

Attachment D



2525 Alluvial, Suite 281
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Phone: 559.266.6222
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**PROFESSIONAL SERVICES AGREEMENT
BETWEEN SIGALA INCORPORATED AND CALVANS**

This Professional Services Agreement is made and entered into this ___ day of [MONTH], 2019 ("Effective Date") by and between SIGALA, INCORPORATED ("Sigala") and CALVANS ("CalVans") for implementation of the Ecosystem of Shared Mobility in the San Joaquin Valley | Valley GO Project ("Project"), as described herein, and pursuant to the terms and conditions of this Agreement (hereinafter "Agreement").

RECITALS:

The San Joaquin Valley Unified Air Pollution Control District ("District") has been awarded grant funds from the California Air Resources Board ("CARB") to implement a car sharing and mobility options pilot project, identified above, under Grant Agreement G16-LDPL-02 (attached as Exhibit A); and

Sigala has agreed to perform for the District certain components of the Project under Agreement No. G-66662 (Attached as Exhibit B); and

Sigala is responsible under Agreement No. G-66662 for a variety of obligations including arranging for and supplying the professional services and related Project deliverables, including the services to be provided under this Agreement; and

Sigala wishes to contract with qualified professional service providers to provide such services as described herein.

IT IS AGREED:

1. Pursuant to the terms and conditions of this Agreement, and in consideration of the covenants and agreements contained herein, CalVans promises and agrees with Sigala, at CalVans' own proper cost and expense, to perform the services as described in Appendix A. Scope of Work.
2. This Agreement is entered into for the purpose of implementing Agreement No. G-66662 between the District and Sigala, and the Grant Agreement G16-LDPL-02 between CARB and the District, and shall conform to the requirements of those agreements.
3. Term: This Agreement shall commence on the Effective Date and terminate upon the earlier of (a) completion of services in the Scope of Work; or (b) termination pursuant to this Agreement; or (c) March 31, 2020.
4. Budget: The anticipated budget for all services provided under this Agreement is described in Appendix B. Budget. It is CalVans' responsibility to track the cost of



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providing these services and proactively report on significant discrepancies between the actual cost of these services and the anticipated budget described in Appendix B.

5. **Payment:** Sigala shall reimburse CalVans for allowable expenditures incurred in performing this Agreement and for services satisfactorily rendered in accordance with this Agreement.
6. **Invoicing:** CalVans shall submit invoices directly to Sigala. Sigala may deny payment if the invoice or any supporting documentation is erroneous or incomplete or if the payment is deemed ineligible by the District and/or CARB. In addition, pursuant to Agreement G-66662, payment may be denied if there is an illegal or improper use of funds; or a failure to comply with this Agreement or Agreement G-66662 or Grant Agreement G16-LDPL-02; or if performance under this Agreement fails to meet the performance standard in this Agreement.
7. **Progress Reports:** CalVans shall keep Sigala fully informed of progress in performing under this Agreement and provide written reports as requested by Sigala, the District, and/or CARB.
8. **Insurance:** CalVans will be required to accept and comply with the insurance provisions pursuant to the Grant Agreement G16-LDPL-02, set forth in Appendix C. General Insurance Provisions and in Appendix D. Insurance Requirements.
9. **Independent Contractor:** In performance of the work, duties, and obligations assumed by CalVans under this Agreement, it is mutually understood and agreed that CalVans, including any and all of CalVans' officers, agents, and employees, will at all times be acting and performing as an independent contractor and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of Sigala, the District, and/or CARB. Furthermore, Sigala, the District, and/or CARB shall have no right to control or supervise or direct the manner or method by which CalVans shall perform its work and function. However, Sigala shall retain the right to administer this Agreement so as to verify that CalVans is performing its obligations in accordance with the terms and conditions thereof. CalVans shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof. CalVans shall be solely liable and responsible for providing to, or on behalf of, itself all legally required employee benefits. In addition, CalVans shall be solely responsible and save Sigala harmless from all matters relating to payment of CalVans' employees, including compliance with social security, withholding, and all other regulations governing such matters.
10. **Assignment and subcontracting:** CalVans may not assign this Agreement without the written consent of Sigala. CalVans may not subcontract any obligations under this Agreement to another party without identifying the subcontractor and obtaining the prior



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the written consent of Sigala.

11. Non-Discrimination: During the performance of this Agreement, CalVans and its management or subcontractors, if any, shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. CalVans and its management or subcontractors, if any, shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. CalVans and its management or subcontractors, if any, shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. CalVans and its management or subcontractors, if any, shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. CalVans shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
12. Conflict of interest: CalVans, by entering into this Agreement, affirms that neither the owner nor management personnel employed by CalCans has any direct or indirect personal financial interest or other matter constituting a conflict of interest in performing this Agreement and will avoid any such financial interests or conflicts of interests during the term of this Agreement. Should any such conflict arise, CalVans will immediately notify and consult with Sigala to identify a remedy.
13. Compliance with laws: CalVans shall comply with all applicable federal and State laws, rules, guidelines, regulations and requirements, in performing under this Agreement.
14. Standard of Performance: CalVans shall perform professional services under this Agreement in a manner satisfactory to Sigala, the District, and/or CARB and meeting generally accepted standards for the profession.
15. Default: Any failure to meet the Standard of Performance, or to correct unsatisfactory work that requires correction, or otherwise commit a material breach shall constitute a default of this Agreement.
16. Governing law: This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Venue for any action arising out of this Agreement shall only be in Fresno County, California.



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17. Dispute Resolution: The Parties shall endeavor to resolve any disputes under this Agreement first by informal discussion and exchange of documents. If the dispute cannot be resolved after 30 days of such discussion, the Parties may agree to proceed to mediation or arbitration. Nothing in this Agreement is intended to limit any legal rights or remedies held by either Party.

18. Termination:

a. For Cause: Sigala may suspend or terminate this Agreement in whole or in part where, in the determination of Sigala, the District and/or CARB, if there is:

- i. An illegal or improper use of funds; or
- ii. CalVans has failed to comply with any terms of this Agreement, Agreement No. G-66662, or Grant Agreement G16-LDPL-02; or
- iii. CalVans has improperly performed a required service and/or provided a defective product.

If Sigala, the District and/or CARB makes a determination that one or more of the aforementioned events has occurred which would constitute a breach of agreement, Sigala may take any action or remedy, including termination of this Agreement. Sigala must first notify CalVans in writing and provide CalVans with a thirty (30) day period to cure the breach. If, after thirty (30) days, CalVans has not cured the breach, Sigala may then provide thirty (30) days written notice of its intent to suspend or terminate this Agreement.

b. Without cause: This Agreement may be terminated if the governmental funds intended for this Project are not allocated. Either party may terminate this Agreement for any reason upon 30 days written notice to the other.

19. Damages: If the Agreement is terminated, Sigala may find a replacement service provider in order to assure the timely performance of the work under this Agreement. CalVans shall cooperate in transitioning the work to such a replacement, including transferring all files and any work product to Sigala for use by the replacement service provider.

20. Force majeure: Failure to perform under this Agreement may be excused by an event of force majeure. An event of force majeure is an event or circumstance that is beyond the control and without the fault or negligence of the party affected. The excuse of performance shall last only as long as the force majeure exists, and the parties shall communicate to the extent possible regarding the failure and resumption of performance.



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21. Confidentiality: CalVans shall not disclose any document it receives related to this Agreement that is labeled "confidential" without prior approval of Sigala, except pursuant to court order. If CalVans deems it necessary, documents may be submitted to Sigala labeled "confidential" and Sigala agrees to afford these documents the same confidentiality treatment. If needed for purposes of complying with Agreement No. G-66662 and Grant Agreement G16-LDPL-02, Sigala will give notice to CalVans that the requested confidentiality treatment may not be maintained.
22. By operation of the Grant Agreement G16-LDPL-02, all information, data, documents and intellectual property under this Agreement are the property of CARB, and, except in furtherance of this Agreement, no information, data, documents, or intellectual property received or generated under this Agreement shall be released without CARB's approval.
23. Records retention: CalVans shall retain all records related to this Agreement and its performance thereunder, and data for activities performed under this Agreement, including financial and service performance records, progress reports, and payment requests, for a minimum of three (3) years after the final payment has been received or three (3) years after the end of the term or until all state audits are completed for that fiscal year, whichever is later.
24. False Claim: CalVans is advised that providing false, fictitious, or misleading information with respect to the receipt and disbursement of CARB and/or District grant funds may result in criminal, civil, or administrative fines and/or penalties. CalVans and its management or subcontractors, if any, must promptly refer to Sigala, to the Office of the Inspector General and to the District any credible evidence that a principal, employee, agent, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds used for payment under this Agreement.
25. Audit: CalVans shall at any time during regular business hours, and as often as Sigala, the District and/or CARB may deem necessary, make available to Sigala, the District and/or CARB for examination, all of its records and data with respect to the matters covered in this Agreement. CalVans shall, upon request by Sigala, the District and/or CARB, permit Sigala, the District and/or CARB to audit and inspect all such records and data necessary to ensure CalVans' compliance with the terms of this Agreement. If deemed necessary, CalVans shall be subject to an audit by Sigala, the District and/or CARB or their authorized representative to determine if the funding and revenues received by CalVans were utilized as provided by law and this Agreement. If, after audit, Sigala, the District and/or CARB makes a determination that funds provided to CalVans pursuant to this Agreement were not spent in conformance with this Agreement or any other applicable provisions of law, CalVans agrees to immediately reimburse Sigala all funds determined to have been expended not in conformance with said provisions. Upon



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written request from Sigala, the District and/or CARB, CalVans shall provide detailed documentation of all expenses and labor reports at any time throughout the project. In addition, CalVans agrees to allow Sigala, the District and/or CARB or their designated representative, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project during the term of this Agreement and for a period of three (3) years after the end of the term, unless Sigala notifies CalVans, prior to the expiration of such three-year period, that a longer period of record retention is necessary. Further, CalVans agrees to incorporate an audit of this Agreement within any scheduled audits, when specifically requested by the State. CalVans agrees to include a similar right to audit in any subcontract. CalVans shall be subject to the examination and audit of the auditor general for a period of three (3) years after final payment under contract (Government Code § 8546.7).

26. No third party beneficiary: Notwithstanding anything else stated to the contrary herein, it is understood that CalVans' services and activities under this Agreement are being rendered only for its own benefit, and no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement.
27. Waiver of rights: Waiver by Sigala of any particular default by CalVans shall not affect or impair Sigala's rights in respect to any subsequent default of the same or a different nature.
28. Indemnification: CalVans shall defend, indemnify and hold harmless of Sigala, the District, and CARB, and their boards, committees, representatives, officers, agents, and employees from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CalVans, its officers, agents or employees.
29. Severability: In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Agreement, and the Agreement shall then be construed as if such unenforceable provisions are not a part hereof.
30. Notices: Any and all notices between Sigala and CalVans provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States mail, postage prepaid, addressed to such party.
31. Amendment: This Agreement including appendices may be amended only by a writing signed by both parties. Any amendments must be signed and dated by both parties, and



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attached to this Agreement.

- 32. Entire Agreement: This Agreement constitutes the entire agreement between Sigala and CalVans with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writing, advertisements, publications and understandings of any nature whatsoever unless expressly included in this Agreement. No oral understanding or agreement not incorporated into this Agreement is binding on either party. Any conflict between this Agreement and any other document, including the Memorandum of Understanding (attached as Exhibit C), shall be resolved in favor of this Agreement.
- 33. The Parties warrant that the persons signing this Agreement on their behalf are fully authorized to enter into this Agreement on behalf of the Party to this Agreement.

Approved and agreed by:

Sigala Incorporated
2525 Alluvial Ave, #281
Clovis, CA 93611

CalVans
1340 North Drive
Hanford, CA 93230

Michael Sigala, Principal

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Appendix A. Scope of Work

CalVans' scope of work includes services related to advancing the *Valley GO* component of the Ecosystem of Shared Mobility in the San Joaquin Valley Project, by implementing an electric vehicle car-sharing program (hereinafter "Valley GO Program") in Kern and Tulare counties.

Under this Agreement, CalVans shall perform the following:

1. Host the Valley GO Program fleet and provide limited operational support to the carsharing program
2. Lease up to twenty-four (24) electric vehicle fleet from SHE for the duration of this Agreement
3. Provide a fleet technician (30 hrs/wk) to support SHE on-site staff with supplement fleet management, including monitoring, repairs and preventative maintenance, including:
 - a. Passive monitoring of Valley GO Program fleet (by way of management platform)
 - b. Accident/incident response in support of MDO
 - c. Management of towing services 24/7
 - d. Management of emergency recharging
 - e. Supplemental support to on-site SHE staff for plugging in vehicles (expected to very rarely invoice a call from MDO to CalVans when SHE is not available)

Should additional resources be identified, with sufficient demand for fleet services, this position may be expanded to a full time position.

4. As determined appropriate by Implementation Partners, bind fleet insurance to cover operation of the leased vehicles by authorized users. CalVans may, at reasonable cost, provide business automobile liability insurance limits above and beyond the requirements of this Agreement up to \$5,000,000.
5. Provide support to MDO in mitigating program risk by:
 - a. Reviewing drivers' licenses upon their application to the program to ensure they meet the following criteria before being approved:
 - i. Being at least 21 years of age. At CalVans' discretion, members between 21 and 25 years of age may be accepted on a case-by-case basis; and
 - ii. No DUI or Reckless Driving citations in previous 5 years; and
 - iii. 2 Points or less on Driving Record.
 - b. Providing active monitoring of approved drivers
 - c. Supporting active monitoring of vehicle usage with tools provided by MDO
6. Leverage existing CalVans networks to provide cross-over memberships where possible
 - a. Provide promotional support to the Valley GO program



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- b. Assist with future development of Valley GO network and partnerships

Furthermore, CalVans—in collaboration with “Implementation Partners”, individually: Sigala Inc (Sigala), Mobility Development Operations (MDO), Self-Help Enterprises (SHE), and UC Davis Institute of Transportation Studies (UC Davis)—shall perform in the following activities:

7. Select a twenty-four (24) electric vehicle fleet mix
8. Procure Fleet insurance, weighing proposals based on factors including:
 - a. Premium
 - b. Coverage limits
 - c. Inclusion of ridesharing/ride-hailing components
9. Review launch plans, operating parameters, and marketing collateral
10. Participate in weekly joint management meetings
11. Recommend program modifications
12. Manage accounts payable
13. Coordinate business development efforts
14. Develop and implement marketing and outreach strategy



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Appendix B. Budget

The anticipated budget for Project related expenses provided under this Agreement is described in the table below:

Cost Item	Estimated Costs	Funding Source
Insurance - \$315/car/month (\$5M liability coverage)	\$63,000	CARB Grant Funds
Fleet Technician @ \$24/hr (FT) (13 months, incl. fringe and overhead)	\$55,000	KernCOG / TCAG
Administrative Support / Management (13 months, 10hrs/wk @ \$45/hr)	\$25,000	KernCOG / TCAG
Maint / repairs (13 months)	\$9,000	CARB Grant Funds
DL monitoring ~\$200/month (pro-rated as a portion of CalVans monitoring package with Samba Safety)	\$2,500	CARB Grant Funds
Roadside assistance / towing (13 months)	\$2,000	CARB Grant Funds
Contingency (5%)	\$7,500	CARB Grant Funds
Total Estimated Costs	\$164,000	

Sigala recognizes that these projected costs are estimates, based on the current understanding of the Project scope. Given this, Sigala further recognizes that these costs may change between the identified tasks during the implementation of the Project. Any changes to these costs and/or tasks necessary for the implementation of the Project must be approved in advance by Sigala in writing.



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Appendix C. General Insurance Provisions

CalVans will be required to accept and comply with the following general insurance provisions pursuant to the Grant Agreement G16-LDPL-02:

1. **Coverage Term:** Coverage needs to be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by Sigala at least ten days prior to the expiration of this insurance documenting coverage as required herein.
2. **Policy Cancellation or Termination & Notice of Non-Renewal:** CalVans is responsible to notify Sigala within five business days 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 CalVans agrees no work or services will be performed prior to obtaining such approval. In the event CalVans fails to keep in effect at all times the specified insurance coverage, the Sigala may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
3. **Premiums, Assessments and Deductibles:** CalVans is responsible for any premiums, policy assessments, deductibles or self-insured retentions contained within their insurance program.
4. **Primary Clause:** Any insurance required by this Agreement shall be primary, and not excess or contributory, to any other insurance carried by 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 CalVans 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 State 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 CalVans' obligations under this Agreement.
8. **Satisfying an SIR:** All insurance required by this contract must allow Sigala to pay and/or act as CalVans' agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as CalVans' agent in satisfying any SIR is at Sigala's discretion.



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9. Available Coverages/Limits: All coverage and limits available to CalVans shall also be available and applicable to Sigala.
10. Use of Subcontractor: In the case of CalVans' utilization of subcontractors to complete the Agreement "Scope of Work", CalVans shall include all subcontractors as insured under CalVans' insurance or supply evidence of Subcontractor's insurance equal to policies, coverages, and limits required of CalVans.

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Appendix D. Insurance Requirements

CalVans must display evidence of the following on a certificate of insurance evidencing the following coverages:

1. **Commercial General Liability:** CalVans shall maintain general liability on an occurrence form with limits not less than \$2,000,000 per occurrence for bodily injury and property damage liability. CalVans shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. A "per project aggregate" endorsement is required. The policy shall include coverage for liabilities arising out of premises, operations, 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 CalVans' limit of liability.
2. **Automobile Liability:** CalVans shall maintain business automobile liability insurance as broad as Form CA0001 for limits not less than \$1,000,000 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.
3. **Workers Compensation and Employers Liability:** CalVans shall maintain statutory workers compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. In addition, employer's liability limits of \$1,000,000 are required. If applicable, CalVans shall provide coverage for all its employees for any injuries or claims under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations, or statutes applicable to maritime employees. By signing this Agreement, CalVans acknowledges compliance with these regulations. **A waiver of Subrogation or Right to Recover endorsement in favor of the State of California must be attached to certificate.**
4. **All policies must name SIGALA INCORPORATED, its officers, agents, and employees as additional insured, but only with respect to work performed under the Agreement.**



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Attachments

[Exhibit A - Grant Agreement G16-LDPL-02]

[Exhibit B - Agreement No. G-66662]

[Exhibit C - Memorandum of Understanding for Launch of Carsharing Services in Kern & Tulare Counties]

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