

**AMENDMENT NO. 1**  
**to the**  
**PROFESSIONAL/CONSULTING SERVICES AGREEMENT**  
**between the**  
**CITY OF CUPERTINO**  
**and**  
**NOMAD TRANSIT LLC**  
**July 20, 2021**

This Amendment No. 1 to the Professional/Consulting Services Agreement between the City of Cupertino ("the City") and NoMad Transit LLC ("Contractor"), hereinafter the "Parties," dated August 20, 2019 (the "Existing Contract"), is made and entered into this 20th day of July, 2021. Except as expressly amended herein, the Existing Contract is in full force and effect.

**RECITALS**

**WHEREAS**, the City and Contractor entered into the Existing Contract, effective as of August 20, 2019 for the Cupertino On-Demand Shuttle Pilot Program ("Shuttle Program");

**WHEREAS**, the City and Contractor entered into a Temporary Covid-19 Suspension Service Order to pause operations of the Shuttle Program, effective August 23, 2020, due to the continued public health emergency associated with the Covid-19 pandemic;

**WHEREAS**, in light of the current state of the public health emergency associated with the Covid-19 pandemic, the Parties have determined that the Temporary Covid-19 Suspension Service Order should terminate on September 1, 2021 and the Shuttle Program will resume operations on that date ("Relaunch");

**WHEREAS**, the Contractor has informed the City that it intends to ensure that the Shuttle Program will come within and comply fully with California law, including as modified by Proposition 22;

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by Parties hereto to amend the Existing Contract as set forth below.

**1. TIME OF PERFORMANCE (Section 3):**

Section 3.1 shall be revised to read as follows: "This Agreement begins on the Effective Date and ends on October 31, 2022 ("Contract Time"), unless terminated earlier as provided herein. In addition, one 3-month contract extension will be allowed upon mutual agreement by the Contractor and the City, which would extend the contract end date to January 31, 2023. Contractor's Services shall begin on August 20, 2019 and shall end on October 31, 2022 or January 31, 2023 if the optional extension is approved by both parties. This extension of the Time of Performance shall not increase the total "not to exceed" value of this Agreement (\$1,750,000), stated in Section 4 below."

**2. OPTIONAL COVID-19 SUSPENSION ORDER**

1. Should there be mutual agreement to temporarily suspend service in light of limited ridership due to the ongoing Covid-19 public health crisis, Via will undertake necessary action to implement a temporary service suspension. This will include, but is not limited to, removing Via-Cupertino branding from vans, returning vans to their lessor, and communicating to customers the suspension of the service. Via will undertake all necessary actions to resume operation of the service upon the City's written request no fewer than eight (8) calendar weeks prior to the City's desired restart date. These actions will include acquiring new service vehicles, applying service branding to the new vehicles, re-training driver partners, and communicating to riders the resumption of service. Upon the resumption of service, Via will continue to operate the Via-Cupertino service for the remainder of this contract.
2. Customer shall pay to Via the following fee in the event of a temporary service suspension:

Invoicing Terms
\$3,125 per month

In accordance with the Terms, all fees set forth herein are exclusive of any applicable taxes and are payable within thirty (30) days of receipt of invoice. All fees are shown in US dollars.

Via will invoice the City for the first payment after the initiation of the suspension order. During such time as the Via-Cupertino service remains suspended under this Suspension Order, Via shall not invoice the City any additional fees as stated in the Agreement.

### **3. INDEMNIFICATION; LIMITATION OF LIABILITY (Section 11):**

Section 11.1 shall be revised by adding a new clause (f), which shall read as follows: "(f) Any violation of labor and/or employment laws, including claims based, in full or in part, on a theory of joint employer liability. This indemnity shall include any claims made by anyone, including drivers and independent contractors, who perform any work in connection with the Shuttle Program."

A new Section 11.6 is added which shall read as follows: "The indemnification specified in Section 11.1(f) shall survive termination or closeout of the Agreement or final payment and is in addition to any other rights or remedies that City may have under the law or under the Agreement."

### **4. COMPLIANCE WITH LABOR LAWS (Section 13.2):**

Section 13.2 shall be revised by adding the following text at the end: "Contractor is also responsible for ensuring the Shuttle Program is operated in compliance with all applicable labor laws, including but not limited to, Proposition 22."

### **5. EXHIBIT C – FEES:**

1. The first paragraph of Exhibit C and the pricing table thereto shall be deleted in their entirety and replaced with the following:

"The table below outlines the payment structure, in which Cupertino would be charged on a per driver hour and price per service hours basis. The total contract value shall not exceed

\$1,750,000. Contractor has proposed these fees in response to the passage of Proposition 22, reasoning that the new law requires the provision of new mandatory protections and benefits to drivers, and promotes customer and public safety through additional safety-related procedures. Contractor's interpretation of Proposition 22 is that such benefits and protections provided to drivers include, *inter alia*, guaranteed minimum earnings, eligibility for healthcare contributions, additional loss and liability insurance protections, and implementation of additional safety training. The fees detailed in the Amended Contract column below reflect changes in fees Contractor has proposed in connection with its planned implementation of and compliance with Proposition 22."

City of Cupertino Total Contract Value - Amended for Prop 22						
Original Contract (From Launch 10/28/2019 - 11/30/2020) Before Prop 22 Adjustments			Amended Contract (From 12/01/2020 - 10/31/2022) After Prop 22 Adjustments			
Price per Driver Hour	Price per Customer Service Hour	Total Estimated Cost	Price per Driver Hour	Price per Customer Service Hour	Total Estimated Cost	
N/A	N/A	\$122,200	N/A	N/A	\$0	
Fixed (Upfront) Costs						
Total Upfront Cost						\$0
Total Cost per Driver Hour						\$1,044,516
Total Cost per Customer Service Hour						\$98,000
Other Adjustments (Outage Credits, Driver Tips, and Suspension Costs)						\$4,950
Total Estimated Cost to City of Cupertino						\$1,147,467

Total Not-to-Exceed Amount for 18-Month Original Contract + 14-Month Extension (Unchanged from Original Contract)	\$1,750,000
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Note: Pricing excludes all taxes (e.g. Access for All fees), which are to be passed through as incurred.

**Driver Hours & Service Hours Summary:**

Total Implied Driver Hours	9,197	24,416
Total Implied Service Hours	3,350	3,920

2. The subsection "Monthly Fees" shall be replaced with the following text:

**Monthly Fees**

Cupertino shall pay the following fees, to be invoiced monthly by Contractor, starting upon Relaunch:

- \$42.78 per driver hour
- \$25.00 per service hour

This Amendment No. 1 may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the Parties hereto have executed this Amendment No. 1 as of the date herein set forth.

**CITY OF CUPERTINO**

By: \_\_\_\_\_  
Dianne Thompson, Acting City Manager

**NOMAD TRANSIT LLC**

By: Erin Abrams  
Erin Abrams, Manager

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Heather M. Minner, City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Kirsten Squarcia, City Clerk









# A - Draft Contract Amendment.

Final Audit Report

2021-07-08

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## "A - Draft Contract Amendment." History

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