

**THIRD AMENDMENT TO THE
PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN THE CITY OF RIALTO
AND
ALTA PLANNING + DESIGN**

1. PARTIES AND DATE.

This Third Amendment to the Professional Services Agreement ("Third Amendment") is made and entered into this *August 10, 2021*, by and between the City of Rialto ("City") and *Alta Planning + Design, Inc.* ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Third Amendment.

2. RECITALS.

2.1 Agreement. City and Consultant entered into that certain Professional Services Agreement dated *August 14, 2018*, ("Agreement"), whereby Consultant agreed to provide professional services to the City related to Professional Services to develop the City of Rialto Bike Share Feasibility Study for a total amount of \$105,097.

2.2 First Amendment. On January 28, 2020 the City and Consultant entered into the First Amendment to include additional tasks for the project, to extend the term of the Agreement, and to increase the total amount of compensation for the Agreement for a total amount of \$186,332.

2.3 Second Amendment. On June 8, 2021 the City and Consultant entered into the Second Amendment to include additional tasks for the project, to extend the term of the Agreement, and to increase the total amount of compensation for the Agreement for a total amount of \$236,197.

2.4 Third Amendment. The City and Consultant wish to enter into this Third Amendment to update the insurance requirements associated with the Agreement to ensure they satisfy the requirements of the Clean Mobility Voucher Program.

3. TERMS.

3.1 Insurance Requirements. Consultant agrees to comply with the Certificates of Insurance Requirements ("COI Requirements") required of the "Awardee" as set forth in Exhibit A, attached hereto and incorporated herein with the understanding that section 3. of this document regarding "specific coverage for Electric Bikes and Scooters" and section 5. "Non-Profit Organization with Volunteers Only" shall not be applicable, apply, or be required of Consultant and sections 1. Commercial General Liability and 2. Automobile Liability limits may be met with a combination of Excess or Umbrella Insurance. In the event that the provisions of the COI Requirements conflict with any provisions of the Agreement, the provisions of the COI requirements shall prevail. Any further amendments to the insurance provisions of the Agreement must be made in writing and executed by the Consultant and the City Manager.

3.2 Continuing Effect of Agreement. Except as amended by this Third Amendment, all provisions of the Agreement, as amended by the First and Second

Amendment, shall remain unchanged and in full force and effect. From and after the date of this Third Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by the First Amendment, the Second Amendment, and Third Amendment.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Third Amendment.

3.4 Counterparts. This Third Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

3.5 Conflict of Interest. Pursuant to Rialto Municipal Code section 2.48.145, Contractor represents that it has disclosed whether it or its officers or employees is related to any officer or employee of the City by blood or marriage within the third degree which would subject such officer or employee to the prohibition of California Government Sections 87100 et. seq., Fair Political Practices Commission Regulation Section 18702, or Government Code Section 1090. To this end, by approving this Agreement, Contractor attests under penalty of perjury, personally and on behalf of Contractor, as well its officers, representatives, that it/they have no relationship, as described above, or financial interests, as such term is defined in California Government Section 87100 et. seq., Fair Political Practices Commission Regulation Section 18702, or Government Code Section 1090, with any City of Rialto elected or appointed official or employee, except as specifically disclosed to the City in writing.

3.6 Corporate Authority. The persons executing this Third Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Third Amendment on behalf of said party, (iii) by so executing this Third Amendment, such party is formally bound to the provisions of this Third Amendment and (iv) the entering into this Third Amendment does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

EXHIBIT A

CERTIFICATES OF INSURANCE REQUIREMENTS 2020 MOBILITY PROJECT VOUCHER Clean Mobility Options Voucher Pilot Program

The Awardee must meet the following General Provisions and Insurance Requirements, as listed in both Section Z.1.n.i and Z.1.n.ii of the [Implementation Manual](#) (IM), as listed below:

INSURANCE REQUIREMENTS (Section Z.1.n.i of IM): Awardee (or Project Lead) must comply with all requirements outlined in the General Provisions and Insurance Requirements below. No payments will be made under the voucher agreement until the project lead fully complies with all insurance requirements. The project lead is responsible to submit the proof of insurance annually until the end of voucher agreement term.

i. General Provisions Applying to All Policies (for Mobility Project Voucher Awardees)

- 1. Coverage Term:** Coverage needs to be in force for the complete term of the voucher agreement. If insurance expires during the term of the voucher agreement, a new certificate must be received by the Program Administrator at least 30 days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the voucher agreement.
- 2. Policy Cancellation or Termination & Notice of Non-Renewal:** Awardee (or Project Lead) is responsible to notify the Program Administrator within 5 calendar days before the effective date of any cancellation, non-renewal, or material change that affects required insurance coverage. New certificates of insurance are subject to the approval of the Department of General Services and awardee agrees no work or services will be performed prior to obtaining such approval. In the event the awardee fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this voucher agreement immediately upon the occurrence of such event, subject to the provisions of the voucher agreement.
- 3. Premiums, Assessments and Deductibles:** Awardee (or Project Lead) is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
- 4. Primary Clause:** Any required insurance contained in this voucher agreement shall be primary, and not excess or contributory, to any other insurance carried by the Program Administrator and/or the State.
- 5. Insurance Carrier Required Rating:** All insurance companies must carry an AM Best rating of at least "A-" with a financial category rating of no lower than VI. If the awardee (or Project Lead) is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- 6. Endorsements:** Any required endorsements requested by the Program Administrator must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- 7. Inadequate Insurance –** Inadequate or lack of insurance does not negate the awardee's obligations under the voucher agreement.
- 8. Satisfying a Self-Insured Retention (SIR):** All insurance required by the voucher agreement must allow the State (CARB) or the Program Administrator to pay and/or act as the awardee's agent in satisfying any SIR. The choice to pay and/or act as the awardee's agent in satisfying any SIR is at the State's (CARB) discretion.
- 9. Available Coverages/Limits -** All coverage and limits available to the awardee shall also be available and applicable to the State and the Program Administrator as additional insureds.
- 10. Subcontractors:** In the case of awardee's or Project Lead's utilization of subcontractors to complete the contracted scope of work, awardee shall include all subcontractors as additional insured's under awardee's insurance or supply evidence of the subcontractor's insurance to the Program Administrator that is equal to policies, coverages and limits required of awardee.

EXHIBIT A

COI Requirements – Mobility Project Voucher

INSURANCE REQUIREMENTS FOR MOBILITY PROJECT VOUCHER AWARDEES (Section Z.1.n.ii of IM): Awardee (or Project Lead) shall display evidence of the following on a certificate of insurance. After the voucher is awarded, failure to provide the certificate upon request will result in the termination of the voucher agreement. The awardee must assure the project funded by the Program Administrator fully complies with all insurance requirements before starting the project. The following coverages must be evidenced on the certificate of insurance and all endorsements required must be attached:

1. Commercial General Liability:

- a. Awardee (or Project Lead) shall maintain general liability on an occurrence form with limits not less than \$5,000,000 per occurrence for bodily injury and property damage liability combined with a \$5,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent awardees, products, completed operations, personal & advertising injury, and liability assumed under an insured contract or grant. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to awardee's limit of liability. **The policy must name "the Program Administrator (CALSTART, Inc.), State of California and California Air Resources Board, its officers, agents, and employees as additional insured with respect to liability arising out of work or operations performed by or on behalf of the awardee including any electric bikes and scooters in connection with any such work or operations".**

2. Automobile Liability:

- a. Awardee (or Project Lead) shall maintain business automobile liability insurance as broad as Form CA0001 for limits not less than \$5,000,000 combined single limit. Such insurance shall cover liability arising out of any and all motor vehicles owned, hired or non-owned. "Any Auto" symbol 1 is required. **The policy must name "the Program Administrator (CALSTART, Inc.), State of California and California Air Resources Board, its officers, agents, and employees as additional insured with respect to liability arising out of work or operations performed by or on behalf of the awardee including any electric bikes and scooters in connection with any such work or operations".**
- b. By signing the voucher agreement, the awardee certifies that the awardee and any employees, subcontractors or servants possess valid automobile coverage in accordance with California Vehicle Code Sections 16450 to 16457, inclusive. The State reserves the right to request proof at any time.
- c. Auto Physical Damage: Awardee (or Project Lead) shall maintain auto physical damage and collision coverage with a deductible no higher than \$1,000; comprehensive, fire and theft insurance with a deductible no higher than \$1,000.

3. If applicable, in addition to the insurance requirements listed above, the awardee must supply specific coverage for **Electric Bikes and Scooters**, with a limit of at least \$5,000,000. Proof of coverage can be submitted in two ways:

- a. If coverage is from an Electric Bike and Scooter insurance carrier, only the certificate of insurance is required showing specific insurance for Electric Bikes and Scooters; **OR**,
- b. If coverage is endorsed to the General Liability policy, insurance company must supply a separate endorsement showing proof of Electric Bike and Scooter Coverage.
- c. Either policy must name **"the Program Administrator (CALSTART, Inc.), State of California and California Air Resources Board, its officers, agents, and employees as additional insured with respect to liability arising out of work or operations performed by or on behalf of the awardee including any electric bikes and scooters in connection with any such work or operations."**

4. Workers' Compensation and Employer's Liability: Awardee (or Project Lead) shall maintain statutory worker's compensation and employer's liability coverage for all its employees, students, interns and/or volunteers who will be engaged in the performance of the project. In addition, employer's liability limits of \$1,000,000 are required. **A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California must be attached to certificate.**

EXHIBIT A

COI Requirements – Mobility Project Voucher

5. **Non-Profit Organization with Volunteers Only (if applicable):** A Volunteer Accident Insurance Policy with a limit not less than \$1,000,000. The policy shall contain a waiver of subrogation in favor of the State of California, if such endorsement is available in the open market. Said policy shall be issued by an insurance company with a rating which is acceptable to the Department of General Services, Office of Risk and Insurance Management. The Program Administrator in Consultation with CARB reserves the right to review and adjust insurance requirements as necessary during the term of the voucher agreement.
6. **Cyber Liability coverage, with limits not less than \$1,000,000 per occurrence or claim.** Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by awardee in the voucher agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well.

Certificate Holder Name/Address to be listed on Certificate of Liability Insurance:

Calstart, Inc.
48 So. Chester Avenue
Pasadena, CA 91106