



PROFESSIONAL/CONSULTING SERVICES AGREEMENT

1. PARTIES

This Agreement is made and entered into as of August 20, 2019 (“Effective Date”) by and between the City of Cupertino, a municipal corporation (“City”), and Nomad Transit, LLC (“Contractor”), a Delaware Limited Liability Company and a wholly owned subsidiary of Via Transportation, Inc. for the Cupertino 18-Month On-Demand Shuttle Pilot Program.

2. SERVICES

Contractor agrees to provide the services and perform the tasks (“Services”) set forth in detail in Scope of Services, attached here and incorporated as **Exhibit A**.

3. TIME OF PERFORMANCE

3.1 This Agreement begins on the Effective Date and ends on August 20, 2021 (“Contract Time”), unless terminated earlier as provided herein. Contractor’s Services shall begin on August 20, 2019 and shall end on August 20, 2021.

3.2 Schedule of Performance. Contractor must deliver the Services in accordance with the Schedule of Performance, attached and incorporated here **Exhibit B**.

3.3 Time is of the essence for the performance of all the Services. Contractor must have sufficient time, resources, and qualified staff to deliver the Services on time.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Services an amount that will be based on actual costs but that will be capped so as not to exceed \$1,750,000.00 (“Contract Price”), based upon the scope of services in **Exhibit A** and the budget and rates included in **Exhibit C**, Compensation attached and incorporated here. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor’s actual costs exceed the capped amount. No extra work or payment is permitted without prior written approval of City.

4.2 Invoices and Payments. Unless otherwise specified in the scope of services, monthly invoices must state a description of the deliverable completed and the amount due for the preceding month. Within thirty (30) days of completion of Services, Contractor must submit a requisition for final and complete payment of costs and pending claims for City approval. Failure to timely submit a complete and accurate payment requisition relieves City of any further payment or other obligations under the Agreement.

Select one

5. INDEPENDENT CONTRACTOR

51 Status. Contractor is an independent contractor and not an employee, partner, or joint venture of City. Contractor is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. Contractor is not entitled to health benefits, worker's compensation or other benefits from the City.

52 Contractor's Qualifications. Contractor warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Services in a competent and professional manner and according to the highest standards and best practices in the industry.

53 Permits and Licenses. Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Services as required by law and have procured a City Business License.

54 Subcontractors. Only Contractor's employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

55 Tools, Materials and Equipment. Contractor will supply all tools, materials and equipment required to perform the Services under this Agreement.

56 Payment of Taxes. Contractor must pay income taxes on the money earned under this Agreement. Upon City's request, Contractor will provide proof of payment and will indemnify City for violations pursuant to the indemnification provision of this Agreement.

6. PROPRIETARY/CONFIDENTIAL INFORMATION

In performing this Agreement, Contractor may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details the disclosure of which to third parties may be damaging to City. Contractor shall hold in confidence all City information provided by City to Contractor and use it only to perform this Agreement. Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

7. OWNERSHIP OF MATERIALS

7.1 Property Rights. Any interest (including copyright interests) of Contractor in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document or other information or work, in any medium (collectively, "Work Product"), prepared by Contractor specifically for the City in connection with this Agreement will be the exclusive property of the City and shall not be shown to any third-party without prior written approval of City. For the avoidance of doubt, no intellectual property will be conceived, created or furnished under this Agreement, and all rights in, to and under Contractor's proprietary on-demand transit solution (the "Via Solution") shall remain the exclusive property of the Contractor. Contractor shall grant to the City all rights necessary to receive the benefit of the Via Solution during the term of the Agreement.

72 Copyright. To the extent permitted by Title 17 of U.S. Code, all Work Product arising out of this Agreement is considered “works for hire” and all copyrights to the Work Product will be the property of City. Alternatively, Contractor assigns to City all Work Product copyrights. Contractor may use copies of the Work Product for promotion only with City’s written approval.

73 Patents and Licenses. Contractor must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

74 Re-Use of Work Product. Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Contractor or its sub-contractors prepared or created under this Agreement, to execute or implement any of the following:

- (a) The original Services for which Contractor was hired;
- (b) Completion of the original Services by others;
- (c) Subsequent additions to the original Services; and/or
- (d) Other City projects.

75 Deliverables and Format. Contractor must provide electronic and hard copies of the Work Product, on recycled paper and copied on both sides, except for one single-sided original.

8. RECORDS

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Contractor’s performance, benchmarks and deliverables, which must be available to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four years from the date of City’s final payment.

9. ASSIGNMENT

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly without prior written consent of City. Any attempt to do so will be null and void. Notwithstanding the foregoing, Contractor may assign its right without such consent to (a) one of its subsidiaries or affiliates or (b) to an entity that acquires all or substantially all of the business or assets of Contractor, whether by merger, reorganization, acquisition, sale, or otherwise. Should the events in (a) or (b) occur, Contractor shall provide notice to the City no later than thirty (30) days after the occurrence of such event.

10. PUBLICITY / SIGNS

Any publicity generated by Contractor for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City’s contributions in making the project possible. The words “City of Cupertino” will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or this Contract, without prior written approval from the City.

Select one

11. INDEMNIFICATION; LIMITATION OF LIABILITY

11.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers and consultants (“Indemnitees”), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs and expenses (including attorney fees, legal costs and expenses related to litigation and dispute resolution proceedings) of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations or warranties;
- (b) Negligent or willful acts or omissions committed by Contractor during performance of the Services;
- (c) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors;
- (d) Unauthorized use or disclosure of City’s confidential and proprietary Information;
- (e) Claim of infringement or violation of a U.S. patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

11.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept a tender of defense upon receiving notice from City of a third-party claim, in accordance with California Public Contract Code Section 9201. At City’s request, Contractor will assist City in the defense of a claim, dispute or lawsuit arising out of this Agreement.

11.3 Contractor’s duties under this section are not limited to the Contract Price, workers’ compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Contractor against City or any Indemnitee.

11.4. Contractor’s payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Agreement, a purchase order, or other transaction.

11.5. Contractor’s total liability arising out of this Agreement shall be limited to the greater of (a) Contractor’s total applicable insurance coverage and (b) ten million dollars (\$10,000,000).

12. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit D**, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance for Contractor and deducting the costs from Contractor’s compensation or terminating the Agreement.

Select one

13. COMPLIANCE WITH LAWS

13.1 General Laws. Contractor shall comply with all local, state and federal laws and regulations applicable to this Agreement. Contractor will promptly notify City of changes in the law or other conditions that may affect the Project or Contractor's ability to perform. Contractor is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act.

13.2 Labor Laws. Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a "public works" component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.

13.3 Discrimination Laws. Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS) or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777 and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or its employees or sub-contractors will not be tolerated.

13.4 Conflicts of Interest. Contractor shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Contractor warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement, in violation of California Government Code Section 1090 et seq. Contractor may be required to file a conflict of interest form if Contractor makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of the California Code of Regulations. Contractor agrees to abide by the City's rules governing gifts to public officials and employees.

13.5 Remedies. Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements or terminating this Agreement. City reserves all other rights and remedies available under the law and this Agreement, including the right to seek indemnification under Section 11 of this Agreement.

14. PROJECT COORDINATION

City Project Manager. The City assigns Chris Corrao, Senior Transit and Transportation Planner, as the City's representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. City reserves the right to substitute another Project manager at any time, and without prior notice to Contractor.

Contractor Project Manager. Subject to City approval, Contractor assigns Valentina Titun _____ as its single Representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. Contractor's Project manager is responsible for coordinating and scheduling the Services in accordance with the Scope of

Select one

Services and the Schedule of Performance. Contractor must regularly update the City's Project Manager about the progress with the work or any delays, as required under the Scope of Services. City written approval is required prior to substituting a new Representative.

15. ABANDONMENT OF PROJECT

City may abandon or postpone the Project or parts therefor at any time. Contractor will be compensated for satisfactory Services performed through the date of abandonment, and will be given reasonable time to assemble the work and close out the Services. With City's pre-approval in writing, the time spent in closing out the Services will be compensated up to a maximum of ten percent (10%) of the total time expended to date in the performance of the Services.

16. TERMINATION

City may terminate this Agreement for cause or without cause at any time, provided City gives Contractor at least ninety (90) days' written notice of the termination.

Notwithstanding the above, in the event Contractor fails or refuses to perform any of the provisions of this Agreement, Contractor shall be deemed in default in the performance of this Agreement. If Contractor fails to cure the default within the time and in the manner required by a written notice of default from City, in addition to any other remedies available to the City by law, the City may terminate the Agreement by giving Contractor written notice thereof, which shall be effective immediately.

Contractor will be paid for satisfactory Services rendered through the date of termination, but final payment will not be made until Contractor closes out the Services and delivers the Work Product.

17. GOVERNING LAW, VENUE AND DISPUTE RESOLUTION

This Agreement is governed by the laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Contractor must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If a dispute arises, Contractor must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

18. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs.

19. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Agreement.

20. WAIVER

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City’s waiver of a breach shall not constitute waiver of another provision or breach.

21. ENTIRE AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s), either oral or written, between the Parties. Any modification of this Agreement will be effective only if in writing and signed by each Party’s authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between the main Agreement and the attachments or exhibits thereto, the text of the main Agreement shall prevail.

22. INSERTED PROVISIONS

Each provision and clause required by law for this Agreement is deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions. The Parties will collaborate to implement this Section, as appropriate.

23. HEADINGS

The headings in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

24. SEVERABILITY/PARTIAL INVALIDITY

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect. The Parties agree to work in good faith to amend this Agreement to carry out its intent.

25. SURVIVAL

All provisions which by their nature must continue after the Agreement expires or is terminated, including the Indemnification, Ownership of Materials/Work Product, Records, Governing Law and Attorney Fees, shall survive the Agreement and remain in full force and effect.

26. NOTICES

All notices, requests and approvals must be sent in writing to the persons below, which will be considered effective on the date of personal delivery or the date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

Select one

To City of Cupertino Select Address Attention: _____ Email: _____	To Contractor: <u>160 varick Street, Floor 4</u> <u>New York, NY 10013</u> Attention: <u>Legal</u> Email: <u>legal-nyc@ridewithvia.com</u>
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27. VALIDITY OF CONTRACT

This Agreement is valid and enforceable only if (a) it complies with the purchasing and contract provisions of Cupertino Municipal Code Chapters 3.22 and 3.23, as amended from time to time, (b) is signed by the City Manager or an authorized designee, and (c) is approved for form by the City Attorney’s Office.

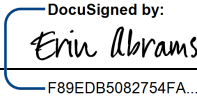
28. EXECUTION

The person executing this Agreement on behalf of Contractor represents and warrants that Contractor has full right, power, and authority to enter into and carry out all actions contemplated by this Agreement and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Contractor. This Agreement may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed.

CONTRACTOR

CITY OF CUPERTINO
A Municipal Corporation

By  _____
F89EDB5082754FA...
 Name Erin Abrams

 Title Manager

 Date 8/10/2019

 Tax I.D. No.: 37-1782964

By _____
 Name _____

 Title _____

 Date _____

APPROVED AS TO FORM:

 HEATHER M. MINNER
 Cupertino City Attorney

Select one

ATTEST:

GRACE SCHMIDT
City Clerk

1145241.1

Select one

EXHIBIT A
SCOPE OF WORK

**City of Cupertino On-Demand Community Shuttle
18-Month Pilot Program**

The City of Cupertino On-Demand Community Shuttle pilot program is an 18-month pilot program to test on-demand transit service in the City of Cupertino. The pilot program is an opportunity to study and evaluate the performance of the service based upon overall ridership, user feedback, synergies with other existing transit services, and other civic, social and environmental impacts.

The Consultant will leverage proprietary technology to assist in the design, deployment, operations, maintenance, marketing and evaluation of an on-demand transit service in Cupertino, CA. The Pilot service will be flexible, dynamically adapting to and responding to demand in real-time, using optimized routes to maximize the number of passengers per-vehicle and per-trip. Regular performance monitoring and data reporting will be used to assess operations and allow for mutually agreed upon adjustments to the service at any time during the Pilot to increase awareness, ridership, and/or accommodate new or shifting demand.

Duration: The anticipated launch of the 18-month Pilot is Fall 2019, with the actual launch date contingent upon the timing of the Cupertino City Council authorization of the agreement for services. After a launch date has been mutually agreed upon by the Consultant and the City, dates referenced in this scope of work, including data sharing, launch timing, etc., will be based upon the set "Launch Date."

Geographic Coverage: The geographic area includes all areas within the City of Cupertino, including areas shown in Exhibit C outside of the City boundary, including the Sunnyvale Caltrain station and other areas mutually agreed upon by the Consultant and the City.

Task 1. Project Management & Administration

Task 1.1 Detailed Work Plan & Schedule

The Consultant will develop and maintain a detailed work plan and schedule for submission to the City Project Manager no later than 15 business days after the Notice to Proceed, which will seek to refine and keep up-to-date the following:

Key Consultant and Subcontract staff assignments, by task/subtask
Identify and maintain schedule of start and stop dates for each task/subtask
Identify key milestones and define expected deliverables/results

Deliverables

Detailed Work Plan & Schedule Documents

Updates to Documents

Task 1.2 Regular Staff Briefings

The Consultant Project Manager shall conduct and schedule regular staff briefings (“briefings”), by phone or in person, to report on Pilot service performance, completed tasks, deliverables, and significant issues encountered and resolved during the period since the previous briefing, with an explanation and revised schedule for any unmet tasks and/or deliverables. The briefing shall also provide an overview of activities and expected deliverables for the upcoming 1-month period. Briefings will occur no less than weekly for the duration of the (four) weeks leading up to, and for 4 weeks following, the Launch Date, unless otherwise agreed upon by the City Project Manager. For the remainder of the term of the Contract, Consultant shall provide bi-weekly briefings to the City Project Manager, unless otherwise agreed upon by the City Project Manager.

Deliverables:

Weekly and Bi-Weekly meetings
Meeting agendas, notes and action items

Task 1.3 Monthly Invoicing

The Consultant shall submit to the City Project Manager invoices monthly on or around the 20th of each month to include expenses for the preceding month, with the billing period beginning and ending in the same calendar month.

Invoices shall have supporting documentation that includes a list of hours by day by Driver Partner ID with the associated applicable rate as well as a schedule showing the operating hours for the month.

Deliverables:

Monthly invoices
Supporting Billing Documentation

Task 1.4 General Project Management

Consultant will take responsibility for project management on a continuous basis during the course of the project and will designate a Project Manager to coordinate all required deliverables and perform all work described herein. The Consultant Project Manager will be empowered to enact decisions related to the project on the Consultant’s behalf, and will serve as primary point of contact with the City Project Manager on an ongoing basis. The Consultant shall oversee subconsultant activities and will ensure that any subcontracted staff performing tasks have the appropriate skill levels and credentials. For the avoidance of doubt, independent contractor driver partners shall not be deemed “subcontractors” for the purposes of Section 5 of the Agreement.

Consultant shall commit to attending in-person at least (3) City Council meetings or major Pilot-related events over the term of the Contract to provide staff support at key milestones, which

may include service Launch Events. The City will give the Consultant at least four (4) weeks advance notice of such events.

The City will also designate a Project Manager to be the primary point of contact for the Consultant throughout the Pilot duration. The Consultant shall keep the City Project Manager abreast of all coordination related to the Pilot with outside agencies with a direct connection to the City regarding project funding, including both governmental agencies and private organizations, prior to any meeting with any such outside agency or organization.

In addition, the Consultant will ensure the project team includes personnel with expertise in service scoping, operations, driver onboarding, fleet maintenance, marketing, and data analytics. Leading up to the launch of, and during the course of the Pilot, the Consultant's project team, led by its Project Manager, will be closely engaged with the City in order to ensure that key project deliverables are provided in a timely manner, and that learnings from the Pilot are incorporated into its optimization.

Onsite support (pre-launch): Consultant Project Manager will be onsite for at least one (1) week prior to the Launch Date to oversee the implementation of the service.

Remote Support (post-launch): For the first month of service, the Consultant Project Manager will lead weekly follow-up calls to review all aspects of the service with City personnel. The Consultant Project Manager will also coordinate additional reviews of key operational topics as mutually decided upon by the Consultant and the City.

Deliverables:

Attendance at minimum (3) Council meetings or other major Pilot-related events
Onsite and remote support including regular calls
Management and oversight for subcontracts
General project management

Task 2. Preliminary Service Planning, Design & Preparation

Task 2.1 Project Kick-Off Meeting

At start of pre-launch phase, Consultant shall hold a kick-off meeting with the City Project Manager and relevant City personnel. The meeting will focus on establishing and introducing the Consultant and City project teams, reviewing a work plan and schedule for pre-launch preparations, and beginning detailed work on the Detailed Launch Plan & Service Parameters as defined below.

Deliverables:

Project Kick-off Meeting, including meeting agenda & notes

Task 2.2 Detailed Launch Plan & Service Parameters

Beginning with the Project Kick-off Meeting and extending throughout the pre-launch phase as necessary, Consultant shall work closely with the City to jointly define and finalize all relevant parameters of the service as outlined below. As part of this collaboration, quality of service standards for the Pilot service will be mutually established in order to create a baseline for monitoring Consultant's performance.

Over the course of the project, decisions to change key parameters will be made collaboratively, and Consultant will work with the City to continuously adjust and optimize the system's features and settings in order to ensure it supports growing ridership. As such, the Baseline Service Parameters defined below may be re-defined or adjusted by mutual agreement between the City and Consultant either in advance of or after the Launch Date based on additional data or new information collected. Any changes to the Pilot Service Parameters will be subject to mutual agreement by the City and Consultant.

Baseline Service Parameters

Coverage Area

At Full Launch, the Pilot will include the entire City, including areas mutually agreed upon outside of the City limits, including Kaiser-Permanente Santa Clara, West Valley Medical Center (PAMF), Sunnyvale Caltrain, and potentially one additional medical center, to be agreed upon mutually by the City and Consultant. Areas deemed inaccessible, including gated areas, are excluded from the service area. The launch of the system must serve the entire service area, however the Consultant may gradually deploy vehicles to balance efficient coverage with quality of service as data is gathered in order to fine-tune deployment elements as ridership grows.

Accessibility

Provision of Wheelchair Accessible Vehicles (WAV)

Upon receiving the Notice to Proceed, Consultant will commence development of a WAV fleet plan that satisfies relevant Federal Transit Administration (FTA) and Americans with Disabilities Act (ADA) requirements – including the equal provision of service to potential Pilot riders of all physical means. To fulfill this goal, Consultant shall cause to be deployed for the Pilot appropriately-trained drivers operating taxi or livery vehicles, or dedicated vehicles specifically deployed for the Pilot.

To indicate their need for a WAV vehicle, a rider will select the "Wheelchair accessibility" option within their profile in the Via app that will prompt the system to dispatch an appropriate vehicle each time the rider makes a request (riders booking by phone would convey their need for a WAV vehicle to the dispatcher, who would make a permanent note in the rider's account). A WAV option will be deployed no later than the Launch Date.

Phone Booking Option

Via's technology is configured to allow a dispatcher to book rides on behalf of riders, allowing users of all technological abilities and access levels to enjoy the same level of service as those with a smartphone (except for the experience and convenience that is specific to in-app rider

ordering and tracking). The Consultant will provide as a feature of the Pilot service a phone number and a dedicated dispatcher to book and coordinate rides for users without smartphones. A phone booking option will be available as part of the Pilot service no later than the Launch Date.

Customer Service

The Consultant shall provide high-quality customer service to both Pilot customers and driver partners during the course of the Pilot. If an issue arises for a customer or driver before, during, or after a ride, parties will be able to reach Consultant staff by text message in real time, or by submitting an email ticket, which will be replied to promptly by Consultant staff. Riders who booked using the dedicated phone line will be able to receive phone support as required.

Hours of Operation

The Pilot will operate Monday through Saturday, excluding holidays, for which a mutual decision whether to operate will be made between the City and Consultant. The Consultant estimates the Pilot service will operate from 6am – 8pm Monday – Friday, and 9am-5pm Saturdays, subject to change based on demand data gathered during the initial launch period and subject to mutual decision between the Consultant and City.

The Pilot goal will be to provide operating hours as extensive and consistent as possible within the reasonable cost, as mutually agreed upon between the Consultant and City. As it is the intent of the Pilot to provide a reliable and predictable service, the Consultant shall seek to limit adjustments to the Hours of Operation to those changes deemed necessary or intended to grow ridership or enhance service.

Fare Structure

It is the intent of the Program to provide a consistent, flat-fare transportation service that enables community members of all incomes to access a convenient, high quality mobility option. The consumer cost to take a ride using the Program shall be as follows in the fare structure below, unless otherwise mutually agreed upon by Consultant and the City Project Manager:

Regular Fare (per trip): \$5.00, with the option to reduce post launch as low as \$2, as it relates to demand generation and rider acquisition tactics and targets.

Rider +friends (additional riders added onto a users' trip request): Half the regular per trip fare per-person, up to a maximum of four (4) riders under one (1) reservation.

Weekly ViaPass: Set price per week, starting the first day of the first trip used. Offers up to a set number of trips per-day, each operational day of the week.

Senior/Disabled Pass (ages 65 and over)/Low-income/De Anza College students discounted rate passes: Riders who are eligible for and submit necessary documentation to receive this discount shall receive 50% off all standard fares, including Weekly ViaPass.

Consultant will work with City staff to determine appropriate fares for mutually agreed-upon out of zone destinations, listed in Cupertino Service Area Map, Exhibit C.

Consultant will work with City staff on developing additional fare packages, such as a monthly pass, and other ways to maximize fare-box recovery and increase ridership.

The City will be responsible for verifying whether riders qualify for discounted fares. The City will identify simple methods of verification, such as student ID's for the student fare, or cards demonstrating that riders qualify for existing low-income programs to simplify the verification process to the maximum extent feasible.

Any changes to base ride cost will be made in response to Pilot service data, and with the intention of making the Pilot as efficient and cost-effective as possible while retaining service accessibility. The City will retain full authority to approve any changes to the base ride cost range described above.

Fare payment options shall include payment by credit card submitted electronically through the Rider App or submitted through the Via system when booking is made for a rider over the phone.

Fleet/Vehicles

Dedicated vehicles will be offered by the Consultant's chosen third party vehicle provider ("Vehicle Provider") to Driver Partners on a rental basis. The Vehicle Provider will offer a fleet of up to ten (10) branded, licensed and insured vehicles ("Fleet Vehicles"), all of which can fit a minimum of 6 passengers and as many as two bicycles. The Fleet Vehicles shall include one Wheelchair Accessible Vehicle (WAV) (approximately 10% of the total Fleet Vehicles) to be made available to independent contractor Driver Partners, who will be able to gain access to these vehicles after being registered onto the Platform. Consultant will ensure Vehicle Provider keeps vehicles clean and maintained in a preventive maintenance program for vehicles used in this pilot program. For the avoidance of doubt, the Vehicle Provider shall not be deemed a "subcontractor" for the purposes of Section 5 of the Agreement.

Drivers

Qualified and accredited independent contractor drivers will be able to gain access to the Fleet Vehicles after being registered onto the Via system, enabling these individuals to sign up for specific daily slots or longer periods of work. Consultant shall establish driver registration and certification protocols designed to ensure compliance with applicable laws, regulations, or terms of project funding sources. Consultant shall ensure drivers are aware of the pilot program and can articulate to riders pilot program basics, including how to get additional program information. For the avoidance of doubt, independent contractor driver partners shall not be deemed "subcontractors" for the purposes of Section 5 of the Agreement.

Smartphone App

Consultant shall work closely with the City to provide a co-branded splash page in the Via Smartphone App. The ultimate appearance of the app will be built upon Via's proprietary rider

application to provide a tailored user experience. As mutually agreed upon, the app may suggest locations to customers, or present service announcements, promotions, or discounted pricing through in-app messages or push notifications.

Technology Platform

Via will leverage its powerful suite of apps, real-time operations and administrative tools, and data analysis and reporting features to power the Pilot service. This platform will be the same one used to manage each Via service around the world. The Consultant will provide use of the Via technology platform that in real time aggregates riders travelling from multiple origins to multiple destinations efficiently, while optimizing the balance between vehicle utilization fleet-wide and a high quality of service. The Via system has fully automated ride proposal, booking, and dispatch services, and is accessible by mobile application and, as required, phone bookings. In order to serve those users who do not have a smartphone or may require additional technology assistance, the Consultant shall provide the option for account creation by phone for at least 10 hours per week (pre-set hours to be determined as part of launch planning). Should Via have the capacity for web-based booking, it shall be made available as an option to the City at no additional cost.

Deliverables:

Final Launch Plan

Additional documentation of Parameters, as mutually agreed upon by Consultant and City

Task 2.3 Technology Localization & Back-end Systems Setup

Consultant shall localize all infrastructure technology, including mapping and real-time routing systems, specifically for the Pilot, taking into account local geography and any algorithmic adjustments required in order to achieve system and service efficiency. Back-end operational systems, including those required for driver registration and supply monitoring, will be fully localized and maintained over the course of the Pilot.

Deliverables:

Completion of Technology Localization & Back-end Systems Setup

Task 2.4 Driver Acquisition & On-Boarding

Consultant shall source independent contractor drivers from the community and surrounding areas if possible and shall verify that drivers possess all data and documentation to satisfy Via's standards as well as local and State requirements. Independent contractor drivers will go through registration, which includes an introduction to Via's system, customer service expectations, and customer and driver safety protocol and policies. Drivers will be subject to comprehensive background checks as required by local and State law.

Deliverables: Drivers fully registered to drive on the Via platform

Task 2.5 Vehicle Delivery & Branding

Vehicle Provider shall coordinate the delivery and availability of a fleet of up to ten (10) Fleet Vehicles vehicles such that these vehicles are ready to be driven by independent contractor drivers on the Launch Date. Vehicle preparation will include successful completion of all relevant insurance, registration, licensure, and maintenance requirements. Fleet Vehicles will have custom co-branding in the form of vehicle decals or wrapping as to be easily recognizable to users of the service. Vehicle branding design will be finalized in collaboration with the City.

Deliverables:

Vehicle Fleet with custom co-branding

Task 2.6 WAV Service

The Pilot Wheelchair Accessible Vehicle (WAV) service shall satisfy relevant FTA ADA requirements, including the equal provision of service to potential Pilot riders of all physical means. To fulfill this goal, Consultant will either (1) ensure Vehicle Provider provides dedicated WAV to be used for the Pilot or (2) identify and subcontract with wheelchair accessible vehicle (WAV) providers who have personnel that are trained to operate vehicles and equipment safety and to assist and treat individuals with disabilities in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities. Consultant will ensure that any drivers providing WAV service as part of the Pilot will be trained to operate WAV vehicles and equipment safely, as well as to properly assist and treat individuals with disabilities in a courteous and respectful manner.

Deliverables:

WAV service

Task 2.7 External Stakeholder Coordination Meetings

City and Consultant will together identify key external stakeholders relevant to or interested in the Pilot (i.e., Santa Clara Valley Transportation Authority, neighboring cities of Cupertino in the western portion of Santa Clara County, San Jose, etc.) and setup meetings in advance of the Launch Date in order to gather data and local information relevant to the Pilot, build community support, and identify opportunities to support multi-modal linkages. This initiative will be spearheaded by the City so as to best utilize local relations, with significant involvement provided by Contractor. Local schools with students ages 14 and older should be contacted by the Consultant launch team prior to the Launch Date to discuss appropriate pick-up and drop-off locations in congested school zones to maximize safety.

Deliverables:

Participation in external stakeholder meetings

Meeting agendas & notes

Task 3. Pilot Deployment & Operations

The Consultant will collaborate with the City of Cupertino to design and operate a Pilot service that meet the project's operational goals. Consultant will establish a project team in the area and

will draw on expertise in Operations, Expansion, Growth and Data Science teams in order to grow and optimize the service across the duration of the Pilot. Consultant will proactively suggest enhancements to the service to improve rider experience, quality of service, and cost per ride. Consultant shall procure all required licenses, permits, and insurance to operate an on-demand rideshare solution in the City of Cupertino.

Task 3.1 Launch Period & Launch Event

A launch event will be held on the Launch Date to raise awareness of the service locally and initiate formal marketing and media outreach.

Deliverables

Coordination and Completion of Launch Event, including appropriate marketing and media outreach.

Operation of Service Launch

Task 3.3 Full Service Launch, Operations & Maintenance

The Consultant shall operate the Full Service for the duration of the 18-month Pilot, unless otherwise mutually agreed upon by the Consultant and City. Following Launch, the Consultant shall continue to operate, maintain, and evaluate system data and service information to optimize, iterate on, and scale the service in collaboration with the City.

Deliverables:

Ongoing operations

Task 4. Marketing Plan & Implementation

Task 4.1 Draft & Final Marketing Plan

Consultants shall work closely with the City to develop and refine a unified marketing and promotional program that increases community awareness of the Pilot, and maximizes its success for implementation by Consultant. As reasonable, the City will cooperate with Consultant to promote the service and create local awareness and will support the Consultant's team by providing useful local insights and leveraging existing marketing platforms, associations, and social media presence to promote the Pilot program. Marketing and branding guidelines, including initial marketing material templates, will be presented by the Consultant to the City for review and approval in advance of finalization and distribution.

Consultant and City shall collaborate on the following key marketing activities during the course of the Pilot:

- Initial collateral and branding development
- Vehicle wrapping/branding design
- Launch press and media campaign
- Rider acquisition campaigns

Ongoing promotional campaigns
Partnership with key City stakeholders and community organizations

Deliverables:

Final Marketing Plan, including branding guidelines

Task 4.2 Production of Marketing Collateral

Per the Marketing Plan developed in Task 4.1, marketing and branding guidelines, including initial marketing material templates, will be presented by the Consultant to the City for review ahead of finalization, production, and distribution.

Deliverables:

Marketing Collateral

Task 4.3 Implement Marketing Plan

Based on the agreed upon Marketing Plan developed in Task 4.1, Consultant shall work closely with the City to implement a range of marketing and promotional subtasks, including the City offering free or discounted rides.

Deliverables:

Implementation of Marketing Plan

Task 5. Performance Monitoring

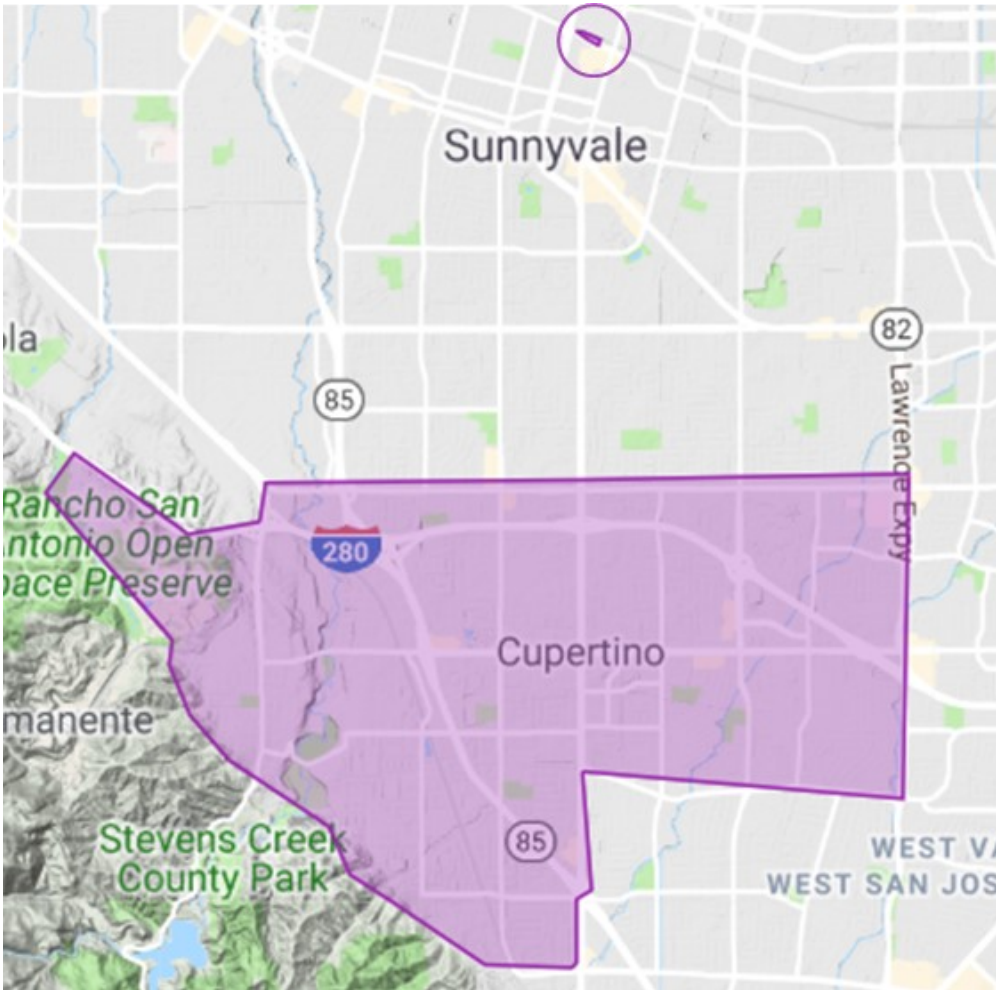
See Exhibit E., Data Sharing.

Deliverables:

Ongoing regular data sharing and reporting.

Via Cupertino Service Area Map

Approximate zone size: 10.6 sq miles



NOTES:

Additional service islands under consideration not shown (to be mutually agreed upon by Via and the City):

1. Palo Alto Medical Foundation - (Mtn View)
2. Mountain View Caltrain Station
3. El Camino Hospital (Mtn View)

EXHIBIT C - FEES

Fees

The table below outlines the payment structure, in which Cupertino would be charged on a price per driver hour and price per service hour basis. The total contract value shall not exceed \$1,750,000 for the 18-month contract term.

	<u>City of Cupertino Proposed Contract Value</u>		
	<u>Price per Driver Hour</u>	<u>Price per Customer Service Hour</u>	<u>Total Price</u>
Fixed (Upfront) Costs	N/A	N/A	\$122,200
Total Upfront Cost	//////		\$122,200
Project Management & Other Pilot Operations*	\$6.59	N/A	\$271,455
Performance Monitoring and Reporting	\$0.76	N/A	\$31,250
Driver Pay (Incl. WAV)	\$27.18	N/A	\$1,119,345
Driver & Rider Acquisition	\$1.30	N/A	\$53,650
Total Cost per Driver Hour	\$35.83	//////	
Customer Service	N/A	\$25.00	\$152,100
Total Cost per Customer Service Hour	//////		\$152,100
Total Pilot Cost to City of Cupertino**			\$1,750,000

Note: Pricing excludes all taxes.

* Includes technology, IT hosting, insurance, T&E, and other miscellaneous costs.

** Total Pilot Cost to City is a not-to-exceed amount and does not reflect unknown farebox revenue invoice credits.

Driver Hours Summary:

Total Implied Driver Hours	41,184
Total Implied Driver Hours (Weekly)	528

Service Hours Summary:

Total Implied Service Hours	6,084
Total Implied Service Hours (Weekly)	78

Note: Hours are indicative and subject to change.

Cupertino will be billed for the above fees and a revenue share as described below. Driver hours, service hours, and revenue share from rides served will be billed as incurred at the end of each month. Cupertino shall pay the following fees to Via:

Installation Fee

Cupertino shall pay to Via a non-refundable installation fee of \$122,200, 50% of which (\$61,100) will be payable upon signing of this Order, and the remaining 50% (\$61,100) will be payable upon launch of the Deployment.

Monthly Fees

Cupertino shall pay the following fees to be invoiced monthly by Via, starting upon launch of the Deployment:

- \$35.83 per driver hour
- \$25.00 per service hour

Revenue Share

Cupertino shall pay to Via \$1.50 for each completed ride (the “Revenue Share”), to be invoiced monthly by Via, starting upon launch of the Deployment. The City of Cupertino shall receive a monthly invoice credit in an amount equal to the net farebox revenue collected, less the Revenue Share retained by Via in that same previous calendar month.

Optional Enhancements Services and Fees

Upon reasonable request, Via will provide enhancements subject to the following fees:

Additional Services	Description	Rate
Additional Features	Add access to powerful features like a web-based booking portal, corporate account management dashboards, linkage to fixed route bus and train lines, and integration into third party travel planners and payment apps	Pricing available upon request
Expert Consulting Services	Additional support	Pricing available upon request
Advanced Data Analytics	Create a data warehouse or additional dashboards not covered in the original agreement	Pricing available upon request

Exhibit E.

Data Sharing Plan

As part of the Deployment, Via will make the below data available to members of the City's Core Team, for the purpose of research and program evaluation. The data to be shared will be uploaded to a Tableau server and protected by Via's VPN. Each of the individuals listed as members of the Core Team will be provided their own Tableau and VPN credentials. Access to the Tableau server will be available through the VPN only and might require appropriate software to connect. Underlying data may not be shared through any other method. The data is considered trade secret by Via, and is subject to the confidentiality and other protective provisions set forth in the Terms.

To protect Via's intellectual property and the privacy of riders, Via will provide the following data tables and dashboards in the form of aggregated Tableau reports that will be provided for City's access. These reports will be refreshed daily. The reports are aggregated, deidentified and do not include any personal information of Passengers.

Section A: STANDARD REPORTING SET		
Dashboard	Data Point	Level of Detail
Rides Data <i>Key data for each completed ride</i>	Rider ID	Completed ride
	Request origin lat/long	Completed ride; truncated to 3rd decimal place
	Pickup date + time	Completed ride; truncated to minute
	Request destination lat/long	Completed ride; truncated to 3rd decimal place
	Dropoff date + time	Completed ride; truncated to minute
	Number of passengers	Completed ride
	Ride distance (miles)	Completed ride
	Ride duration (minutes)	Completed ride

	Fare paid	Completed ride
	WAV	Completed ride
Mileage and Sharing <i>Aggregate vehicle mileage & sharing data by week</i>	Service time (hours)	week
	Revenue time (hours)	week
	Service distance (miles)	week
	Revenue distance (miles)	week
	% of shared bookings	week
	Bookings / loop	week
Quality of Service Trends <i>Summary of rides and quality of service</i>	Completed rides	week
	Avg. ride distance (miles)	week
	Avg. ride duration (minutes)	week
	Utilization	week
	Active drivers	week
	Driver hours	week
	ETA	week
	On-time pickup %	week
	Completed ride %	week
	Pickup request locations (by polygon)	week

	Dropoff request locations (by polygon)	week
	Top 5 pickup request intersections	week
	Top 5 dropoff request intersections	week

EXHIBIT D
Insurance Requirements
Via Transportation, Inc – On-Demand Community Shuttle

Consultant shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to City.

INSURANCE POLICIES AND MINIMUMS REQUIRED

1. **Commercial General Liability** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$5,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 01 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. 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 City as a named insured.
2. **Automobile Liability:** ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.
4. **Sexual Abuse/Molestation:** Insurance or the equivalent as required for activities/services involving minors, (i.e., after school activities, recreational programs, athletics, study/training events and transportation of minors). Coverage may be included under General Liability or be obtained in a separate policy, such as Educators Legal Liability (ELL) policy, with a limit of no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, it must apply separately to this contract or be twice the required occurrence limit.
5. **Cyber Liability:** Insurance with limits not less than **\$5,000,000** per occurrence / **\$5,000,000** aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as

well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

OTHER INSURANCE PROVISIONS

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers (“Additional Insureds”) are to be covered as additional insureds on all insurance coverages required by this Agreement. General Liability coverage can be provided in the form of an endorsement to Consultant’s insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

Primary Coverage

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant’s insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At City’s option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

Acceptability of Insurers

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

Verification of Coverage

Consultant must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Agreement), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subcontractors

Consultant shall require and verify that all subcontractors maintain CGL, Automobile Liability, Sexual Abuse and Molestation, and Workers’ Compensation and Employer Liability (if applicable) insurance that meet the requirements of this Agreement, including naming the City as an additional insured on subcontractors’ insurance policies.

Higher Insurance Limits

If Consultant maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Consultant.

Adequacy of Coverage

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.

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