



## PUBLIC WORKS DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: July 20, 2021

#### Subject

Consideration of Approval of a Contract Amendment with Nomad Transit, LLC (Via) to 1) Extend Via-Cupertino Shuttle Pilot Program by Extending the Contract Time; 2) Update Contract Language Due to California Assembly Bill (AB) 5 and Proposition 22; and 3) to Increase Driver Compensation.

#### Recommended Action

Adopt a Contract Amendment with Nomad Transit, LLC (Via) (Attachment A) Extending the Contract End Date from August 20, 2021 to October 31, 2022, Including Revisions to Contract Language Pursuant to AB 5 and Proposition 22, and to Increase Driver Compensation.

#### Discussion

The Via-Cupertino Community Shuttle launched on October 29, 2019, in response to growing community concern over traffic congestion and a desire to employ a sustainable transportation solution in Cupertino. The service features small vans that provide on-demand transit anywhere within Cupertino, also connecting to the Sunnyvale Caltrain station and Kaiser Permanente Santa Clara. Additional program information is available on the City website, [www.cupertino.org/shuttle](http://www.cupertino.org/shuttle). The budget allocation for this program was made on June 18, 2019, and the agreement with Via was approved by City Council on August 20, 2019. Service was suspended on August 24, 2020 due to the COVID-19 pandemic and approval of this contract amendment will enable the service to resume on September 1, 2021. The existing contract will expire on August 20, 2021.

#### Background

After the shuttle launch, ridership grew steadily due to outreach efforts. As word-of-mouth spread, ridership reached nearly 4,000 monthly trips. The utilization rate, which indicates the number of shared rides, also grew steadily reaching a monthly average of 2.5 by February 2020. A survey conducted in early March 2020 before the pandemic indicated a high level of satisfaction with the service. A year later, in March 2021, a rider survey showed that 88 percent of respondents would use Via-Cupertino when service resumes.

After the Santa Clara County Health Department issued a stay-at-home order on March 13, 2020, Via-Cupertino ridership decreased significantly. Despite the sudden drop in ridership, some riders continued to use the service and the trip data suggested those trips were to essential services such as grocery stores. A reduced service, with fewer vans and shorter hours of operation was maintained through August 2020. After this time, and due to increasingly restrictive health orders, very few trips were taken, and the program was suspended. Per the terms of the suspension agreement, monthly payments of \$3,125 were made to Via during the suspension period for non-operation. These payments covered non-operational and administrative program costs (vehicle holding fees, data fees, and other ancillary costs). In exchange for these fees Via will allow the program to be restarted without additional launch fees.

### Contract Amendment

This contract amendment includes updated language regarding AB 5 and Proposition 22, it extends the length of the contract, and increases driver compensation.

AB 5 is a law that became effective January 1, 2020 that requires that most wage-earning workers be classified as employees, and not independent contractors. Proposition 22 was approved by voters in November 2020 and grants an exception to app-based Transportation Network Companies (TNC's) from this provision. Via has confirmed that its operations in Cupertino will qualify for the exemption, as operational, scheduling, and technical changes have been made to comply with AB 5 and Proposition 22. Via has agreed to indemnify the City from any potential liabilities regarding compliance with the provisions of AB 5 and Proposition 22. Complying with AB 5 and Proposition 22 has led to some cost increases, however less funds were expended during COVID due to the suspended service and the previously allocated budget will cover these additional costs through the remainder of the pilot program.

The amended contract will expire on October 31, 2022. Expiration on this date adds time for when the service was suspended plus an additional two months. The purpose of the added two months is to allow time for the preparation of a Request for Proposals (RFP) if Council decides to make the program permanent.

Driver pay will be raised \$3 per hour to be more competitive given the nationwide labor shortage. All drivers are independent contractors.

### Re-launch

Re-launch planning is currently underway, with marketing materials being prepared, design work on the vehicle wrap (exterior graphics on the vans), and updates to the Via-Cupertino app. Upon execution of the contract amendment, vehicles will be ordered from Avis (Via's vehicle partner) and service is scheduled to resume on September 1, 2021.

The service will launch with eight vans to avoid previous capacity issues and long wait times which occurred in February and early March 2020 due to the popularity of the program. There is no additional cost to the City to launch with more vans, as Via only schedules driver shifts based on demand. Previously, fewer vans were used at launch and ordering additional vans proved to be a lengthy process.

### Rates & Hours of Operation

At launch the service will operate Monday to Friday, 7am – 7pm, and Saturday from 9am-5pm. Fares will be \$4 per trip and \$2 for discounted fares (senior, low-income, disabled, and student). This is two hours per-day less than the original hours of operation. This change will help offset rising labor costs and will better match changing travel patterns.

### Vehicles

The vehicles used will no longer be Mercedes Metris, as many riders disliked the high step into the vans. Instead, Dodge Caravans and Chrysler Pacificas will be used in the service. The new vans will feature refreshed graphics. All vans except for the wheelchair accessible vans will feature bike racks. Cyclists will be able to reserve a rack space using the app.

### Next Steps

The Via-Cupertino shuttle will operate until October 31, 2022. Staff will return to Council by June 2022 to report on the progress of the pilot program. A community survey will be conducted by this time to receive community feedback. With this information, staff anticipates making a recommendation to Council to authorize an RFP process to solicit bids for a permanent on-demand transit service by the end of summer 2022. Pending this authorization and a successful RFP, a permanent shuttle program could be in place by November 1, 2022.

### Sustainability Impact

On-demand transit and shared rides have the potential to convert trips that would have otherwise been made in single-occupancy vehicles. This has the potential to reduce local congestion and Vehicle Miles Traveled (VMT) by offering shared rides anywhere in Cupertino and by connecting to the Sunnyvale Caltrain station. These connections enable more Cupertino residents and visitors to use the growing regional rail network. Reducing VMT has a corresponding reduction in greenhouse gas (GHG,) and helps further goals outlined in the City's Climate Action Plan. Additionally, by including bicycle racks on vans, the system helps cyclists by providing a backup during inclement weather, or when making difficult connections where there are gaps in the bicycle network.

### Fiscal Impact

No fiscal impact. Of the approved \$1.75 million allocated to the Via-Cupertino shuttle, \$561,137.76 has been spent to date. Passenger fares are credited from each Via invoice, which totals \$20,270.52 to date.

The increase in driver pay will result in an estimated \$163,346.20 increase in cost. The remaining budget of \$1,188,862.24 is sufficient to cover this increase and is expected to be fully expended through the performance of the agreement by the end of the amended contract date of October 31, 2022.

The City was awarded a grant from the Bay Area Air Quality District's (BAAQMD) Pilot Trip Reduction Program, however as the grant is narrowly tied to Sunnyvale Caltrain trips, with reduced commuting tied to the COVID-19 pandemic, it is unlikely to generate significant revenue through the end of the pilot program. Transportation staff continues to research alternative funding sources to support the program.

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Reviewed by: Roger Lee, Director of Public Works; David Stillman, Transportation Manager

Approved for Submission by: Dianne Thompson, Acting City Manager

Attachments:

A – Draft Contract Amendment

B – Ridership Heat Map