

CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement (“Agreement”) is dated [month] [day], [year] (“Effective Date”), and is between the City of Monrovia, a California municipal corporation (“City”) and [Consultant’s Legal Name], a [Legal Form of Entity, e.g., California corporation, limited partnership, limited liability company] (“Consultant”).

RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to provide GoMonrovia dispatch and transportation services that meet the requirements of the Americans with Disabilities Act (“ADA”) and are accessible to persons with disabilities.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Consultant and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The parties therefore agree as follows:

1. Consultant’s Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services, attached as **Exhibit A**. City may request, in writing, changes in the scope of services to be performed. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the “City Representative”). For the purposes of this Agreement, the Consultant Representative shall be:

[Name], [Title] (the “Consultant Representative”)
[E-mail Address]

The Consultant Representative shall directly manage Consultant’s services under this Agreement. Consultant shall not change the Consultant Representative without City’s prior written consent.

C. Time for Performance. Consultant shall commence the services on the Effective Date and shall perform all services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

D. Standard of Performance. Consultant shall perform all services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the services required under this Agreement. All of the services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

F. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements applicable to this Agreement.

G. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through June 30, 2028, unless sooner terminated as provided in Section 13 of this Agreement or extended.

3. Compensation.

A. Compensation. As full compensation for Consultant's services provided under this Agreement, City shall pay Consultant a sum not to exceed [Written Amount] Dollars (\$[Numerical Amount]) (the "maximum compensation"), based on the hourly rates set forth in the Approved Fee Schedule, attached hereto as **Exhibit B**.

B. Expenses. The amount set forth in paragraph A shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

C. Additional Services. City shall not allow any claims for additional services performed by Consultant, unless the City Council and the Consultant Representative authorize the additional services in writing prior to Consultant's performance of the additional services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall

itemize the services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Consultant in writing within ten (10) business days of receipt of any disputed invoice amounts.

B. **Payment.** City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 3 of this Agreement. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant.

C. **Audit of Records.** Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this agreement available during Consultant's regular working hours to City for review and audit by City.

5. Ownership of Documents. All reports, documents or other written material ("written products") developed by Consultant in the performance of this Agreement shall be and remain City's property without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

6. Independent Contractor. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, 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, agents or employees are in any manner employees of City.

7. Confidentiality. All data, documents, discussion, or other information (collectively "data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential. Consultant shall keep all data confidential and shall not disclose any data to any person or entity without City's prior written consent. City shall grant such consent if disclosure is legally required. Consultant shall return all data to City upon the expiration or termination of this Agreement. Consultant's covenant under this Section 7 shall survive the expiration or termination of this Agreement.

8. Conflicts of Interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall

incorporate a clause substantially similar to this Section 8 into any subcontract that Consultant executes in connection with the performance of this Agreement.

9. Indemnification.

A. Indemnities for Third Party Claims.

1) To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liability with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith. Contractor's duty to defend, hold harmless and indemnify the Indemnitees shall include, without limitation, any claim, investigation, administrative action or legal proceeding regarding the City's compliance with the ADA in the provision of transportation services during the term of this Agreement.

2) Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor shall indemnify and hold City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Subparagraph A. 2).

3) Contractor shall obtain executed indemnity agreements with provisions identical to those in this Section 9 from each and every subcontractor or any

other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. If Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties.

B. Workers' Compensation Acts not Limiting. Contractor's indemnifications and obligations under this Section 9, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section 9 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Contractor's indemnifications and obligations under this Section 9 shall survive the expiration or termination of this Agreement.

10. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with coverage at least as broad as Insurance Services Office form CG 00 01. with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Four Million Dollars (\$4,000,000) per project or location. If Contractor is a limited liability company, the commercial general liability coverage shall be amended so that Contractor and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Comprehensive Vehicle Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Ten Million Dollars (\$10,000,000) per accident for bodily injury

and property damage. If Contractor does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, Contractor shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 10.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Contractor has no employees while performing services under this Agreement, workers' compensation policy is not required, but Contractor shall execute a declaration that it has not employees.

4) Sexual Abuse/Molestation Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Coverage may be provided as part of commercial general liability coverage, professional liability coverage, or as a separate policy.

B. Acceptability of Insurers. The insurance policies required under this Section 10 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 10.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 10 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.

E. Contractor's Waiver of Subrogation. The insurance policies required under this Section 10 shall not prohibit Contractor and Contractor's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by City. At City's option, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Contractor shall not cancel, reduce or otherwise modify the insurance policies required by this Section 10 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel

the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) days' prior written notice to City. If any insurance policy required under this Section 10 is canceled or reduced in coverage or limits, Contractor shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Contractor does not maintain the policies of insurance required under this Section 10 in full force and effect during the term of this Agreement, or in the event any of Contractor's policies do not comply with the requirements under this Section 10, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Contractor's expense, the premium thereon. Contractor shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Contractor.

I. Evidence of Insurance. Prior to the performance of services under this Agreement, Contractor shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 10. The endorsements are subject to City's approval. Contractor may provide complete, certified copies of all required insurance policies to City. Contractor shall maintain current endorsements on file with City's Risk Manager. Contractor shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Contractor shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duty to indemnify City under Section 9 of this Agreement.

K. Subcontractor Insurance Requirements. Contractor shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 10.

11. Mutual Cooperation.

A. City's Cooperation. City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for Consultant's proper performance of the services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against the City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

12. Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of five (5) years.

Consultant shall, without charge, provide City with access to the records during normal business hours. City may examine and audit the records and make transcripts therefrom, and inspect all program data, documents, proceedings and activities.

13. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least five (5) calendar days before the termination is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least sixty (60) calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

14. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

15. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the party to be notified as set forth below:

If to City:
Attn: Alice D. Atkins, City Clerk
City of Monrovia
415 South Ivy Avenue
Monrovia, California 91016

If to Consultant:

With a courtesy copy to:

Craig A. Steele, City Attorney

Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, CA 90071

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

17. Prohibition of Assignment and Delegation. Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

18. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

Exhibits are subject to change based on proposals received.

19. Exhibits. Exhibits A, B, C, D, and E constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

20. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may be modified only by a writing signed by both parties.

21. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.

22. Word Usage. Unless the context clearly requires otherwise, (a) the words “shall,” “will” and “agrees” are mandatory and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” or “including” are not limiting.

23. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

24. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Monrovia.

25. Attorneys’ Fees. In any litigation or other proceeding by which one party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys’ fees together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

26. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

27. FTA Required Federal Provisions and Certifications. The FTA Required Federal Provisions and Certifications set forth in Exhibit D are incorporated as part of this Agreement. Each contractor and subcontractor will be subject to these federal provisions and certifications. The contractor must include these provisions and certifications with all subcontracts.

28. RC-DBE Instructions for Metro Subrecipient Agencies. The RC-DBE Instructions for Metro Subrecipient Agencies set forth in Exhibit E are incorporated as part of this Agreement. The City has established a 2% Race Conscious DBE contract goal for this Agreement. The Contractor is required to meet this goal or demonstrate Good Faith Efforts as a condition of the agreement. The contractor must include these RC-DBE instructions with all subcontracts.

[SIGNATURE PAGE FOLLOWS]

The parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Monrovia,
a California municipal corporation

Consultant:

[Consultant's Legal Name],
a [Legal Form of Entity]

By: _____

Name: Dylan Feik
Title: City Manager

By: _____

Name: [Name of Authorized Signer]
Title: [Title of Authorized Signer]

ATTEST:

By: _____

Name: Alice D. Atkins, MMC
Title: City Clerk

By: _____

Name: [Name of Authorized Signer]
Title: [Title of Authorized Signer]

APPROVED AS TO FORM:

(Two signatures of corporate officers required for corporations under Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)

By: _____

Name: Craig A. Steele
Title: City Attorney

**EXHIBIT A
SCOPE OF SERVICES**

[Section 2 of this RFP (“Scope of Work”) will be attached as “Exhibit A” to this Agreement]

EXHIBIT B
APPROVED FEE SCHEDULE

[The City will work with the selected Contractor to establish an approved fee schedule, which will be attached as "Exhibit B" to this Agreement].

EXHIBIT C APPROVED DRIVER SCHEDULE

[The City will work with the selected Contractor to establish an approved driver schedule, which will be attached as "Exhibit B" to this Agreement. Below is an example of what Exhibit C may entail.]

Contractor shall provide the following:

- Sufficient vehicles and drivers to complete advanced reservation trips requested by phone call and demand responsive trips requested through the Lyft app during GoMonrovia service hours.
- A dedicated vehicle for demand responsive trips requested through the Lyft app on an as-needed basis.

Contractor shall use recent ridership data to recommend vehicle and staffing needs for both advanced reservation trips and demand responsive trips requested through the Lyft app. The determined number of vehicles and riders must be approved by City staff prior to any changes.

EXHIBIT D
FTA REQUIRED FEDERAL PROVISIONS AND CERTIFICATIONS

[Form F of this RFP (“FTA Required Federal Provisions and Certifications”) will be attached as “Exhibit D” to this Agreement]

EXHIBIT E
RC-DBE INSTRUCTIONS FOR METRO SUBRECIPIENT AGENCIES

[Form G of this RFP (“RC-DBE Instructions for Metro Subrecipient Agencies”) will be attached as “Exhibit E” to this Agreement]