



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction

Metropolitan Planning Organization of Washoe County, Nevada

September 18, 2020

AGENDA ITEM 3.11

TO: Regional Transportation Commission

FROM: James Gee
Manager of Service Planning and
Innovation

Bill Thomas, AICP
Executive Director

SUBJECT: Recommendation for Award for the Provision of Microtransit Software for RTC FlexRIDE service

RECOMMENDATION

Approve the agreement with Spare Labs Inc. in an amount not-to-exceed \$99,000 to provide microtransit software services; authorize the RTC Executive Director to execute the agreement.

SUMMARY

The RTC issued a Request for Proposal (RFP) in July 2020. The RFP requested proposals for software to manage RTC’s FlexRIDE system which ends its pilot phase on November 2, 2020. The RFP submission deadline was August 5, 2020. Proposals were received by the RTC from six qualified firms

A three-person proposal evaluation team consisting of two RTC employees and one representative from MTM (operator of the current FlexRIDE system) reviewed and ranked the proposals. The proposals were evaluated based on the criteria set forth in the RFP:

- 40 points for project approach
- 30 points for pricing
- 20 points for past performance

The following is the result of the scoring process:

1. Spare Labs Inc. – 93.3 points
2. Via Mobility – 89.3 points
3. Routematch – 88.0 points
4. RideCo – 84 points
5. Transloc – 80 points
6. CityWay Transdev – 58 points

Staff is recommending award to Spare Labs, Inc. because they received the highest ranking based upon the evaluation criteria above. The amount of the agreement is not-to-exceed \$99,000 over two years. Actual cost will be dependent (and lower) based on the number of buses utilized.

FISCAL IMPACT

Funds for the microtransit software have been included in the FY 2021 RTC Board approved budget.

PREVIOUS BOARD ACTIONS:

July 19, 2019	Approval of Fall 2019 RTC Service Adjustment including implementation of a six-month microtransit demonstration project.
Feb 15, 2019	Acknowledged receipt of the report on the proposed Microtransit Pilot Project.

ADVISORY COMMITTEE(S) RECOMMENDATION

There are no advisory committee recommendations pertaining to this agenda item.

Attachments

AGREEMENT FOR GOODS AND SERVICES

MICROTRANSIT SOFTWARE SOLUTION

This agreement (this “Agreement”) is dated and effective as of September 25, 2020, by and between the Regional Transportation Commission of Washoe County, Nevada (“RTC”) and Spare Labs, Inc. (“Contractor”).

1. **Term.** The initial term of this Agreement shall begin on the date above and shall end on October 31, 2022.
2. **Scope of Work.** Contractor shall provide the goods and services described in the scope of work attached as Exhibit A. RTC shall determine the number of vehicles that will use the software.
3. **Time for Performance.** The software solution shall be fully implemented and ready to use by November 1, 2020 at the latest, subject to RTC providing timely and accurate responses to all requests for information and directions by Contractor.
4. **Compensation.** RTC shall pay Contractor monthly pursuant to the pricing and fee schedule attached as Exhibit B. The actual monthly cost will be depend on the actual number of vehicles that are using the software. RTC has determined that the software will initially be used on 8 vehicles, but may determine in its sole discretion that the software be used on fewer or more vehicles, subject to the usage not exceeding the total-not-exceed amount of the contract. The total-not-exceed amount of the contract is \$99,000.
5. **Proceeding with Work.** Contractor shall not proceed with work until both parties have executed this Agreement and RTC has issued a purchase order. No additional terms may be imposed under such purchase order. In Contractor proceeds with work before those conditions have been satisfied, Contractor shall forfeit any and all right to reimbursement and payment for work performed during that period. In the event Contractor violates this section, Contractor waives any and all claims and damages against RTC, its employees, agents, and affiliates, including but not limited to monetary damages, and any other remedy available at law or in equity arising under the terms of this Agreement.
6. **Invoices/Payment.** Contractor shall submit invoices to accountspayable@rtcwashoe.com. RTC’s payment terms are 30 days after the receipt of the invoice. Simple interest will be paid at the rate of half a percent (0.5%) per month on all invoices approved by RTC that are not paid within thirty (30) days of receipt of the invoice.
7. **Legal/Regulatory Compliance.**
 - a. Contractor shall comply with all applicable federal, state and local government laws, regulations and ordinances. Contractor shall be responsible for obtaining all necessary permits and licenses for performance of services under this Agreement. Upon request of RTC, Contractor shall furnish RTC certificates of compliance with all such laws, orders and regulations.

- b. Contractor represents and warrants that none of the services to be rendered pursuant to this Agreement constitute the performance of public work, as that term is defined by Section 338.010(17) of the Nevada Revised Statutes. To the extent Contractor does engage in such public work, Contractor shall be responsible for paying the prevailing wage as required by Chapter 338 of the Nevada Revised Statutes.

8. Insurance. Contractor shall obtain all types and amounts of insurance set forth in Exhibit C, and shall comply with all of its terms. Contractor shall not commence any work or permit any employee/agent to commence any work until satisfactory proof has been submitted to RTC that all insurance requirements have been met.

9. Indemnification. Contractor's obligations are set forth in Exhibit C. Said obligation would also extend to any liability of RTC resulting from any action to clear any lien and/or to recover for damage to RTC property arising from the gross negligence or willful misconduct of Contractor.

10. Termination.

- a. Mutual Assent. This Agreement may be terminated by mutual written agreement of the parties.
- b. Convenience. RTC may terminate this Agreement in whole or in part for convenience upon written notice to Contractor.
- c. Default. Either party may terminate this Agreement for default by providing written notice of termination, provided that the non-defaulting party must first provide written notice of default and give the defaulting party and opportunity to cure the default within a reasonable period of time.

11. Rights, Remedies and Disputes

- a. RTC shall have the following rights in the event that Contractor is guilty of a breach of any material term under the Agreement and fails to remedy such breach within 30 day's written notice of such breach:
 - i. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
 - ii. The right to cancel this Agreement as to any or all of the work yet to be performed;
 - iii. The right to specific performance, an injunction or any other appropriate equitable remedy; and
 - iv. The right to money damages.
- b. In as much as the Contractor can be adequately compensated by money damages for any breach of this Agreement, which may be committed by RTC, the Contractor expressly agrees that no default, act or omission of RTC shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Agreement (unless RTC directs Contractor to do so) or to suspend or abandon performance.

12. Confidentiality Obligations and Ownership Rights.

- a. Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Proprietary Information of Contractor includes non-public information regarding features, functionality and performance of the Contractor’s software platform (the “Service”). Proprietary Information of RTC includes non-public data provided by RTC to Contractor to enable the provision of the Services (“RTC Data”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.
- b. RTC shall own all right, title and interest in and to the RTC Data. Contractor shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.
- c. Notwithstanding anything to the contrary, Contractor shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning RTC Data and data derived therefrom), and Contractor will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Contractor offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.
- d. RTC will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Contractor or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels. With respect to any Software that is distributed or provided to RTC for use on RTC premises or devices, Contractor hereby grants RTC a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services.

- e. RTC represents, covenants, and warrants that RTC will use the Services only in compliance with all applicable laws and regulations. RTC hereby agrees to indemnify and hold harmless Contractor against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from RTC's use of Services. Although Contractor has no obligation to monitor RTC's use of the Services, Contractor may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.
- f. **RTC Responsibilities.** The successful operation of the Service is dependent on RTC use of proper procedures and systems and input of correct data. RTC agrees that it shall have the sole responsibility for inputting, protecting and backing up their original data used in connection with the Service. The RTC is responsible for providing Spare Labs with the necessary information to appropriately integrate with the system and deliver all portions of the contract. RTC is solely responsible for the accuracy and adequacy of the information and data that it furnishes to Spare Labs for use with the service and Spare Labs is not responsible for reductions in Service quality due to RTC action or inaction.
- g. RTC shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). RTC shall also be responsible for maintaining the security of the Equipment, RTC account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of RTC account or the Equipment with or without RTC's knowledge or consent.
- h. RTC shall comply with all applicable local, state, provincial, federal and foreign laws in using the Service.
- i. RTC is solely responsible for (i) providing terms of service in respect of use of the Service by RTC's end users (which shall be an agreement solely between RTC and such end user); and (ii) obtaining the requisite permission from end users for the use, storage and processing of their personal information by Contractor through the provision of the Services.

13. Records. Contractor will permit RTC access to any books, documents, papers and records of Contractor pertaining to this Agreement, and shall maintain such records for a period of not less than three years.

14. Exhibits. The exhibits to this Agreement, and any additional terms and conditions specified therein, are a material part hereof and are incorporated by reference as though fully set forth herein.

15. Exclusive Agreement. This Agreement constitutes the entire agreement of the parties and supersedes any prior verbal or written statements or agreements between the parties.

16. Amendment. No alteration, amendment or modification of this Agreement shall be effective unless it is in writing and signed by both parties.

17. Limitation of Liability. Notwithstanding anything to the contrary in this Agreement, except for bodily injury of a person, contractor and its suppliers (including but not limited to all equipment and technology suppliers), officers, affiliates, representatives, contractors and employees shall not be responsible or liable with respect to any subject matter of this Agreement or terms and conditions related thereto under any contract, negligence, strict liability or other theory: (a) for error or interruption of use or for loss or inaccuracy or corruption of data or cost of procurement of substitute goods, services or technology or loss of business; (b) for any indirect, exemplary, incidental, special or consequential damages; (c) for any matter beyond company's reasonable control; or (d) for any amounts that, together with amounts associated with all other claims, exceed the fees paid by RTC to contractor for the services under this Agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not contractor has been advised of the possibility of such damages.

18. No Assignment. Contractor shall not assign, sublease, or transfer this Agreement or any interest therein, directly or indirectly by operation of law, without the prior written consent of RTC. Any attempt to do so without the prior written consent of RTC shall be null and void, and any assignee, sublessee, or transferee shall acquire no right or interest by reason thereof.

19. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Nevada.

20. Venue. Any lawsuit brought to enforce this Agreement shall be brought in the Second Judicial District Court of the State of Nevada, County of Washoe appropriate court in the State of Nevada.

21. Attorneys' Fees. In the event of a dispute between the parties result in a proceeding in any Court of Nevada having jurisdiction, the prevailing party shall be entitled to an award of costs and any reasonable attorneys' fees.

REGIONAL TRANSPORTATION COMMISSION
OF WASHOE COUNTY

BY: _____
Bill Thomas, AICP, Executive Director

SPARE LABS, INC.

BY: _____
Kristoffer Vik Hansen, CEO

EXHIBIT A
SCOPE OF WORK

Contractor will provide a microtransit software as a service solution for RTC's FlexRIDE services to satisfy the requirements in RTC's Request for Proposal (RFP) RTC 20-20 ("Microtransit Software Solution").

Contractor will provide all of the goods and services described in Contractor's proposal dated August 5, 2020 ("Microtransit Software Solution for RTC Washoe County")(the "Proposal"), in material compliance with all of the representations, terms, and promises contained therein.

Summary of Deliverables

Contractor will provide the software, training, infrastructure, and other associated items to ensure the transition from the current TransLoc software to Contractor's microtransit platform in accordance with the Proposal. The services to be provided include:

1. **System Software** as a Service platform– an instance of Spare's Software as a Service platform will be configured and hosted to service for RTC's microtransit program in accordance with the Proposal, subject to the fee limitations set out in Exhibit B. This software will be based upon the Spare Platform and include Spare Products, Spare Launch, and Spare Analyze. Required components of this software suite include:
 - a. The ability to create and modify service areas and locations for microtransit service
 - b. The ability to assign vehicles to service zones
 - c. The ability to assign times of services
 - d. Day to day management capabilities of microtransit service
 - e. Reporting capabilities including but not limited to National Transit Database data. Reporting capabilities will include the ability to create custom reports and download data as needed.
 - f. Passenger interfaces for booking trips including telephone, internet, IOS application, and Android application.
 - g. Passenger interface for managing trips including tracking of vehicles and ETA for pickup.
 - h. Driver interface for receiving directions, managing trips, and accepting walk-ons for service utilizing RTC owned tablets installed on FlexRIDE vehicles.

2. **Implementation** – Contract will work with RTC to develop a complete implementation plan for the configuration and rollout of the microtransit software instance in accordance with the Proposal. This implementation plan will be approved by RTC prior to the start of the project. Required components of the implementation plan include:
 - a. Deployment strategy – An overview of the deployment process will be included in the implementation plan including a complete list of deliverables by Contractor

and a list of any expectations for RTC staff. The deployment strategy should present a holistic process for the successful start-up of the microtransit service which ensures the transition from the current TransLoc software.

- b. Training strategy – An outline of the training process and strategy will be included in the implementation plan. The training components shall include
 - 1. Administrative Training
 - 2. Driver Training
 - 3. Dispatcher Training
 - 4. Passenger Materials
 - c. Marketing strategy – Contractor and RTC will work together to develop a marketing and branding strategy to promote the service to existing and potential customers.
3. **Support** – Contractor will provide ongoing support through the implementation process and throughout the term of the contract. Support features shall include:
- a. Weekly project calls during the transition process
 - b. 24/7 dedicated technical customer support (phone, email, and chat) during launch and throughout the term of the agreement.
 - c. Continuous software upgrades as they are developed and rolled out to other customers.

Schedule

The existing microtransit software agreement with TransLoc expires on November 2, 2020. It is expected that RTC's Board of Commissioners will award this contract on September 18, 2020. Contractor and RTC will work cooperatively to develop a schedule, which finalizes an implementation date to occur sometime in October 2020.

Project Coordination

The contractor and RTC will work cooperatively to ensure the timely success of this project. RTC will provide a project manager to act as the dedicated single point of contact to coordinate efforts internally within RTC and externally with Contractor.

EXHIBIT B
COMPENSATION PLAN

First Year

Item Description	Price Per Month	Price Per Year	Total Cost
Cost per Vehicle (Vehicles 1 thru 8)	\$260.42	\$3,125.00	\$25,000
Cost per Additional Vehicle (Vehicles 9-12)	\$291.67	\$3,500.00	\$14,000
App and Technical Support Cost	\$875.00	\$10,500.00	\$10,500.00
Total Not-to-Exceed Cost			49,500.00

Second Year

Item Description	Price Per Month	Price Per Year	Total Cost
Cost per Vehicle (Vehicles 1 thru 8)	\$260.42	3,125.00	\$25,000
Cost per Additional Vehicle (Vehicles 9-12)	\$291.67	\$3,500.00	\$14,000
pp and Technical Support Cost	\$875.00	\$10,500.00	\$10,500.00
Total Not-to-Exceed Cost			\$49,500.00

Payment Terms:

RTC will pay Contractor monthly. The total cost per vehicle will be based on the actual number of vehicles in service with the software that month.

Optional Items

Contractor shall not initiate any optional fees unless written pre-approval have been provided by RTC, following any necessary amendment to the Agreement in terms of the Not-to-Exceed Cost.

Item Description	Fee
Annual license of Spare Platform driver arriving phone call notification feature.	US\$0 per month for first year. US\$420 per month after first year.
Cost per trip request for non-dedicated vehicle service	\$1.87 per trip for the first 5,000 trips per month, \$1.46 per trip for the next 10,000 trips, and \$1.06 per trip for any trips beyond this.
Bespoke customization projects	\$150 per hour
Automated calls (if driver arriving phone call notifications are enabled for Customer) and transactional text messages (SMS) and). See https://www.twilio.com/pricing for pricing	Pass Through Cost of Twilio + 10% admin fee

EXHIBIT C

INDEMNIFICATION AND INSURANCE REQUIREMENTS FOR SOFTWARE SERVICE AGREEMENTS

1. INTRODUCTION

IT IS HIGHLY RECOMMENDED THAT CONTRACTORS CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE THE AVAILABILITY OF THESE INSURANCE CERTIFICATES AND ENDORSEMENTS IN ADVANCE OF PROPOSAL SUBMISSION. IF THERE ARE ANY QUESTIONS REGARDING THESE INSURANCE REQUIREMENTS, IT IS RECOMMENDED THAT THE AGENT/BROKER CONTACT RTC'S FINANCE DIRECTOR AT (775) 335-1845.

2. INDEMNIFICATION

CONTRACTOR agrees to defend, save and hold harmless and fully indemnify RTC including its elected officials, officers, employees, and agents (hereafter, "Indemnitees") from and against any and all claims, proceedings, actions, liability and damages, including attorneys' fees and defense costs incurred in any action or proceeding (collectively "Damages") arising out of:

- A. Any breach of duty, neglect, error, misstatement, misleading statement or omission committed in the conduct of CONTRACTOR'S profession, work or services rendered by (i) CONTRACTOR, its employees, agents, officers, or directors, (ii) subcontractors (hereafter, "Subs"), or (iii) anyone else for which CONTRACTOR may be legally responsible; and
- B. The negligent acts of CONTRACTOR, its employees, agents, officers, directors, Subs, or anyone else for which CONTRACTOR is legally responsible; and
- C. The infringement of any patent or copyright resulting from the use by the Indemnitees of any equipment, part, component or other deliverable (including software) supplied by CONTRACTOR under or as a result of this Agreement, but excluding any infringement resulting from the modification or alteration by the Indemnitees of any equipment, part, component, or other deliverable (including software) except as consented to by CONTRACTOR.

The Damages shall include, but are not limited to, those resulting from personal injury to any person, including bodily injury, sickness, disease or death and injury to real property or personal property, tangible or intangible, and the loss of use of any of that property, whether or not it is physically injured.

If the Indemnitees are involved in defending actions, CONTRACTOR shall reimburse the Indemnitees for the time spent by such personnel at the rate the Indemnitees pay for such services.

If an Indemnitee is found to be liable in the proceeding, then CONTRACTOR'S obligation hereunder shall be limited to the proportional share of the liability attributed to CONTRACTOR.

In determining whether a claim is subject to indemnification, the incident underlying the claim shall determine the nature of the claim.

In the event of a violation or an infringement under paragraph 2.C above and the use is enjoined, CONTRACTOR, at its sole expense, shall either (1) secure for the Indemnitees the right to continue using the materials by suspension of any injunction or by procuring a license or licenses for the Indemnitees; or (2) modify the materials so that they become non-infringing. This covenant shall survive the termination of this Agreement.

3. GENERAL REQUIREMENTS

Prior to the start of any work on a RTC project, CONTRACTOR shall purchase and maintain insurance of the types and limits as described herein insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR, its Subs, or their employees, agents, or representatives. The cost of all such insurance shall be borne by CONTRACTOR.

4. VERIFICATION OF COVERAGE

CONTRACTOR shall furnish RTC with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein, on forms acceptable to RTC. All deductibles and self-insured retentions shall be shown on the certificate. All certificates and endorsements are to be addressed to RTC's Finance Director and be received by RTC before work commences. The CONTRACTOR agrees that RTC has the right to inspect CONTRACTOR'S and the Sub's insurance policies, or certified copies of the policies, upon request. Copies of applicable policy forms or endorsements confirming required additional insured, waiver of subrogation and notice of cancellation provisions are required to be provided with any certificate(s) evidencing the required coverage.

5. NOTICE OF CANCELLATION

CONTRACTOR or its insurers shall provide at least thirty (30) days' prior written notice to RTC prior to the cancellation or non-renewal of any insurance required under this Agreement. An exception may be included to provide at least ten (10) days' written notice if cancellation is due to non-payment of premium. CONTRACTOR shall be responsible to provide prior written notice to RTC as soon as practicable upon receipt of any notice of cancellation, non-renewal, reduction in required limits or other material change in the insurance required under this Agreement.

6. SUBCONTRACTORS & SUBCONSULTORS

CONTRACTOR shall include all Subcontractors and Subconsultants (referred to collectively as "Subs") as insureds under its liability policies OR shall cause Subs employed by CONTRACTOR to purchase and maintain separate liability coverages and limits of the types specified herein. If any Subs maintain separate liability coverages and limits, each shall include the RTC an additional insureds under its commercial general liability policy, subject to the same requirements stated herein, without requiring a written contract or agreement between each of the additional insureds and any sub-consultant or sub-contractor. Any separate coverage limits of liability maintained by

Subs shall be at least **\$1,000,000** per occurrence and at least **\$2,000,000** for any applicable coverage aggregates or the amount customarily carried by the Sub, whichever is GREATER. If any Subs provide their own insurance with limits less than required of the Contractor, Contractor shall include Subs in their coverage up to the full limits required of the Contractor. When requested by RTC, CONTRACTOR shall furnish copies of certificates of insurance evidencing coverage for each Sub.

7. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions that exceed \$25,000 per occurrence or claim must be declared to RTC's Finance Director prior to signing this Agreement. RTC is entitled to request and receive additional documentation, financial or otherwise, prior to giving its approval of the deductibles and self-insured retentions. Any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy must be declared to the RTC's Finance Director prior to the change taking effect.

8. ACCEPTABILITY OF INSURERS

Required insurance is to be placed with insurers with a Best's rating of no less than A-VII and acceptable to RTC. RTC may accept coverage with carriers having lower Best's ratings upon review of financial information concerning CONTRACTOR and the insurance carrier. RTC reserves the right to require that CONTRACTOR'S insurer(s) be licensed and admitted in the State of Nevada or meet any applicable state and federal laws and regulations for non-admitted insurance placements.

9. OTHER CONDITIONS

- A. Failure to furnish the required certificate(s) or failure to maintain the required insurance may result in termination of this Agreement at RTC's option.
- B. If CONTRACTOR fails to furnish the required certificate or fails to maintain the required insurance as set forth herein, RTC shall have the right, but not the obligation, to purchase said insurance at CONTRACTOR's expense.
- C. Any waiver of CONTRACTOR's obligation to furnish such certificate or maintain such insurance must be in writing and signed by an authorized representative of RTC. Failure of RTC to demand such certificate or other evidence of full compliance with these insurance requirements or failure of RTC to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONTRACTOR's obligation to maintain such insurance, or as a waiver as to the enforcement of any of these provisions at a later date.
- D. By requiring insurance herein, RTC does not represent that coverage and limits will necessarily be adequate to protect CONTRACTOR, and such coverage and limits shall not be deemed as a limitation on CONTRACTOR's liability under the indemnities granted to RTC in this contract.

- E. If CONTRACTOR'S liability policies do not contain the standard ISO separation of insureds condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

10. COMMERCIAL GENERAL LIABILITY

CONTRACTOR shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than **\$1,000,000** each occurrence. If such CGL insurance contains a general aggregate limit, it shall be increased to equal twice the required occurrence limit or revised to apply separately to this project.

CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

RTC and any other Indemnitees listed in Section 2. INDEMNIFICATION of this Agreement shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 07/04 or CG 20 33 07/04 or a substitute providing equivalent coverage, and under the commercial umbrella, if any.

This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to RTC or any other Indemnitees under this Agreement.

CONTRACTOR waives all rights against RTC and any other Indemnitees listed in Section 2. INDEMNIFICATION of this Agreement for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement. CONTRACTOR's insurer shall endorse CGL policy to waive subrogation against RTC with respect to any loss paid under the policy.

11. NETWORK SECURITY AND PRIVACY LIABILITY

If CONTRACTOR will have access to RTC computer or network systems for any reason and/or data including personal information (as defined in NRS 603A.040) or confidential information, CONTRACTOR shall maintain network security and privacy liability insurance insuring against loss resulting from (1) privacy breaches [liability arising from the loss or disclosure of confidential information] (2) system breach (3) denial or loss of service (4) introduction, implantation, or spread of malicious software code (5) unauthorized access to or use of computer systems and (6) system failure. Coverage shall be provided with a limit of not less than **\$1,000,000** per claim and annual aggregate.