approval from each applicable Member Agency to the extent such assignment, hypothecation or transfer could impact such Member Agency's Appendix. 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.

3.5.13 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 work days. All references to Consultant include all personnel, employees, agents, and sub-contractors of Consultant, except as otherwise specified in this Agreement. All references to WRCOG include its Directors, officers, employees, agents and all volunteers except as otherwise specified in this Agreement. All references to Member Agencies include their 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.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties, subject to prior written approval from each applicable Member Agency to the extent such supplement, modification, or amendment impacts such member Agency's Appendix.

Exhibit A

3.5.15 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.

3.5.16 No Third-Party Beneficiaries. There are no intended beneficiaries of any right or obligation assumed by the Parties with the exception of the Member Agencies, which are expressly considered to be third party beneficiaries and are entitled to enforce any and all rights held by the Member Agency itself or by WRCOG under this Agreement.

3.5.17 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.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant 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 Consultant, 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, WRCOG shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, Director, officer, official, agent volunteer, or employee of WRCOG, during the term of his or her service with WRCOG, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer, and it shall not discriminate against any sub-contractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. 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. Consultant shall also comply with all relevant provisions of any of WRCOG's Minority Business Enterprise Program, Affirmative Action Plan, or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires 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 the Services.

3.5.21 Authority to Enter Agreement. Consultant 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.

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

3.6 Subcontracting.

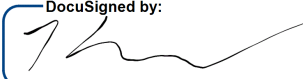
3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of WRCOG, subject to prior written approval from the applicable Member Agency to the extent such work relates to such member Agency's Appendix. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]


SIGNATURE PAGE TO
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
PROFESSIONAL SERVICES AGREEMENT

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

WESTERN RIVERSIDE COUNCIL
OF GOVERNMENTS

By: 
DocuSigned by:
359AA08D610442A...
Dr. Kurt Wilson
Executive Director

Yunex, LLC

By: 
Digitally signed by Teal Steven
saftest2
Date: 2023.10.31 14:13:22 -07'00'
Title: Director of Service

APPROVED AS TO FORM:

By: 
General Counsel
Best Best & Krieger LLP

ATTEST:

By: 
Digitally signed by Hutchens Michael
saftumc1
DN: cn=Hutchens Michael saftumc1,
ou=DirSync,
email=Michael.hutchens@yunextraffic.com
Date: 2023.10.31 09:32:49 -07'00'
Its: Western Operations Manager

*A corporation requires the signatures of two corporate officers.

One signature shall be that of the Chairman of Board, the President or any Vice President, and the second signature (on the attest line) shall be that of the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to WRCOG.