



CITY OF CARSON

Legislation Text

File #: 2020-215, Version: 1

Report to Mayor and City Council

Tuesday, April 07, 2020

Discussion

SUBJECT:

CONSIDER APPROVAL OF SHORT-TERM AGREEMENT WITH LYFT, INC., FOR LYFT RIDE SERVICES TO PROVIDE ACCESS TO ESSENTIAL SERVICES DURING COVID-19 EMERGENCY FOR RESIDENTS ENTERING A CODE (CITY COUNCIL)

I. SUMMARY

In an effort to assist Carson residents with transportation during the COVID-19 pandemic, Staff received the approval of the Disaster Council on March 26, 2020 to move forward with an emergency three (3) month agreement with Lyft, Inc. (Lyft). Further changes have been negotiated with Lyft since the time of the Disaster Council approval, and the final agreement is now presented for the City Council's approval. Should the City Council approve the agreement, Staff will announce the availability of the services through the Public Information Office, Social Media, and the City's website.

II. RECOMMENDATION

1. APPROVE the attached Short-Term Agreement with Lyft, Inc. allowing residents to use a code to qualify for a subsidy ("Agreement") (Exhibit 1).
2. AUTHORIZE the Mayor to execute the Agreement, following approval as to form by the City Attorney.

III. ALTERNATIVES

TAKE another action the City Council deems appropriate.

IV. BACKGROUND

In response to the outbreak of the Coronavirus Disease 2019 (COVID-19), the Disaster Council temporarily suspended its fixed-route bus services, including the Carson Circuit, effective March 28, 2020, in an effort to protect the health of the public and specifically to slow the community spread of COVID-19.

Dial-A-Ride and Access services will remain in operation and will be unaffected by the suspension. The Dial-A-Ride program is available to eligible residents who have completed the application process and who are 60 years of age or older, or have disabilities such as ambulatory, vision or hearing impairments. Each trip is being limited to one eligible participant and their caretaker to minimize community spread of the COVID-19 virus.

At the direction of the City Manager, staff has worked with Lyft on an emergency three (3) month agreement to provide on-demand ride services to City resident participants age 18 years of age or older, provided that the rides must begin and end within the boundaries of the City of Carson. This would provide participants with safe and timely access to essential services such as grocery stores, pharmacies, food banks, and more.

On March 26, 2020, the Disaster Council provided further direction to staff on qualifying rides being those rides that start and end in Carson, and approved of staff proceeding to finalize the agreement with Lyft. The final draft agreement is now presented for the City Council's approval.

Under the proposed agreement, Lyft will provide the City with a promotional code for participants to enter into the Lyft app. By entering this code, participants would get 50% off the cost of their ride and the City, through grant funds, would cover the remaining balance, up to a maximum subsidy of \$10. The promotional code will only apply the discount for rides that start AND end within the boundaries of the City. Residents will be eligible for twenty (20) rides per person that will be made available on a monthly basis for three (3) months.

Legal Issues

The Agreement was entered into on an emergency basis using Lyft's form contract with very little time for legal review and negotiations. As such, not all provisions of the Agreement conform to the City Attorney's normal contract standards. However, the City Attorney was able to negotiate several changes to help mitigate the legal risk to the City in launching this program. Most issues have been satisfactorily resolved; however, some issues remain, including without limitation the following key issues requiring Council consideration:

ADA Compliance. The vehicles used by Lyft to provide rides are the personal vehicles of the drivers providing the rides, and as such are not necessarily accessible for individuals with disabilities. There is a question as to whether federal ADA regulations requiring ADA-accessibility of public transportation apply to this program. The ADA Regulations provide that where a public entity enters into a contract with a private entity to operate a demand responsive service, the public entity shall ensure that the private entity meets the requirements of the ADA regulations that would apply to the public entity if the public entity itself had provided the service. A public entity is subject to ADA regulations when it provides "designated public transportation," which means, "transportation provided by a public entity . . . by bus, rail, or other conveyance . . . that provides the general public with general or special service . . . on a regular and

continuing basis.” The law is not entirely clear as to what this means and whether it applies to require ADA compliance with respect to the program at issue. However, there is a reasonable argument that because this contract is a short-term emergency contract, it can be said that services are not being provided on a “regular and continuing basis,” and thus do not constitute “designated public transportation” that would trigger applicability of the ADA regulations. Further, Lyft asserts that it is not performing transportation services for the general public under the Agreement, and therefore it is not subject to the ADA regulations. The Agreement contains acknowledgments of the parties in accordance with the foregoing. Finally, as noted above, the City provides ADA-accessible public transportation options that can be used as a co-extensive alternative to this program (e.g., the Dial-a-Ride program).

Indemnification. The City Attorney was able to negotiate mutual indemnification, whereby each party indemnifies the other from third party claims related to the indemnifying party’s breach of the Agreement or failure to comply with applicable law in the performance of the Agreement. Absent this provision, indemnification would have been one-sided in favor of Lyft pursuant to Lyft’s Business Terms of Service (which apply in the absence of an express provision to the contrary in the Agreement). This provision helps to shield the City from potential liabilities of Lyft related to non-compliance with state and federal law, including liabilities related to treatment of its drivers as independent contractors rather than employees.

Insurance. Lyft refused City’s request to add a requirement that Lyft name City as an additional insured on the insurance policies Lyft is required to maintain pursuant to the Agreement, which include commercial general liability insurance, workers compensation insurance, and commercial automobile liability insurance. This means City will not be listed as a named insured on these Lyft policies. The City has its own self-insurance coverage in these areas, and would have to rely on this insurance to cover any claims that may be raised directly against City, rather than being covered by Lyft’s insurance policies with respect to these claims.

Timing for Payment of Invoices. City contracts normally provide that although City will make best efforts to pay invoices within 45 days of receiving them, City cannot guarantee payment within this time frame due to City warrant run procedures. Lyft refused to agree to this provision, and the Agreement instead provides that payment shall be made within 30 days from City’s receipt of the invoice. The result is that if City fails to make a payment within the specified timeframe, it could trigger a right of Lyft to terminate the agreement and/or pursue remedies for breach. Lyft has verbally assured City staff that it does not ordinarily pursue such remedies for late payments, but such assurances are not legally binding.

Limitation of Liability and Disclaimer of Warranties. The Agreement provides that neither party shall be liable for any indirect, punitive or consequential damages, including

damages for loss or interruption of business. Recoverable damages are instead limited to direct provable damages, and are capped at \$250,000. These provisions restrict the City's potential recovery from Lyft of any damages it may suffer related to the Agreement. Additionally, Lyft's Business Terms of Service contain a disclaimer of all warranties not expressly made in the Agreement, including that the Lyft platform will function without interruption or be error-free. These provisions, while not in the City's best interest, are consistent with industry standard in software-as-a-service contracts such as this.

Waiver of Jury Trial. Lyft's Business Terms of Service provide that each party waives the right to a jury trial in any dispute arising out of or related to the Agreement. City requested removal of this provision, but Lyft refused, meaning any trial in such a dispute would be a bench trial (judge only).

Venue. Lyft's Business Terms of Service provide that in the event of a lawsuit arising between the parties related to the agreement, San Francisco County shall be the venue for the court proceedings. The City generally requires venue to be in Los Angeles County. Lyft rejected City's request to change venue to Los Angeles. The result is that the venue for any such legal proceedings would be the courts located in San Francisco County.

Commencement Date; Funding

Should the City Council approve the recommendation, services will be available commencing as of April 20, 2020, and continuing through June 30, 2020, when the grants terminate. Funding for this emergency agreement will come from two sources, the Air Quality Management District (AQMD) and the Los Angeles County Metropolitan Transportation Authority (Metro). There will be no fiscal impact to the City's General Fund.

V. FISCAL IMPACT

Should the City Council approve the proposed agreement, funds have been budgeted in the Fiscal Year 2019-2020 and appropriated in the accounts below. The grant funds are only available through the remainder of this fiscal year.

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| 1. \$200,000 from Prop C account: | 219-90-940-180-6004 |
| 2. \$100,000 from AB2766 account: | 225-90-830-075-6004 |

VI. EXHIBITS

1. Lyft Short-Term Codes Agreement (Agreement for Emergency Ride Services) (pages 5-10).

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