

RIDECO SUBSCRIPTION AND SERVICES AGREEMENT

This Subscription and Services Agreement (this “**Agreement**”) is entered into on _____ (the “**Effective Date**”) by and between **RideCo Inc.**, having its head office at 279 Weber St. North, Waterloo, Ontario N2J3H8, Canada (“**RideCo**”), and the City of Milpitas, CA, having its principal address at 455 E. Calaveras Blvd. Milpitas, CA 95035-5411 (the “**City**”).

RECITALS

- A. RideCo is a technology provider for on-demand transit services.
- B. City wishes to implement a technology-driven transportation service and RideCo is willing to provide access to RideCo’s Dynamic Transit System (as defined below) on a license basis and to coordinate the provision and delivery of transportation services on the terms set out herein (the “**Project**”).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, it is agreed by and between the parties as follows:

1. INTERPRETATION

- 1.01 Definitions:** In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the following meanings:

“**Distributed Software**” means the RideCo passenger mobile application and driver mobile applications and any other software tools or components made available by RideCo for download under this Agreement;

“**Dynamic Transit System**” means RideCo’s proprietary software programs including optimization algorithms, data analysis algorithms, web application, passenger mobile application, driver mobile application, dashboards, graphical user interface, all documentation and end user manuals;

“**Documentation**” means any and all of the following that are provided by RideCo, in any form of media, in connection with the Agreement (a) know-how, proprietary information and methodologies, document templates and best practice guides; (b) scripts and data analysis tools; (c) user manuals and guides, that explain or facilitate the use of the Software, including all updates thereto; and (d) data sheets, specifications and other technical documents and materials in respect of the Software;

“**Maintenance and Support Services**” means the maintenance and support services provided by RideCo as further described in Section 3 of this Agreement and Schedule “B”;

“**Personal Data**” has the meaning given in Schedule “C”;

“**Platform Software**” means collectively the RideCo Dynamic Transit System (DTS) cloud platform technology and underlying software, including its dynamic routing technologies, ride-sharing technologies, algorithms, implementation architectures, operations dashboards, user interfaces, and application programming interfaces (“APIs”) to third party systems;

“**Operational Data**” means data recorded by the Distributed Software and presented through export on the operations dashboard end-user interface, where such data is provided by City or passengers or partner drivers of City. For greater certainty, Operational Data includes passenger ride booking information (origin, destination, time, payment, status) and driver action data (location data, pickup/drop-off times) however Operational Data does not include system log data

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or any other data that is not provided as an export to an end user through the operations dashboard end-user interface;

“Services” means collectively the provision of access to the Software, Documentation, associated APIs and interfaces to third party systems provided by RideCo under this Agreement together with the vehicular transportation services provided by the Transportation Operations Provider and Maintenance and Support Services all as further described in the schedules hereto;

“Software” means collectively the Distributed Software, Platform Software, and any interfaces between the two;

"Software Enhancements" means an update or upgrade to the Distributed Software or to the Platform Software, which update or upgrade may include new product features that change the character or structure of the software or its functional use or operation and will usually form part of an automatic update to the Software without any action being required from Customer;

“Subscription and Services Fee” means the fees set forth in Schedule “A”; and

“Transportation Operations Provider” means the subcontractor that is contracted by RideCo to provide drivers and vehicles for the Project. RideCo intends to subcontract to Yellow Checker Cab of San Jose per the Measure B grant application regarding the Project.

1.02 Schedules: The schedules to this Agreement are set forth as follows:

Schedule “A”	-	Project Terms and Scope of Work
Schedule “B”	-	Service Level Agreement
Schedule “C”	-	Personal Data Protection Undertaking
Schedule “D”	-	Software Functional Requirements

2. SERVICES LICENSE, INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIALITY

2.01 Services. During the term of the Project, RideCo shall:

- a) provide and supply all necessary hardware and software to run the Project with the Dynamic Transit System;
- b) contract with a Transportation Operations Provider, acceptable to the City, that (i) will supply drivers and vehicles that meet applicable bylaws, insurance requirements, and regulations of the City; and (ii) will agree to the applicable terms of the Funding Agreement executed between the Santa Clara Valley Transportation Authority and the City of Milpitas for this Project, including but not limited to, compliance with applicable requirements of state, federal, and local law, compliance with wage and hour laws, and insurance and indemnity requirements;
- c) perform logistics activities involved in running the Services, including without limitation:
 - i. the coordination of the dispatch, selection, scheduling, training and itinerary management for the Transportation Operations Provider, vehicles and drivers in relation to the Project;
 - ii. managing hours of operation and operating parameters as defined in Schedule “A”;

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- iii. communicating itinerary information with passengers and drivers (digitally via the website, SMS, or the mobile app);
 - iv. collecting fare payments (“**Fare Payments**”) from passengers of the ride-share service, via credit card (if applicable). The Fare Payments shall be reported in the Invoice (as such term is defined in Section 5.02); and
 - v. utilizing the Float (as defined in Section 5.03 below) to pay costs involved in the operation of drivers and vehicles on the Project,
- d) advise City of the assistance it requires from City in connection with the completion of its responsibilities under this Agreement; and
 - e) complete the Project in a professional and competent manner by persons qualified and skilled in their occupations and the roles that they are required to perform hereunder, and in accordance with: (a) this Agreement; (b) industry standards; and (c) any requirements of law, as applicable.

2.02 License Grant: Subject to the terms of this Agreement, RideCo grants City a limited, revocable, non-exclusive and non-transferable license to access and use the Dynamic Transit System in the geographic area identified in Schedule “A”. The Distributed Software may only be used in combination with the Approved Equipment/Third Party Software. RideCo or its agents, resellers or distributors may release from time to time to City at no additional charge during the term of this Agreement, software bug fixes and patches and such releases shall be considered “Software” hereunder and subject to the terms of this Agreement unless otherwise specified by RideCo.

2.03 Restrictions & End User Terms:

- a) *Restrictions.* Except as otherwise expressly permitted in this Agreement, City shall not, and shall not encourage any third party to: (i) customize, modify or create any derivative works of the Services; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Software (except to the extent applicable laws specifically prohibit such restriction); (iii) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Distributed Software; (iv) publish any results of benchmark tests run on the Software to a third party without RideCo’s prior written consent; (v) redistribute, encumber, sell, rent, lease, sublicense or otherwise transfer rights to the Services; (vi) copy, reproduce, distribute, modify or in any other manner duplicate the Software, in whole or in part and City may not copy any written materials (except for training materials and for internal use) accompanying any portion of the Services unless specifically authorized in writing to do so by RideCo. City shall not access the Services in order to build a competitive product or service or to copy any ideas, features, functions or graphics of the Dynamic Transit System or the Documentation. For greater certainty, City will not be in breach of this Section 2.03 if City independently develops a competing product or service without use or reference to RideCo’s Confidential Information.
- b) *End Users.* RideCo and its subcontractors shall ensure that end users agree to appropriate terms of service and privacy policy in accordance with requirements of applicable law before using the Services. RideCo will inform end users that the transportation services are provided on behalf of the City by the Transportation Operations Provider.

2.04 RideCo Intellectual Property: RideCo retains all right, title and interest in and to the Dynamic Transit System including all Documentation, all intellectual property rights in the Software and all copies and derivative works thereof. City acknowledges and agrees that the Dynamic

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Transit System, and all intellectual property rights therein (including without limitation, copyrights, patents, trade secrets, trademarks, moral rights and other intellectual property rights, in and to the Dynamic Transit System and all modifications, changes, enhancements, or additions thereto) and all intellectual property rights relating to the provision of professional services, feedback, technical support, maintenance and other support if any, (collectively, “**RideCo IP**”), are owned or licensed by RideCo. To the extent City acquires rights in the RideCo IP, City assigns such rights to RideCo and waives any moral rights it may have in the RideCo IP to and in favor of RideCo. Nothing in this Agreement gives City any right, title or interest in, to or under any of the Dynamic Transit System or any intellectual property rights therein (including without limitation patent rights) or arising pursuant to professional services, product feedback, technical support and other support.

- 2.05 Operational Data:** As between City and RideCo, City will own the Operational Data from the Project and City acknowledges and agrees that RideCo is not responsible for any liability arising out of the collection, retention, use, operation and disclosure by City of Operational Data. Subject to the personal data protection undertakings set out in Schedule “C”, City hereby grants to RideCo for the duration of this Agreement a worldwide and royalty-free right and license to access and use the Operational Data for the sole purposes of: (i) providing the Services to City, (ii) assessing the performance of the Services; and (iii) creating Pattern Data (as defined in Section 2.06 below). City is not entitled to receive any compensation or re-imbursement of any kind from RideCo for use of said Operational Data. Except as otherwise expressly permitted in this Agreement, RideCo does not claim any right, title or interest in the Operational Data.
- 2.06 Personal Data Protection Undertaking.** RideCo hereby agrees and undertakes to comply with the personal data protection undertakings set out in Schedule “C”.
- 2.07 Pattern Data.** “**RideCo Pattern Data**” means non-personally identifiable data including Operational Data which contains no Personal Data (as such term is defined in Schedule “C”). For greater certainty, RideCo Pattern Data does not identify a specific passenger or driver. As between RideCo and City, all right and title to RideCo Pattern Data belongs to RideCo and accordingly RideCo is free to use RideCo Pattern Data for any purpose including the improvement of RideCo’s Services.
- 2.08 Suggestions.** RideCo shall have a royalty-free, worldwide, transferable, sub licensable, irrevocable, perpetual, unrestricted license to use and/or incorporate into its products, services and business any suggestions, enhancement requests, recommendations or other feedback provided by City relating to the operation of the Services.
- 2.09 Reservation of Rights.** Except for the rights and licenses granted in this Agreement, City acknowledges and agrees that RideCo owns and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and all other intellectual property rights therein) in and to the technology used to provide the Services) and all related RideCo IP and RideCo grants City no further licenses of any kind hereunder, whether by implication, estoppel or otherwise. City acknowledges that only RideCo shall have the right to maintain, enhance or otherwise modify the Dynamic Transit System.
- 2.10 Confidentiality:**
- a) *Confidential Information.* As used herein, “**Confidential Information**” means all confidential information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”) that is designated in writing as confidential or ought to be considered confidential based on the nature of the information and the circumstances of disclosure. For greater certainty, the Documentation and the functionality of the Software are all Confidential Information of RideCo. Confidential Information shall not include any information that the Receiving Party can demonstrate by its written records: (i) was known to it prior to its disclosure hereunder by the Disclosing Party; (ii) is or becomes

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known through no wrongful act of the Receiving Party; (iii) has been rightfully received from a third party without restriction or disclosure and without breach by such third party of a non-disclosure obligation; (iv) is independently developed by the Receiving Party; or (v) has been approved for release by the Disclosing Party's prior written authorization.

- b) *Obligations.* Neither party shall use any Confidential Information of the other party except as necessary to exercise its rights or perform its obligations under this Agreement or as expressly authorized in writing by the other party. Each party shall use the same degree of care to protect the other party's Confidential Information as it uses to protect its own Confidential Information of like nature. Neither party shall disclose the other party's Confidential Information to any person or entity other than its officers, employees, service partners, consultants and legal advisors who need access to such Confidential Information in order to effect the intent of the Agreement and who have entered into written confidentiality agreements with it at least as restrictive as those in this Section. Upon any termination of this Agreement, the receiving party will promptly return to the disclosing party or destroy, at the disclosing party's option, all of the disclosing party's Confidential Information.

- c) *Injunctive Relief.* Each party acknowledges that due to the unique nature of the other party's Confidential Information, the disclosing party may not have an adequate remedy in money or damages if any unauthorized use or disclosure of its Confidential Information occurs or is threatened. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.

3. MAINTENANCE AND SUPPORT SERVICES

3.01 Maintenance Services: RideCo shall provide the following maintenance services to City:

- a) Supply or deploy corrections to the Software as required to correct errors, defects, malfunctions and deficiencies, if any, in the Software; and
- b) Supply or deploy improvements, extensions, upgrades, enhancements and other changes to the Software developed from time to time by RideCo.

3.02 Support Services: In response to a support request from City, RideCo shall provide the following support services to City as per the priority levels, response times and procedures specified in Schedule "B" to be provided remotely:

- a) Clarification of software functionality
- b) Adjustments to software configuration; and
- c) Advice on the use and results of the Services;

3.03 Services Outside Scope of Maintenance and Support: The Maintenance and Support Services to be provided under this Agreement do not include:

- a) Correction of errors or defects caused by operation of the Software in a manner other than specified in the Software documentation;
- b) Rectification of errors caused by incorrect use of the Software;
- c) Correction of errors caused in whole or in part by the use of computer programs other than

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the Software unless the use of such programs has been approved by RideCo in writing; or

d) Diagnosis or rectification of faults not associated with the Software.

3.04 Professional Services: City may request at any time and from time to time that RideCo provide to City any other professional services or Software modifications which are within the scope of its business and which are not provided for herein and which are not covered by the Subscription and Services Fee. RideCo shall evaluate such requests and may provide the City an estimate of the cost of such professional services. In no event shall RideCo be obligated to provide professional services not agreed in writing with City.

4. INSURANCE

4.01 Insurance Requirements: Contractor shall meet the Insurance Requirements in Schedule E

5. FEES AND PAYMENT TERMS

5.01 Subscription and Services Fee: In consideration of the provision of the Services under this Agreement, City agrees to pay RideCo the Subscription and Services Fee in accordance with Schedule "A". Incremental payments, if applicable, shall be made as outlined in Schedule "A".

5.02 Invoicing and Payment Terms. Within fifteen (15) days following each month during the term of this Agreement, RideCo shall provide to City an invoice ("**Invoice**"). Within fifteen (15) days following City's receipt of the invoice, it shall pay to RideCo all bona fide amounts owing pursuant to the Invoice. Any such amounts which are not paid by City when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid in full to RideCo.

5.03 Float: City shall provide a pre-payment deposit ("**Float**") to RideCo for the costs for the ride-share drivers with the amount of the Float specified in Schedule "A" ("**Float Amount**") until changed by notice in writing from City to RideCo. RideCo shall have no right to apply the Float Amount to any amounts owing to it with respect to any Invoice unless and until it receives approval in writing from City of such Invoice. Upon termination or expiry of this Agreement, the Float shall be applied to the final approved Invoice payable to RideCo pursuant to this Agreement and the balance of any remaining amount of the Float shall be paid by RideCo to City within thirty (30) days following the expiry or termination of this Agreement. RideCo shall keep detailed records and documents with respect to the Transportation Operations Provider costs, operating hours, and Float Amount and shall provide copies of all documents as may be requested from time to time by City relating thereto.

5.04 Taxes: All charges and fees provided for in this Agreement are exclusive of and do not include any foreign or domestic governmental taxes or charges of any kind imposed by any federal, state, provincial or local government on the transactions contemplated by this Agreement, including without limitation excise, sales, use, property, license, value-added taxes, goods and services, harmonized, franchise, withholding or similar taxes, customs or other import duties or other taxes, tariffs or duties other than taxes that are imposed based on the net income of RideCo. Any such taxes that are imposed on the net income of RideCo shall be the sole responsibility of RideCo. City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of RideCo or its employees or subcontractors.

6. TERM AND TERMINATION

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- 6.01 Term:** This Agreement commences on the Effective Date and shall run for the duration of the Project term specified in Schedule “A” together with any agreed extensions, unless terminated sooner in accordance with the terms of this Section 6.
- 6.02 Termination:** Either party may terminate this Agreement with written notice if the other party: (i) fails to correct a material breach of its obligations under this Agreement within thirty (30) days after receipt by such other party of written notification from the notifying party of such material breach; (ii) ceases to carry on business as a going concern; or (iii) files a bankruptcy petition or has such a petition filed involuntarily against it, becomes insolvent, makes an assignment for the benefit of creditors, consents to the appointment of a trustee, or if bankruptcy reorganization or insolvency proceedings are instituted by or against the other party.
- 6.03 Survival.** The following Sections shall survive the termination or expiration of this Agreement for any reason: 1 (Definitions), 2.03(a) (Restrictions), 2.04 (RideCo Intellectual Property), 2.05 (Operational Data), 2.07 (Pattern Data), 2.08 (Suggestions), 2.09 (Reservation of Rights), 2.10 (Confidentiality), 7.04 (Effect of Termination), 7.02 (Disclaimer of Implied Warranties), 7.03 (Service Disclaimer), 8 (General Provisions) and all terms related to payment (until payments have been made in full) and any other terms herein which expressly state that such terms will survive or which by their nature are required to survive to give effect to the surviving terms stated to survive, shall survive the termination or expiration of this Agreement for any reason and will continue in full force and effect subsequent to and notwithstanding such termination, until such provisions are satisfied or by their nature expire.
- 6.04 Effect of Termination.** On termination, City shall destroy all copies of the Software (and cease all access to the same), destroy or delete all accompanying Documentation and Confidential Information of RideCo and shall provide confirmation of having done so within one (1) week of the effective date of termination.

7. WARRANTIES, INDEMNIFICATION, LIABILITY

7.01 Warranties:

- a) *Representations and Warranties by Each Party.* Each party represents, warrants to the other party that: (i) it is a corporation, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) it has all requisite power and authority and approvals to execute, deliver and perform its obligations under this Agreement; (iii) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by it and any necessary third parties; (iv) it will comply with all applicable laws in connection with this Agreement.
- b) *RideCo Warranties.* RideCo represents and warrants to City that RideCo will perform its duties and obligations hereunder in a careful, diligent, professional, proper, efficient and business-like manner. RideCo further represents and warrants that:
- (i) The Services do not infringe any patent, copyright or trademark or violate the trade secret or other proprietary rights of any third party;
 - (ii) RideCo owns or has exclusive or non-exclusive rights in all patents, copyrights, trademarks, trade secrets and other proprietary rights in and to the Services necessary to grant the licenses herein; and
 - (iii) RideCo possesses the legal right and authority to execute and perform this Agreement,

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Except as expressly provided in this Agreement, the Services are provided 'as is' and RideCo does not warrant that the functions performed by the Dynamic Transit System or Services will meet City's requirements or that the operation of the same will be uninterrupted or error-free.

7.02 Disclaimer of Implied Warranties: Except as set forth in this Agreement, there are no other warranties or conditions of any kind, including without limitation, the warranties that the Services are free of defects, merchantable or fit for a particular purpose. Specifically, RideCo makes no representation or warranty regarding the merchantability, fitness for a particular purpose or functionality of the Services. All Approved Equipment/Third Party Software is subject to the warranty of its respective manufacturer and no warranty whatsoever is provided by RideCo. RideCo makes no guarantee of the performance, accuracy and results of the Services with respect to Operational Data. This disclaimer of warranty constitutes an essential part of this Agreement. No use of the Services is authorized under this Agreement except under this disclaimer.

7.03 Service Disclaimer & Liability Waiver. RideCo is a technology provider and not a provider of transportation services. To the fullest extent permitted by law, RideCo will not be responsible for: (i) the actions, inactions, errors, omissions, representations, warranties, breaches or negligence of any passenger or driver or for any personal injuries, death, property damage, or other damages or expenses resulting therefrom; or (ii) the actions, inactions, errors, omissions, representations, warranties, breaches or negligence of Transportation Operations Provider or for any damages or expenses resulting therefrom including without limitation any personal injury or property damage. City expressly waives the right to bring any claim against RideCo, its successors, assigns or related companies, directors, officers or employees in respect of any and all actions, causes of action, damages, claims, cross-claims and demands of any kind in connection with the transportation, vehicular or driver related portions of the Services, except to the extent that a claim would not have arisen but for RideCo's gross negligence or willful misconduct. In consideration of the foregoing, RideCo will use commercially reasonable efforts to: (i) contractually require Transportation Operations Provider to maintain the minimum insurance levels set out in Section **Error! Reference source not found.** above and to add City as an additional insured to such policies; and (ii) add City as a third party beneficiary to the contract between RideCo and Transportation Operations Provider to enable City to bring any transportation, vehicular or driver-related claims in connection with the Project directly against Transportation Operations Provider.

7.04 Limitation of Liability:

- a) IN NO EVENT SHALL RIDECO BE LIABLE TO THE CITY FOR ANY LOST PROFITS OR FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS), HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND WHETHER OR NOT RIDECO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- b) RideCo's cumulative liability to the City or any other party for damages for any cause whatsoever will be limited to no more than the Subscription and Services Fees paid under this Agreement in the three (3) month period prior to the applicable claim.

7.05 Indemnification: RideCo shall defend (at its own cost and expense) and hold City harmless against any and all claims, demands, suits, brought by a third party against the City that any part of the Services infringes any patent, copyright, trademark or trade secret right of such third party, except to the extent that the actual or alleged infringement has not been caused by the

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use of a modification of the Software by the City other than a modification provided by RideCo, by the combination and/or use of the Distributed Software with third party software, hardware, data, and/or technology not approved by RideCo in writing or by City's failure to implement any update or upgrade provided by RideCo. In addition to the defense obligations above, RideCo will indemnify the City Indemnitees in respect of any damages awarded by a court of competent authority to the third party claimant, any fines levied against the City Indemnitees in respect of a claim and/or any settlement amounts agreed by RideCo with a third party claimant. As conditions for the foregoing commitments by RideCo, City will promptly notify RideCo of any such claim and provide reasonable assistance to RideCo with respect to handling the claim. RideCo will have the sole right to defend, negotiate and settle any such claim. RideCo may at any time and at its option and expense: (i) procure the right of City to continue to use the Services that may infringe a third party's rights; or (ii) modify the Services so as to avoid infringement; or (iii) terminate this Agreement and the licenses granted hereunder.

8. GENERAL PROVISIONS

- 8.01 Subcontractors:** RideCo may sub-contract the performance of the transportation services provided by and/or managed by to the Transportation Operations Provider to third party service providers. In the event that the Transportation Operations Provider's subcontract is terminated in accordance with its terms, Contractor will use commercially reasonable efforts to find a suitable replacement acceptable to City. City shall not unreasonably withhold, condition or delay consent to the same. In the event that RideCo cannot find a suitable replacement or the replacement is not approved by City, Contractor will have the right to terminate this Agreement on not less than sixty (60) days' prior, written notice to the City. For greater certainty, RideCo will be solely responsible for payment of its subcontractors, including the Transportation Operations Provider.
- 8.02 Partial Invalidity:** If any provision in this Agreement should be held illegal or unenforceable by a court having jurisdiction, such provision shall be modified to the extent necessary to render it enforceable without losing its intent, or severed from this Agreement if no such modification is possible, and other provisions of this Agreement shall remain in full force and effect.
- 8.03 Assignment:** Neither party may assign this Agreement without the prior written consent of the other party. Notwithstanding the generality of the foregoing, RideCo may freely assign this Agreement to a successor in interest upon a merger, acquisition, reorganization, change of control, or sale of all or virtually all of its assets, and any such assignment shall not require the consent of the City. This Agreement shall be binding on and shall inure to the benefit of the parties, their successors and permitted assigns.
- 8.04 Governing Law and Venue:** Except to the extent applicable law, if any, requires otherwise, this Agreement shall be governed by the laws of California. All disputes relating to this Agreement, shall be subject to and dealt with in the courts of Santa Clara County, CA.
- 8.05 Publicity.** RideCo shall be entitled to disclose and publicize in the form of City lists and on its web site and marketing materials, the identity of the City as a client of RideCo, provided that the use of any trademark/logo of City shall be subject to City's prior written consent.
- 8.06 Non-Solicitation.** During the term of this Agreement and for one (1) year thereafter, the City shall not, directly or indirectly, in any manner whatsoever, including, without limitation, either individually or in partnership, jointly or in conjunction with any other person, or as employee, principal, agent, director or shareholder, hire any employees of RideCo or induce or attempt to induce any such employees to leave their employment.
- 8.07 Force Majeure:** Neither party shall be liable for any delay or failure in performance due to

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such acts of God, earthquake, labor disputes, strikes, shortages of supplies, riots, war, fire, epidemics, or transportation difficulties, to the extent not in control of such party. The obligations and rights of the excused party shall be extended on a week to week basis, provided, however, that a delay of thirty (30) days shall entitle the other party to terminate this Agreement without liability.

8.08 Miscellaneous: This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement may be amended only in writing signed by both parties. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. The relationship between RideCo and City is that of independent contractors and neither City nor its authorized agents shall have any authority to bind RideCo in any way. If any dispute arises under this Agreement, the prevailing party shall be reimbursed by the other party for any and all legal fees and costs associated therewith. The headings to the sections of this Agreement are used for convenience only and shall have no substantive meaning.

8.09 Entire Agreement. This Agreement includes any amendments, supplements, schedules, exhibits or appendices attached, referencing this Agreement, or expressly made a part hereof by agreement between the parties and constitutes the entire agreement between the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as set out below.

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CITY OF MILPITAS

RIDECO

Approved By:

Signature

Steven G. McHarris, City Manager

Prem Gururajan

Date

Chief Executive Officer

Approved As To Form:

Date

Christopher J. Diaz, City Attorney

DIR Registration Number (If Applicable)

Approved:

Lauren Lai, CPA, MPA

Finance Director/Risk Manager

Approved As To Content:

[INSERT NAME], [INSERT TITLE]

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SCHEDULE "A"

PROJECT TERMS AND SCOPE OF WORK

Project Term: 18-months starting on the Effective Date, extendable for an additional 36 months, in 12 month increments at City's option, subject to agreement of applicable terms including the appropriate Subscription and Services Fee.

Zone: Milpitas, CA

Service model: on-demand Hub and Spoke Microtransit using virtual stops, within the Zone

Vehicles: Approximately four (4) 6-seat Dodge Caravan (or equivalent) minivans and three (3) ADA-accessible 4-seat Dodge Caravan (or equivalent) minivans. The actual number of vehicles scheduled to be in revenue operation will vary subject to day of week, time of day and passenger demand.

Service Hours: 7am-7pm Monday to Friday

Vehicle Revenue Hours: Approximately 32760 vehicle revenue hours for the initial Project Term; approximately 1820 hours per month of service

Subscription and Services Fee: \$39.10 per vehicle revenue hour

Marketing Budget: approximately \$75,000

Budget for the initial Project Term: \$1,355,916

Float: \$25,000

City and RideCo may, if mutually agreed upon, add additional hours of service, service area, target rider market, or vehicles in accordance with the terms of the Agreement.

Scope of Work:

Project Management, Training, Software Requirements, and Data Reporting:

1. Project management will be a continuous function and a key responsibility of RideCo. RideCo will develop and maintain an overall project schedule to ensure milestones are met in an efficient manner
2. RideCo shall coordinate with City to refine and approve the service model, including specific stops, schedules, service coverage areas, and cost structure (including potential subsidization).
3. RideCo shall ensure the adequate and complete training of operators, dispatchers, operations manager(s), and City staff that are involved in the operation or monitoring of the service
4. RideCo will ensure that the functions listed in Schedule "D" Software Functional Requirements are met.
5. RideCo and City will agree upon data reporting expectations and shall include daily ridership information, virtual stop locations, use of referral or promotional codes, qualitative data collected from riders to capture travel preferences, and other data as mutually agreed.
6. RideCo will work with City to coordinate a test run of both the software application and service prior to commencement of public revenue service operations.
7. RideCo will provide a daily KPI report, including data mutually agreed upon by the City and

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RideCo.

8. RideCo will review data dashboard with the City and transportation partners on weekly basis during the first month of revenue service operations and a monthly basis thereafter, during the Project Term.
9. RideCo will periodically provide City with any recommendations for changes in virtual stops, service hours, or promotions to ensure meeting project goals.
10. RideCo will provide city with a final report summarizing their market, operational findings, viability of long-term service, and recommendations. A presentation on the final report will be provided to city staff.

Branding and Marketing:

1. RideCo will brand the rider mobile application uniquely to the service. City will provide necessary graphics and content for RideCo to brand the application.
2. RideCo will advise the city in the marketing of the service to passengers, including providing examples of successful marketing materials from other client efforts.
3. RideCo will configure and manage referral and promotional codes throughout the duration of the Project.
4. RideCo, through its marketing subcontractor, will design graphics to be placed on the vehicles in accordance with specifications provided by the Transportation Operations Provider. Transportation Operations Provider will be responsible for having the graphics placed on the vehicles prior to commencement of vehicle revenue operations.

Vehicles and Drivers:

1. RideCo, through its subcontractor Transportation Operations Provider, will be responsible for the acquisition, storage, fueling, and maintenance of the appropriate vehicles. Vehicles used in the performance of this contract shall be no more than five (5) years old and/or have no more than 300,000 miles during any time during the initial Project Term or subsequent renewals of this contract. Vehicle registration and vehicle identification numbers will serve as proof of age. Vehicles must meet all EPA standards. All wheelchair-accessible vehicles must meet ADA (49 CFR Parts 37 and 38) standards.
2. RideCo, through its Transportation Operations Provider, will provide current California licensed drivers that meet the following criteria:
 - a. No more than two moving violations in the past three (3) years
 - b. No at fault accidents or major violations (Driving Under the Influence or Driving While Intoxicated) in the past seven (7) years
 - c. Speak, write, and read English fluently
 - d. Successfully pass background checks annually which include social security number verification, no sex offender, no government restricted lists, no county, state and federal court records, no criminal misdemeanor convictions within the past three (3) years related to the possession, sale or use of illegal drugs, and verification of past living history or other available public records.
3. RideCo, through its Transportation Operations Provider, will regularly screen drivers for legal and illegal substances via an independent medical agency in accordance with the U.S. Department of Transportation regulations.

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4. RideCo, through its Transportation Operations Provider, will train drivers focused on customer service including the ability to:
 - a. Handle inquiries and/or complaints
 - b. Develop rapport and the ability to respond to an individual's needs
 - c. How to handle doubt, misunderstandings and objections
5. RideCo, through its Transportation Operations Provider, will provide road driver training to include:
 - a. Vehicle Familiarization Training
 - b. Tech Applications
 - c. Vehicle Inspection Training
 - d. Onsite Local Knowledge and Culture Training
 - e. On Demand Route Training
 - f. Maintenance Protocol
 - g. Parking and Storage Locations
 - h. Lost & Found Protocol

Customer Service:

1. RideCo, through its subcontractor Transportation Operations Provider, will maintain customer service access through an operations center, during hours of revenue service operations. For those who are not able to access the service via the software application, customers shall be able to call, during hours of revenue service operations, and book rides over the telephone and receive customer support including information about lost items.

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SCHEDULE "B" RIDECO SERVICE LEVEL AGREEMENT

1. APPROVED EQUIPMENT / THIRD PARTY SOFTWARE

Driver Mobile App Requirements:

- Android Device running 6.0 or above with Google Play Services
- GPS Enabled Phone
- High speed (4G recommended) data plan with a minimum of 2GB/month
- Minimum screen resolution 800x480
- Minimum recommended CPU: Mid-to-High range performance CPU based on ARMv8-A 64-bit Architecture
- 2GB RAM
- 1GB internal storage

Passenger Mobile App Requirements:

- iPhone 5S running iOS 9, or Android device running 5.0.1 or above with Google Play Services
- Minimum screen resolution 800x480
- Minimum recommended CPU: dual-core 1.5GHz
- 1GB RAM
- 200MB internal storage

Browser requirements for operations dashboards:

- Internet Explorer 11
- Google Chrome (v59 or above)
- Firefox (v50 or above)
- Safari 10

2. PRIORITY LEVELS, RESPONSE TIMES AND PROCEDURES

Priority Levels

High	Business critical problems that affect the availability or access of or to the Service Offering for most users
Medium	Not critical but important problems that materially interrupt or restrict the normal production running of the Software (affecting a minority of users)
Low	Not business critical or important. Issues that do not materially impact the normal production running of the Software

Resources and Forms of Support

Support Portal	Utilized for medium or low priority items [** City specific slack channel(s)] (typically one slack channel for each active service)
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Emergency hotline	Used for critical / high priority items [**City specific emergency telephone number] [**City specific emergency slack channel]
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Support Response Time

Priority	Response Time	Update Frequency	Resolution Time
High	Reviewed by RideCo staff and support ticket updated/created within 2 hours	Every 2 hours or as mutually determined	Within 24 hours RideCo will attempt to resolve all high priority issues within 24 hours, however resolution times may be longer depending on the nature and complexity of the problem.
Medium	Reviewed by RideCo staff and support ticket updated/created within 12 hours	Every working day or as mutually determined	Within five (5) business days

Low	Reviewed by RideCo staff and support ticket updated/created within 24 hours	Every week or as mutually determined	RideCo shall notify City within ten (10) business days of the analysis of the problem, the intended fix and the release in which it will be delivered. Where feasible, RideCo shall provide a temporary workaround to City.
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SCHEDULE "C" PERSONAL DATA PROTECTION UNDERTAKING

"Personal Data" means data, whether true or not, about an individual who can be identified: (a) from that data; or (b) from that data and other information to which the organization has or is likely to have access;

RideCo agrees that the following terms shall apply where RideCo accesses, handles or uses any Personal Data under the Agreement, including in the course of and/or in connection with exercising its rights or carrying out its obligations under the Agreement:

- a. Unless otherwise permitted by the City, RideCo may only collect, use or process Personal Data as allowed under this Agreement, and RideCo shall comply with any written instructions the City gives RideCo in advance relating to compliance with any laws, regulations, court orders, or self-regulatory programs applicable to the collection, use, disclosure, treatment, protection, storage and return of Personal Data.
- b. RideCo shall maintain commercially reasonable policies and procedures to protect the security, privacy, integrity, and confidentiality of Personal Data.
- c. If RideCo knows of any breach or potential breach of protective measures or if there has been any actual or potential unauthorized or accidental disclosure of Personal Data, RideCo must inform the City immediately and cooperate with the City in any post-breach investigation or remediation efforts.
- d. RideCo shall notify the City promptly in the event of any claim or complaint from any individual to whom the Personal Data relates and/or where there has been an event of non-compliance with any data privacy laws by RideCo, whether discovered by RideCo or forming the subject of an investigation and/or action by the relevant authorities.
- e. RideCo shall notify the City promptly in the event that RideCo is required by law, court order, warrant, subpoena, or other legal or judicial process to disclose any Personal Data to any person.
- f. If under the Agreement, RideCo has to collect any Personal Data from the City's employees or any other individuals directly, RideCo must notify the individuals about the purpose of RideCo's collection and must obtain and record (for future reference) their consent before RideCo does so, and RideCo must follow any reasonable instructions which the City may give RideCo in this regard, and must comply with all applicable laws for such collection of Personal Data.
- g. RideCo must not disclose any City Personal Data to any other persons/entities (e.g. to RideCo's related company/affiliate) or transfer any Personal Data outside of the USA or Canada without the City's permission in writing.
- h. RideCo shall promptly return to the City or destroy any Personal Data received in error. RideCo must destroy Personal Data as soon as practicable if required by the City. At the end of the Agreement, RideCo must notify the City if RideCo or other recipients (if disclosure of Personal Data to such other recipients has been permitted by the City in writing) have any Personal Data collected/received as part of the Agreement, and follow the City's instructions on destroying the Personal Data. Following such destruction, the City may require RideCo to certify that RideCo (and such recipients) no longer have Personal Data. If RideCo wants to retain any Personal Data beyond the end of the Agreement, RideCo will be required to inform the City of RideCo's reasons and seek the City's agreement on the same.

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SCHEDULE "D"

SOFTWARE FUNCTIONAL REQUIREMENTS

Passenger Application Requirements

Rider Account

- Trip history menu to see trip details
 - Start & end time
 - Starting & ending address
 - Trip cost (if applicable)
 - Help menu to provide feedback, or report other issue
- Reserved trip details
- Recent destinations are automatically saved to rider account

Ride Booking and Tracking:

- Ability to enter an address or select current or specific location on the map
- Reserve multiple seats or seat types (e.g. accessible)
- Reserve trips up to 5 business days in advance
- Reserve multiple trips at once (same trip for multiple days in one week)
- Retain recently queried locations so they are easy to pull up even if rider does not designate them as a “favorite”
- Ability to restrict virtual vs. doorstep drop-off and pick-up points
- Vehicle location, vehicle ID and driver information are displayed while waiting for pickup
- Ability to call and/or leave a note for driver

Payment

- Ability to hold credit card information.
- Place to enter promotional codes

Rating System

- Ride rating (e.g., 1 to 5 stars)

Customer Support

- Legal/terms and conditions
- A place for Frequently Asked Questions (FAQs)
- In app requests for support
- Customer service system that creates trackable tickets for follow up and resolution
- Ability to mask phone number when contacting driver

Driver Application Requirements

- Automatic trip dispatching
- Dynamic routing capabilities to adjust vehicle allocation efficiently.
- Make phone calls to a rider via anonymized phone number
- Ability to launch turn-by-turn driving directions

Operations Dashboard Requirements

- Dashboards accessible to operations coordinators and authorized individuals by the City
- Dashboard displays real-time data on riders, vehicles, drivers and service performance/Key Performance Indicators (KPIs). Data available includes:
 - Ridership

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- Travel times
 - Trip denial rate
 - Booking abandonment rates
 - On-time performance
 - Trip and driver reviews
 - Trip and driver comments
- Ability to assign different user-level permissions and rights based on operator, seniority, or role.
 - The data gathered will be shared with / available to the operator or agency in multiple formats:
 - **Dashboards** to visualize rider, driver, and performance data, aggregated across a period or at an individual trip/driver level
 - **Weekly and monthly performance reports** provided in Excel, in a performance format to be mutually agreed upon
 - **Exports of the raw data** (rides, vehicles, times, locations etc.) in CSV format that can be further analyzed by the operator or agency staff if they desire

Software Security, Reliability & Privacy Requirements

- The passenger and driver apps are 'stateless' and do not store any confidential passenger data on the local device.
- All data is stored securely in the cloud (Amazon Web Services – 'AWS').
- The passenger and driver apps communicate securely with the cloud-based platform using RESTful APIs.
- RideCo's Platform Software has a 99.9%+ historical uptime performance record.
- Data is encrypted in transit using standard HTTPS, using an SSL wildcard certificate.
- All public facing webservers have been hardened using industry standard practices.
- Internal networks are shielded by AWS security groups which define allowable ports and IP addresses for internal services.
- APIs are all secured using token authentication using an identity management system. Tokens are only valid for one user and can only be acquired by successfully authenticating against our authentication API. APIs used by internal components are never exposed publicly. For certain API calls, throttling exists to prevent against DOS type attacks.
- Daily backups of production databases for disaster recovery.
- Software does not store any payment card or billing information on RideCo's servers.
- The mobile applications and operations dashboards include their own terms of service to end users that include provisions relating to data privacy, confidentiality, and intellectual property rights.

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SCHEDULE "E" INSURANCE REQUIREMENTS

Contractor or Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor or Consultant, its agents, representatives, employees or subcontractors.

Contractor or Consultant shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Contractor or Consultant shall furnish City with copies of original endorsements affecting coverage required by this "Schedule E". The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Contractor's or Consultant's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

Commercial General Liability (CGL): Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limit no less than \$5,000,000.00 combined single limit for bodily injury and property damage.

Professional Liability (Errors and Omissions): Insurance appropriate to the Contractor or Consultant's profession, with limit no less than \$1,000,000.00 per occurrence or claim, \$2,000,000.00 aggregate.

Workers' Compensation Insurance: Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor or Consultant provides written verification it has no employees)*

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain the following provisions:

Additional Insured Status and Primary/Non-Contributory Language: Contractor's general liability and automobile liability policies shall be primary and shall not seek contribution from the

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City's coverage and be endorsed to add the City and its officers, officials, employees, and agents as additional insureds under such policies using Insurance Services Office form CG 20 10 (or equivalent) on the general liability policy. For construction projects, an endorsement providing completed operations coverage for the additional insured on the general liability policy, ISO form CG 20 37 (or equivalent), is also required.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Notice of Cancellation, Suspension or Otherwise Voiding Policies: Each insurance policy required above shall contain or be endorsed to contain that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

Waiver of Subrogation: Contractor or Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor or Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Contractor or Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Contractor or Consultant, its employees, agents and subcontractors.

THE FOLLOWING PROVISIONS APPLY TO ALL AGREEMENTS

Deductibles and Self-Insured Retentions ("SIR"): Any deductibles or self-insured retentions must be declared to and approved by City. The City may require the Contractor or Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Contractor or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to City.

Claims Made Policies: (note - should be applicable only to professional liability, see

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below)

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor or Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Subcontractors: Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

Verification of Coverage: Contractor or Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor or Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances: City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Failure to Comply: Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

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Applicability of Coverage: Each insurance policy required above shall contain or be endorsed to contain that the Contractor's or Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.