

SETTLEMENT AGREEMENT
UNDER THE AMERICANS WITH DISABILITIES ACT
BETWEEN
THE UNITED STATES OF AMERICA AND
THE CITY OF SAN CLEMENTE, CALIFORNIA
USAO # 2017V0708
DJ # 202-12C-480

I. BACKGROUND

1. The parties to this Settlement Agreement (“Agreement”) are the United States of America and the City of San Clemente, California (“San Clemente” or “City”).
2. The United States Department of Justice, through the United States Attorney’s Office for the Central District of California (“USAO”), opened a compliance review of the City under Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131-12165 and Title II’s implementing regulation, 28 C.F.R. pt. 35 and 49 C.F.R. pt. 37, to determine whether the City’s program using Lyft, Inc. (“Lyft”) to provide demand responsive reduced-fare vehicle rides along the discontinued Orange County Transportation Authority bus routes 191 and 193 in San Clemente complies with Title II.
3. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in litigation. The parties have therefore voluntarily entered into this Agreement, as follows:

TITLE II COVERAGE AND DETERMINATIONS

4. The Attorney General is responsible for enforcing Title II of the ADA, 42 U.S.C. §§ 12131-12165 and the relevant regulations implementing Title II, 28 C.F.R. pt. 35 and 49 C.F.R. pt. 37.
5. The City of San Clemente is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1), and 28 C.F.R. § 35.104, and is, therefore, subject to Title II of the ADA, 42 U.S.C. §§ 12131-12165, and its implementing regulation, 28 C.F.R. pt. 35 and 49 C.F.R. pt. 37.

6. When a public entity provides services, programs, or activities to the public, no qualified individual with a disability shall be excluded from participation in, be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity on the basis of disability. 28 C.F.R. § 35.130. A public entity, in providing any aid, benefit, or service, may not enter into a contractual arrangement that denies qualified individuals with a disability an opportunity to participate in or benefit from the aid, benefit, or service. 28 C.F.R. § 35.130.
7. The City currently administers a program (“Program”) using Lyft to provide demand responsive reduced-fare Lyft vehicle rides for persons along the discontinued Orange County Transportation Authority bus routes 191 and 193 in San Clemente (“discontinued bus routes”). The Program is made available to residents and visitors to the City who receive a reduced-fare ride by requesting a Lyft vehicle ride through Lyft’s smart phone application and inputting a promotional code. Within approximately seven minutes on average, a Lyft vehicle arrives to the requested location. To be eligible for the reduced-fare ride, the Program requires that a person be picked-up and dropped-off within 500 feet of the discontinued bus routes’ former bus stops between the hours of 6:00 a.m. and 8:00 p.m. There are no eligibility requirements to participate in the Program: So long as a person uses the promotional code and uses Lyft under the circumstances described in the preceding sentence, a person is entitled to the benefits of the Program. At the discontinued bus routes’ former stops, the City advertises the Program with “SC Rides with Lyft” sign.
8. The City commenced a soft launch of the Program on October 9, 2016. Since that time, the Program has been made available to all members of the public provided they use the promotional code and are picked-up and dropped-off within 500 feet of the discontinued bus routes’ former bus stops between the hours of 6:00 a.m. and 8:00 p.m. The Program was originally funded for two years, until October 8, 2018, and funding has been authorized through June 2022.
9. The USAO’s compliance review determined that qualified individuals with disabilities may be denied the opportunity to participate in or benefit from the City’s Program. From October 9, 2016 through March 19, 2018, the Program did not provide a method by which a Program participant with a mobility disability may request a wheelchair accessible vehicle to transport

the participant along the discontinued bus routes. The City subsequently entered into an agreement, effective March 19, 2018, to also provide wheelchair accessible reduced fare demand responsive rides under the Program through Butterfli Technologies, Inc. (“Butterfli”).

ACTIONS TO BE TAKEN BY THE CITY

10. The City shall not discriminate against any qualified individual with a disability, on the basis of such disability, by excluding such individuals or denying them the benefits of its services, programs or activities, within the meaning of Title II of the ADA, 42 U.S.C. §§ 12131-12165, 28 C.F.R. pt. 35, and 49 C.F.R. pt. 37.
11. The City shall not exclude qualified individuals with disabilities, including individuals with mobility disabilities from participation in or deny them the benefits of the Program, or subject them to discrimination, on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a).
12. The City agrees to provide Program participants with mobility disabilities, including participants who use wheelchairs, a demand responsive option through Butterfli so individuals may request and are provided with accessible demand responsive transportation. The City agrees to ensure that the Program, provided through Lyft and Butterfli, will meet the equivalent service standard with consideration that services are now provided to participants with mobility disabilities on a demand responsive basis. 49 C.F.R. § 37.77(c) (describing the characteristics of equivalent service standard including, *inter alia*, response time, fares, geographic area of service, hours and days of service, and reservations capability); 49 C.F.R. § 37.105 (same). Such services will remain in effect for the remainder of the duration of the Program, which has had funding authorized through June 2022.
13. The City will require that Lyft and Butterfli, or any other selected vendor or third-party drivers providing accessible demand responsive transportation participating in the Program, be trained to proficiency, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities, as required by 49 C.F.R. § 37.173.

14. For the duration of the Program, which is contingent on authorized funding being allocated and distributed, the City agrees to ensure that it provides the equivalent geographic area of service and the equivalent hours and days of service for Program participants with mobility disabilities, including participants who use wheelchairs, as for Program participants without disabilities. If there are any restrictions based on trip purpose, the restrictions shall be the same for Program participants with mobility disabilities, including participants who use wheelchairs, and for Program participants without disabilities.
15. For the duration of the Program, the City agrees to ensure it provides information about the Program to the public in the same or equivalent manner regarding the provision of the Program through Lyft, Butterfli, or any other vendor that the City uses to implement the Program.
16. To ensure that the Program meets the equivalent service standard, the City shall maintain the following records that shall be computed on a monthly basis:
 - a. The response time between when individuals request to use the Program's service and when the service is provided. The response time will separate the data based on service requests through Lyft, Butterfli, or any other vendor that the City uses to implement the Program.
 - b. The fare charged to individuals who request the service. The fare will separate the data based on service requests through Lyft, Butterfli, or any other vendor that the City uses to implement the Program.
 - c. The reservations capability. The City shall separately describe the reservations capability (i.e. through smart phone application, telephone, e-mail) for how persons may request the Program's service through Lyft, Butterfli, or any other vendor that the City uses to implement the Program.
 - d. Any constraints on capacity or service availability. The City shall separately describe whether there are any constraints on capacity or availability regarding the provision of the Program through Lyft, Butterfli, or any other vendor that the City uses to implement the Program.
17. The City will continue to advertise that the Program is accessible to residents with disabilities, including residents who use wheelchairs, in the following ways:

- a. A post on the main page at www.san-clemente.org, in the same font size as headings, which announces the formal launch of the “SC Rides” Program including the availability of demand responsive accessible reduced fare rides through the selected third party partner as part of the Program. The post will include details of the Program and instructions for accessing wheelchair accessible demand responsive transportation.
 - b. A post on the City’s Twitter account (currently @CitySanClemente) each month, for at least six months, that includes the information included on the City’s webpage as further described in (a) above.
 - c. A post on the City’s Facebook account (currently www.facebook.com/cityofsancllementegovernment) each month, for at least six months that includes the information included on the City’s webpage as further described in (a) above.
 - d. The “SC Rides with Lyft” signs will continue to include information about how to access demand responsive wheelchair accessible rides as part of the Program.
 - e. Conduct outreach each quarter for one year to different disability rights and/or independent living advocacy organizations to advertise how to use the Program to receive transportation in an accessible vehicle. Such outreach will be in coordination with Department of Justice representatives.
18. On a quarterly basis for the duration of this Agreement, the City will provide a written report to the U.S. Attorney’s Office describing the activities the City has taken to comply with paragraphs 12–17 of this Agreement. The report will include the records described in paragraph 16.

IMPLEMENTATION

19. In consideration for entering this Agreement, the United States will refrain from undertaking further enforcement action relating to this compliance review or from filing a civil action alleging discrimination based on the allegations set forth above. However, the United States may review the City’s compliance with this Agreement or Title II of the ADA at any time. If the United States believes that any portion of this Agreement has been violated, the United

- States will so notify the City in writing and will attempt to resolve the issue in good faith. If the United States is unable to reach a satisfactory resolution of the issue within 60 days of the date it notifies the City, the United States may file a civil action in federal district court to enforce the terms of this Agreement, or take any other action to enforce Title II of the ADA.
20. Failure by the United States to enforce any provision in this Agreement is not a waiver of its right to enforce other provisions of this Agreement.
21. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and the City shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
22. This Agreement is applicable to and binding on the City, including its officers, agents, employees, and assigns.
23. The signatory for the City represents that he or she is authorized to bind the City to this Agreement.
24. This Agreement is the entire agreement between the United States and the City on the matters raised herein and no other statement, promise or agreement, either written or oral, made by any party or agents of any party, is enforceable. This Agreement can only be modified by mutual written agreement of the parties.
25. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement. Nothing in this Agreement relieves the City of its obligation to otherwise comply with the requirements of the ADA.
26. All documents and communications required to be sent to the United States under the terms of this Agreement shall be sent to the following individual by overnight courier or, where practicable, by e-mail:

Acrivi Coromelas
Assistant U.S. Attorney
Civil Rights Section, Civil Division
United States Attorney's Office

300 North Los Angeles Street

Los Angeles, CA 90012

acrivi.coromelas@usdoj.gov

EFFECTIVE DATE/TERMINATION DATE

27. The effective date of this Agreement is the date of the last signature below.
28. The duration of this Agreement will be three years from the effective date. In the event that funding is not allocated for the continuation of the Program and the Program terminates, City will provide notice to the United States of discontinuation of the Program and to request termination of the Agreement.
29. Notwithstanding Paragraph 28, this Agreement will terminate earlier than three years if the USAO determines that the City has demonstrated durable compliance with Title II of the ADA with respect to the Program.
30. Notwithstanding Paragraph 28, if the USAO determines that the City has demonstrated durable compliance with a part of the Agreement and that part is sufficiently severable from the other requirements of the Agreement, the Parties agree to terminate that part of the Agreement. In determining whether the City has demonstrated durable compliance with a part of the Agreement, the Department may assess collectively all the requirements of the Agreement to determine whether the intended outcome of the part has been achieved. The City and USAO will work collaboratively and in good faith around compliance with this Agreement.

FOR THE UNITED STATES

Dated: March 10, 2020

NICOLA T. HANNA

United States Attorney

Central District of California

KAREN P. RUCKERT

Assistant United States Attorney

Chief, Civil Rights Section, Civil Division

By: /s/

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Dated: March 4, 2020

FOR CITY OF SAN CLEMENTE

By: /s/

JAMES MAKSHANOFF

City Manager

City of San Clemente

By: /s/

SCOTT C. SMITH

City Attorney

Best Best & Krieger LLP
