



Staff Report

Date: September 13, 2016

To: City Council

From: Valerie J. Barone, City Manager

Reviewed by: Victoria Walker, Director of Community and Economic Development

Prepared by: Ray Kuzbari, Transportation Manager
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(925) 671-3129

Subject: **Considering approval of a license agreement to allow the Monument Community Shuttle operator, MYGORIDE, Inc., to use City of Concord property at the Civic Center for overnight parking of shuttle vehicles, and authorizing the City Manager to execute the agreement.**

This project qualifies for a Categorical Exemption pursuant to the California Environmental Quality Act Guidelines Section 15301 – Existing Facilities.

Report in Brief

A private company (MYGORIDE, Inc.) was recently selected by Monument Impact and the City of Concord to operate the new Monument Community Shuttle program. MYGORIDE has requested permission to use City property at the Civic Center for overnight parking of two shuttle vans to facilitate the daily operation of the shuttle service. The City Attorney's office has prepared a license agreement between the City and MYGORIDE for consideration by the City Council, as listed in Attachment 1.

Recommended Action

Staff recommends that the City Council approve the proposed license agreement (Attachment 1) to allow the Monument Community Shuttle operator, MYGORIDE, Inc.,

City Council Agenda Report

Considering a license agreement to allow the Monument Community Shuttle operator, MYGORIDE, Inc., to use City of Concord property for overnight parking of shuttle vehicles

September 13, 2016

to use City of Concord property at the Civic Center for overnight parking of vehicles used for the shuttle program, and authorize the City Manager to execute the agreement.

Background

On August 15, 2016, the Monument Community Shuttle service was launched following an extensive process of securing funding for the project and preparing an implementation plan. The shuttle service is designed to connect the Monument neighborhood with various key destinations within the City of Concord at no charge to the community. MYGORIDE has assigned two ADA accessible vans to this program with a loading capacity of 18 passengers. One van operates for 8 hours a day on weekdays (between 8:00 a.m. and 5:00 p.m.) on a route that follows Detroit Avenue. The second van operates for 4 hours a day on weekdays (between 8:00 a.m. and 1:00 p.m.) on a route that follows Meadow Lane. Shuttle service is also available on Tuesday evenings for 3 hours between 5:00 and 8:00 p.m. No service is provided on weekends due to budget constraints.

The funding process was initiated in March 2012 with the City of Concord and, then, Monument Community Partnership /Michael Chavez Center (now Monument Impact) filing a joint application with the Metropolitan Transportation Commission (MTC) for a federal grant to fund a free shuttle service in the Monument neighborhood. Federal funding for the project was subsequently approved but later replaced with Measure J funds in coordination with MTC and the Contra Costa Transportation Authority (CCTA). The allocated Measure J funds are sufficient to sustain the shuttle program for a period of two years.

Analysis

The Monument Community Shuttle program is administered by Monument Impact, including day-to-day oversight of project operations. (Monument Impact is the agency that superseded the Monument Community Partnership/Michael Chavez Center in 2012). The City of Concord provides assistance to Monument Impact with project oversight and in-kind administrative services in the form of management staff time. The shuttle routes include drop-off/pick-up stops at the following locations:

- Downtown Concord BART Station – (back side by Oakland Ave)
- Downtown Concord – (Pacheco St & Grant St) (Family Justice Center & Rainbow Center)
- Concord Senior Center – (Parkside Circle in front of Senior Center)
- Monument Impact at 2699 Monument Blvd – (Inside shopping center by MI office)
- John Muir Medical Center (East Street) – (hospital entrance inside parking lot)

City Council Agenda Report

Considering a license agreement to allow the Monument Community Shuttle operator, MYGORIDE, Inc., to use City of Concord property for overnight parking of shuttle vehicles

September 13, 2016

- La Clinica de la Raza – (Sierra Road)
- Women, Infants, and Children (WIC) Office – (Stanwell Circle)
- Monument Crisis Center – (Sutter St in front of the center)
- Monument Impact at 1760 Clayton Road – (inside parking lot)
- Mt. Diablo High School – (Almond Ave & Grant St)
- Cambridge Elementary – (Lacey Ln)
- Monument Head Start/Park Haven Community Church – (Meadow Ln)

At the conclusion of each service day, Monument Impact has temporarily arranged for MYGORIDE to park the shuttle vans overnight (including weekends) in a secure parking lot behind the Las Montañas Supermarket at 2699 Monument Boulevard. Furthermore, MYGORIDE has expressed a desire to continue to park the shuttle vans locally in the City of Concord for the full two-year period of the project, in order to maximize service reliability without the need to drive the vans to their Richmond office every day for overnight storage. As a result, the City was recently approached by Monument Impact regarding the possibility of allowing MYGORIDE to use City property for overnight parking of the shuttle vans.

In response to this request, City staff reviewed available options and determined that the east parking lot at City Hall (near Building A and Human Resources offices) would be the best location for overnight parking of the shuttle vans on City property due to a favorable parking layout and adequate lighting. (This parking area is shown in Exhibit 1 of the proposed license agreement listed in Attachment 1.) Additionally, the parking lot at Keller House is also proposed as an alternate location for overnight parking should the east parking lot at City Hall be temporarily closed for maintenance/repair activities.

The purpose of the proposed license agreement with MYGORIDE is to indemnify the City of Concord from any responsibility for loss or damage to the property of MYGORIDE, including theft, vandalism or other property loss or damage incurred as a result of MYGORIDE's use of City property.

Financial Impact

If approved by the City Council, the proposed license agreement will not result in any significant costs to the City of Concord over the two-year period of the shuttle program. For example, pavement conditions in the proposed license area at the City Hall parking lot or in the alternate license area at Keller House parking area are not expected to deteriorate as a result of allowing the shuttle vans to use these properties for overnight parking.

City Council Agenda Report

Considering a license agreement to allow the Monument Community Shuttle operator, MYGORIDE, Inc., to use City of Concord property for overnight parking of shuttle vehicles

September 13, 2016

Furthermore, no additional signs or pavement markings will be installed in these facilities and no shuttle parking designations will be added. The shuttle operator will be allowed to use these parking areas without restriction during periods of very low parking demand (i.e., at nighttime and on weekends).

Environmental Determination

This project is Categorical Exempt from further review under the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15301 – Existing Facilities, as the project involves temporary, minor expansion of use of facilities beyond that existing. The Notice of Exemption will be filed with the County Clerk's Office after the proposed license agreement has been executed.

Public Contact

The City Council Agenda was posted.

Attachments

1. Proposed License Agreement

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into on _____, 2016 (“Effective Date”) between the City of Concord, a California municipal corporation (“City”) and MYGORIDE, Inc., a California corporation (“Licensee”).

Recitals

A. City owns certain real property located at 1950 Parkside Drive, Concord, California, APN 111240014 (“City Hall Property”), and 1736 Clayton Road, Concord, California, APN 1262400243 (“Keller House Property”).

B. Licensee would like to obtain a temporary, non-exclusive, and limited right, privilege, and permission to use a portion of the City Hall Property, as shown in Exhibit 1 (“License Area”), or the Keller House Property as an alternative site, as shown on Exhibit 2 (“License Area (Alternative)”), for overnight parking of vehicles used for the Monument Community Shuttle program (“Permitted Use”), as more fully described in Section 3 below.

C. In March 2012, the City of Concord and the Monument Community/Michael Chavez Center for Economic Opportunity submitted a joint grant application to the Metropolitan Transportation Commission (MTC) to fund a “Monument Neighborhood Shuttle,” as defined in the Monument Corridor Community-Based Transportation Plan. Using the MTC grant funding, the City subsequently designated Monument Impact, a non-profit organization, as the operator of the Monument Neighborhood Shuttle program (now referred to as Monument Community Shuttle program). Monument Impact, in turn, has contracted with Licensee to provide shuttle services in the Monument area.

D. In support of the above-described shuttle program, the City is willing to allow Licensee to use the License Area or License Area (Alternative) for overnight parking of Licensee’s vans and other vehicles used for the Monument Community Shuttle program, pursuant to the terms set forth below.

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Licensee agree as follows:

1. License

A. Grant of License. City hereby grants to Licensee a temporary, non-exclusive, and limited right, privilege, and permission to use the License Area (including reasonable access to the License Area) or License Area (Alternative) (including reasonable access to License Area (Alternative)) for the purpose of the Permitted Use, and for no other purpose, subject to all leases, subleases, easements, restrictions and reservations now or subsequently pertaining to the License Area or License Area (Alternative), the Property, or any portion thereof.

B. City Access. Licensee agrees that the City or its appointed representatives shall have access to the License Area or License Area (Alternative) at all times. City shall have the unrestricted right to observe all activities by Licensee and/or any Licensee Party at the Property. “Licensee Party” means any of Licensee’s partners, officers, officials, volunteers, shareholders, members, employees, agents, invitees, representatives, contractors, subcontractors, sub-licensees, successors, assigns, consultants, experts, and any other person or entity affiliated with Licensee or under Licensee’s direction or control.

C. Condition of Property. Licensee represents and warrants that Licensee has inspected and examined the License Area or License Area (Alternative) and accepts the License Agreement in its present “as is” condition. Licensee acknowledges and agrees that neither City, nor anyone acting for or on behalf of City, has made any representations, warranties, or promises to Licensee, or to anyone acting for or on behalf of Licensee, concerning the condition of the License Area or License Area (Alternative), the Property, any portion thereof, or any other aspect thereof including any structures or improvements located thereon, the availability of utilities, or the absence or presence of hazardous materials. Licensee shall keep the License Area or License Area (Alternative) in a clean, orderly and sanitary condition to the satisfaction of the City Engineer or his/her designee. Licensee agrees to take proper care to maintain and preserve the property of City. Upon expiration or other termination of this Agreement, Licensee shall remove all of its equipment and other installations from and shall repair and restore the License Area or License Area (Alternative), the Property, and all portions thereof, and shall peaceably surrender such areas to the City clean and in the same condition as when received, reasonable wear and tear excepted.

D. Risk of Loss. City assumes no responsibility for loss or damage to the property of the Licensee, including theft, vandalism or other property loss or damage incurred as a result of Licensee’s use of License Area or License Area (Alternative).

E. Advertising. Licensee shall not at any time display any advertising sign without City’s prior written approval, which City may withhold in its sole discretion.

F. License Fee. There shall be no license fee for this Agreement. Licensee shall pay when due any taxes of any kind and every nature, including but not limited to possessory interest tax that may be imposed upon the License Area or License Area (Alternative), or Licensee’s use thereof.

2. Term. The term of this License Agreement shall commence on the Effective Date, and shall run on a month-to-month basis, unless terminated by the mutual agreement of both parties. Either party may terminate this License Agreement upon thirty (30) days written notice to the other party.

3. Permitted Use.

A. “Permitted Use” means the overnight parking (including weekends) of Licensee’s two (2) shuttle vans used as part of the Monument Community Shuttle Program in the east

parking lot of the City Hall Property (as shown in Exhibit 1). As an alternative location, Licensee may park its two (2) shuttle vans used as part of the Monument Community Shuttle Program at the parking lot for the Keller House Property (as shown in Exhibit 2). Licensee's employees may also be permitted to use up to two (2) parking spots for the shuttle driver(s)' vehicles parked during operation of the shuttle vans.

B. Licensee shall ensure that its employees obey and comply with California traffic laws and other applicable laws. City shall have the right (but not the obligation) to immediately terminate this agreement upon actual notice of any breach of this provision. Absent an amendment or modification of this Agreement, no activities other than those described above are allowed. All Permitted Use shall be conducted in accordance with all applicable Laws (defined in Section 7 below), and best industry practices. No alterations (including temporary or permanent structures, changes and/or additions) shall be made and no work or activities shall be allowed without City's prior written consent, which City may condition or withhold in its sole discretion. All Permitted Use and all other activities pursuant to this Agreement shall be at the sole cost and expense of Licensee. The provisions of this Section 4 (Permitted Use) are in addition to those of Sections 5 (Indemnification) and 7 (Compliance with Laws).

4. Indemnification. The following obligations are in addition to those imposed by applicable provisions of the Concord Municipal Code. Licensee agrees to and shall defend (with independent counsel approved by the City), indemnify and hold harmless the City, its officers, officials, employees, agents, representatives and volunteers (each, a "City Party") from and against any and all claims, demands, actions, losses, damages, injuries, and liability, including all attorney's fees, expert fees, consultant fees, and other litigation costs and expenses ("Claims") arising out of or connected in any way with: (a) the Permitted Use; (b) Licensee's or any Licensee Party's activities on or about, operation of, access to and/or from, and/or use of, the License Area or License Area (Alternative), the Property, or any portion thereof; (c) this Agreement; or (d) Licensee's or any Licensee Party's performance, non-performance, breach, or default under this Agreement (individually and collectively, "Activities"), except to the extent caused by City's sole or active negligence or willful misconduct.

5. Insurance. Licensee shall, at its own expense, procure and maintain in full force at all times during the term of this Agreement the following insurance:

A. Commercial General Liability Coverage. Licensee shall maintain commercial general liability insurance with limits of no less than one million dollars (\$1,000,000) combined single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily injury, personal injury, and property damage.

B. Automobile Liability Coverage. Licensee shall maintain automobile liability insurance covering all vehicles used in the performance of this Agreement providing a one million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

C. Compliance with State Workers' Compensation Requirements. Licensee covenants that it will insure itself against liability for Workers' Compensation pursuant to the

provisions of California Labor Code §3700, et seq. Licensee shall, at all times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being maintained by it in force and effect in accordance with the California Labor Code. The insurer shall also agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Licensee for City. This provision shall not apply upon written verification by Licensee that Licensee has no employees.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain the following provisions:

(i) **Additional Insured.** City, its officers, agents, employees, and volunteers are to be covered as an additional insured as respects: Liability arising out of activities performed by or on behalf of Licensee and operations of Licensee, premises owned, occupied, or used by Licensee. The coverage shall contain no special limitations on the scope or protection afforded to City, its officers, officials, employees, or volunteers. Except for worker's compensation and professional liability insurance, the policies mentioned in this subsection shall name City as an additional insured and provide for notice of cancellation to City. Licensee shall also provide timely and prompt notice to City if Licensee receives any notice of cancellation or nonrenewal from its insurer.

(ii) **Primary Coverage.** Licensee's insurance coverage shall be primary insurance with respect to City, its officers, officials, employees, and volunteers. Any insurance, risk pooling arrangement, or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be in excess of Licensee's insurance and shall not contribute with it.

(iii) **Reporting Provisions.** Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to the City, its officers, officials, employees, or volunteers.

(iv) **Verification of Coverage.** Licensee shall furnish City with certificates of insurance and the original endorsements effecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The aforementioned policies shall be issued by an insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and shall be delivered to City at the time of the execution of this Agreement or before work commences. Such policies and certificates shall be in a form approved by the City Attorney. City reserves the right to require complete certified copies of all required insurance policies at any time.

6. Compliance With Laws. Licensee shall at all times comply with, and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with, any and all laws, statutes, ordinances, rules, regulations, permitting requirements, labor codes, prevailing wage requirements, hazardous materials laws, the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, covenants and restrictions of record, life and fire safety and similar requirements, including those of the State of California, the County of Contra Costa, the City of Concord, or other applicable authority, all as amended from time to time ("Laws") which apply

to any Licensee Activities and/or any Permitted Use, including those requiring payment of any fees, charges or assessments arising out of or in any way related to any Activities or any portion thereof as a source of adverse environmental impacts or effects. Licensee shall not permit or suffer any mechanic's lien to be filed against the License Area or License Area (Alternative), the Property, any portion thereof, or any interest therein, and shall immediately discharge any such lien. Licensee agrees to and shall protect, defend (with independent counsel approved by the City), indemnify and hold harmless the City and each City Party from and against any and all Claims arising out of or connected in any way with any such lien, except to the extent caused by City's sole or active negligence or willful misconduct.

7. Environmental Matters.

A. Definitions. "Hazardous Materials" means hazardous waste (as defined in 42 U.S.C. 16901, *et seq.*), hazardous substance (as defined in 42 U.S.C. §9601, *et seq.*), and any other hazardous, toxic, radioactive, carcinogenic, or prohibited materials, substances or wastes. "Hazardous Materials Laws" means all Laws concerning the management, use, generation, storage, transportation, presence, discharge or disposal of Hazardous Materials.

B. Generator. City shall not be identified on any documents or otherwise as the generator of any materials or wastes on any manifests or similar documents regarding any Hazardous Materials, or any other materials or wastes resulting from the Permitted Use.

C. Compliance with Hazardous Materials Laws. Licensee shall, at its sole cost and expense, comply with all Hazardous Materials Laws. Neither Licensee nor any Licensee Party shall use, handle, store, transport, release or dispose of any Hazardous Materials anywhere in, on, under or about the License Area or License Area (Alternative), the Property, or any portion thereof. Licensee shall cause any and all Hazardous Materials brought onto, used, generated, stored or discharged in, on, under or about the License Area or License Area (Alternative), the Property, or any portion thereof to be removed from the License Area or License Area (Alternative), the Property, and all portions thereof, and transported for disposal in accordance with applicable Hazardous Materials Laws. City shall have the right to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Licensee's compliance with its obligations concerning Hazardous Materials and Hazardous Materials Laws. Licensee shall immediately notify City in writing of any voluntary clean-up or removal action instituted or proposed by Licensee, any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened, or any claim made or threatened by any person against Licensee, the License Area or License Area (Alternative), the Property, or any portion thereof, relating to Hazardous Materials or Hazardous Materials Laws. Licensee shall also supply to City as promptly as possible, and in any event within five (5) business days after Licensee receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations concerning Hazardous Materials or Hazardous Materials Laws which in any way relate to any of the Activities.

8. Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. In the event that suit shall be brought by either

party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Contra Costa, California.

9. Non-Waiver. The waiver by either party of any breach of any term, covenant, or condition contained in this Agreement, or any default in their performance of any obligations under this Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same.

10. Enforceability; Interpretation. All duties and obligations of Licensee hereunder shall also be deemed to the duties and obligations of each Licensee Party, and Licensee shall be responsible for any breach of any provision of this Agreement by any Licensee Party. In the event that any of the provisions or portions of application of any of the provisions of this Agreement are held to be illegal or invalid by a court of competent jurisdiction, City and Licensee shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward affecting the purpose of this Agreement. The illegality or invalidity of any of the provisions or portions of application of any of the provisions of this Agreement shall not affect the legality or enforceability of the remaining provisions or portions of application of any of the provisions of this Agreement. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. Headings used in this Agreement are for convenience of reference only and shall not be used in construing this Agreement. Where the context so requires, the use of the singular shall include the plural and vice versa. The words “include” and “including” shall be interpreted as though followed by the words “without limitation.”

11. Integration. The recitals and any exhibits attached to this Agreement are incorporated by reference as though fully restated herein. This Agreement contains the entire agreement and understanding between the parties as to the subject matter of this Agreement, and merges and supersedes all prior or contemporaneous agreements, commitments, representation, writings, and discussions between Licensee and City, whether oral or written.

12. Successors and Assigns; No Third Party Beneficiaries; No Joint Venture. Licensee binds itself and its successors and assigns to the terms and obligations of this Agreement. Licensee shall not assign or transfer any interest in this Agreement without the City’s prior written consent, which City may condition or withhold in its sole discretion. Any attempted assignment or transfer in breach of this provision shall be void. This Agreement is not intended and shall not be construed to create any third party benefit, or any joint venture, partnership, employment, or agency relationship between the parties.

13. Notices. All notices required hereunder shall be in writing and mailed postage prepaid by certified or registered first class United States mail, return receipt requested, or by personal delivery to the City’s address as shown below, or such other places as City or Licensee may,

from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed effectively served upon deposit in the United States Mail, or upon personal delivery.

To City: City of Concord
Transportation Division
Attn: Ray Kuzbari, Transportation Manager
1950 Parkside Drive, MS/52
Concord, CA 94519-2578
Telephone: (925) 671-3129
ray.kuzbari@cityofconcord.org

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To Licensee: MYGORIDE, Inc.
Attention: Fred A. Khan, General Manager
3931 Alemany Blvd., #2003-221
San Francisco, CA 94132
Telephone: (415) 513-5777
info@MYGORIDE.org

For purposes of this Agreement, Fred A. Khan is hereby authorized to act as Licensee's agent for service of process.

14. Non-Liability. Neither City nor any City Party shall be personally liable to Licensee or otherwise in the event of any default or breach of the City, or for any amount which may become due to Licensee or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

15. Execution; Counterparts; Amendment. Each individual or entity executing this Agreement on behalf of Licensee represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of Licensee and that such execution is binding upon Licensee. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. This Agreement may be amended or modified only by a writing duly executed by authorized representatives of both parties, and made and approved in compliance with the City of Concord Municipal Code.

16. No Title; No Recording. Nothing in this Agreement or any activities pursuant to this Agreement shall convey or create in Licensee any right, title or interest in the License Area or License Area (Alternative), the Property, or any portion thereof. Licensee may not record this Agreement or a memorandum referring to this Agreement without City's prior written consent, which City may condition or withhold in its sole discretion.

17. Survival. The terms and conditions of the following Sections shall survive any termination or expiration of this Agreement: Section 3 (Permitted Use), Section 4

(Indemnification), Section 5 (Insurance), Section 6 (Compliance with Laws), Section 7 (Environmental Matters), Section 8 (Choice of Law), Section 14 (Non-Liability), and Section 0 (Survival).

IN WITNESS WHEREOF, City and Licensee have respectively entered into this Agreement as of the Effective Date.

LICENSEE:

MYGORIDE, Inc.
a California corporation

By: _____
Name: _____
Its: _____

CITY:

City of Concord,
a California municipal corporation

By: _____
Valerie J. Barone, City Manager

ATTEST:

By: _____
Joelle Fockler, MMC, City Clerk

APPROVED AS TO FORM:

By: _____
Susanne Meyer Brown
City Attorney

EXHIBIT 1
License Area
City Hall Property



EXHIBIT 2
License Area (Alternative)
Keller House Property

