

**PROFESSIONAL SERVICE AGREEMENT BY AND BETWEEN THE
CITY OF FONTANA
AND
GOGO TECHNOLOGIES, INC.
FOR THE PROVISION OF RIDE SHARE SERVICES FOR SENIOR TRANSIT PROGRAMS**

THIS AGREEMENT is made and entered into this ____ day of _____, 202_ by and between the CITY OF FONTANA, hereinafter referred to as the "CITY," and GOGO TECHNOLOGIES, INC., hereinafter referred to as the "CONSULTANT."

I. RECITAL

A. PURPOSE. The purpose of this AGREEMENT is to allow the CITY to procure the professional services of a qualified administrator and dispatch ride sharing agency to coordinate and dispatch existing private ride sharing services for the CITY's Senior Transit Programs and to have these CONSULTANT services based upon the mutual covenants and conditions set forth herein.

II. TERMS AND CONDITIONS

A. MISSION. The CITY hereby retains the CONSULTANT in the capacity as CONSULTANT and the CONSULTANT hereby accepts such responsibility as described herein.

B. TERMS. The term of this AGREEMENT shall be for an initial term of 1 year with option by the CITY to renew for additional periods of 2 year terms, which option must be exercised by CITY prior to the expiration of initial 1 year term and prior to the expiration of each succeeding 2 year term periods; provided, however, that this paragraph does not affect the right of either party to terminate the Agreement unless in accordance with those provisions set forth in paragraph P.

C. SCOPE OF SERVICES. Under the supervision of the Director of Community Services or designee, the CONSULTANT shall provide all services as detailed in the CONSULTANT's Proposal attached herein as Exhibit A". CONSULTANT is bound by the contents of Exhibit "A", hereto and incorporated herein by this reference. In the event of conflict, the requirements of CITY's Request for Proposal and this Agreement shall take precedence over those contained in the CONSULTANT's proposal. The incorporation of the CONSULTANT's proposal shall be for the scope of services to be provided only, and any other terms and conditions included in such proposal shall have no force and effect on this Agreement or the relationship between CONSULTANT and/or CITY, unless expressly agreed to in writing.

D. PERFORMANCE. CONSULTANT shall at all times faithfully, competently, and to the best of their ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices

utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this Agreement.

E. COMPENSATION. During the term of this AGREEMENT, the CITY shall compensate the CONSULTANT for the services described as detailed in Exhibit "A". Invoices for payment shall be submitted on a monthly basis and shall be approved by the Director of Community Services or designee.

The CONSULTANT shall submit an itemized invoice to the CITY according to work progress, setting forth the work performed and the rates charged in accordance with the CONSULTANT's fee schedule.

All change orders, additions, deletions or adjustments to the CONSULTANT's specifications must be submitted in writing to the CITY for approval. The CITY is the sole authority regarding change orders and the CONSULTANT shall not change, alter, or delete, in any manner, any portion of these specifications of the CITY.

E. EXPENSES. CONSULTANT shall not be entitled to an expense account and shall not be required or permitted to incur expenses on behalf of the CITY in addition to the expenses required for completion of the scope of services described herein. The compensation described herein includes provision for all CONSULTANT expenses required to complete the scope of services described herein.

F. INDEPENDENT CONTRACTOR.

- (a) CONSULTANT is and shall at all times remain as to the CITY a wholly independent contractor. The personnel performing the services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT'S exclusive direction and control. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT'S officers, employees, or agents, except as set forth in this Agreement. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the CITY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against CITY, or bind CITY in any manner.
- (b) Neither CONSULTANT, nor any of CONSULTANT'S officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY's employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.
- (c) CITY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

G. INDEMNIFICATION AND DEFENSE.

(a) To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CITY and any and all of its elected and appointed boards, commissions, officers employees and agents, and/or volunteers ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs, and expenses, including attorney's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or sub-consultants (or any CITY or individual that CONSULTANT shall bear the legal liability thereof) in the performance of services under this Agreement. CONSULTANT's duty to indemnify and hold harmless CITY shall not extend to the CITY's sole or active negligence or willful misconduct.

(b) CONSULTANT agrees to defend, indemnify and hold harmless the CITY, its elected and appointed boards, commissions, officers, employees and agents from all claims, demands, liability fines and penalties made by CONSULTANT'S employees from health, retirement or other benefits attributable to services performed pursuant to this Agreement.

(c) In the event the Indemnified Parties, individually or collectively, are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by CITY, CONSULTANT shall defend the Indemnified Parties at CONSULTANT's cost or at CITY's option, to reimburse CITY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by CITY is not a condition precedent to enforcement of this provision. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises from the sole or active negligence or willful misconduct of the CITY or its officers, employees, or agents, CONSULTANT will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the Indemnified Parties as solely or actively negligent or to have acted with willful misconduct. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees, and costs of litigation.

H. SUCCESSOR AND ASSIGNMENT. The services as contained herein are to be rendered by the CONSULTANT whose name is as appears first above written and said CONSULTANT shall not assign nor transfer any interest in this AGREEMENT without the prior written consent of the CITY. Claims for money by CONSULTANT from the CITY under this contract may be assigned to a bank, trust company, or financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CITY.

I. INSURANCE. Without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit "B" attached herewith and

incorporated herein by this reference as though set forth in full.

J. COMPLIANCE WITH LAWS. CONSULTANT agrees to be bound by applicable federal, state and local laws, regulations and directives as they pertain to the performance of this AGREEMENT.

K. SEVERABILITY. In the event that any covenant, condition or other provisions herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of the AGREEMENT and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained herein. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

L. INTERPRETATION. No provision of this AGREEMENT is to be interpreted for or against either party because that party or that party's legal representative drafted such provision, but this AGREEMENT is to be construed as if it were drafted by both parties hereto.

M. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

N. WAIVER. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

O. CONTRACT EVALUATION AND REVIEW. The ongoing assessment and monitoring of this AGREEMENT is the responsibility of the City Manager, or his designee.

P. TERMINATION OF AGREEMENT. This AGREEMENT may be terminated by either party by giving written notice at least thirty (30) days prior to the effective termination date in the written notice. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the CONSULTANT under this AGREEMENT shall, at the option of the CITY, become its property and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the AGREEMENT by the CONSULTANT, and the CITY may withhold any payments to the CONSULTANT for the purpose of set-off until such time as the exact amount of damages due the CITY from the CONSULTANT is determined.

Q. CHANGES. The CITY or CONSULTANT may request changes in the scope of the services of the CONSULTANT to be performed hereunder. Such changes, including any

increase or decrease in the amount of the CONSULTANT'S compensation, which are mutually agreed upon by and between the CITY and the CONSULTANT, shall be incorporated in written amendments to this AGREEMENT.

R. REPORTS AND INFORMATION. CONSULTANT, at such times and in such forms as the CITY may require, shall furnish the CITY such periodic reports as it may request pertaining to work or services undertaken pursuant to this AGREEMENT, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this AGREEMENT.

S. OWNERSHIP OF DOCUMENTS.

(a) CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by CITY that relate to the performance of services under this Agreement. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the CITY at reasonable times to such books and records; shall give CITY the right to examine and audit said books and records; shall permit CITY to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the CITY and may be used, reused, or otherwise disposed of by the CITY without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the CITY, at the CONSULTANT's office and upon reasonable written request by the CITY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to CITY all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the services under this Agreement.

T. RELEASE OF INFORMATION.

(a) All information gained by CONSULTANT in performance of this Agreement shall be considered confidential and shall not be released by CONSULTANT without CITY's prior written authorization. CONSULTANT, its officers, employees, agents, or sub-consultants, shall not without written authorization from the CITY or unless requested by the CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the CITY. Response to a subpoena or court order shall not be considered "voluntary" provided

CONSULTANT gives CITY notice of such court order or subpoena.

(b) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents, or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the CITY, unless the CITY is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the CITY of such Discovery. CITY retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless CITY is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with CITY and to provide the opportunity to review any response to Discovery requests provided by CONSULTANT. However, CITY's right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

U. COPYRIGHT. No report, maps, or other documents produced in whole or in part under this AGREEMENT shall be the subject of an application for copyright by or on behalf of the CONSULTANT.

V. PERSONNEL. CONSULTANT represents that it has, or will secure at its own expense, all personnel required in performing the services under this AGREEMENT. Such personnel shall not be employees of or have any contractual relationship with the CITY. All of the services required hereunder will be performed by CONSULTANT or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under the state and local law to perform such services. None of the work or services subcontracted hereunder shall be specific by written contract or agreement and shall be subject to each provision of this AGREEMENT.

W. LICENSES. At all times during the term of this Agreement, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

X. GOVERNING LAW. The CITY and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the CITY.

III. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this AGREEMENT, the CONSULTANT agrees as follows:

A. EQUAL OPPORTUNITY.

(a) The CONSULTANT will not discriminate against any employee or applicant for

employment because of race, creed, sex, color, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the CITY setting forth the provisions of this non-discrimination clause.

- (b) The CONSULTANT will, in all solicitation or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
- (c) The CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this AGREEMENT so that such provisions will be binding upon each sub-contractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- (d) The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the CITY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the CONSULTANT'S non-compliance with the equal opportunity clauses of this AGREEMENT or with any of such rules, regulations, or orders, this AGREEMENT may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The CONSULTANT will include the provisions of paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-contractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the CITY may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided,

however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the CITY, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

B. CIVIL RIGHTS ACT OF 1964. Title VI of the Civil Rights Act of 1964, provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of or, be subjected to discrimination under any program or activity receiving Federal financial assistance.

C. AGE AND DISABILITY. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended, or with respect to an otherwise qualified handicapped individual, as provided in Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, shall apply to this AGREEMENT.

IV. CONFLICT OF INTEREST

During the performance of this AGREEMENT, the CONSULTANT agrees as follows:

A. INTEREST OF MEMBERS OF THE CITY. No member of the governing body of the CITY and no other employee, or agent of the CITY who exercises any functions of responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this AGREEMENT.

B. INTEREST OF CONSULTANT. CONSULTANT represents, warrants and agrees that he does not presently have, nor will he acquire during the term of this AGREEMENT, any interest, direct or indirect, by contract, employment or otherwise, or as a partner, joint venture or shareholder (other than as a shareholder holding a one-percent (1%) or less interest in publicly-traded companies) or affiliate with any business or business entity that has entered into any contract, subcontract, or arrangement with the CITY.

C. INTEREST OF OTHER LOCAL PUBLIC OFFICIALS. No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this AGREEMENT; and the CONSULTANT shall take appropriate steps to assure compliance.

V. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service; (ii) delivery by a reputable document delivery service (e.g., Federal Express), which provides a receipt showing date and time of delivery; or (iii) United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

EXHIBIT "A"

PROPOSAL OF SERVICES

1. Provider shall perform all Services under this Letter 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, and consistent with all applicable laws. Provider 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, including a valid business license, and that such licenses and approvals shall be maintained throughout the term of this Letter Agreement.
2. The compensation for GoGo Technologies services shall be the full cost of the fare and concierge fee (or the desired subsidy), as detailed in Exhibit A, plus \$1,000 base fee each month for the duration of the account. The CITY will be without a limitation for customers eligible for the program each month. The CITY may change customers at any time. Any changes that occur between billing cycles that bring the total number of customers served in that billing cycle to more than 50 will incur a \$20 fee per additional customer for that billing cycle.
3. GoGo Technologies, Inc. shall provide invoices that include a detailed description of the services performed. Invoices shall be submitted to the Partner on a monthly basis.
4. Under this Agreement, GoGo Technologies, Inc. will conduct a subsidized senior rides program for the City of Fontana's senior residents. This program is subsidized by the CITY in an effort to support mobility of senior residents.
5. GoGo Technologies, Inc. responsibilities are as follows:
 - A. GoGo will design and implement the program for the City of Fontana's senior residents.
 - B. GoGo will provide the GoGo Grandparent service to CITY's senior residents using a web-based, app-based, and telephonic-based user system.
 - C. The automated telephone hotline allows the CITY's senior residents to access and use Lyft or Uber with a phone call in accordance with the following process:
 - Registered Customers call 1 (855) 464 -6872 when they need a ride, and press a digit that corresponds to the location they would like to be picked up at. For example: ○ "Please press 1 for a car to be sent to pick you up from your home" ○ "Please press 2 for a car to be sent to pick you up from where we dropped you off last" ○ "Please press 0 to speak with an operator".
 - Based on the selection, GoGo Grandparent orders a ride to the selected pickup location through a third party transportation network service, such

as Uber or Lyft. It tracks the ride and saves the last location to the Customer's dial tone menu. The ride is monitored: if a driver cancels, GoGo automatically reorders; if a driver is lost an operator is alerted; if a driver tries to communicate with a Customer, GoGo manages that contact.

- In addition, GoGo Grandparent provides custom instructions to the Uber or Lyft or other third party transportation network service drivers, tailored to the needs of individual Customers.

D. Operator support is provided 24/7 to customers at no additional charge. Operator support is provided for:

- Answering questions
- Ordering rides when a caller is not at their home or last location
- Assisting callers with technical issues associated with the GoGo Grandparent service

E. Hours of Availability. Customers will have access to the GoGo Grandparent service and to speak with an operator 24 hours a day, 365 days a year.

F. Enterprise Features. GoGo will provide the CITY of Fontana with a login portal that the CITY may use to enroll customers into the program.

6. The City of Fontana responsibilities are as follows:

- A. The CITY will be responsible for vetting and enrolling customers in the program through GoGo's portal.
- B. Information collected during registration includes the customer's (i) Full Name; (ii) Cell Phone Number; (iii) Home Phone Number; (iv) Home Address; and (v) On-File Payment Method (optional).

7. The CITY will provide payment by check to GoGo every month of service for the base fee plus the cost of full cost of fare for each user in the billing period.

8. The CITY will subsidize each customer trip with the following program limitations:

- Up to 6 one-way trips per week within CITY boundaries for trips to the Fontana Community Senior Center, shopping centers, government offices, and medical offices with no co-pay required.

9. Subsidized use of this program is limited to use between 6 a.m. and 10 p.m., Sunday through Saturday.

EXHIBIT "B"

INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of CITY, and prior to commencement of work and/or services under this Agreement, CONSULTANT shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and, in a form, satisfactory to CITY.

General liability insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the CONSULTANT arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than 1,000,000 combined single limit for each accident.

Professional liability (errors & omissions) insurance. CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. CONSULTANT shall maintain Workers' Compensation Insurance (statutory limits) and Employer's Liability insurance (with limits of at least \$1,000,000).

CONSULTANT shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its elected and appointed boards, commissions, officers, employees and agents.

Other provisions or requirements

Proof of insurance. CONSULTANT shall provide certificates of insurance and required endorsements to CITY as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by CITY's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with CITY for the contract period and any additional length of time required thereafter. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. CONSULTANT shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, their agents, representatives, employees, or sub-consultants.

Primary/noncontributing. Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by CITY shall not be required to contribute with it. The limits of insurance required herein 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 CITY before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

CITY's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, CITY may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the CITY's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against CITY and shall require similar written express waivers and insurance clauses from each of its sub-consultants.

Enforcement of contract provisions (non estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the CITY nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the CONSULTANT maintains higher limits than the minimums shown

above, the CITY requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

Notice of cancellation. CONSULTANT agrees to oblige its insurance agent or broker and insurers to provide the CITY with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the CONSULTANT's insurers are unwilling to provide such notice, then CONSULTANT shall have the responsibility of notifying the CITY immediately in the event of CONSULTANT's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that CITY and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CONSULTANT agrees to ensure that its sub-consultants, subcontractors, and any other party who is brought onto or involved in the project/service by CONSULTANT (hereinafter collectively "Subcontractor"), provide the same minimum insurance coverage and endorsements required of CONSULTANT under this Agreement. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event CONSULTANT's Subcontractor cannot comply with this requirement, which proof must be submitted to the CITY, CONSULTANT may still be able to utilize the Subcontractor provided CONSULTANT shall be required to ensure that its Subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with Subcontractor's scope of work and services, with limits less than required of the CONSULTANT, but in all other terms consistent with the CONSULTANT's requirements under this Agreement. This provision does not relieve the CONSULTANT of its contractual obligations under the Agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide CONSULTANT with the ability to utilize a Subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the CONSULTANT under this Agreement given the limited scope of work or services provided by the subcontractor. CONSULTANT agrees that upon request, all agreements with Subcontractors, and others engaged in the project and/or services, will be submitted to CITY for review.

CITY's right to revise specifications. The CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the CITY and CONSULTANT may renegotiate CONSULTANT's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by CITY. CITY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. CONSULTANT shall give CITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.