

PROGRAM AGREEMENT ENDORSEMENT

THIS AGREEMENT (the "Agreement") entered into by and between Old Republic General Insurance Corporation, Chicago, IL (herein, the "Company"), and City of San Mateo, San Mateo, CA (herein, the "Insured") on TBD (the "Effective Date").

WITNESSETH:

WHEREAS, the Insured has requested the Company to issue to it for its benefit and others as reflected in the Named Insured endorsement, effective TBD, certain insurance Policies covering the Insured's operations;

WHEREAS, the Company has agreed to do so on the terms and conditions set forth below, as well as those in the insurance Policies it issues to the Insured.

NOW THEREFORE, in consideration of the premises and the mutual promises herein set forth, and intending legally to be bound, the parties agree as follows:

1. Insured and Its Subsidiaries

This Agreement is entered into by the Insured for its own benefit, and is a binding obligation of the Insured and any Named Insured under the Policy.

2. Application and Effective Date

This Agreement and Schedules A and B attached hereto, which are a part of this Agreement, apply to each of the insurance coverages described in Section 3 below as of the effective date(s) of such insurance coverages as shown on Schedule A and will continue in full force and effect until terminated in accordance with the provisions of Section 16 hereof, and the applicable insurance laws governing such insurance coverage.

3. The Insurance Coverages

The Company will issue to the Insured, the Company's Policies as shown on Schedule A. Coverage will be provided under each Policy with the retentions and/or deductibles that are set forth in Schedule A attached hereto. Any renewals shall be set forth on an Addendum to Schedules A, and B.

4. Definitions

As used in this Agreement"

- (a) "Allocated Loss Adjustment Expenses" are as defined in the applicable endorsement and/or Policy.

- b) "Claim Service Company" means the Claims Administrator designated or approved by the Company.
- (c) "Incurred Losses" means all amounts the Company pays or estimates it will pay for claims and Allocated Loss Adjustment Expenses under each Policy for which the Insured is responsible to reimburse the Company pursuant to the terms of the deductible endorsement(s) attached to each Policy.
- (d) "Insured's Retention" means the amounts of Loss and Allocated Loss Adjustment Expense which are retained by the Insured, as indicated on Schedule A for each Policy, respectively.
- (e) "Loss" or "Losses" means any claim or claims to the extent covered by any one of the Policies. "Loss" or "Losses", for purposes of any other type of claim covered under this Agreement besides workers' compensation, shall also include any extra-contractual, punitive or exemplary damages liability which may be imposed with respect to each Policy.
- (f) "Loss Conversion Factor" means the factor applied to Losses to compensate the Company for Unallocated Loss Adjustment Expenses. If this is a Paid Loss program, they will be applied to Paid Losses for billing and payment, and incurred losses and incurred but not reported losses ("IBNR") for purposes of establishing security levels. Incurred programs will have the Loss Conversion Factor applied to developed losses.
- (g) "Obligation" or "Obligations" means any and all amounts the Insured is or will be required to pay under the terms and conditions of each Policy and this Agreement. The Insured's Obligations include, but are not limited to, Losses, Allocated Loss Adjustment Expenses, Unallocated Loss Adjustment Expenses, premiums, surcharges and assessments under each Policy and any and all indemnification, defense, or hold harmless expenses due or becoming due to the Company under this Agreement.
- (h) "Occurrence" means the event or events for which there is insurance coverage under the terms and conditions of one or more of each Policy.
- (i) "Paid Losses" mean the amounts paid as benefits or damages, or Allocated Loss Adjustment Expenses arising under the Policies. Paid Losses shall be limited, however, not to exceed the amounts specified as payable to the Company in the applicable retrospective premium endorsement or deductible endorsement.
- (j) "Policy" means each insurance policy set forth on Schedule A. For purposes of the Agreement, "Policy" shall also include any renewal of the aforesaid Policy and any policy issued by the Company in substitution of the Policy. The Company shall provide this service for the Policy, and subsequent policies which are subject to a deductible endorsement (the amount set for therein is sometimes referred to as the "Deductible").
- (k) "Unallocated Loss Adjustment Expenses" means salaries, overhead and other costs related to the claim adjustment process that are not specifically allocated to the expense incurred for a particular claim, including but not limited to any claims administration fees paid or payable in accordance with Section 11 below.

5. Payments by the Insured

- 5.1 The premium for each Policy will be subject to adjustment based upon the Company's rights of audit under the terms of each respective Policy,
- 5.2 The Insured agrees to fund and pay for Paid Losses in accordance with Section 6 herein below.
- 5.3 The Insured agrees to be responsible for Unallocated Loss Adjustment Expenses in accordance with the fee schedule, Loss Conversion Factor or other method as outlined in the attached Schedules

6. Funding for Paid Losses

- 6.1 The Company will bill the Insured for Paid Losses within the deductible and Unallocated Loss Adjustment Expenses on a monthly basis. Payment is due within thirty (30) days of billing. If collateral is in the form of depleting cash, Paid Losses will be automatically transferred within thirty (30) days.

6.2 Loss Deposit Fund

- (a) The Company requires a deposit payment to establish a loss deposit fund pending the periodic reimbursements from the Insured. The loss deposit fund, or what remains, is returned to the Insured upon termination of the Paid Loss program. The initial funding is as outlined in Schedule B.
- (b) The loss deposit fund will be assessed by the Company from time to time to determine the minimum amount required. If the minimum amount required to be on deposit as reasonably determined by the Company is greater than the current balance in the fund at any time, the Insured shall pay on demand into the fund an amount necessary to bring the fund to the required level. If the Company determines the minimum amount required to be on deposit in the fund is less than the then current balance on deposit, then the Company will return the difference to the Insured.
- (c) If collateral is in the form of depleting cash, loss deposit funds will be automatically transferred within thirty (30) days of determination
- (d) In the event the Company makes, or is scheduled to make; a payment for a Paid Loss equal to or in excess of fifty 50% percent of the amount initially deposited in the loss deposit fund or is] equal or greater than \$50,000 the Insured, notwithstanding the availability of funds on deposit, shall immediately upon receipt of notice pay the Company for the amount of the Paid Loss If collateral is in the form of depleting cash, loss deposit funds will be automatically transferred.
- (e) The Insured grants to the Company the right to offset any balance(s) due from the Insured to the Company under the terms of this Agreement, any subsequent

or preceding agreement relating to this subject matter or any of the Policies (including any preceding or subsequent policies issued to the Insured by the Company). For the purposes of this Section 6, the Company or the Insured shall include each of their respective affiliates.

7. Allocated Loss Adjustment Expenses

Each Policy for which Schedule A specifies that the Insured's Retention includes both Loss and Allocated Loss Adjustment Expenses, the Insured shall be responsible for all Allocated Loss Adjustment Expenses incurred with respect to each Loss, up to but not exceeding the amount of the Insured's Retention

8. Aggregate Coverage

An aggregate limit may apply to Paid Losses by the Insured, which shall never be reduced because of a reduction in exposure unless a Policy to which this aggregate limit applies is cancelled by the Company, in which case the limit shall be pro-rated. If the Company conducts a premium audit and determines that the Insured's payroll has increased, the aggregate limit shall increase in proportion to the increase in payroll. The aggregate rate is outlined in Schedule B attached hereto.

9. Security

9.1 As security for all of the Insured's Obligations, the Insured must provide to the Company one or more clean, unconditional, irrevocable Letter(s) of Credit establishing credit in favor of the Company, or other security acceptable to the Company. Such Letter(s) of Credit, must be issued by a bank(s) which is a member of the Federal Reserve system and is acceptable to the Company. The form of the Letter(s) of Credit must be as shown in Appendix A

If posting a Letter of Credit, each such Letter of Credit must be issued for a term of at least twelve (12) months and shall be, by its terms, subject to an unlimited number of automatic renewals thereafter for additional terms of at least twelve (12) months, unless the issuer bank advises the Company in writing, at least sixty (60) days prior to the next expiration date, of its intention not to have the Letter(s) of Credit renewed. In that case, the Insured must furnish the Company with a replacement Letter(s) of Credit issued to the Company by an acceptable bank(s), or other security as may be acceptable to the Company, establishing credit or security in an amount equal to the credit under the Letter(s) of Credit being replaced, within not less than [ten (10) business days before the expiry date. The requirement for such security will remain in place until all of the Insured's current and future Obligations have been indefeasibly paid or otherwise concluded in a manner satisfactory to the Company.

9.2 The amount of the initial required security is outlined in Schedule A. At such times as the Company deems it appropriate or necessary, but at least annually, and until all liability

with respect to the Insured's Obligations has been paid or otherwise concluded, the Company shall, applying generally accepted actuarial and credit review principles, review the security requirement. The Company shall have the sole right to determine the adequacy of the amount of security to be held. The sum of all of the Insured's Obligations which have been paid by the Insured or satisfied by sums drawn by the Company under the Letter(s) of Credit or other acceptable security held by the Company shall be subtracted to arrive at the required security. If the resulting security requirements exceed the amount of remaining credit available to the Company under the Letter(s) of Credit or other acceptable security as of the calculation date, then the Insured must provide the Company with additional acceptable security equal to such excess within fifteen (15) days of the Insured's receipt of notice of the increased security requirement. If the required security is less than the remaining credit available to the Company under the Letter(s) of Credit or other acceptable security, then the amount of such remaining credit will be reduced by the amount of such difference, and the Company will execute any document necessary in order to reduce the amount of such credits in accordance with this Section 9.

- 9.3 The Company or its successors in interest may draw upon any Letter of Credit, trust or other security at any time and from time to time, and such funds shall be applied without diminution because of the insolvency of the Insured or the Company for one or more of the following purposes only:
- (a) to reimburse the Company for the Insured's share of Losses, Allocated Loss Adjustment Expenses and Unallocated Loss Adjustment Expenses paid by the Company;
 - (b) to fund an account with the Company for the full amount secured under this Agreement in the event the Insured has failed to replace timely any expiring Letter of Credit as required by Section hereof or to adjust timely the amount secured hereunder as required by Section 9.2 hereof, and such failure would result in a deficiency in the total security provided by the Insured;
 - (c) to fund an account with the Company for the full amount secured in the event of the filing of a voluntary or involuntary petition in bankruptcy by the Insured, the insolvency of the Insured, the admission in writing by the Insured of its inability to pay its debts as they become due, or a general assignment by the Insured of its assets for the benefit of creditors;
 - (d) to pay any other amounts the Company claims are due to it under each Policy or this Agreement.

In the event the Company draws upon a Letter of Credit or other security pursuant to items (b), (c) or (d) above, the Company will be free to hold the proceeds thereof, without liability for interest thereon, until the Insured has fully remedied the circumstances for which the draw was made, whereupon the Company shall promptly return the proceeds held by it, less portions allocable to amounts due it under item (a) above, upon receipt of written instructions from the Insured, signed by a duly authorized officer of the Insured, indicating to whom such return is to be made. The Company shall have no obligation or liability to remit to the Insured

any investment income thereupon.

10. Claims Administration

10.1 Claims arising under Policies issued by the Company shall be administered by a third party claims administrator designated and approved by the Company.

11. Breach of Obligations

If the Insured fails to pay or otherwise perform in a timely manner any Obligation due the Company hereunder or under a Policy at any time during the term of this Agreement, and if such failure continues for at least ten (10) business days following the Insured's receipt of written notice of such failure, the Company shall, at its sole discretion have the option of cancelling that Policy due to nonperformance or nonpayment in accordance with the provisions of that Policy subject to applicable law and, pursuant to Section 9.3 hereinabove, have the option of drawing on the Letter(s) of Credit, or other security furnished to it under this Agreement in payment of the Obligations due from the Insured, but shall be under no obligation to do so. Alternatively, the Company may terminate the financing related to the Insured's insurance coverages by converting the applicable Policy(ies) to a guaranteed cost rating plan using the Company's filed and approved rates in effect as of the Policy(ies) effective date, and the entire amount of standard premium thereunder shall be immediately due.

12. Renewal Option

The Company is under no obligation, and unless otherwise agreed to in writing, the Company shall not be under any obligation in the future; to renew any of the coverages under each Policy or to offer renewal of the coverages under the same terms and conditions following the expiration of any Policy. If the Company elects not to renew and/or to cancel coverage, it will furnish to the Insured notice of its intent not to renew and/or cancel consistent with the terms and conditions of each Policy and in accordance with applicable law.

13. Joint Obligations

The Obligations set forth in this Agreement are Obligations of the Insured and its insured subsidiaries and affiliates jointly and severally: While the Company agrees to look primarily to the Insured for all such Obligations, its recourse is not limited to the Insured, and the Company has the right at all times to hold any or all of the Named Insureds liable for any Obligations due it. The Insured hereby expressly represents and warrants that it is

authorized to enter into this Agreement on behalf of, and to bind, its Named Insureds to this Section 14 and all of the other terms and conditions hereof, and stipulates that the foregoing representation and warranty is material and has been specifically relied upon by the Company in entering into this Agreement and agreeing to issue each Policy under this Agreement.

14. Financial Statements, Access to Records

- 14.1 Annually while this Agreement remains in force, the Insured will make available to the Company copies of audited financial statements of the Insured and its insured subsidiaries and affiliates. In the event the Insured ceases to be a reporting company required to file such reports, it will provide the Company with copies of quarterly financial statements certified by its chief financial officer and annual financial statements certified by independent auditors within sixty (60) days after the end of each calendar quarter and within one hundred-twenty (120) days after the end of each calendar year while this Agreement remains in effect.
- 14.2 At all times while this Agreement remains in effect, the Company will have full and free access to the books and records of the Insured, its subsidiaries and affiliates insured under each Policy, and those of the third party claims administrator(s) described above, as respects information pertaining to the subject coverages. Such access will be limited, however, to normal business hours and shall be afforded only at reasonable intervals and upon reasonable prior written notice.

15. Term and Termination

- 15.1 This Agreement shall remain in full force and effect until all of the Insured's Obligations have been indefeasibly paid in full or otherwise satisfactorily concluded and will survive the expiration as well as any cancellation of each Policy.
- 15.2 Notwithstanding Section 15.1 above, this Agreement shall terminate:
- (a) by mutual written consent;
 - (b) when the Company notifies the Insured that the Insured's Obligations have been fully and indefeasibly discharged;
 - (c) if there is a material change in the Insured's ownership or any change in the policyholder's business or operations that materially increases the hazard for frequency or severity of loss, or requires additional or different classifications for premium calculations; however, the Insured shall still be liable for all Obligations under this Agreement incurred up to the date of termination.

17. Entire Agreement, Amendment

This Agreement, together with each Policy issued hereunder, represents the entire agreement between the parties with respect to the subject matter hereof. This Agreement may only be changed by written amendment signed by duly authorized officers of the respective parties. No other changes will be binding or enforceable.

18. Governing Law

This Agreement will be governed in all respects by the laws of the State of California, unless the law of another state is required by the Policy, applicable law or regulation.

19. Notices

All notices or other communications required hereunder will be in writing, sent by registered mail to:

OLD REPUBLIC GENERAL INSURANCE CORP.

225 South Lake Ave., Suite 225

Pasadena, CA 91101

Attn: Christine Kruse, Chief Underwriting Officer

CITY OF SAN MATEO

330 W 20th Ave

San Mateo, CA 94403

or such other addresses as may be designated in the same manner from time to time.

20. No Waiver

The failure on any occasion by either party to enforce the terms of this Agreement will not be deemed or construed as a waiver of that party's right to enforce those or any other terms of this Agreement on any other occasion.

21. Construction

The terms and conditions of this Agreement will be liberally construed so as to give the fullest possible effect to the intentions of the parties

22. Severability

If any term or provision of this Agreement is in violation of the law of any state, such term or provision shall be void in the jurisdiction(s) where it is unlawful. The remainder of this Agreement shall remain binding on the parties so that the terms of this Agreement are binding only to the extent lawful under applicable laws. If any provision of this Agreement is determined by a court of law to be unenforceable, the parties hereto agree, and it is their desire, that the court shall modify such provision to the extent necessary to be deemed enforceable by such court. As so modified, the provision shall be binding upon the parties as if originally set forth herein.

23. Assignment

Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.

24. Remedies

The rights and remedies granted to the parties hereunder will be in addition to, and not in lieu of, any rights or remedies they may otherwise have.

25. Successors

The terms and conditions of this Agreement are binding upon and will inure to the benefit of the successors and assigns of the parties hereto.

26. Execution

This Agreement may be executed in counterparts, with signature pages exchanged by any commercially reasonable means, including by facsimile or electronic mail. necessary to be deemed enforceable by such court. As so modified, the provision shall be binding upon the parties as if originally set forth herein.

23. Assignment

Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.

24. Remedies

The rights and remedies granted to the parties hereunder will be in addition to, and not in lieu of, any rights or remedies they may otherwise have.

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The terms and conditions of this Agreement are binding upon and will inure to the benefit of the successors and assigns of the parties hereto.

26. Execution

This Agreement may be executed in counterparts, with signature pages exchanged by any commercially reasonable means, including by facsimile or electronic mail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

ATTEST:

**OLD REPUBLIC GENERAL
INSURANCE CORP**

BY: Christine Kruse, Chief Underwriting Officer

TITLE: _____ Authorized Representative

DATE: _____

ATTEST:

CITY OF SAN MATEO

for itself and on behalf of its insured
subsidiaries and affiliates

BY: _____

TITLE: _____

DATE: _____

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No;
Insurance Company

Endorsement No;