

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

This Implementation Agreement (“Agreement”) is entered into as of June 27, 2019 (“Effective Date”) by and 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 Agreement as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, various cities within Riverside County and the County of Riverside entered into a Joint Powers Agreement on April 1, 1991, as amended from time to time, to create WRCOG (the “JPA”); and

WHEREAS, Member Agency is a signatory to the JPA; and

WHEREAS, Article VIII of the JPA permits any WRCOG member agency, when authorized by the Executive Committee, to execute this Agreement for the purpose of authorizing WRCOG to implement, manage and administer area-wide and regional programs in the interest of the local public welfare; and

WHEREAS, the JPA permits WRCOG, when authorized by an Implementation Agreement, to make and enter into such contracts, incur such debts and obligations, assess contributions from the members, and perform such other acts as are necessary to the accomplishment of the purposes of such agreement; and

WHEREAS, over the course of 2016 and 2017, WRCOG negotiated a template purchase and sale agreement, and other associated agreements, with Southern California Edison (“SCE”) to permit WRCOG’s member agencies to acquire streetlights from SCE; and

WHEREAS, the Member Agency desires to acquire such streetlights from SCE and install, retrofit such lights with certain energy efficiency improvements; and

WHEREAS, the Member Agency intends to enter into that Equipment Lease/Purchase Agreement dated June 27, 2019 (as amended, the “Lease Agreement”) with Banc of America Leasing & Capital, LLC (together with its successors and assigns, “BALCAP”) in order to finance the acquisition, installation and retrofitting of streetlights within its jurisdiction; and

WHEREAS, as a condition of such Lease Agreement, the Member Agency must properly maintain, repair and replace such streetlights during the term of the Lease Agreement; and

WHEREAS, WRCOG and Member Agency believe that economies of scale can be achieved if maintenance, repair, retrofitting and replacement services of streetlights were provided

to several of WRCOG's member agencies under one or more agreements which would be administered by WRCOG; and

WHEREAS, WRCOG member agencies have the common power to enter into an agreement for the maintenance, repair, retrofitting and replacement of streetlights in their jurisdictions and administer such agreement; and

WHEREAS, WRCOG and the Member Agency desire to enter into this Agreement 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 on behalf of Member Agency within the Member Agency's jurisdiction and administer such agreements ; and

WHEREAS, the Executive Committee of WRCOG and the City Council of the Member Agency have each authorized WRCOG and the City Council, respectively, to enter into this Agreement; and

WHEREAS, WRCOG, the Member Agency, Wilmington Trust, National Association (together with any successor paying agent, the "Paying Agent"), and BALCAP will enter into a Paying Agent Agreement dated June 27, 2019 (as in order to facilitate the orderly distribution of payments required under this Implementation Agreement and the Lease Agreement (as amended, "Paying Agent Agreement"); and

WHEREAS, the Member Agency, Wilmington Trust, National Association, as escrow agent, and BALCAP will enter into an Escrow and Account Control Agreement to fulfill the deposit requirements under the Lease Agreement (as amended, "Escrow Agreement").

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

AGREEMENT

1. Maintenance, Repair, and Access

1.1 WRCOG shall enter into an agreement (the "Professional Services Agreement") for the provision of retrofitting services and regular maintenance and repair services for those streetlights listed in Exhibit A (the "Services"), attached hereto and incorporated herein located in Member Agency's jurisdiction. Maintenance and repair activities shall consist of repair of electrical wiring and light fixtures, replacement of burned-out lamps, repair and replacement of damaged equipment caused by auto accidents and vandalism, and marking the location of underground electrical conduits for the Dig Alert: Underground Service Alert program, as needed. So long as the Lease Agreement is in effect and not later than three months prior to the termination of any such Professional Services Agreement, WRCOG shall either: (a) renew the Professional Services Agreement; or (b) enter into a Professional Services Agreement with a new vendor.

1.2 In addition, WRCOG shall enter into an agreement (the "Equipment Purchase Agreement") for the purchase of all equipment associated with the Services.

1.3 In addition to the Services, WRCOG shall enter into a future agreement (the “Re-lamping Services Agreement”) to provide capital replacement services for such streetlighting, otherwise known as “Re-lamping Services.” Re-lamping Services may be provided under the Professional Services Agreement, through amendment to the Professional Services Agreement, or through a separate agreement.

1.4 WRCOG shall cause the Services to be performed to conduct activities on an as required basis. Non-emergency and emergency maintenance may be performed at Member Agency’s request, but will be subject to the provisions of Section 4 of this Agreement.

1.5 WRCOG shall provide streetlight system reviews and reports including a summary of system activities on an annual basis.

1.6 In order for the contractors to perform the Services and Re-lamping Services, Member Agency hereby grants to WRCOG a no-cost license and right to access the streetlights and adjacent Member Agency properties and rights-of-way for the sole purpose of performing the services under this Agreement. This license and right-of-access shall run concurrently with the Agreement. Notwithstanding the foregoing, WRCOG will require its contractors performing the Services and Re-lamping Services to follow each Member Agency’s encroachment and right-of-way access procedures. In complying with these procedures, Member Agency shall not charge the contractors a fee and will not unreasonably delay or deny the contractors access to the streetlights and adjacent Member Agency properties and rights-of-way.

1.7 Member Agency understands and agrees that WRCOG intends to retain one or more contractor (or contractors) for the performance of the Services and the Re-lamping Services. WRCOG shall take all necessary steps to ensure Member Agency holds the right to enforce the terms of WRCOG’s agreement with said contractor (or contractors) as it pertains to the Services and the Re-lamping Services rendered in Member Agency’s jurisdiction. In retaining said contractor(s), WRCOG shall comply with all applicable laws, including any applicable public bidding requirements.

1.8 Insurance.

WRCOG shall require that its contractors or subcontractors retained for the Services in furtherance of WRCOG’s performance of its obligations under this Agreement (“Contractor(s)”) shall procure and maintain, at their sole cost and expense during the entire term of any agreement including any extension thereof, the following minimum policies of insurance:

- (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. Contractors 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 any such agreement between WRCOG and the Contractor/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.

- (c) Professional Liability. Contractors 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 any agreement between WRCOG and the Contractor and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Contractors. "Covered Professional Services" as designated in the policy must specifically include work performed under such agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.
- (d) Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractors shall provide endorsements on forms supplied or approved by WRCOG to add the following provisions to the insurance policies:
 - (1) 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 such 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 between WRCOG and the Contractor.
 - (iii) The policy shall give WRCOG, its directors, officials, officers, employees, 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 or any Member Agency’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.
- (2) Automobile Liability.
 - (i) The automobile liability policy shall be endorsed to state that: (1) WRCOG, its Member Agency, and WRCOG’s and its Member Agency’ 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 Contractors or for which the Contractors are responsible; and (2) the insurance coverage shall be primary insurance as respects WRCOG, its Member Agency, and WRCOG’s and its Member Agency’ directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor’s scheduled underlying coverage. Any insurance or self-insurance maintained by WRCOG, its Member Agency, and WRCOG’s and its Member Agency’ directors, officials, officers, employees, agents and volunteers shall be excess of the Contractors’s insurance and shall not be called upon to contribute with it in any way.
- (3) Workers’ Compensation and Employers Liability Coverage.
 - (i) Each Contractor 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 the Agreement between WRCOG and the Contractor.
 - (ii) The insurer shall agree to waive all rights of subrogation against WRCOG, its Member Agency, and WRCOG’s and its Member Agency’ directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.
- (4) All Coverages.
 - (i) Defense costs shall be payable in addition to the limits set forth hereunder.

- (ii) 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.
- (iii) The limits of insurance required in any 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).
- (iv) Contractors shall provide WRCOG at least thirty (30) days prior written notice of cancellation of any policy required by the agreement, except that the Contractor 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 the agreement, the Contractor 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.
- (v) The retroactive date (if any) of each policy is to be no later than the effective date of the agreement with the Contractor. Contractor shall maintain such coverage continuously for a period of at least three years after the completion of the work under the agreement. Contractor shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of the 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 the agreement.
- (vi) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, 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 Contractor pursuant to the agreement with the contractor, including but not limited to, the provisions concerning indemnification.
- (vii) If at any time during the life of the agreement with the Contractor, any policy of insurance required under such agreement does not

comply with these specifications or is canceled and not replaced, WRCOG and the applicable Member Agency(ies) have the right but not the duty to obtain the insurance they deems necessary and any premium paid by WRCOG and the applicable Member Agency(ies) will be promptly reimbursed by Contractor or WRCOG (and the applicable Member Agency(ies)) will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, WRCOG may cancel the agreement with the Contractor. WRCOG may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.

- (viii) Neither WRCOG, its Member Agencies, nor WRCOG's or its Member Agencies' directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of the agreement with the Contractor.
- (e) 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 Agency, and WRCOG's and its Member Agency directors, officials, officers, employees, agents and volunteers.
- (f) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by WRCOG. Contractor 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 Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.
- (g) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to WRCOG and the applicable Member Agency.
- (h) Verification of Coverage. Contractor shall furnish WRCOG and the applicable Member Agency with original certificates of insurance and endorsements effecting coverage required by the agreement with Contractor 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.
- (i) Subconsultant Insurance Requirements. Contractor shall not allow any subcontractors or subconsultants to commence work on any subcontract 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 subcontractors or subconsultants shall be endorsed to name WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' directors, officials, officers, 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 Contractor, WRCOG may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

- (j) Member Agency acknowledges and agrees that the insurance requirements under this Agreement (including those for which WRCOG is obligated) do not relieve the Member Agency of its insurance requirements required under Section 7.02 of the Lease Agreement.

1.9 Indemnification.

WRCOG shall cause Contractors responsible for the performance of the Services to defend, indemnify and hold the WRCOG, its Member Agency, and WRCOG's and its Member Agency' 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 Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or the Agreement between WRCOG and the Contractor, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Contractor shall defend, at Contractor'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 Agency, and WRCOG's and its Member Agency' directors, officials, officers, consultants, employees, agents or volunteers. Contractors shall pay and satisfy any judgment, award or decree that may be rendered against WRCOG, its Member Agency, and WRCOG's and its Member Agency' directors, officials, officers, consultants, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractors shall reimburse WRCOG, its Member Agency, and WRCOG's and its Member Agency' directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractors's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by WRCOG, its Member Agency, and WRCOG's and its Member Agency' directors, officials, officers, consultants, employees, agents or volunteers. WRCOG shall ensure that the indemnification survives the expiration or termination of any agreement with the Contractors. Notwithstanding the foregoing, WRCOG may include a provision in any agreement with the Contractors noting that, to the extent the Services are subject to Civil Code Section 2782.8, the 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 Contractors.

1.10 Surety Bonds.

For the Services, WRCOG shall secure from its Contractor(s), a payment and performance bond (“Surety Bond”) executed by a surety company authorized to do business in the State of California, having a financial strength rating by A.M. Best Company of “A-” or better, and otherwise satisfactory to the applicable Member Agency as a co obligee in a sum equal to the entire amount to become payable under the agreement with its Contractor(s) for the applicable Member Agency. Each bond shall be conditioned on the completion of the Services for the applicable Member Agency and upon payment of all claims of subcontractors and suppliers. WRCOG shall cause the Contractor to require the surety company to add WRCOG and BALCAP as a co obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to WRCOG and BALCAP promptly upon receipt thereof by the Contractor. WRCOG shall promptly thereafter share a copy with the applicable Member Agency. Any proceeds from a Surety Bond shall be applied in accordance with such Surety Bond to the payment and performance of the Contractor(s)’s obligations in accordance with the related agreement(s) and, if for whatever reason such proceeds are not so applied, then first to amounts due BALCAP under Section 4.05 and 7.04 of the Lease Agreement, and any remaining amounts shall be payable to the applicable Member Agency.

2. Member Agency Payments

2.1 The Member Agency shall make all payments in the amounts and at the times as required in the Paying Agent Agreement. Payments shall be made by the Member Agency to the fund established under the Paying Agent Agreement entitled Menifee Equipment Lease/Purchase Agreement, Account No. _____” (the “Collection Fund”) by wire transfer as follows:

Wire instructions for
The City of Menifee
Streetlight Acquisition & Retrofit

Manufacturers & Traders Trust Company
Wilmington, DE
ABA #031100092
A/C #1001
Ref: City of Menifee/WRCOG
Attn: Corporate Trust

2.2 The Member Agency shall pay all Rental Payments due under the Lease Agreement to the Paying Agent (for deposit into Collection Fund and further deposit into the Rental Payment Subaccount) at the times and in the amounts required in the Paying Agent Agreement, including Annex I attached thereto (and in any event no later than required under the Lease Agreement).

2.3 The Member Agency shall pay all fees, costs or expenses due and owing to the Paying Agent under the Paying Agent Agreement including in accordance with the column titled “Paying Agent Fee Subaccount” on Annex I attached thereto, together with any past due amounts due to the Paying Agent thereunder, to the Paying Agent for deposit into the Collection Fund and for further distribution as provided in the Paying Agent Agreement.

2.4 Member Agency shall make payments in an amount sufficient to pay the amount of the administrative fees due and payable to WRCOG under this Agreement at the times and in the amounts as required by the Paying Agent Agreement and in accordance with the column titled “Administrative Fee Subaccount” on Annex I attached thereto, together with any past due administrative fee amounts owing to WRCOG, to the Paying Agent for deposit into the Collection Fund and for further distribution as provided in the Paying Agent Agreement.

2.5 Member Agency shall make payments owing with respect to Services provided by WRCOG under Section 1.1 hereof, at the times and in the amounts as required by the Paying Agent Agreement and accordance with the column titled “Annual Maintenance Subaccount” on Annex I attached to the Paying Agent Agreement, *plus* any amounts due and unpaid with respect to Services performed, to the Paying Agent for deposit into the Collection Fund and for further distribution as provided in the Paying Agent Agreement.

2.6 The Member Agency shall make payments for Re-lamping Services to the Paying Agent at the times and in the amounts as required by the Paying Agent Agreement and accordance with the column titled “Re-lamping Reserve Subaccount” on Annex I attached to the Paying Agent Agreement, *plus* any amounts due and unpaid with respect to Re-lamping Services performed, to the Paying Agent for deposit into the Collection Fund and for further distribution as provided in the Paying Agent Agreement. In the event of a deficiency in the Re-lamping Reserve Subaccount to make payment on any of amounts due for fees and costs associated with the Re-lamping Services for the Member Agency, the Member Agency shall deposit with the Paying Agent for deposit into the Collection Fund and for further distribution as provided in the Paying Agent Agreement an amount equal to the deficiency in the Re-lamping Reserve Subaccount.

2.7 The Member Agency hereby grants WRCOG the authority to provide the Paying Agent with instructions on requisitions from the Administrative Fee Subaccount, the Annual Maintenance Subaccount and the Re-lamping Reserve Subaccount. WRCOG shall maintain records of payment relating to expenditures from such funds and subaccounts and make such records available to the Member Agency upon request.

2.8 The Member Agency and WRCOG acknowledges that if insufficient funds are appropriated to make payments pursuant to the Lease Agreement or any payments required pursuant to this Agreement, the Paying Agent shall distribute funds from the Collection Fund as follows:

First, deposit moneys into the Rental Payment Subaccount to exclusion of all the other subaccounts until there exists in the Rental Payment Subaccount funds sufficient to pay all Rental Payments then past due and owing *plus* an amount sufficient to pay all Rental Payments then due and owing *plus* an amount sufficient pay the sum of the Rental Payment Interest Portion *plus* the Rental Payment Principal Portion coming due on the next succeeding Payment Date as reflected on Annex I of the Paying Agent Agreement, *plus* any past due amounts and interest thereon, fees, costs, expenses and any other amounts due to Lessor under the Lease Agreement or any related agreement;

Second, after all amounts required to be deposited into the Rental Payment Subaccount have been deposited in full, deposit moneys into the Paying Agent Fee Subaccount to the extent available;

Third, after all amounts required to be deposited into the Rental Payment Subaccount and the Paying Agent Fee Subaccount have been deposited in full, deposit moneys into the Administrative Fee Subaccount to the extent funds are available;

Fourth, after all amounts required to be deposited into the Rental Payment Subaccount, the Paying Agent Fee Subaccount and the Administrative Fee Subaccount have been deposited in full, deposit moneys to the Annual Maintenance Subaccount to the extent available;

Fifth, after all amounts required to be deposited into the Rental Payment Subaccount, the Paying Agent Fee Subaccount, the Administrative Fee Subaccount and the Annual Maintenance Subaccount have been deposited in full, deposit amounts in the Re-lamping Reserve Subaccount to the extent available.

Each subaccount shall be as described in the Paying Agent Agreement.

2.9 Notwithstanding anything to the contrary herein, so long as Member Agency transmits the amounts due hereunder to the Paying Agent by the respective due dates, Member Agency's obligation with respect to such due amounts shall be satisfied. Subject to the terms of the Lease Agreement, Member Agency shall not be liable in any way for failure or delay by the Paying Agent to transfer such amounts to the proper recipients.

3. Initial Cut-Over Process and Installation of LED Lights

Upon transfer of the streetlights to the Member Agency, pursuant to the Pole Agreement, WRCOG shall coordinate and manage the cut-over process involving the removal of SCE tags and replacement with new tags for tracking purposes. WRCOG shall also coordinate and manage the retrofitting of the streetlights identified in Section 1 of this Agreement with Member Agency-approved LED luminaires. The costs associated with this process shall be paid by Member Agency as a Transition Cost or Severance Cost (each as defined in the Pole Agreement, as defined in the Lease Agreement) through disbursements (approved by BALCAP) from the escrow account established in accordance with the Escrow Agreement.

4. Emergency Maintenance

WRCOG shall perform, only at the express request of the Member Agency, emergency maintenance activities for the streetlights identified in Section 1 of this Agreement. Emergency maintenance performed under the Services Agreement pursuant to this Section shall be charged to Member Agency directly on a reasonable time and materials basis. When emergency maintenance services are provided hereunder, WRCOG shall submit to Member Agency a monthly invoice by the 15th of the month immediately following the month in which the services were performed. Member Agency shall then pay said invoice in full within thirty (30) days following its receipt of the invoice.

5. Term, Termination, and Default

5.1 This Agreement shall commence on the Effective Date set forth above and continue in perpetuity unless and until otherwise modified or terminated by any Party under the terms of this Agreement.

5.2 Upon an event of non-appropriation pursuant to Section 5.3 hereof or written notice of not less than one fiscal year, either Party may terminate this Agreement without cause. Termination shall not relieve the Party of its proportionate share of any debts or other liabilities incurred under this Agreement prior to the effective date of the Party's notice of termination. Any termination of this Agreement shall be subject to Section 9.02 of the Lease Agreement.

5.3 If any payment due from Member Agency is not received by WRCOG when due, the Member Agency shall pay an administrative late charge of five percent (5%) of the amount paid or the maximum amount permitted by law, whichever is less. Member Agency's obligations to provide payments under this Agreement is subject to Member Agency's annual budget process and the making of necessary budget appropriations in the fiscal year in which Member Agency would pay the obligations. In the event the governing body of the Member Agency does not make a budgetary appropriation for the payments under this Agreement for an upcoming fiscal year, Member Agency shall notify WRCOG within 5 days of such decision to not appropriate, and this Agreement shall be terminated as of the commencement on such upcoming fiscal year.

5.4 So long as this Agreement is not terminated pursuant to Section 5.3 hereof, if any payment due from Member Agency under this Agreement is not received by WRCOG within 10 days of the due date, the amount shall bear interest at 5.00% annually. The Parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that WRCOG will incur by reason of a late payment by Member Agency. Acceptance of any late payment charge shall not constitute a waiver from exercising any of the other rights and remedies available to WRCOG under this Agreement, at law or in equity, including, but not limited to, any interest charges imposed herein. Furthermore, if Member Agency has not made any payment due under this Agreement within thirty (30) days following the due date, WRCOG may terminate this Agreement for cause. Termination of this Agreement by WRCOG for cause shall not relieve Member Agency of its proportionate share of any debts or other liabilities incurred under this Agreement prior to the effective date of the WRCOG's notice of termination.

6. Environmental Review

WRCOG shall be the lead agency under the California Environmental Quality Act for any environmental review that may be required under this Agreement.

7. Cooperative Effort

Member Agency shall cooperate with WRCOG by providing information and other assistance in order for WRCOG to meet its obligations hereunder.

8. Miscellaneous Provisions

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

WRCOG:

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

MEMBER AGENCY:

City of Menifee
29714 Haun Road
Menifee, CA 92586
Attn: City Manager

8.2 Entire Agreement. This Agreement, together with the JPA and WRCOG By-laws, constitutes the entire agreement among the Parties. This Agreement 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.

8.3 Successors and Assigns. This Agreement 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 Agreement with prior written approval of the other Party, which approval shall not be unreasonably withheld.

8.4 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.

8.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, as applicable. Venue shall be in Riverside County.

8.6 No Third Party Beneficiaries. This Agreement 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 Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

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

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

8.9 Amendment. This Agreement 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 Agreement shall be of no effect. Any amendment of this Agreement shall be subject to Section 9.02 of the Lease Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Agreement to be in effect as of the date last signed below.

WRCOG
Western Riverside Council of Governments

Member Agency
Menifee

By: 
Executive Director

By: _____
City Manager

Date: _____

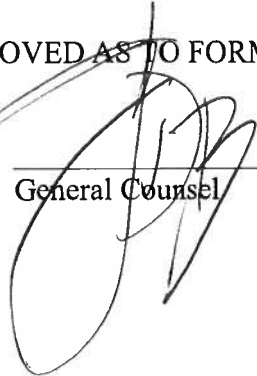
Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
General Counsel

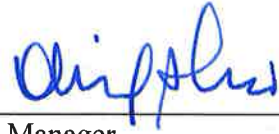
By: _____
City Attorney

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Agreement to be in effect as of the date last signed below.

WRCOG
Western Riverside Council of Governments

Member Agency
Menifee

By: _____
Executive Director

By: 
City Manager

Date: _____

Date: 6/23/19

ATTEST:

By: 
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
General Counsel

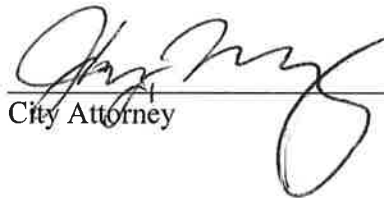
By: 
City Attorney

EXHIBIT A
TO IMPLEMENTATION AGREEMENT

See Exhibit A
to Equipment Lease/Purchase
Agreement

**WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
EQUIPMENT PURCHASE AGREEMENT**

This Equipment Purchase Agreement ("Agreement") is entered into this 28 day of June, 2018 ("Effective Date"), by and between the Western Riverside Council of Governments ("WRCOG"), a public agency with its principal place of business at 3390 University Avenue, Riverside CA 92501, and California Electric Supply, a corporation with its principal place of business at 1011 Bay Blvd, Chula Vista, CA 91911 ("Contractor"). WRCOG and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

Section 1. DEFINITIONS AND INCORPORATED DOCUMENTS.

A. Definitions.

1. "Equipment" means all machinery, equipment, items, parts, materials, labor or other services, including design, engineering and installation services, provided by Contractor as specified in Exhibit "A" to each Appendix, attached hereto and incorporated herein by reference.

2. "Delivery Date(s)" means that date or dates upon which the Equipment is to be delivered to WRCOG and its member agencies, ready for approval, testing and/or use as specified in Exhibit "B" to each Appendix, attached hereto and incorporated herein by reference.

3. "Member Agency" means any and all member agencies participating in WRCOG's equipment purchase process. The following local agencies are Member Agencies for the purposes of this Agreement:

- | | |
|--------------------------------------|-------------------------|
| • City of Eastvale | • City of Moreno Valley |
| • City of Hemet | • City of Murrieta |
| • Jurupa Community Services District | • City of Perris |
| • City of Lake Elsinore | • City of San Jacinto |
| • City of Menifee | • City of Temecula |
| | • City of Wildomar |

B. Incorporated Documents.

1. The Request for Quotation No. 17-09 ("RFQ") issued by WRCOG on September 21, 2017 and the CONTRACTOR's response to the RFQ dated December 21, 2017 are incorporated herein by this reference.

2. Appendices and Exhibits. Each Member Agency shall execute its own Appendix, which shall cover the following for that Member Agency: Equipment Specifications (Exhibit A), Delivery Schedule (Exhibit B), and Fee Schedule (Exhibit C). The following Appendices, including their Exhibits, are attached hereto and incorporated herein by this reference:

- 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 Moreno Valley
- Appendix 7 – City of Murrieta
- Appendix 8 – City of Perris
- Appendix 9 – City of San Jacinto
- Appendix 10 – City of Temecula
- Appendix 11 – City of Wildomar

Section 2. MATERIALS AND WORKMANSHIP.

When Exhibit “A” to an Appendix specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without WRCOG’s and the applicable Member Agency’s written approval. Machinery, equipment or material installed in the Equipment without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit “A” to each Appendix as equal to any particular standard, WRCOG will decide the question of equality subject to prior written approval from the relevant Member Agency. When requested by WRCOG, Contractor will furnish WRCOG with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Equipment. Material samples will be submitted at WRCOG’s request.

Section 3. INSPECTIONS AND TESTS.

WRCOG and any Member Agency shall have the right to inspect and/or test the Equipment prior to acceptance. If upon inspection or testing the Equipment or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained in Exhibit “A” to any Appendix, then without prejudice to any other rights or remedies, WRCOG or the applicable Member Agency may reject the Equipment or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair WRCOG’s or the applicable Member Agency’s right to reject nonconforming goods, irrespective of WRCOG’s or the applicable Member Agency’s failure to notify Contractor of a

rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

Section 4. WARRANTY.

A. Contractor warrants that the Equipment will be of merchantable quality and free from defects in design, engineering, material and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer's warranty or as agreed to by Contractor and WRCOG (through the RFQ process or otherwise) subject to prior written approval from the relevant Member Agency, from the date of final written acceptance of the Equipment by WRCOG as required for final payment under Section 7. Contractor further warrants that any services provided in connection with the Equipment will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

B. Contractor further warrants that all machinery, equipment or process included in the Equipment will meet the performance requirements and specifications specified in Exhibit "A" to each Appendix and shall be fit for the purpose intended. WRCOG's and any applicable Member Agency's inspection, testing, approval or acceptance of any such machinery, equipment or process will not relieve Contractor of its obligations under this Section 4.B.

C. For any breach of the warranties contained in Section 4.A and Section 4.B, Contractor will, immediately after receiving notice from WRCOG or the applicable Member Agency, at the option of WRCOG or the applicable Member Agency, and at Contractor's own expense and without cost to WRCOG or the applicable Member Agency:

1. Repair the defective Equipment;
2. Replace the defective Equipment with conforming Equipment, F.O.B. WRCOG's plant, office or other location of WRCOG where the Equipment was originally performed or delivered, including the applicable Member Agency's site; or
3. Repay to WRCOG or the Applicable Member Agency the purchase price of the defective Equipment.

If WRCOG or the applicable Member Agency selects repair or replacement, any defects will be remedied without cost to WRCOG or the applicable Member Agency, including but not limited to, the costs of removal, repair and replacement of the defective Equipment, and reinstallation of new Equipment. All such defective Equipment that is so remedied will be similarly warranted as stated above. In addition, Contractor will repair or replace other items of the Equipment which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to WRCOG or the applicable Member Agency.

D. Contractor also warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Equipment. Contractor agrees to indemnify, defend and hold

WRCOG and all Member Agencies harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

E. In the event of a breach by Contractor of its obligations under this Section 4, WRCOG and any Member Agency will not be limited to the remedies set forth in this Section 4, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to WRCOG and any Member Agency under the California Commercial Code.

F. Notwithstanding the foregoing, Contractor shall comply with all warranty requirements included in the RFQ. To the extent any of the warranty requirements in this Section 4 conflict with those in the RFQ, the provisions of the RFQ will prevail.

Section 5. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "C;" to each Appendix, attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of WRCOG and the applicable Member Agency. No extra charges of any kind will be allowed unless specifically agreed to in writing by WRCOG's authorized representative and the applicable Member Agency. The total price shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Equipment furnished to WRCOG and the Member Agencies hereunder; and (ii) all charges for packing, freight and transportation to destination.

Section 6. CHANGES.

WRCOG and any applicable Member Agency, at any time, by a written order, and without notice to any surety, may make changes in the Equipment, including but not limited to, WRCOG's requirements and specifications. If such changes affect the cost of the Equipment or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between WRCOG, the applicable Member Agency, and Contractor and such change will be authorized by a change order document signed by WRCOG and the applicable Member Agency and accepted by Contractor.

Section 7. PAYMENTS.

A. Terms of payment, are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable Progress Milestones for Member Agencies. Final payment shall be made by WRCOG or the applicable Member Agency after Contractor has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of Equipment.

B. If Progress Milestones have been specified Exhibit "B;" to any Appendix, then payments for the Equipment will be made as the requirements of such Progress Milestones are met. Progress payments for the Equipment will be made by WRCOG or the applicable Member Agency upon proper application by Contractor during the progress of the Equipment and according to the terms of payment as specified in Exhibit "B;" of the applicable Appendix.

Contractor's progress billing invoice will include progress payments due for the original scope of work and changes. Each "Item for Payment" shown in Exhibit "B" to each Appendix and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Exhibit "B" to any Appendix or a change order, must have subcontractor and/or supplier invoices attached to Contractor's invoice. Other format and support documents for invoices will be determined by WRCOG and the applicable Member Agency in advance of the first invoice cycle.

C. Payments otherwise due may be withheld by WRCOG or any Member Agency on account of defective Equipment not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of Contractor to make payments properly to its subcontractors or for material or labor, the failure of Contractor to perform any of its other obligations under the Agreement, or to protect WRCOG or any Member Agency against any liability arising out of Contractor's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, WRCOG or the applicable Member Agency may remove them at Contractor's expense.

D. Payment of the final Progress Milestone payment or any retention will be made by WRCOG or the applicable Member Agency upon:

1. Submission of an invoice for satisfactory completion of the requirements of a Progress Milestone as defined in Exhibit "B" to each Appendix and in the amount associated with the Progress Milestone;
2. Written acceptance of the Equipment by WRCOG and the applicable Member Agency;
3. Delivery of all drawings and specifications, if required by WRCOG or the applicable Member Agency;
4. Delivery of executed full releases of any and all liens arising out of this Agreement; and
5. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Contractor may furnish a bond satisfactory to WRCOG and the applicable Member Agency to indemnify WRCOG and the applicable Member Agency against any claim or lien at no cost to WRCOG or the applicable Member Agency.

E. Acceptance by Contractor of payment of the final Progress Milestone payment pursuant to Section 7.D will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which Contractor then has, or can subsequently acquire against WRCOG or the applicable Member Agency, their successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this

Agreement. However, payment for the final Progress Milestone by WRCOG or the applicable Member Agency will not constitute a waiver, release or discharge of any claims or demands which WRCOG or the applicable Member Agency then have, or can subsequently acquire, against Contractor, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

Section 8. SCHEDULE FOR DELIVERY.

A. The time of Contractor's performance is of the essence for this Agreement. The Equipment will be delivered to the Member Agencies in accordance with the schedule set forth in Exhibit "B:" to the applicable Appendix. Contractor must immediately notify WRCOG and the applicable Member Agency in writing any time delivery is behind schedule or may not be completed on schedule. In addition to any other rights WRCOG or the applicable Member Agency may have under this Agreement or at law, Contractor shall pay WRCOG or the applicable Member Agency the sum of \$0.00 per item of Equipment for each calendar day for which the item of Equipment is unavailable beyond the scheduled delivery date(s) specified in Exhibit "B" to the applicable Appendix.

B. In the event that the Equipment is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Contractor will fully cooperate in scheduling the delivery so that WRCOG and the applicable Member Agency can maximize the efficient completion of such project(s).

C. In the event that the schedule for delivery for any Member Agency's Equipment as identified in Exhibit "B" to any Appendix 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 for any other Member Agency's Equipment.

Section 9. TAXES.

A. Contractor agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Equipment provided under this Agreement.

B. Contractor will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Contractor will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Equipment provided hereunder, will be the responsibility of Contractor. In addition, all taxes assessed by any taxing jurisdiction based on Contractor property used or consumed in the provision of the Equipment such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Contractor.

D. Contractor will, upon written request, submit to WRCOG and to each Member Agency written evidence of any filings or payments of all taxes required to be paid by Contractor hereunder.

Section 10. INDEPENDENT CONTRACTOR.

Contractor enters into this Agreement as an independent contractor and not as an employee of WRCOG or any Member Agency. Contractor shall have no power or authority by this Agreement to bind WRCOG or any Member Agency in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees, agents, contractors or subcontractors of the Contractor and not of WRCOG or any Member Agency. Neither WRCOG nor any Member Agency shall be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

Section 11. SUBCONTRACTS.

Unless otherwise specified, Contractor must obtain WRCOG's written permission before subcontracting any portion of the Equipment. WRCOG's permission shall be subject to prior written approval from the relevant Member Agency. Except for the insurance requirements in Section 13.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Equipment, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Contractor from its obligations to WRCOG or the Member Agencies, including, but not limited to Contractor's insurance and indemnification obligations. No subcontract or order will bind WRCOG or any Member Agency.

Section 12. TITLE AND RISK OF LOSS.

The applicable Member Agency will have title to, and risk of loss of, all completed and partially completed portions of the Equipment, as well as materials delivered to and stored on WRCOG or Member Agency property which are intended to become a part of the Equipment automatically and immediately upon the payment by WRCOG or the Member Agency or their agents or designees (whether directly or through an escrow account disbursement or otherwise) therefor. However, Contractor will be liable for any loss or damage to the Equipment and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Equipment or materials at its own cost to the complete satisfaction of WRCOG and the applicable Member Agency. Notwithstanding the foregoing, in the event that WRCOG or a Member Agency has paid Contractor for all or a portion of the Equipment which remains in the possession of Contractor, then the applicable Member Agency (and/or its lender) shall have title to, and the right to take possession of, such Equipment at any time following payment therefor. Risk of loss for any Equipment which remains in the possession of Contractor shall remain with Contractor until such Equipment has been delivered or WRCOG or the applicable Member Agency has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of the Equipment but which does not become a part of the Equipment.

Section 13. INDEMNIFICATION.

A. Contractor shall defend, indemnify and hold WRCOG and all Member Agencies, WRCOG's and the Member Agencies' 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 acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Equipment or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of WRCOG or the applicable Member Agency.

B. Contractor's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against WRCOG or any Member Agency, WRCOG's and the Member Agency's officials, officers, employees, agents or volunteers shall be at Contractor's own cost, expense and risk. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against WRCOG, the Member Agency, or their officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse WRCOG, the Member Agency, and their 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.

C. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by WRCOG, any Member Agency, their officials, officers, employees, agents or volunteers.

Section 14. INSURANCE.

A. General. Contractor shall take out and maintain:

1. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01;

2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);

3. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and

4. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by the Contractor if transporting hazardous materials.

5. If Contractor is also the manufacturer of any equipment included in the Equipment, Contractor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$1,000,000.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage.

The policies required under this Section shall give WRCOG, the Member Agencies, and WRCOG's and the Member Agencies' officials, officers, employees, agents or volunteers additional insured status. Such policies shall contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by WRCOG, any Member Agency, or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of WRCOG, the Member Agencies, and WRCOG's and the Member Agencies' officials, officers, employees, agents, and volunteers. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. 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. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

C. Insurance Carrier. All insurance required under this Section is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to WRCOG and each Member Agency.

D. Evidence of Insurance. Contractor shall furnish WRCOG and each Member Agency with original certificates of insurance and endorsements effecting coverage required by the 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 supplied or approved by WRCOG. All certificates and endorsements must be received and approved by WRCOG before delivery commences. WRCOG, on behalf of itself and each Member Agency, reserves the right to require complete, certified copies of all required insurance policies, at any time.

E. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Freight. Contractor shall ensure that third party shippers contracted by Contractor have adequate insurance coverage for the shipped Equipment.

Section 15. LIENS.

A. Contractor, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Equipment, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Contractor,

subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Contractor, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Contractor will save and hold WRCOG and all Member Agencies harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Contractor will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 16. TERMINATION OF AGREEMENT BY WRCOG.

A. Should Contractor at any time refuse or fail to deliver the Equipment with promptness and diligence, or to perform any of its other obligations under the Agreement, WRCOG may terminate Contractor's right to proceed with the delivery of the Equipment by written notice to Contractor. In such event WRCOG may obtain the Equipment by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Contractor. In such case Contractor will not be entitled to receive any further payments until the Equipment is delivered. If WRCOG's cost of obtaining the Equipment, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Agreement, Contractor will be liable for and will pay the difference to WRCOG. Each Member Agency shall have the same rights as WRCOG under this provision for that Member Agency's Equipment, i.e. through that Member Agency's termination of the applicable Appendix.

B. WRCOG may, for its own convenience, terminate Contractor's right to proceed with the delivery of any portion or all of the Equipment by written notice to Contractor. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which WRCOG may have against Contractor, and will not affect the obligations and duties of Contractor under the Agreement with respect to portions of the Equipment not terminated. Each Member Agency shall have the same rights as WRCOG under this provision for that Member Agency's Equipment.

C. On receipt of notice under Section 16.B, Contractor will, with respect to the portion of the Equipment terminated, unless the notice states otherwise,

1. Immediately discontinue such portion of the Equipment and the placing of orders for materials, facilities, and supplies in connection with the Equipment,
2. Unless otherwise directed by WRCOG or the applicable Member Agency, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to WRCOG or the applicable Member Agency; and
3. Deliver only such portions of the Equipment which WRCOG or the applicable Member Agency deems necessary to preserve and protect those portions of the

Equipment already in progress and to protect material, plant and equipment at the Equipment site or in transit to the Equipment site.

D. Upon termination pursuant to Section 16.B, Contractor will be paid a pro rata portion of the compensation in the Agreement for any portion of the terminated Equipment already delivered, including material and services for which it has made firm contracts which are not canceled, it being understood that WRCOG or the applicable Member Agency will be entitled to such material and services. Upon determination of the amount of said pro rata compensation, WRCOG or the applicable Member Agency will promptly pay such amount to Contractor upon delivery by Contractor of the releases of liens and affidavit, pursuant to Section 7.C.

Section 17. MISCELLANEOUS PROVISIONS.

A. 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:

WRCOG:

Western Riverside Council of Governments
3390 University Avenue, Suite 450
Riverside, CA 92501
Attn: Rick Bishop
Facsimile: (951) 223-9720

CONTRACTOR:

California Electric Supply
1011 Bay Blvd.
Chula Vista, CA 91911
Attn: Kevin Huffman
Facsimile: (619) 427-5416

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.

B. Assignment or Transfer. Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of WRCOG, which will not be unreasonably withheld. WRCOG's consent hereunder shall be subject to prior written approval from the relevant Member Agency. Provided, however, that claims for money due or to become due Contractor from WRCOG under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to WRCOG.

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

D. 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 any affected Member Agency.

E. 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.

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

G. Interpretation. 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.

H. No Third Party Beneficiaries. There are no intended third party 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 and remedies held by the Member Agency itself or by WRCOG under this Agreement.

I. Authority to Enter 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.

J. 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.

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

L. WRCOG's Right to Employ Other Contractors. WRCOG reserves its right to employ other contractors in connection with the Equipment subject to prior written approval from any affected Member Agency.

M. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Equipment specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR EQUIPMENT PURCHASE AGREEMENT
BETWEEN WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
AND CALIFORNIA ELECTRIC SUPPLY**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**WESTERN RIVERSIDE COUNCIL OF
GOVERNMENTS**

Approved By:


Rick Bishop

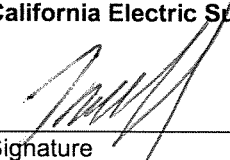
Executive Director

7-12-18
Date

Approved As To Form:


General Counsel

California Electric Supply


Signature

Kevin Huffman
Name

Manager
Title

06/20/18
Date

EXHIBIT "C"

FEE SCHEDULE

PRODUCT PRICING SHEET

DESIGNATION	EXIST WATTS	PROPOSED LUMINAIRE	QTY	UNIT PRICE	TOTAL PRICE
	50W HPS	ERL1002XX30AGRAYL	864	\$114.02	\$98,513.28
	70W HPS	ERL1003XX30AGRAYL	3,042	\$114.02	\$346,848.84
	70W HPS ALT	ERL1004XX30AGRAYL		\$114.02	
	100W HPS	ERL1005XX30AGRAYL	21,791	\$120.96	\$2,635,839.36
	150W HPS	ERL1009XX30AGRAYL	161	\$192.64	\$31,015.04
	200W HPS	ERLH011XX30AGRAYL	6,109	\$204.20	\$1,247,457.80
	250W HPS	ERL2016XX30AGRAYL	46	\$244.68	\$11,255.28
	400W HPS	ERL2021XX30AGRAYL	25	\$279.36	\$6,984.00
	35W HPS	ERL1002XX30AGRAYL	29	\$114.02	\$3,306.58
	55W HPS	ERL1002XX30AGRAYL	15,012	\$114.02	\$1,711,668.24
	90W HPS	ERL1004XX30AGRAYL	89	\$114.02	\$10,147.78
	135W HPS	ERL1009XX30AGRAYL	3,273	\$192.64	\$630,510.72
PHOTO CELL	N/A	GWLL127-1.5-BK	50,441	\$13.33	\$672,378.53
			50,441		\$7,405,925.45

XX = optical designation

GE OPTICAL A3, B3, C3, D3 = SAME PRICE

30 = 3000K/27 = 2700K ALL SAME PRICE

TAX INCLUDED IN FIXTURE SELL

APPENDIX #
[*MEMBER AGENCY NAME***]**

This Appendix # to Agreement ("Appendix") by and between WRCOG, Contractor, and [***MEMBER AGENCY ***] ("Member Agency") is made and entered into this day of , 201_. WRCOG, Contractor, and Member Agency are referred to herein as Parties.

1. Defined Terms. All terms used herein have the meanings ascribed to them in the Equipment Purchase Agreement ("Agreement") between WRCOG and Contractor dated with the exception of the term Member Agency, which for the purposes of this Appendix # will refer to [***MEMBER AGENCY NAME***] only.

2. Agreement Incorporated. The terms and provisions of the Agreement are hereby incorporated into this Appendix.

3. Member Agency Exhibits. The Parties hereby agree that the Equipment Specifications, Delivery Schedule, and Fee Schedule for the Agreement as it relates to Member Agency are defined specifically in Exhibits A, B, and C, attached hereto and incorporated herein by this reference.

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

WRCOG

By: _____
[Insert Name, Insert Title]

APPROVED AS TO FORM:

By: _____
General Counsel

Contractor

By: _____
[Insert Name, Insert Title]

By: _____
[Insert Name, Insert Title]

Member Agency

By: _____
[Insert Name, Insert Title]

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT "A"
EQUIPMENT SPECIFICATIONS

[**INSERT DESCRIPTION OF EQUIPMENT FROM ACCEPTED RFQ RESPONSE AND
REFER BACK TO RFQ**]

EXHIBIT "B"
DELIVERY SCHEDULE

Delivery Schedule (Estimated)						
<i>Acquisition Process</i>	<i>SCE Transition Start</i>	<i>Delivery Schedule</i>	<i>Phase 1 Transition (retrofit start)</i>	<i>Phase 2 (if needed)</i>	<i>Phase 3 (if needed)</i>	<i>Phase 4 (if needed)</i>
<i>Retrofit, O&M, LED fixture, and financing GOALS</i>	Finance Closing and LED selection GOAL		LED fixture delivery date GOAL			
[***MEMBER AGENCY***]	+ 60 days	Min. 2 weeks prior to Phase 1 Transition	+ 30 days			

**APPENDIX #5
Menifee**

This Appendix #5 to Agreement ("Appendix") by and between WRCOG, Contractor, and Menifee ("Member Agency") is made and entered into this 27th day of June, 2019. WRCOG, Contractor, and Member Agency are referred to herein as Parties.

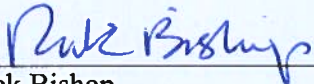
1. Defined Terms. All terms used herein have the meanings ascribed to them in the Equipment Purchase Agreement ("Agreement") between WRCOG and Contractor dated June 28, 2018 with the exception of the term Member Agency, which for the purposes of this Appendix #5 will refer to Menifee only.

2. Agreement Incorporated. The terms and provisions of the Agreement are hereby incorporated into this Appendix.

3. Member Agency Exhibits. The Parties hereby agree that the Equipment Specifications, Delivery Schedule, and Fee Schedule for the Agreement as it relates to Member Agency are defined specifically in Exhibits A, B, and C, attached hereto and incorporated herein by this reference.

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

WRCOG

By: 
Rick Bishop
Executive Director

~~APPROVED AS TO FORM:~~

By: 
General Counsel

Contractor

By: _____
Kevin Huffman, Manager

Member Agency

By: _____
Armando G. Villa, City Manager

ATTEST:

By: _____
Sarah Manwaring, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

APPENDIX #5
Menifee

This Appendix #5 to Agreement ("Appendix") by and between WRCOG, Contractor, and Menifee ("Member Agency") is made and entered into this 27th day of June, 2019. WRCOG, Contractor, and Member Agency are referred to herein as Parties.

1. Defined Terms. All terms used herein have the meanings ascribed to them in the Equipment Purchase Agreement ("Agreement") between WRCOG and Contractor dated June 28, 2018 with the exception of the term Member Agency, which for the purposes of this Appendix #5 will refer to Menifee only.

2. Agreement Incorporated. The terms and provisions of the Agreement are hereby incorporated into this Appendix.

3. Member Agency Exhibits. The Parties hereby agree that the Equipment Specifications, Delivery Schedule, and Fee Schedule for the Agreement as it relates to Member Agency are defined specifically in Exhibits A, B, and C, attached hereto and incorporated herein by this reference.

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

WRCOG

By: _____
Rick Bishop
Executive Director

Contractor

By:  _____
Kevin Huffman, Manager

APPROVED AS TO FORM:

By: _____
General Counsel

Member Agency

By: _____
Armando G. Villa, City Manager

ATTEST:

By: _____
Sarah Manwaring, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

**APPENDIX #5
Menifee**

This Appendix #5 to Agreement ("Appendix") by and between WRCOG, Contractor, and Menifee ("Member Agency") is made and entered into this 27th day of June, 2019. WRCOG, Contractor, and Member Agency are referred to herein as Parties.

1. Defined Terms. All terms used herein have the meanings ascribed to them in the Equipment Purchase Agreement ("Agreement") between WRCOG and Contractor dated June 28, 2018 with the exception of the term Member Agency, which for the purposes of this Appendix #5 will refer to Menifee only.

2. Agreement Incorporated. The terms and provisions of the Agreement are hereby incorporated into this Appendix.

3. Member Agency Exhibits. The Parties hereby agree that the Equipment Specifications, Delivery Schedule, and Fee Schedule for the Agreement as it relates to Member Agency are defined specifically in Exhibits A, B, and C, attached hereto and incorporated herein by this reference.

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

WRCOG

By: _____
Rick Bishop
Executive Director

APPROVED AS TO FORM:

By: _____
General Counsel

Contractor

By: _____
Kevin Huffman, Manager

Member Agency

By: _____
Armando G. Villa, City Manager

ATTEST:

By: _____
Sarah Manwaring, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

[PLACEHOLDER] : Exhibit “A” to Appendix # 5-Equipment Specifications - Post Closing

To be delivered directly to BALCAP

[PLACEHOLDER] : Exhibit “B” to Appendix # 5-Delivery Schedule - Post Closing

To be delivered directly to BALCAP

EXHIBIT “C”
FEE SCHEDULE

PRODUCT PRICING SHEET

Luminaire Designation	Existing Wattage	Proposed Luminaire	Quantity *	Unit Price **	Total Price
	50W HPS	ERL1 0 02 XX 30 A GRAY L	864	\$ 114.02	\$ 98,513.28
	70W HPS	ERL1 0 03 XX 30 A GRAY L	3042	\$ 114.02	\$ 346,848.84
	70W HPS ALT	ERL1 0 04 XX 30 A GRAY L		\$ 114.02	\$ -
	100W HPS	ERL1 0 05 XX 30 A GRAY L	21791	\$ 120.96	\$ 2,635,839.36
	150W HPS	ERL1 0 09 XX 30 A GRAY L	161	\$ 192.64	\$ 31,015.04
	200W HPS	ERLH 0 11 XX 30 A GRAY L	6109	\$ 204.20	\$ 1,247,457.80
	250W HPS	ERL2 0 16 XX 30 A GRAY L	46	\$ 244.68	\$ 11,255.28
	400W HPS	ERL2 0 21 XX 30 A GRAY L	25	\$ 279.36	\$ 6,984.00
	35W LPS	ERL1 0 02 XX 30 A GRAY L	29	\$ 114.02	\$ 3,306.58
	55W LPS	ERL1 0 02 XX 30 A GRAY L	15012	\$ 114.02	\$ 1,711,668.24
	90W LPS	ERL1 0 04 XX 30 A GRAY L	89	\$ 114.02	\$ 10,147.78
	135W LPS	ERL1 0 09 XX 30 A GRAY L	3273	\$ 192.64	\$ 630,510.72
			50441		\$ 6,733,546.92

XX = optical designation
GE optical A3, B3, C3, D3 = same price
30 = 3000K/27 = 2700K All same price

Tax rate added to fixture is 8.75% ***

*Quantity of fixtures and total price subject to change per Final True-up performed by SCE's Inventory and Inspection Period and final count of City-owned lights that City's would like to add to the project.

**Unit price set at a Not-to-Exceed price unless otherwise approved by WRCOG representative. Does not include price of Photocell.

***Tax rate subject to change per jurisdiction.

**AMENDED AND RESTATED
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Amended and Restated Agreement is made and entered into this 27 day of March, 2018 (“Effective Date”), by and between the Western Riverside Council of Governments, a California public agency (“WRCOG”) and **SIEMENS INDUSTRY INC., INTELLIGENT TRAFFIC SYSTEMS** (“Consultant”). WRCOG and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. DEFINITIONS, INCORPORATED DOCUMENTS, AND RECITALS.

2.1 Original Agreement

On or about December 18, 2017, the Parties entered into that certain Professional Services Agreement for professional services for the Project (as defined herein) (“Original Agreement”). Parties now desire to amend and restate the Original Agreement to include additional language requested by the lender to the Member Agencies (as defined herein) consistent with that Equipment Lease/Purchase Agreement entered into between each Member Agency and Banc of America Leasing & Capital, LLC (together with its successors and assigns, “Lessor”) 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.

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 Moreno Valley |
| • City of Hemet | • City of Murrieta |
| • Jurupa Community Services District | • City of Perris |
| • City of Lake Elsinore | • City of San Jacinto |
| • City of Menifee | • City of Temecula |
| | • City of Wildomar |

2.3 Incorporated Documents.

2.3.1 Request for Proposal. The Request for Proposal No. 17-04 (“RFP”) issued by WRCOG on March 10, 2017 and the Consultant’s response to the RFP dated May 11, 2017 are incorporated herein by this reference.

2.3.2 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), Schedule of Services (Exhibit B), and Compensation (Exhibit C). The following Appendices, including their Exhibits, are attached hereto and incorporated herein by this reference:

- 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 Moreno Valley
- Appendix 7 – City of Murrieta
- Appendix 8 – City of Perris
- Appendix 9 – City of San Jacinto
- Appendix 10 – City of Temecula
- Appendix 11 – 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 street light 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 and the RFP.

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 perform 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 the Effective Date to December 1, 2022, 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 two (2) additional one (1) year 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 so 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 “C”, but otherwise all other terms and obligations of this Agreement shall continue to apply 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 perform the Services for WRCOG and the applicable Member Agencies expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit “B” to each Appendix attached hereto and incorporated herein by reference. Consultant understands and agrees that in the event that the schedule for delivery of Services to any Member Agency, as identified in Exhibit “B” to any Appendix, 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 to meet the Schedule of Services.

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 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: Alex Valenti, Bryan Berlin, Candace Gallaher, Michael Hutchens and Steven Teal.

3.2.5 WRCOG’s Representative. WRCOG hereby designates Rick Bishop, 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 subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors 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 or the applicable Member Agency, 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 regulations and without giving written notice to WRCOG, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold WRCOG, its Member Agencies, and WRCOG's and the Member Agencies' officials, directors, 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 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 subcontractor to commence work on any subcontract until it has provided evidence satisfactory to WRCOG that the subcontractor 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 subcontractors. Consultant 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 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:

(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, 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 or any Member Agency’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’s and its Member Agencies’ directors, officials, officers, employees, agents and volunteers shall be 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.

(i) Defense costs shall be payable in addition to the limits set forth hereunder.

(ii) 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.

(iii) 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).

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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 deems 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.

(viii) Neither WRCOG, its Member Agencies, nor WRCOG's or its Member Agencies' directors, officials, officers, employees 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 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 Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract 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 subcontractors or subconsultants shall be endorsed to name WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' directors, officials, officers, 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 subcontractors or subconsultants.

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 subcontractors, 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 “C” to each Appendix attached hereto and incorporated herein by reference. The total compensation shall not exceed Five Million Nine Hundred Thirteen Thousand Seventy-Three Dollars (\$5,913,073) over a five year contract period 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 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.

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 shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' elected officials, officers, employees 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.

3.4 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 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: 9225 Bee Cave Road, Building B, Suite 101
Austin, TX 78733
Attn: Steven Teal
Facsimile: (512) 421-6617

WRCOG: Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor, MS 1032
Riverside, CA 92501
Attn: Rick Bishop
Facsimile: (951) 787-7991

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 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 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 the WRCOG, its Member Agencies, and WRCOG's and its Member Agencies' 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, its Member Agencies, and WRCOG's and its Member Agencies' 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's and its Member Agencies' directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys fees, incurred by each of them in connection therewith or in

enforcing the indemnity herein provided. 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 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 subcontractors of Consultant, 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. 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.

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 third party 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 and remedies 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, officer 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 subcontractor, 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 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 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 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
AMENDED AND RESTATED
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
PROFESSIONAL SERVICES AGREEMENT**

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

WESTERN RIVERSIDE COUNCIL
OF GOVERNMENTS

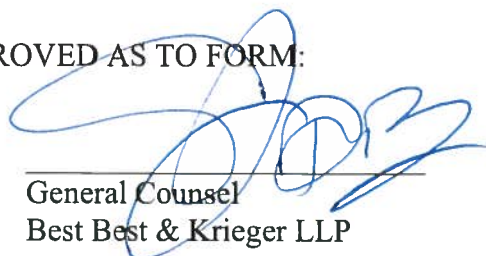
SIEMENS INDUSTRY INC.,
INTELLIGENT TRAFFIC SYSTEMS

By: 
Rick Bishop
Executive Director

By: _____
Title: _____

APPROVED AS TO FORM:

ATTEST:

By: 
General Counsel
Best Best & Krieger LLP

By: _____
Its: _____

* 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.

**SIGNATURE PAGE
TO
AMENDED AND RESTATED
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
PROFESSIONAL SERVICES AGREEMENT**

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

WESTERN RIVERSIDE COUNCIL
OF GOVERNMENTS

By: _____
Rick Bishop
Executive Director

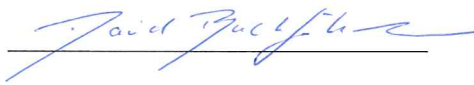
SIEMENS INDUSTRY INC.,
INTELLIGENT TRAFFIC SYSTEMS

By:  _____
Title: Marcus Welz, CEO

APPROVED AS TO FORM:

By: _____
General Counsel
Best Best & Krieger LLP

ATTEST:

By:  _____
Title: David Buchfuehrer, CFO

* 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.

APPENDIX #5
Meniffee

This Appendix #5 to Agreement ("Appendix") by and between WRCOG, Consultant, and Meniffee ("Member Agency") is made and entered into this 27th day of June, 2019. WRCOG, Consultant, and Member Agency are referred to herein as Parties.

1. Defined Terms. All terms used herein have the meanings ascribed to them in the Professional Services Agreement between WRCOG and Consultant dated March 27, 2018 with the exception of the term Member Agency, which for the purposes of this Appendix #5 will refer to Meniffee only.

2. Agreement Incorporated. The terms and provisions of the Agreement are hereby incorporated into this Appendix.

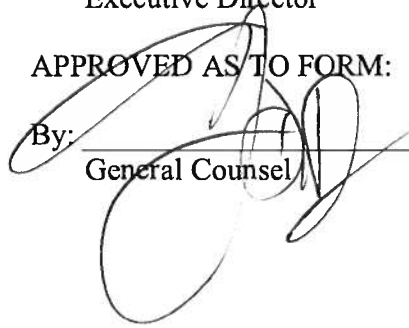
3. Member Agency Exhibits. The Parties hereby agree that the Scope of Services, Schedule of Services, and Compensation for the Project as it relates to Member Agency are defined specifically in Exhibits A, B, and C, attached hereto and incorporated herein by this reference.

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

WRCOG

By: 
Rick Bishop
Executive Director

APPROVED AS TO FORM:

By: 
General Counsel

Consultant

By: _____
Marcus Welz, CEO

By: _____
David Buchfuehrer, CFO

Member Agency

By: _____
Armando G. Villa, City Manager

ATTEST:

By: _____
Sarah Manwaring, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

APPENDIX #5
Meniffee

This Appendix #5 to Agreement ("Appendix") by and between WRCOG, Consultant, and Meniffee ("Member Agency") is made and entered into this 27th day of June, 2019. WRCOG, Consultant, and Member Agency are referred to herein as Parties.

1. Defined Terms. All terms used herein have the meanings ascribed to them in the Professional Services Agreement between WRCOG and Consultant dated March 27, 2018 with the exception of the term Member Agency, which for the purposes of this Appendix #5 will refer to Meniffee only.

2. Agreement Incorporated. The terms and provisions of the Agreement are hereby incorporated into this Appendix.

3. Member Agency Exhibits. The Parties hereby agree that the Scope of Services, Schedule of Services, and Compensation for the Project as it relates to Member Agency are defined specifically in Exhibits A, B, and C, attached hereto and incorporated herein by this reference.

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


WRCOG


By: _____
Rick Bishop
Executive Director

APPROVED AS TO FORM:

By: _____
General Counsel

Consultant

By: _____
Marcus Welz
Vice President - ITS

By: _____
David Buchfuehrer
Head of Finance - ITS

Member Agency

By: _____
Armando G. Villa, City Manager

ATTEST:

By: _____
Sarah Manwaring, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

APPENDIX #5
Menifee

This Appendix #5 to Agreement ("Appendix") by and between WRCOG, Consultant, and Menifee ("Member Agency") is made and entered into this 27th day of June, 2019. WRCOG, Consultant, and Member Agency are referred to herein as Parties.

1. Defined Terms. All terms used herein have the meanings ascribed to them in the Professional Services Agreement between WRCOG and Consultant dated March 27, 2018 with the exception of the term Member Agency, which for the purposes of this Appendix #5 will refer to Menifee only.

2. Agreement Incorporated. The terms and provisions of the Agreement are hereby incorporated into this Appendix.

3. Member Agency Exhibits. The Parties hereby agree that the Scope of Services, Schedule of Services, and Compensation for the Project as it relates to Member Agency are defined specifically in Exhibits A, B, and C, attached hereto and incorporated herein by this reference.

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

WRCOG

By: _____
Rick Bishop
Executive Director

APPROVED AS TO FORM:

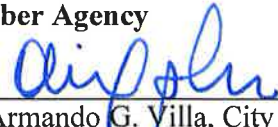
By: _____
General Counsel

Consultant

By: _____
Marcus Welz, CEO

By: _____
David Buchfuehrer, CFO

Member Agency

By: 
Armando G. Villa, City Manager

ATTEST:

By: 
Sarah Manwaring, City Clerk

APPROVED AS TO FORM:

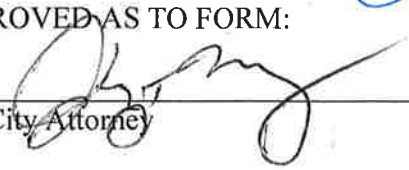
By: 
City Attorney

EXHIBIT “A”
SCOPE OF SERVICES

Siemens Intelligent Traffic System proposes the following scope of work for services related to the street lights located in the Western Riverside Council of Governments (WRCOG) subregion. These services include the turnkey services related to installation of LED street lights and the ongoing operations and maintenance of the street light systems for member jurisdictions. These services are extended to the street lights currently owned by the member jurisdictions, those to be purchased from Southern California Edison and any additional assets that are installed within the contract period. Siemens extends this contract for 5 years for date of execution, with the option for additional extension if agreed upon by all parties. All services included in the Scope of Services will be billed per the rates outlined in Exhibit C.

Project Development

The Project Development phase includes several key elements that must take place for member jurisdictions to effectively acquire street lights from Southern California Edison (SCE), efficiently convert to LED technology and begin operating and maintaining the system.

1. SCE Coordination- Facilitate the “Cut-Over” Process with SCE

Siemens will assist WRCOG and member jurisdictions in communication and scheduling with Southern California Edison representatives during the acquisition phase. Siemens will coordinate the development of an agreed upon schedule and geographic plan for the associated field work and cutover of assets from SCE to member jurisdictions. Specific scope includes:

- Participation in SCE calls
- Develop cut over schedule and work flow with SCE subcontractors
- Provide review of “fielding” data from SCE and associated subcontractors
- Update Street light database to include new street lights previously not included in valuations and other associated data corrections/modification/additions.
- Track billing adjustments from SCE as street lights are acquired
- Support WRCOG and its member jurisdictions with the Inventory, Inspection and Transition Activities as identified in the City’s Purchase and Sales Agreement (Agreement) with SCE
-

2. Street light pole tagging and field verification

Siemens will install street light pole tags during the installation of the LED street light fixture. The tags will either be furnished by WRCOG, member jurisdiction or by Siemens. The associated pole tags will be designed and approved with jurisdiction/regional street light numbering sequence by WRCOG and/or jurisdiction staff. Siemens will install pole tags and update the web based WRCOG database of information for each pole, referencing the associated pole number.

Siemens will verify street light asset attributes during the LED installation utilizing the web based WRCOG database. The information to be reaffirmed in the database upon conversion shall

include condition of asset, GPS coordinates for each asset, pole type, pole height, arm length, luminaire type, wattage, lamp type, voltage, general pole condition, service feed type: overhead or underground, city and SCE pole structure number (in the case the numbers are different) and description of point of demarcation between jurisdiction and SCE facilities.

3. Procurement Support- LED Material Selection and Design (optional)

Siemens can provide support in the process of selecting and procuring fixtures for the project and provide recommendations to the City for final approval. This service includes identifying material vendors, soliciting proposals from vendors and performing a detailed evaluation of material proposals submitted.

Fixture selection is typically based on a variety of factors that ultimately will lead to identification of the best solution for the customer. Some of the factors considered are:

- Fixture efficiency
- Demonstrated durability
- Material cost
- Availability/production lead times
- Design functionality
- SCE rebate eligibility
- Life-cycle cost

Concurrent with the evaluation of fixture alternatives, Siemens can provide additional design support. This includes evaluating basic standard lighting configurations which exist on various street types throughout a jurisdiction. This includes reviewing current existing light levels, performing photometric analysis and recommended replacement fixture standards to apply throughout the conversion process. The process of ordering and staging replacement LED fixtures will be greatly aided by establishing these conventions. These services will be billed at a time and material basis per the labor rates outlined in Exhibit C. In the event that Siemens provides procurement services, Siemens will waive the fees associated with this service.

Project Implementation

The implementation phase addresses the various tasks needed to convert each newly acquired street light with a suitable LED fixture and process all data, billing and rebate applications. Siemens will develop a City specific project plan which will include pre-construction meetings, staging of material, installation, and other acquisition and retrofit project milestones.

1. Procurement Support- LED Material Purchasing (optional)

Siemens can direct purchase associated material for the project as approved by the WRCOG and member jurisdiction. This procurement support extends to all associated materials, such as LED fixtures, photocells, pole tags, lighting controls, poles, mast arms and all other associated street light system components. Siemens can receive, warehouse and manage all material prior to installation and process all warranty information with manufacturers as needed. Warranty

information will be retained by Siemens with appropriate copies provided to the member jurisdiction for future use.

2. LED Fixture Installation

Siemens will coordinate and complete all aspects of the conversion of HID fixtures to LED fixtures. This includes coordinating with WRCOG staff regarding procurement, receiving materials at a jurisdiction facility during typical working hours, providing equipment and labor for the complete installation of LED fixture and associated materials and field update of WRCOG provided web based GIS database.

Prior to beginning conversion efforts, Siemens will coordinate all traffic control requirements with the member jurisdiction to gain approval for approved methods for various street configurations, including allowable working hours on arterials, in commercial areas and in residential neighborhoods. MUTCD standards will be adhered to.

Installation progress will be tracked on a daily basis by the project's Siemens Field Supervisor and Project Manager, and a brief status report that includes project status and any current issues will be provided to WRCOG and the jurisdiction on a weekly basis.

3. House Side Shield Installation

Siemens will install manufacturer approved house-side shields on LED street lights, as instructed by member jurisdiction. All requests for shields will be reviewed and approved by member jurisdiction staff prior to installation. Siemens can collaborate with member jurisdiction on specific strategies for implementing house side shields during the LED conversion. Siemens will install house-side shield on up to 10% of new LED street lights upon request, within the first year. Full cost of material and labor included in retrofit costs.

Siemens recommends that house side shields for LEDs be installed at sites where HPS fixtures currently have them. The like-for-like replacement can increase customer satisfaction and reduce the amount of visits to the same location.

4. HID Fixture Disposal

Siemens will be responsible for all fixture disposal and recycling. Disposal of existing luminaries and any other discarded materials will follow all applicable California Recycle and Disposal Laws. Siemens will produce a recycling plan, to be approved by the member jurisdiction. Following disposal, a manifest of disposal will be provided to the member jurisdiction, that specifies what was recycled, what was sent to the landfill, and how hazardous material was disposed of. Siemens reserves the right to select disposal and recycling firms. This includes use of approved bins and locations for temporary holding locations of fixtures, etc. All disposal costs, fees, etc. are included in the retrofit costs.

5. Record Documents

Following the completion of the implementation phase and City acceptance, Siemens will generate project close out documentation. This includes (but is not limited to) the following:

- Final Installation Data
- A summary report of the LED installation database information updated throughout the installation. This is based on the WRCOG provided web based database.
- As-built documentation (as-needed)
- As-built schedule of the project and a comparison of the actual installation vs. the scheduled baseline.
- A summary of any scope changes that occurred

Siemens will prepare and submit the final rebate documentation to the utility. In addition, Siemens will verify that the billing rate change has been submitted and accepted, and that the utility bill is correct.

Once the rebate is secured, the billing is verified then a final project closeout report will be generated. This will consist of a complete inventory database of the installed system with GIS locations and attributed of the LED street light system. Furthermore, this report will also include the final results of the rebate allocation, the energy savings to date and the final estimated energy savings for future years, summarizing the final results of the project.

Maintenance Phase

This phase will begin once a member jurisdiction pays SCE for a group of assets. This will be done in phases to be determined by SCE, the City and Siemens.

The maintenance phase will transition from initial maintenance of the existing poles with HID fixtures to maintenance of existing poles with new LED fixtures as the project progresses. Siemens will provide maintenance services for all fixtures acquired by the City from SCE and provide a monthly bill prorating the fixtures acquired throughout the previous month, by technology and fixture type.

General Maintenance will consist of all operations and repairs starting at the pull box or bottom of street light pole where the fuse holder or secondary power source necessary to keep all street lights operations, and associated wiring within the street light circuit.

1. Customer Service

Siemens will develop and implement a customer service portal for each member jurisdiction to effectively manage all incoming street light inquiries from public and from the member jurisdiction. General customer services include:

- 24/7 telephone and web based reporting service
- Web portal access for member jurisdiction and designated representatives
- Quarterly reporting/summaries of customer inquiry activity
- Customer service feedback survey

2. Routine Street light Maintenance Duties

A base monthly fee is established for maintenance of the street light system on a per month, per light basis. Siemens will respond to standard maintenance calls within 5 working days. The fee will reflect the total number of lights being served along with and adjustments for special fixtures/poles.

Routine Maintenance tasks include but are not limited to:

- RMA of LED Fixture (Shipping and handling)
- Warranty management of defective LEDs
- Traffic Control
- General Cleaning During Call Out
- Outage Nights Checks
- Photocell Replacement
- Fuse Replacement
- Fuse Holders Replacement
- Hand Hole Covers (up to 0.05% of stock, annually)
- False Calls

The fee is expected to be all inclusive, with the sole exceptions being those items identified in the extraordinary maintenance section. Annual services include:

- System problem assessment/diagnostics
- Repair and replacement of damaged/inoperable fixture material
 - For HID fixtures this can include repair or replacement of constituent parts. Such as lamps, ballasts, starters, reflectors, diffusers, etc.
 - For LED fixtures this can include repair or replacement of constituent parts. Such as drivers, lenses, and LED arrays. Typically LED fixtures will be covered under warranty and will be processed accordingly.
- Photocell repair and maintenance
- Hand hole cover replacement of standard hand hole covers. Limited to 0.05% of stock annually.
- Coordination with 3rd party attachment licensees
- Quarterly review of system operation (night check)
- General cleaning of fixture during maintenance call out
- Customer service portal operations
- LED fixture warranty processing

3. Extraordinary Street light Maintenance Duties

Siemens recognizes that there will be situations that can and will occur during the maintenance phase of the project that are best addressed individually based on the actual occurrence and not covered under a monthly fixture price. Items such as accidents resulting in the street lights being damaged and replaced or the need for specialized shielding devices are expected to

occur, though the frequency may vary considerably. These items are being defined as extraordinary maintenance and not included in the base monthly fee for standard maintenance. The following items have specifically been identified as extraordinary maintenance:

- 24/7 emergency response and securing field location for basic public safety. This would typically include pushing pole out of the right-of-way or from private property, taping off the area of the debris, capping/taping live wires, checking street light circuit and documenting all work activities for insurance purposes.
- Pole knockdown repair. Services can include:
 - removal of all associated spoils and debris from original installation
 - installation of new street light pole and associated system components
 - installation of associated foundation
 - Adjacent concrete repair/cap replacement
- House side shield installation (if occurs after year one)
- Overhead wiring replacement
- Pole graffiti abatement
- Pole painting
- USA Dig Alert services

EXHIBIT “B”
SCHEDULE OF SERVICES

Streetlight Timeline								
Acquisition Process	SCE sends to CPUC	CPUC approval date	Est. Financial Closing	SCE Transition Start	Phase 1 Transition (retrofit start)	Phase 2 (if needed)	Phase 3 (if needed)	Phase 4 (if needed)
Retrofit, O&M, LED fixture, and financing GOALS		Retrofit, O&M service selection GOAL		Finance Closing and LED selection GOAL	LED fixture delivery date GOAL			
Menifee								

**EXHIBIT “C”
COMPENSATION**

BILLING RATES

	Item	Description	Unit Cost
Project Development			
1	Street light pole ID tag	This includes the labor for installation of a unique pole ID tag for each pole. Pole tags will be affixed to poles with an adhesive, no riveting or drilling will be performed. The pole tags will be installed at the same time as the LED fixture conversion.	\$10.00/pole
Project Implementation			
2	LED replacement Cobra head	This includes the costs for labor, equipment (trucks, lifts, tools, traffic control, etc.) and materials needed to replace existing cobra head fixtures with a new LED fixture. Includes update of WRCOG database with model number installed and installation date. This also included the cost for disposal of HID materials.	\$57.00/ Each
3	LED replacement Decorative	This includes the costs for labor, equipment (trucks, lifts, tools, traffic control, etc.) and materials needed to replace existing post top fixtures with a new LED fixture. Includes update of database with model number installed and installation date. The cost per pole shall not include the cost of the actual fixture.	\$114.00/ Each
4	House side shield installation As Separate call	This includes the costs for installation only of new house side shields including labor, equipment (trucks, tools, etc.) and incidental materials needed for the installation. Includes update of database. The cost does not include the cost of the shield itself.	\$64.00/ Each
Routine Maintenance- Pre-LED Conversion			
5	HPS Fixture Maintenance – Cobra (labor, materials, equipment)	This includes the monthly costs for maintenance of all HPS cobra head fixtures during the period from acquisition of poles through retrofit with new LED fixture. Costs include all labor, materials and equipment needed to keep the existing fixtures functioning properly until the new LED fixtures are installed. This includes all anticipated costs for repairs and maintenance during that time including bulb	\$1.55/ each/month

		replacements, ballast replacements, field calls etc. as assumed and prorated across the HPS inventory.	
6	HPS Fixture Maintenance – Post Top Acorn (labor, materials, equipment)	This includes the monthly costs for maintenance of all HPS post top fixtures during the period from acquisition of poles through retrofit with new LED fixture. Costs include all labor, materials and equipment needed to keep the existing fixtures functioning properly until the new LED fixtures are installed. This includes all anticipated costs for repairs and maintenance during that time including bulb replacements, ballast replacements, field calls etc. as assumed and prorated across the HPS inventory.	\$3.50/ each/month
7	HPS House side shield installation (labor, materials, equipment)	This includes the cost for each HPS house side shield installation that may be requested during the pre-retrofit stage. Costs include all labor, equipment and materials including the cost of the shield. These would be billed on an individual basis (not monthly or per pole being maintained).	\$64.00/ Each
Maintenance- Post LED Conversion			
8	LED Fixture Maintenance Cobra head	This includes the cost for all regular maintenance and associated tasks to maintain the cobrahead fixtures in the street light system. Detailed scope is included in the Part 1. Scope of Work document above.	\$0.65/ each/month
9	LED Fixture Maintenance Decorative	This includes the cost for all regular maintenance and associated tasks to maintain the post top fixtures in the street light system. Detailed scope is included in the Part 1. Scope of Work document above.	\$2.00/ each/month
10	LED Replacement Cobra head	This includes the costs for labor, equipment (trucks, lifts, tools, traffic control, etc.) and materials needed to replace existing cobra head fixtures with a new LED fixture. Includes update of WRCOG database with model number installed and installation date. This also included the cost for disposal of HID materials.	\$57.00/ Each
11	LED Replacement Decorative	This includes the costs for labor, equipment (trucks, lifts, tools, traffic control, etc.) and materials needed to replace existing post top fixtures with a new LED fixture. Includes update of database with model number installed and installation date. The cost per pole shall not include the cost of the actual fixture.	\$114.00/ Each
12	House side shield	This includes the costs associated with the installation of a house side shield on a LED fixture	\$64.00/ Each

	installation	excluding the cost of the actual shield. The costs should include labor, equipment, tools and incidental materials needed to complete a standard installation. This assumes a standard cobra head style fixture and a factory standard shield available for purchase (does not include custom installations and decorative fixtures).	
Extraordinary Maintenance (Reference pricing only- this scope will be quoted on time and material basis)			
13	Knockdown pole replacement No foundation	<p>This includes the costs associated with the replacement of an entire street light pole, luminaire arm, fixture and wiring typically associated with a street light knockdown that does not require replacement of the foundation. This is based on the following assumptions: a 30 foot, marbelite pole with a standard 150 watt equivalent LED cobra head fixture.</p> <p>The City understands that there will be considerable variation in costs for these repairs under the contract and anticipates work being authorized individually through a quote process.</p> <p>These repairs will not be completed as part of an initial emergency response. Costs are based on a single replacement with work completed during normal work hours scheduled within the requested repair interval.</p>	\$4,600.00/ Each

14	Knockdown pole replacement with foundation	<p>This includes the costs associated with the replacement of an entire street light pole, luminaire arm, fixture and wiring typically associated with a street light knockdown that does require replacement of the foundation. This is based on the following assumptions: a 30 foot, marbelite pole with a standard 150 watt equivalent LED cobra head fixture.</p> <p>The City understands that there will be considerable variation in costs for these repairs under the contract and anticipates work being authorized individually through a quote process.</p> <p>These repairs will not be completed as part of an initial emergency response. Costs are based on a single replacement with work completed during normal work hours scheduled within the requested repair interval.</p>	\$6,925.00/ Each
15	Pull box lid replacement	This includes the cost of labor, materials and equipment to purchase, supply and replace a pull box lid with a fiberlyte lid due to damage or missing lid.	\$165.00/ Each
16	Pole graffiti abatement	This includes the estimated cost per pole to remove or cover reported graffiti. Costs include labor, equipment and materials needed to complete each individual abatement assuming time required to abate graffiti is less than 30 minutes. Work limited to under 4SF and/or lower than 7ft.	\$65.00/ Each
17	Overhead wiring replacement	<p>Total cost to repair or replace damaged overhead wiring. Cost provided per foot of wire being replaced. Costs include labor, equipment and materials to complete the repair during normal working hours.</p> <p>The City understands that there will be considerable variation in costs for these repairs under the contract and anticipates work being authorized individually through a quote process.</p>	\$15/foot, or lump sum as quoted
18	Pole painting	This includes the costs on a per occurrence (per pole) basis for all labor, equipment and materials needed to prep and paint a standard metal street light pole (assume 30 foot). It is assumed that a minimum of 5	\$479.00/ Each

		poles and a maximum of 20 poles would be scheduled for painting as a group.	
19	USA Dig Alert	Siemens typically prices this service out on a per occurrence basis. This includes the following: Siemens technician identifies the point of demarcation on site using field equipment. This is typically limited to approximately 100-150 linear ft per call out.	\$225.00/ Each

Siemens will evaluate maintenance contract values annually and discuss any needed adjustments with member jurisdictions. Siemens typically utilizes the US Consumer Price Index to calculate annual escalations.

Schedule of Values- Time and Material Rates

1. Labor	Regular Time*	Overtime*	Premium Time*
Maintenance Superintendent	\$105.00	\$135.00	\$160.00
Foreman	\$105.00	\$135.00	\$160.00
Electrician	\$98.00	\$125.00	\$145.00
Laborer	\$85.00	\$115.00	\$135.00
Energy Engineer	\$180.00	N/A	N/A
2. Equipment		Rate per Hour	
Bucket Truck		\$28.00	
Service Truck		\$25.00	
3. Material Mark up (from actual invoice cost)			
Street light LED Retrofit Installation Materials		15%	
Street light Maintenance Materials		15%	

* Work hours are as follows:

- Regular Hours – 7:30am to 4:00pm Monday Thru Friday except Holidays
- Overtime
 1. Monday thru Friday after 4:00pm (for the first four hours)
 2. Saturday for the first 12 hours worked
- Premium Time
 1. Monday thru Saturday After 12 working hours
 2. Sunday & Holidays all day (24 hours)