

May 11, 2020

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Consumer Protection and Enforcement Division  
Transportation Licensing and Analysis Branch  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Service List: R.19-02-012

Re: Reply of Lyft, Inc. to Protests of the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and the Mayor's Office on Disability to Lyft Advice Letters AL-1 through AL-3

Dear CPED Staff:

By this Reply, Lyft, Inc. ("Lyft") responds to each of the three protests submitted by the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and the Mayor's Office on Disability (collectively, "SF") to Lyft Advice Letters AL-1, AL-2, and AL-3 (collectively, "ALs"). Because each of the three protests filed by SF is substantively identical, Lyft addresses all three protests together in this Reply.

**1. SF's Objections to Lyft's Claim of Confidentiality Are Not a Proper Subject for Protest Under General Order 96-B**

SF's protest to Lyft's ALs largely fails to comply with the requirements of General Order 96-B ("GO 96-B"), which expressly enumerates the grounds upon which a protest may be premised. Rather than challenge Lyft's ALs on one of the specified grounds, SF instead focuses much of its protest on attempting to undermine Lyft's claim of confidentiality. SF is entitled, of course, to object to Lyft's claim of confidentiality, however, that objection must be addressed independently of any protest, as set forth in General Order ("GO") 96-B, § 10.5. Furthermore, to the extent SF made any effort to comply with the procedures governing objections to confidentiality in GO 96-B, it unreasonably delayed taking action and unreasonably rejected Lyft's offer to provide the unredacted data.

Pursuant to General Order 96-B, as modified by Decision (D.) 20-03-007, any party to Rulemaking (R.) 19-02-012 may file a protest to a TNC advice letter seeking an offset request. GO 96-B, §7.4.2 sets forth the grounds upon which a protest to an advice letter may be premised. Those bases include, for example, that the relief would violate a statute or Commission order, the data, analysis, or calculations contain material errors, or the relief requested is unjust unreasonable, or discriminatory.<sup>1</sup> They do not include objection to a claim of confidentiality.

Objections to claims of confidentiality are instead addressed by §10 of GO 96-B. Pursuant to §10.3, a party submitting an advice letter is expressly authorized to seek confidential treatment for the advice letter, or portions thereof. In fact, it is routine for utilities to seek confidential treatment of data

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<sup>1</sup> GO 96-B, §7.4.2(2), (3), (6).

underlying advice letters submitted to the Commission.<sup>2</sup> In the event a party objects to a claim of confidentiality, that party must meet and confer with the utility in an effort to resolve the objection pursuant to §10.5. If the parties are unable to resolve the objection, the Industry Division is directed to refer the dispute to the Administrative Law Division for resolution. Objections to claims of confidentiality cannot be resolved by Industry Division staff and are not a proper subject of protest.

SF attempts to frame its objection to confidential treatment as a protest by claiming that it lacks sufficient information to properly evaluate Lyft's offset requests. However, to the extent SF claims it lacks access to necessary data, that is a problem entirely of its own making. Lyft filed and served redacted, public versions of its ALs on April 15, 2020.<sup>3</sup> SF then waited a full fifteen days, until Friday, May 1, 2020, at 11:15 am, before notifying Lyft that it objected to the redactions and requesting a meet and confer, as required by GO 96-B, §10.5. Lyft met and conferred with SF by telephone the very next business day, May 4, 2020. During that call, Lyft offered to provide SF with fully unredacted copies of its ALs, subject to an appropriate nondisclosure agreement, as contemplated by GO 96-B. SF declined to accept the data, claiming that it was unable to agree to a nondisclosure agreement due to its obligations as a public entity under the Public Records Act. However, that position is squarely at odds with the position SF has taken in similar instances in the past, as SF has previously agreed on multiple occasions to receive confidential TNC data subject a stipulated protective order that includes provisions to accommodate Public Records Act requests.<sup>4</sup> Equally significant, SF's position here is also directly contrary to the terms of GO 96-B, which expressly states that a party seeking confidential treatment of information in an advice letter must provide notice that "the information will be made available to those who execute a nondisclosure agreement" and must list "the name and contact information of the person or persons who will provide the nondisclosure agreement and access to the confidential information."<sup>5</sup> In other words, GO 96-B expressly **requires** the very process that SF now rejects.

Had SF accepted access to the data, consistent with GO 96-B and past practice, SF would have had full access to all of the data and could have analyzed that data (as CPED is able to do), and could have formulated a cogent response to that data prior to the expiration of the time to lodge a protest. Instead, SF unreasonably delayed seeking access to the data until the eleventh hour and engaged in a

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<sup>2</sup> See, e.g., *In Re Order Instituting Rulemaking* (Aug. 19, 2005) 2005 WL 2036510, at \*6 (upholding Southern California Edison's claim of confidentiality with respect to data underlying advice letter); *In Re Pac. Gas & Elec. Co.* (Dec. 14, 2006) 2006 WL 3831303, at \*2 (finding that PG&E justified confidential treatment of data in advice letter); *be Resolution E-4388. San Diego Gas & Elec. (SDG&E) Requests Approval of Two Renewable Power Purchase Agreements with Centinela Solar Energy, LLC.* (Jan. 13, 2011) 2011 WL 732001, at \*2 (ruling that "confidential appendices attached to the Advice Letter 2171-E and the confidential portions of the Advice Letter 2171-E will not be made public upon Commission approval of the Advice Letter 2171-E.").

<sup>3</sup> Lyft served "corrected" versions thereafter to remedy certain technical issues in the Excel spreadsheet and an issue that prevented Lyft from combining the various documents into a single PDF/A compliant document. The corrected versions were substantively identical to the originally filed versions. Thus, SF was on notice of Lyft's claims of confidentiality as of April 15, 2020.

<sup>4</sup> In *City and County of San Francisco v. Lyft, Inc.*, Case No. CPF-17-515768, SF and Lyft agreed to a Stipulation and Protective Order, pursuant to which Lyft agreed to provide SF with confidential data and which established an agreed upon procedure for addressing potential Public Records Act requests for that data. A copy of that Stipulation is attached as Exhibit A hereto. SF agreed to a similar procedure with Uber. See *City and County of San Francisco v. Uber Technologies, Inc.* (2019) 36 Cal.App.5th 66 noted in its decision. See *id.* at 83–84 ("Uber and the City entered into a stipulated protective order" that "squarely and thoroughly addressed" concern regarding "requests for that data under the Public Records Act.").

<sup>5</sup> GO 96-B, §103(a).

*pro forma* meet and confer, at which it refused Lyft's offer to provide the data. Now, SF argues, paradoxically, that Lyft's offset request must be denied because SF did not have access to the data. SF cannot be heard to complain that it cannot evaluate Lyft's ALs because it lacks access to data when Lyft expressly offered to provide SF with access to that very same data.

To be clear, Lyft is fully prepared to support its claim of confidentiality before the Administrative Law Division, but declines to do so in the context of its reply to a protest, consistent with the terms of GO 96-B. Lyft does, however, believe it is important to note its forceful objection to the notion advanced by SF in its protest that Decision (D.) 20-03-014 in R. 12-12-011 preemptively determined that TNC data is not confidential. Indeed, it is for just that reason – the risk that parties like SF would make sweeping claims regarding confidentiality based on that decision – that Lyft and Uber have sought rehearing to remove the ill-considered *dicta* cited by SF here. Nevertheless, even **that** decision acknowledges that it would be inappropriate for the Commission to prejudge any claim of confidentiality based upon the broad, conclusory discussion of competition in D. 20-03-014.<sup>6</sup> SF's sweeping reliance on D.20-03-014 as a basis to deny Lyft's offset requests is entirely inappropriate.<sup>7</sup>

In submitting and serving its ALs, Lyft dutifully followed the instructions provided by CPED staff to serve and file redacted versions provisionally, and then, when directed to do so by CPED staff, to file unredacted, non-public versions. As a result, CPED staff has all the data necessary to evaluate Lyft's ALs. SF would be in the same position had it timely raised its objections and accepted Lyft's offer of access to that data. The fact that SF chose not to accept the data offers no grounds for denial of Lyft's offset requests.

## **2. SF's Arguments that Lyft Failed to Establish Presence and Availability Lack Merit**

In addition to objecting to Lyft's redactions, SF criticizes certain other aspects of Lyft's advice letters. None of these criticisms has merit.

SF first complains that:

"[R]esponse times" are not reported for trip requests made by people with disabilities that went unfulfilled because a driver with a WAV was not present or available. This makes the response time percentages look dramatically higher than they would if response times were measured in a way that reflected those occasions when a request for WAV service receives no response at all.<sup>8</sup>

As threshold matter, it is not at all clear how one would calculate a "response time" for a ride that had no response that one could time. More to the point, however, Lyft calculated response times precisely as directed in D.20-03-007. To the extent SF objects to the Commission's definition of response time, the proper vehicle to raise that issue is an application for rehearing, not a protest to Lyft's advice letters.

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<sup>6</sup> D.20-03-014, p. 32; 34-35.

<sup>7</sup> It is also inappropriate because, by its terms, D.20-03-014 applies only to TNC Annual Reports. See D.20-03-014, Ordering Para. 2 ("If a Transportation Network Company (TNC) wants to claim that any information contained in **its annual reports** should be protected from public disclosure....") (emphasis added). It is true, as SF points out, that in the body of the decision, the Commission indicated that issues regarding confidentiality of information concerning this rulemaking would be addressed consistent with the Commission decision in D.20-03-014. But D.20-03-014 does not automatically apply to data submitted in this rulemaking. If it did, TNCs would be required to file a motion for confidentiality 90 days in advance of an offset filing, something they are obviously not required to do.

<sup>8</sup> SF Protest, p. 7.

Further tilting at windmills, SF next takes issue with the Commission's determination in D.20-03-007 that TNCs can demonstrate presence and availability by submitting data on WAVs in operation by quarter, hour and day of the week and the number and percentage of trips completed, not accepted, or cancelled by the passenger and the number of driver and passenger no-shows.<sup>9</sup> SF asserts that CPED cannot "simply write the statutory requirement for a demonstration of presence and availability out of their analysis for offset eligibility" and that "[m]ere submission of data does not 'demonstrate' presence and availability." Once again, however, SF takes issue not with Lyft's ALs, but with D.20-03-007. A protest is not the vehicle by which to express that disagreement.

SF next asserts that Lyft fails to demonstrate presence and availability because "the submittals contain basic math errors, where the sums of the percentages of trips reported on the tabs that begin with '% WAV Trips....' exceed 100% in many cells. (See Attachment 1 to SFMTA et al Protest - Lyft Retroactive Offset Check.)."<sup>10</sup> It is not at all clear what SF is actually saying here, and SF offers no further explanation; however, Lyft presumes that SF believes that adding up percentages across the various tabs should equal 100%. If that is what SF is saying, it is SF that is making a basic error. Lyft has calculated the percentages as directed by D.20-03-007 and the instructions provided by staff. The categories of instances reflected in the percentage tabs do not constitute the complete universe of possible scenarios that might be encountered in offering WAV service and, therefore, are not intended to, and should not be expected to, result in 100% when added together. For example, Lyft observed instances in which a driver canceled a ride request, but the ride request was accepted by a different driver and the ride was completed. In that instance, Lyft counted both the cancel and the completed ride. In other instances, an "administrative cancel" may have occurred, such as an instance in which Lyft observed that a driver forgot to hit the "drop off" button in the app to record a completed ride. When Lyft detected that a completion had not been recorded, Lyft administratively canceled the ride and tallied the cancellation, despite the fact that the passenger was picked up and arrived at his or her destination. In these instances, which may include a driver, passenger, or "admin" cancellation, as well as a completed ride, both a cancel and a completed ride are recorded. As a result, adding percentages across tabs may produce a number greater than 100%, or less than 100%. That does not mean that Lyft made an error. Notably, Lyft could have declined to record cancellations in such instances. That would have made Lyft's cancellation figures appear more favorable. However, Lyft believes recording such cancellations is more reflective of the user experience and is more useful in evaluating the level of service offered by its WAV programs.

SF also complains that some of the data fields are left blank, and that it does not know whether the blank fields represent 100%, 0% or not applicable. To be clear, if there were no instances of the specified activity, Lyft left the field blank. For example, in the % completed field, if there were no ride requests during the specified day and hour, nothing was recorded in the corresponding cell. Likewise, if no cancellations by driver were recorded in a given hour and day, no value was placed in that cell. Lyft believed that this was clear from the context, but is happy to clear up any confusion.

Finally, SF argues in a vacuum that because Lyft's WAV pilot programs have limited service hours, Lyft's request for reimbursement should be denied.<sup>11</sup> First, SF does not point to any statute, decision, or ruling providing that only WAV programs that operate 24 hours a day are eligible for reimbursement. Second, Lyft has designed its initial pilot programs based upon feedback from the community that it serves and the data collected from the program, rather than arbitrary coverage targets. For example, Lyft initially offered WAV service between 7:00 am and 9:00 pm, but extended the hours of service to midnight based upon feedback from the disability community and observed

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<sup>9</sup> SF Protest, p. 8.

<sup>10</sup> *Id.*

<sup>11</sup> SF Protest, p. 8.

demand, and to minimize the risk of stranded passengers. Given the extremely limited demand Lyft has observed for service outside of the current operating hours, and the enormous costs of providing such service, Lyft believes its current operating hours are appropriate, though Lyft continues to monitor demand and solicit input from users and is prepared to make adjustments where appropriate. Nevertheless, SF's argument that only WAV programs that operate 24 hours a day are eligible for reimbursement should be rejected, as it is not a requirement and would not be a sound policy. Again, to the extent SF believes this should be a requirement, a protest is not the appropriate forum to raise the issue.

### **3. SF's Assertion that Lyft Failed to Demonstrate Outreach to the Disability Community Is Unfounded**

SF also claims that Lyft failed to demonstrate outreach to the disability community. First, SF claims that it "received constituent feedback that the "WAV" option is not readily available in the Lyft app unless a rider knows to activate 'Access mode' in the app settings."<sup>12</sup> Lyft appreciates and will consider this feedback, however, SF's criticism is not of Lyft's outreach efforts, but rather its product design. Suggested improvements in product design are not a basis for denying an offset request.

SF also takes issue with Lyft's documentation of its outreach efforts by noting that Lyft listed an in-person meeting with the SFMTA and SF Paratransit on Sunday, September 8, 2019. SF states that after a "reasonable survey," it has "found no one with any knowledge of any such meeting."<sup>13</sup> Lyft is puzzled by this assertion. As SF knows, September 8, 2019 was the date of the City's First Livable City/Sunday Streets: Getting There Together Celebration at the Civic Center.<sup>14</sup> The event was described as "a signature citywide celebration of San Francisco seniors and adults with disabilities," and was "[p]resented by CASE (Coalition of Agencies Serving the Elderly) in partnership with Livable City/Sunday Streets, the Department of Aging and Adult Services, Age and Disability Friendly San Francisco, and the Dignity Fund Coalition, [to] bring together seniors, people with disabilities, service providers, City officials, and the general public to celebrate and ensure San Francisco is a great place to live and age."<sup>15</sup> Lyft's Julia Kim, and other members of Lyft's WAV team, attended the Getting There Together Celebration and spoke with representatives of SF Paratransit and SFMTA who were attending the event (at their respective booths) to let them know about Lyft's WAV pilot programs and to distribute copies of a marketing flyer for the program. In fact, at the suggestion of Nicole Bohn, Director of the Mayor's Office on Disability, who also attended the event, Ms. Kim asked to speak with Matt West of SFMTA, and asked whether Lyft could share information about its program on SF's online resources webpage. An individual Ms. Kim believes was West responded that due to a city ordinance, SF was prohibited from listing Lyft's WAV service on its website. SFMTA offered no other suggestions as to how Lyft could get the word out about its WAV program and instead told Ms. Kim to go back to Ms. Bohn, as they were surprised that she wasn't familiar with the city ordinance. To Lyft's surprise, unlike other exhibitors, who expressed enthusiasm regarding Lyft's WAV pilot programs and offered to help get the word out, SFMTA did not demonstrate any interest in learning about Lyft's WAV pilot program, ask any further questions, or offer additional recommendations for publicizing the program. Although Lyft's efforts to engage with

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<sup>12</sup> *Id.*

<sup>13</sup> SF Protest, p. 8.

<sup>14</sup> <https://www.livablecity.org/seniors-and-people-with-disabilities-take-over-civic-center-for-the-first-annual-getting-there-together-celebration-on-september-8/>

<sup>15</sup> <https://www.sundaystreetssf.com/gtt/>

SFMTA were not reciprocated, SF's assertion that such a meeting never took place is both inaccurate and particularly inappropriate, given the circumstances.<sup>16</sup>

#### **4. SF's Request for Relief Is Contrary to Law and Is Unsupported**

SF requests "that the CPED reject Lyft's claims for confidentiality; direct Lyft to re-serve unredacted Advice Letters on all parties; and issue a notice continuing or re-opening the protest period pursuant to General Order 96-B, Section 7.5.1, for an additional 20 days following service of the unredacted Advice Letters to allow the parties to analyze the Advice Letters and, if necessary, submit a supplemental protest."<sup>17</sup> SF's request finds no support in the law and lacks any justification on the record here.

To the extent SF objects to Lyft's claim of confidentiality, that claim must be referred by CPED staff to the Administrative Law Division pursuant to GO 96-B, §10.5 and addressed separately. It does not provide a basis for denying Lyft's request for reimbursement. Furthermore, SF cites no authority that would authorize Staff to re-open the protest period specified in GO 96-B or permit SF an additional 20 days to submit a supplemental protest. Moreover, D.20-03-007 clearly sets out the schedule for Staff decisions on offsets requests, which must be made within 30 days after submission of the offset request. No provision is made for extension of that period. Finally, to the extent SF claims entitlement to additional time to evaluate Lyft's requests, its lack of diligence in attempting to resolve those objections, and its unreasonable refusal to agree to receive the data, warrants denial of any additional time.

For all of the foregoing reasons, SF's protests should be rejected.

Very truly yours,



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<sup>16</sup> In this regard, Lyft also notes that it has on multiple occasions requested to present its WAV program at the SF Mayor's Council on Disability public hearings, but has been refused permission (most recently with respect to the February 2020 meeting).

<sup>17</sup> SF Protest, p. 9.

# EXHIBIT A



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

Dec-07-2017 10:21 am

Case Number: CPF-17-515768

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ORDER

IN RE: CITY AND COUNTY OF SAN FRANCISCO

001C06134205

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

CITY AND COUNTY OF SAN  
FRANCISCO,

Petitioner,

vs.

LYFT, INC.,

Respondent.

Case No. CPF-17-515768

**STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER**

Date Action Filed: July 21, 2017

Trial Date: None Set

1 THE PARTIES AGREE AS FOLLOWS:

2 The Office of the City Attorney for the City and County of San Francisco ("CAO") served an  
3 administrative subpoena on Lyft, Inc. ("Lyft"), on June 5, 2017. The CAO and Lyft (collectively, the  
4 "parties") stipulate that the following Order is appropriate to protect Confidential Information and  
5 Highly Confidential Information, as those terms are defined below, produced in response to the  
6 administrative subpoena.

7 The parties acknowledge that responses to the subpoenas and ensuing discovery activity are  
8 likely to involve production of confidential, proprietary, or private information for which protection  
9 from public disclosure may be warranted. The parties agree that this Order does not confer blanket  
10 protections on all disclosures by Lyft, and that designations under this Order are to be guided by  
11 applicable legal principles.

12 I. DEFINITIONS

13 1. "Confidential Information" means any information that Lyft clearly designates as such  
14 as provided in this Order and that constitutes (i) confidential trade secrets as defined in California  
15 Civil Code § 3426.1(d), proprietary business information, commercially sensitive information that, if  
16 released, could cause competitive harm to Lyft, or (ii) non-public personal, client, rider, driver, or  
17 customer information concerning individuals or other entities (including, but not limited to, name,  
18 Social Security numbers, home telephone numbers and addresses, tax returns, and medical,  
19 investment, credit and banking information).

20 2. "Highly Confidential Information" is Confidential Information that Lyft clearly  
21 designates as such as provided in this Order and that constitutes extremely sensitive "Confidential  
22 Information" the disclosure of which would create a substantial risk of serious harm that could not be  
23 avoided by less restrictive means.

24 3. "Document" means written, recorded or graphic material, media files, and  
25 electronically stored information, including but not limited to data, data sets, and compilations of data  
26 produced in response to the Administrative Subpoenas.

27 4. "Investigation" shall refer to the CAO's investigation referenced in the CAO's June 5,  
28 2017 administrative subpoena, the Petition and Motion to Enforce Administrative Subpoena filed on

1 July 21, 2017 in San Francisco Superior Court (Case Number CPF-17-515768), and any other  
2 litigation arising from the CAO's investigation.

3 5. "Public Records Request" shall refer to public records requests made pursuant to the  
4 California Public Records Act, the San Francisco Sunshine Ordinance, or any other similar laws  
5 (whether local, state, federal etc.).

## 6 **II. DESIGNATION OF CONFIDENTIAL INFORMATION**

7 6. Lyft shall mark all Documents and portions of Documents that Lyft contends contain  
8 Confidential Information or Highly Confidential Information with the legend "CONFIDENTIAL" or  
9 "HIGHLY CONFIDENTIAL" as appropriate. Where including a legend is not practical (e.g.,  
10 production of native files, video files, etc.), Lyft shall rename the file "CONFIDENTIAL" or  
11 "HIGHLY CONFIDENTIAL" as appropriate.

12 7. By designating any Document or portions of Documents "CONFIDENTIAL," or  
13 "HIGHLY CONFIDENTIAL," Lyft warrants and attests its good faith belief that the designation  
14 complies with the definitions included in this Order.

15 8. When designating Documents or portions of Documents for protection under this  
16 Order, Lyft will use good faith efforts to limit any such designation to specific material that qualifies  
17 under the appropriate standard. Accordingly, Lyft agrees to designate for protection only those parts  
18 of Documents that qualify as Confidential or Highly Confidential as such. Lyft agrees to refrain from  
19 mass, indiscriminate, or routinized designations.

20 9. If it comes to Lyft's attention that information or items that it designated for protection  
21 do not qualify for protection, Lyft agrees to promptly notify the CAO in writing within fourteen (14)  
22 calendar days of learning of such improper designation, that it is withdrawing the mistaken  
23 designation, and that the mistakenly designated information will not be subject to protection under this  
24 Order.

25 10. Any copies or reproductions, excerpts, summaries, compilations, or testimony,  
26 conversations, or other documents or media that paraphrase, excerpt, contain or otherwise reveal the  
27 substance of Confidential, or Highly Confidential Information shall also be treated as Confidential, or  
28 Highly Confidential Information, as appropriate, pursuant to this Order.

1           11. Inadvertent production of or failure to designate any Document or portion of a  
2 Document as Confidential or Highly Confidential shall not, standing alone, be deemed a waiver of  
3 Lyft's claim of confidentiality as to such information. After correction of a designation, the CAO  
4 must make reasonable efforts to ensure that the material is treated in accordance with the provisions of  
5 this Order.

6           12. Inadvertent production of any document or other material that Lyft later claims should  
7 have been withheld on grounds of privilege, including the attorney-client privilege, and the work  
8 product doctrine, will not be deemed to waive such privilege.

9           13. The CAO reserves the right to ask for additional information and justification with  
10 respect to any "CONFIDENTIAL" OR "HIGHLY CONFIDENTIAL" designation and may challenge  
11 a designation of confidentiality at any time. The CAO does not waive its right to challenge a  
12 confidentiality designation by electing not to mount a challenge promptly after the original designation  
13 is disclosed.

14           14. The CAO may initiate the dispute resolution process by providing written notice of  
15 each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as  
16 to whether a challenge has been made, the notice must recite that the challenge to confidentiality is  
17 being made in accordance with this Order. The parties shall attempt to resolve each challenge in good  
18 faith and must confer by telephone or in person within fourteen (14) calendar days of the date of  
19 service of notice. In conferring, the CAO shall explain the basis for its belief that the confidentiality  
20 designation was not proper and shall give Lyft an opportunity to review the designated material, and to  
21 reconsider the circumstances. Lyft shall provide a written response within fourteen (14) calendar days  
22 stating whether it agrees with the CAO's challenge, or, if it disagrees, explain the basis for continuing  
23 to assert the challenged designation.

24           15. If the Parties cannot resolve a challenge without judicial intervention, Lyft shall file and  
25 serve a motion to retain confidentiality within fourteen (14) calendar days after Lyft's written response  
26 to the CAO's challenge or the parties' meet and confer (whichever event occurs later in time). Lyft  
27 shall bear the burden of persuasion of showing that the contested material constitutes Confidential, or  
28 Highly Confidential Information.

1 **III. PERMISSIBLE USES OF CONFIDENTIAL INFORMATION**

2 16. All persons obtaining access to information marked "CONFIDENTIAL," or "HIGHLY  
3 CONFIDENTIAL," shall store the information in a secured manner and use such material only in  
4 connection with the CAO's Investigation, and not for any other purpose, regardless of its designation.  
5 Nothing in this Order shall limit or restrict Lyft's rights to use its own information in any manner that  
6 it deems appropriate.

7 17. Nothing in this Order shall impose any restrictions on the use or disclosure by a party  
8 of documents, material, or information obtained by such party independently of the production under  
9 this Order.

10 18. Confidential Information may be disclosed only to the following persons:

11 (a) Attorneys in the San Francisco City Attorney's Office, including staff or other  
12 such personnel in that Office necessary to assist counsel with the Investigation, such as litigation  
13 assistants, paralegals, and secretarial or other clerical personnel. Confidential Information may also  
14 ~~not~~ be disclosed to any person outside of that Office, including other persons or entities within the San  
15 Francisco City government, if and only if those persons (1) agree to abide by this Order and  
16 acknowledge and confirm their commitment to do so by reviewing this Order and executing the  
17 document attached here as Exhibit A, and (2) are, based on the CAO's good faith determination,  
18 necessary to assist with the Investigation or serve as consultants or experts described in subparagraph  
19 (c) below and are subject to the requirements of that paragraph;

20 (b) Document management and litigation support providers necessary to assist with  
21 the Investigation;

22 (c) Consultants or experts, retained by the CAO for the purpose of assisting with  
23 the Investigation, including associated personnel who are necessary to assist any such consultants or  
24 experts, provided that, at the time the Confidential Information is disclosed, the consultant, expert,  
25 and/or the associated personnel is not an employee of or consultant to (and, does not have any present  
26 plans to become, an employee of or consultant to) any Lyft competitor in the transportation network  
27 company ("TNC") industry. In the event the CAO wishes to disclose Confidential Information to an  
28 "Industry Participant" (which means a person employed by or a consultant to, or who has a present

1 plan to become an employee of or consultant to, any Lyft competitor in the TNC industry), then the  
2 CAO shall first notify Lyft of the intended disclosure and provide information reasonably requested by  
3 Lyft for it to evaluate whether good cause exists to object to the disclosure of Confidential Information  
4 to the Industry Participant. The CAO shall not disclose Confidential information to the Industry  
5 Participant absent either (a) Lyft's written consent or (b) the passage of 20 calendar days after the  
6 CAO gives notice and information to Lyft without Lyft providing a response to the CAO's notice; and  
7 (d) Any other person as to whom Lyft has consented to disclosure in advance and in  
8 writing, on notice to the CAO.

9 19. Highly Confidential Information may be disclosed only to attorneys in the San  
10 Francisco City Attorney's Office, including staff or other such personnel in that Office necessary to  
11 assist such counsel with the Investigation, such as litigation assistants, paralegals, and secretarial or  
12 other clerical personnel. Highly Confidential Information may also be disclosed to any persons falling  
13 within categories (b), (c), and (d) in paragraph 18 above.

14 20. Before disclosing Confidential Information and/or Highly Confidential Information to a  
15 person described in paragraph 18(c), the CAO must first: (a) advise the person that the information is  
16 Confidential Information and/or Highly Confidential Information and may only be used as specified in  
17 this Order; (b) provide the person with a copy of this Order; and (c) secure the person's printed name  
18 and signature on a statement in the form attached hereto as Exhibit A. The CAO shall retain the  
19 signed statement for the duration of the Investigation and make such statement reasonably available  
20 for inspection by Lyft.

#### 21 **IV. USE OF CONFIDENTIAL INFORMATION IN A JUDICIAL PROCEEDING**

22 21. In the event the CAO seeks to use Confidential Information or Highly Confidential  
23 Information in connection with a judicial proceeding, the following procedures shall apply:

24 (a) The CAO shall comply with the procedures set forth in California Rule of Court  
25 2.551(b)(3)(A). The CAO shall provide any notice under that section prior to or within one court day  
26 of the lodging of the documents with the court. The CAO will promptly notify Lyft of any ruling by  
27 the court or any challenge to the sealing of the documents, unless such ruling or challenge is  
28 accompanied by a proof of service showing service on Lyft or its counsel. In no event shall the CAO

1 bear the burden to file an application or motion for a sealing order with respect to information  
2 designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by Lyft.

3 (b) The parties shall confer and attempt to agree, before any trial or other hearing,  
4 on the procedures under which Confidential Information and Highly Confidential Information may be  
5 introduced into evidence or otherwise used at such trial or hearing or during pre-trial discovery  
6 proceedings, including but not limited to depositions.

7 22. Paragraph 21 of this Order is applicable to actions in which Lyft is a party and actions  
8 in which it is not a party.

9 **V. SUBPOENAS AND PUBLIC RECORDS ACT REQUESTS**

10 23. The CAO will notify Lyft in writing no later than three (3) business days following the  
11 receipt of any subpoena or Public Records Request relating to Confidential Information or Highly  
12 Confidential Information under this Order.

13 24. In response to a Public Records Request, the CAO will assert that Documents or  
14 portions of Documents designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (unless such  
15 document(s) have been un-designated in accordance with this Order) constitute investigatory materials  
16 exempt from production under one or more provisions of the Public Records Act, Cal. Govt. Code §§  
17 6250 *et seq.*, and the Sunshine Ordinance (S.F. Admin. Code Chapter 67), or as otherwise provided by  
18 law.

19 25. The CAO shall simultaneously provide a copy of this response to Lyft and keep Lyft  
20 reasonably informed about the status of the Public Records Request, such that it may reasonably take  
21 or respond to legal action to protect its confidentiality rights. The CAO shall notify the requester that  
22 he or she is seeking material marked as Confidential or Highly Confidential under the terms of this  
23 Order and that is not subject to disclosure under the Public Records Act.

24 26. If, following such notification, the requester seeks to compel the production, the CAO  
25 will promptly notify Lyft of such legal action and Lyft shall take appropriate legal action to protect its  
26 rights in the Confidential Information and/or Highly Confidential Information. CAO shall not have  
27 the burden to establish the material is Confidential Information and/or Highly Confidential  
28 Information and therefore not subject to disclosure. The CAO's obligations shall be consistent with

1 the Public Records Act, Cal. Govt. Code §§ 6250 *et seq.*, and the Sunshine Ordinance (S.F. Admin.  
2 Code Chapter 67).

3 27. The CAO will also not produce Confidential or Highly Confidential Information in  
4 response to a legal request without providing reasonable notice to Lyft and until Lyft has had a  
5 reasonable opportunity to object and/or seek an order protecting the Confidential or Highly  
6 Confidential Information from disclosure, unless the CAO is legally obligated to produce the  
7 information prior to Lyft objecting or seeking such an order.

8 28. The CAO will furnish only that portion of the Confidential Information or Highly  
9 Confidential Information that the CAO is legally required to disclose.

10 29. Nothing in this Order shall affect the CAO's disclosure obligations, under applicable  
11 public record disclosure laws, with respect to information not designated as Confidential Information  
12 or Highly Confidential Information under this Order.

13 **VI. MISCELLANEOUS**

14 30. This Order may be amended by application to the Court and upon a showing of good  
15 cause or by written agreement of the parties.

16 31. This Order shall survive the conclusion of the Investigation, and the CAO shall  
17 continue to treat Confidential Information and Highly Confidential Information designated under this  
18 Order until Lyft agrees otherwise in writing or a court order otherwise directs.

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1        32. If the CAO learns that, by inadvertence or otherwise, it has disclosed Confidential  
2 Information or Highly Confidential Information to any person or in any circumstance not authorized  
3 under this Order, the CAO must immediately (a) notify in writing Lyft of the unauthorized disclosures,  
4 (b) use its best efforts to retrieve all unauthorized copies of the Confidential Information or Highly  
5 Confidential Information, (c) inform the person or persons to whom unauthorized disclosures were  
6 made of all the terms of this Order, and (d) request such person or persons to execute the  
7 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

8 Dated: October 3, 2017

Respectfully Submitted,

DENNIS J. HERRERA

City Attorney

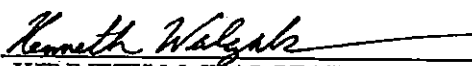
YVONNE MERÉ

Chief of Complex and Affirmative Litigation

KENNETH M. WALCZAK


AUSTIN M. YANG

Deputy City Attorneys

14  
15 By:   
16 KENNETH M. WALCZAK  
17 Attorneys for Petitioner  
CITY AND COUNTY OF SAN FRANCISCO

18 Dated: October 2, 2017

MUNGER, TOLLES & OLSON LLP

19  
20  
21 By:   
22 MARJA-LIISA OVERBECK  
Attorneys for Respondent  
LYFT, INC.

23 IT IS SO ORDERED.

24 Dated:

25  
26 JUDGE OF THE SUPERIOR COURT  
27  
28

1  
2 **Modification**

3 Provided that nothing in this order determines that any document marked "confidential"  
4 qualifies for sealing under CRC 2.550 or relieves any party from following the procedure in  
5 CRC 2.551.  
6

7 **ORDER**

8 GOOD CAUSE APPEARING for this Protective Order, **IT IS SO ORDERED.**  
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10 DATED: \_\_\_\_\_

12/6/17



11 HAROLD KAHN  
12 Judge of the Superior Court  
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**Exhibit A**

I, \_\_\_\_\_, declare that:

1. My address is \_\_\_\_\_, my current occupation is \_\_\_\_\_, and my employer is \_\_\_\_\_.

2. I am authorized to enter into this agreement on behalf of my employer. (Initial in the space to the right if you are signing on behalf of your employer: \_\_\_\_\_):

3. I have received a copy of the Protective Order concerning Lyft and the City and County of San Francisco, and entered in *City and County of San Francisco v. Lyft, Inc.*, S.F. Superior Court No. CPF-17-515768 (the "Order").

4. I will comply with all of the provisions of the Order. I will hold in confidence and, except as permitted by the Order, will not disclose to anyone any information or documents designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" that is disclosed to me. I will only use information or documents designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" to assist attorneys in the San Francisco City Attorney's office with their Investigation (as defined in the Order).

I declare under penalty of perjury that the foregoing is true and correct.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_