



THE CITY OF SAN MATEO

REQUEST FOR PROPOSALS

FOR

CAR SHARING SERVICES

April 8, 2015

SECTION 1: INTRODUCTION

The City of San Mateo is located on the San Francisco Peninsula, at the midpoint between San Francisco and Silicon Valley. The San Mateo City Council has established sustainability as one of its top priorities and to this end is in the process of adopting an updated Climate Action Plan to achieve our goal of reducing Greenhouse Gas Emissions citywide. Increasing the availability of car sharing vehicles throughout San Mateo is one of the strategies the City is exploring to reduce the transportation-related emissions within our community.

NOTICE INVITING PROPOSALS

1. The City of San Mateo ("City") is requesting proposals from qualified firms ("Vendor") to provide car sharing services at a minimum of 8 locations within the City, including City-owned property and on other properties owned by partners identified by the City. Proposals should be submitted to the City Manager's Office, Attention: Kathy Kleinbaum, Senior Management Analyst, City of San Mateo, 330 West 20th Avenue, San Mateo CA 94403 by 5:00 pm on Thursday, May 14, 2015.
2. The proposal is available as a free download from the City of San Mateo. Any questions regarding the contract documents should be directed to Kathy Kleinbaum, Senior Management Analyst, at (650) 522-7153, or in writing at: kkleinbaum@cityofsanmateo.org.

4. PROJECT SCHEDULE AND CONTRACTOR/VENDOR SELECTION

Proposal Due	May 14, 2015 by 4:00 PM
Selection and Award of Project	June 2015
Project Completion	August 2015

The dates shown above for selection, award and project completion are *tentative*. The Vendor shall state in the proposal a commitment to the project schedule outlined above (including project resources).

5. Addenda issued shall become a part of the documents furnished bidders for the preparation of proposals, shall be covered in the proposals, and shall be made a part of the Contract. Each proposal shall include specific acknowledgement in the space provided of receipt of all Addenda issued during the proposal period. Failure to so acknowledge may result in the proposal being rejected as not responsive. Failure of any bidder to receive such Addenda shall not be grounds for non-compliance with the terms of the instructions. It is the responsibility of the Vendor to contact the City to determine the existence of any and all addenda.
6. The right is reserved, as the interest of the City may require, to reject any or all proposals, to waive any informality in proposals, and to accept, modify, or reject any items of the proposal, or in the case of a single proposal being received to extend the

acceptance date by up to thirty (30) days with notice. The City of San Mateo is a charter City and any contract entered into is subject to the provisions of the City of San Mateo Charter, which may supersede certain provisions of the Public Contract Code and other provisions of state law.

7. City Representative shall report the results of the proposals to the City Council at a later date, at which time the City Council may award the contract as City's interests dictate. The City Council may exercise its right to modify the award or to reject any or all bids.

Dated: April 8, 2015

/S/ Maureen Freschet, MAYOR

SECTION 2 - SCOPE OF WORK

The City of San Mateo was awarded a grant from the Metropolitan Transportation Commission (MTC) from their Car Sharing Grant Program. The Car Sharing Program is part of MTC's Climate Initiatives Program, which invests in innovative technologies and strategies to reduce transportation-related emissions. The City of San Mateo plans to use the grant funds to expand car sharing services within the City in order to create a robust network that supports both the existing and future land uses, developments and transportation services.

The focus of the project will be to locate at least an additional 8 car sharing pods throughout the City at our high density residential developments, transit stations, community centers, and employment centers. The City does not plan to subsidize the placement of the car sharing vehicles with the grant funds. The grant funds will be used for a marketing campaign in partnership with Commute.org to advertise the availability of car sharing within the City with a focus on connections to other transit services for expanded travel options. In addition, the City will evaluate the success of the car sharing expansion and use the collected data to evaluate what changes should be made to our existing zoning code, right-of-way use policies, and/or Transportation Demand Management program to require car sharing in future development projects. A portion of the grant funds, a total of \$50,000, have been earmarked to pay for electric vehicle charging infrastructure to be installed for the dedicated use for electric car sharing vehicles at a portion of the proposed locations, the number of which will depend on the installation costs.

The City is seeking proposals from established car sharing service providers to locate at least 8 publically available car sharing pods throughout the City. The City has identified the following preferred locations for car sharing services, which are shown in the map in Attachment 1:

- Downtown Caltrain Station/Transit Center Garage (City-owned property)
- Hillsdale Caltrain Station parking facility
- Hayward Park Caltrain Station parking facility
- Martin Luther King Center Recreation Center (City-owned property)
- College of San Mateo campus
- County of San Mateo Health Center campus
- Franklin Templeton Headquarters/Bay Meadows development
- MidPen Housing affordable development at 2000 S. Delaware Street.

The City has direct control of 2 of the 8 proposed sites and has confirmed interest from the remaining property owners in negotiating with the City's selected vendor to operate a car sharing pod at their property. The City is also open to considering additional or alternative sites within San Mateo as may be identified by the selected car sharing provider.

Minimum Requirements for Vendor

To ensure a successful car share program, the City requires the selected vendor to include the following minimum elements as part of their program. Each of the elements should be described in detail as part of the submitted proposal:

1. Vendor agrees to provide car share vehicles at 8 unique locations throughout the City. The number of cars at each location will be determined by the vendor in consultation with the property owners.
2. Customers shall have the ability to register, make reservations, and utilize the vehicles 24 hours a day, seven days a week, including holidays.
3. Vendor shall provide a secure online reservation system for customers to make reservations.
4. Vendor will provide and follow protocols and procedures for handling customer questions, feedback, and complaints in a timely and professional manner.
5. Vendor shall ensure accessibility of its services to members and passengers with disabilities, at least to the extent required under state and federal law.
6. Vendor shall service and maintain car sharing vehicles in a state of good repair as specified by the manufacturer. Should a vehicle be unavailable for member use due to maintenance or service, a spare vehicle shall be provided in a timely manner.
7. Vendor shall provide vehicle license and registration and shall keep proof of registration and insurance in the vehicles.
8. Vendor must be able to provide data collection and reports to the City on membership and vehicle usage patterns.
9. Vendor shall also commit to facilitating and/or collecting survey data from customers.
10. Vendor must be able to provide electric or plug-in hybrid vehicles for a portion of the locations if dedicated Electric Vehicle chargers are made available.

Specific elements of the above requirements are described in more detail in the sections below.

Electric Car Sharing vehicles

A portion of the grant funds awarded to the City will be used to pay for the purchase and installation of dedicated electrical vehicle chargers so that a portion of the City's car sharing network can include electric or plug-in hybrid vehicles. It is anticipated that the installation of the charging infrastructure will occur after the initial roll-out of the car sharing locations. The exact timeframe is to be determined but may lag as much as 6 months to a year. The selected vendor will provide input on which locations are the most feasible for electric or plug-in hybrid vehicles and will be responsible for providing these vehicles once the EV chargers are installed. The vendor is not expected to cover any portion of the costs of the EV charger procurement or installation.

Usage Data and Customer Surveys

The selected vendor would be required to provide detailed data to the City on the usage of the car share vehicles and also allow the City to survey their users to get information about their general commute behavior, vehicle ownership rates, etc. This data will be used to assist the City in evaluating the success and the potential long-term impacts of the project. The City plans to hire a consultant to analyze the data obtained from the car sharing provider and use the

results to identify and recommend positive changes to our Zoning Code and existing Transportation Demand Management policies to better incorporate car sharing so to achieve the maximum benefit citywide from this amenity.

The City will work with the vendor to identify the specific data to be provided which may include:

- Current and new membership enrollment within the jurisdiction.
- Average daily reservation requests per location.
- Average vehicle rental period and distance traveled.
- Number of business accounts.
- Number of personal membership accounts.

Vendor's Responsibilities

The selected car sharing vendor will be responsible for the following:

- Working with the City to finalize the location of the 8 car sharing vehicle pods.
- Executing license agreements with each property owner for the car sharing spaces.
- Installing and maintaining City-approved signage at designated parking spaces.
- Installing and maintaining City-approved stencils (if desired by the property owners) to help further designate parking spaces for exclusive car share use.
- Providing and maintaining the fleet of car sharing vehicles for the designated spaces. The vehicles shall be clearly marked as car sharing vehicles on their exterior for ease of locating them and to avoid errant citation by the City.
- Providing electric or plug-in hybrid vehicles at a portion of the car share locations following the installation of the dedicated EV chargers for car sharing vehicles.
- Providing ongoing usage data reports to the City on a schedule to be negotiated with the City at the time of selection.
- Providing access to the City to the local user database to allow the City to administer surveys related to their car share use.
- Assist the City in marketing availability of car sharing services.

License Agreement

The City will enter into a license agreement with the selected vendor for the use of the City-owned spaces. A sample license agreement is included as Attachment 2 to this RFP. The Vendor shall state his or her willingness to accept these terms and conditions. The Vendor shall list any items which cannot be met and the alternative suggested wording, if necessary to ensure proper agreement terms.

SECTION 3 - PROPOSAL REQUIREMENTS

The proposal should include the following components. The proposal shall comply with the following criteria. The proposal should be brief and concise. A total of three (3) bound copies of the proposal and one (1) electronic copy via email shall be submitted no later than the time and date referenced in this RFP. Please note that files over 10MB cannot be accepted by the City via email and instead can be sent via a file sharing service or can be submitted on a flash drive.

1. *Cover letter* – The cover letter should describe the background of the Vendor’s company and should clearly state the Vendor’s understanding of the services to be provided. The letter should include the name(s) of the person(s) who will be authorized to represent the Vendor, their title(s) and telephone number(s) and email address(es). An official of the firm who has authority to enter into a contract must sign the cover letter.
2. *Qualifications and Experience*
 - Describe the firm, its size and organization, operational structure, and the location of offices.
 - Describe the size of the car sharing fleet currently operated by the firm and its current market penetration in the Bay Area and within San Mateo County.
 - List past experiences in implementing car sharing services in partnership with public agencies.
 - Provide a minimum of 3 references from public agencies that you have worked with on car sharing programs. Include a brief summary of your responsibilities for each entity listed.
3. *Business Model* – Please describe the specifics of your car sharing business model including but not limited to:
 - Membership enrollment.
 - Fee structure for use of car sharing vehicles, including any required registration or ongoing fees for members.
 - Reservation system for customers.
 - Customer support system.
 - Car sharing location selection.
 - Vehicle maintenance program.
 - Vehicle tracking and security.
 - Vehicle insurance coverage for members.
 - Fleet composition (including any lower emission and alternative fuel vehicles).
 - Lease payments for use of parking spaces.

- Typical length of terms for license agreements.
4. *List of Subcontractors and Service Providers* – The Vendor must provide detailed information regarding the use of any subcontractors and service providers, if any, under this RFP. The list of subcontractors and service providers must include the subcontractor’s and service provider’s name, address, and phone number. The list should also include a description of the type of work or functionalities each company is providing related to this RFP. Vendors shall list their subcontractor(s)’ California State License classification and license numbers.
 5. *Project Methodology* – Describe your approach to this specific project including but not limited to:
 - Selection of final car sharing locations
 - Negotiation of License Agreements
 - Mobilization plan and timeline
 - Marketing plan
 - Data collection and approach to customer surveys
 6. *Financial Plan* – The City’s grant funds will support the initial marketing plan, data collection, and installation of EV Chargers. The vendor financial investment in the project is an important consideration. The vendor will be responsible for the following costs, with no financial assistance from the City or the other property owners:
 - Provision and maintenance of the vehicles and all required technologic systems to support the car sharing operation;
 - Signage and striping, if desired by the property owners, at car sharing locations;
 - License fees (as outlined below);

The vendor should address their ability to cover these costs in the proposal.

7. *License Fees* – License fees for the use of the parking spaces will be negotiated with each property owner. The vendor shall state their approach to negotiating license fees and/or profit sharing with property owners.
8. *Proposed Contract amendments* – The Vendor should review the sample License Agreement in Attachment 2 that will apply to this proposal and should list any items which cannot be met and the alternative suggested wording, if necessary to ensure proper agreement terms

Submit three (3) bound copies of the proposal and one (1) electronic copy to:

Kathy Kleinbaum
City of San Mateo
City Manager's Office
330 West 20th Avenue
San Mateo, CA 94403
Kkleinbaum@cityofsanmateo.org

Please note that the City's email system only accepts emails that are smaller than 10MB in size. If your proposal is a larger file, please submit it via a file sharing service or on a flash drive.

SECTION 4 – VENDOR SELECTION AND CONTRACT AWARD

VENDOR SELECTION CRITERIA

Proposals received will be evaluated and ranked based on evaluation criteria listed below. A list of Vendors will be selected for further evaluation. Vendors that are placed on the list on the basis of the evaluation criteria may be requested to go through an interview process prior to final selection.

Evaluation Criteria

The City will evaluate each Vendor's proposal on the basis of the overall best values to the City based on quality, service, price, and other criteria set out herein including, but no limited to:

- Vendor's experience in operating car sharing programs.
- Vendor's experience in partnering with public agencies.
- Vendor's market penetration in the Bay Area and specifically in San Mateo County.
- The end-user experience for customers including customer service, competitiveness of pricing, and ease of reservation and access.
- Vendor's approach to maintenance and upkeep of car sharing vehicles.
- Vendor's willingness to partner with the City for data collection and marketing.
- Vendor's ability to agree to the City's standard terms and conditions.
- Vendor's approach to negotiating license fees with property owners.

AWARD OF CONTRACT

Negotiations will be held with the Vendor ranked most qualified by the evaluation committee on the basis of the proposal and interview. The City will negotiate the agreement with the most qualified Vendor. The Vendor must be prepared to immediately begin working on the project after approval of the agreement.

Should the City be unable to reach an agreement with the most qualified Vendor, negotiations will commence with the next most qualified Vendor. This process will continue until a satisfactory contract is negotiated. The City exercises its right to reject any and all proposals.

Conditions of Award

It is the intent of the City to award to the most responsive firm provided the proposal has been submitted in accordance with the requirements of this RFP document, judged to be fair and reasonable. The City shall be the sole judge of the firm's qualifications, and to determine whether the proposal is in the best interests of the City.

The City may conduct such investigations, as the City considers necessary to assist in the evaluation of any proposal and to establish the responsibility, qualifications and financial ability of the offers and award in accordance with the RFP documents to the City's satisfaction within the prescribed time.

AMENDMENTS TO THIS REQUEST FOR PROPOSAL

The City reserves the right to amend this RFP by an addendum at any time prior to the date set for receipt of proposals. Addenda or amendments will be available at City Hall and shall be the responsibility of the firm to obtain all addenda.

If revisions are of such a magnitude to warrant, in the City's opinion, the postponement of the date for receipt of proposals, an addendum will be issued announcing the new date.

ADDITIONAL INFORMATION

Proposals will be considered only from firms that are well established in an appropriate business, who are financially responsible, and who have the resources and ability to offer services in a professional and expedient manner. The City reserves the right to be the sole judge of these criteria.

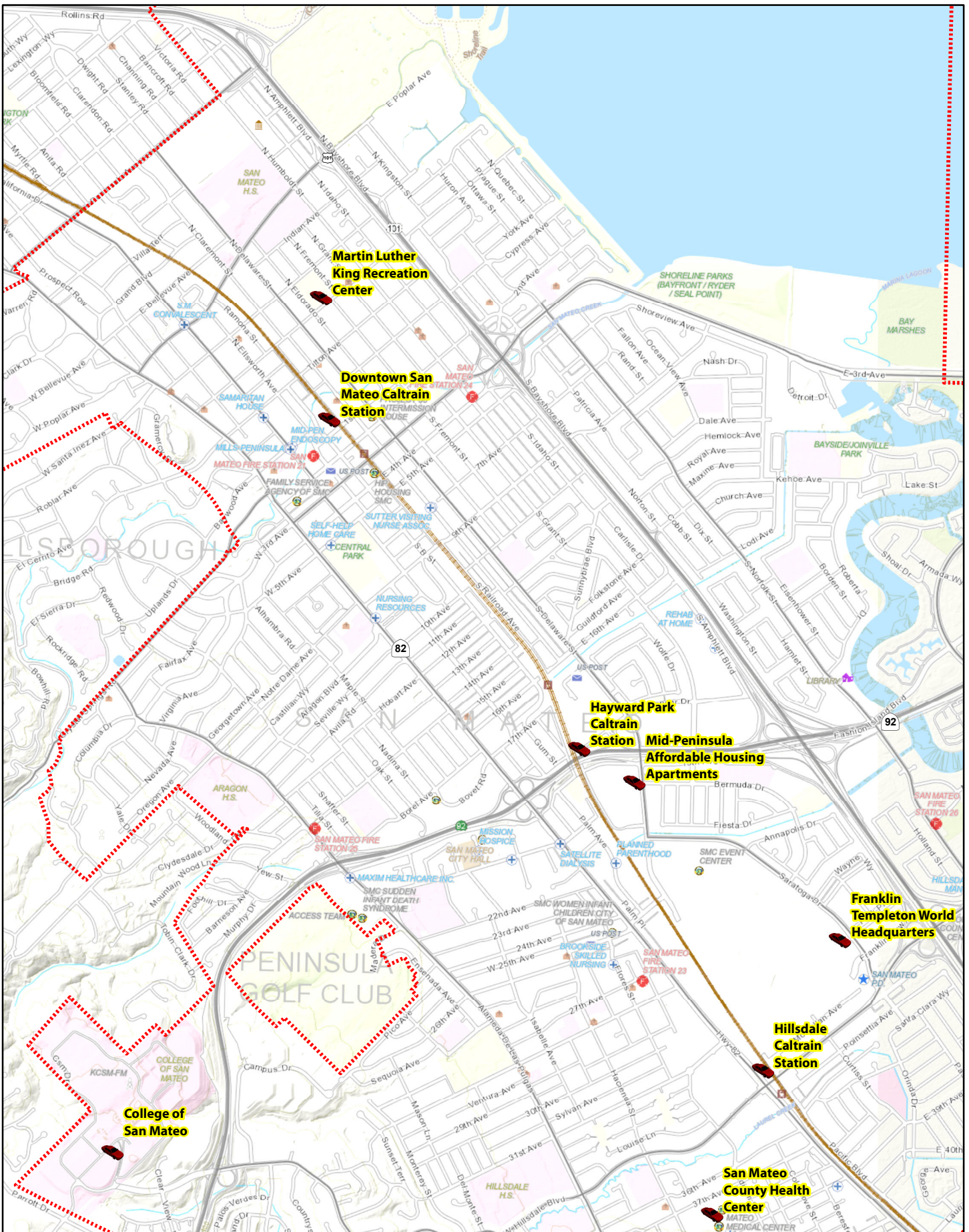
The City may request additional information as deemed necessary. Failure to provide such information may result in the proposal being considered incomplete.

The City of San Mateo reserves the right to reject any and all proposals, to waive any informality in the proposals received, and to accept the proposal deemed most advantageous to the City.

For questions and additional information about this Request for Proposal contact Kathy Kleinbaum at (650) 522-7153 or kkleinbaum@cityofsanmateo.org.

Enclosed:

- Attachment 1 – Map of proposed locations
- Attachment 2 – Proposed Form of License Agreement

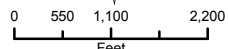


City of San Mateo Proposed Car Share Locations

Legend



Proposed Car Share Location



ATTACHMENT 2

LICENSE AGREEMENT BETWEEN THE CITY OF SAN MATEO AND _____ FOR THE USE OF CITY-OWNED PARKING SPACES FOR CARSHARING SERVICES

This Agreement (Agreement”) (“Permit”) is dated for identification this ____ day of _____, 20__, by and between **CITY OF SAN MATEO** (herein termed “City”) and _____, a _____ (herein termed “Licensee”).

RECITALS:

- A. Licensee desires to provide car sharing services on parking spaces owned by the City; and
- B. City has the authority to regulate the terms and conditions for the use of public property; and
- C. Licensee is a corporation doing business in City and desires to provide their proprietary car sharing vehicles in support of its business operations;

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, City and Licensee agree as follows:

“Business Day” means any calendar day, except a Saturday, Sunday, and any Day observed as a legal holiday by City. For the purposes hereof, if the time in which an act is to be performed falls on a Saturday, Sunday, or any Day observed as an official holiday by City, the time for performance shall be extended to the following Business Day.

“Day” means any calendar day, unless a Business Day is specified. For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first Day and including the last.

“Carsharing Services” means without limitation, a membership based service available to all qualified drivers in a community which offers members access to a dispersed network of shared vehicles at unattended self-service locations.

“Law” or “Laws” means any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, administrative order, certificate, order or other requirement of any municipal, county, state, federal or other Agency having joint or several jurisdiction over the parties to this Agreement, in effect either at the time of execution of this Agreement or at any time during the location of the Facilities in the Public Right-of-Way, including, without limitation, any regulation or order of an official entity or body.

Section 1 – SCOPE OF AGREEMENT

This License Agreement authorizes the activities described in Exhibit A and incorporates by reference the requirements of the City’s Request for Proposals issued on _____.

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Section 2 - TERM OF AGREEMENT

A. This Permit shall be binding on the Licensee on the date of its approval by the City Council (“Effective Date”), and shall be for an initial term of one year. Provided that Licensee is not in default under this License, the term will renew automatically for one-year periods of time, unless the Licensee or the City chooses to terminate the agreement. Either party shall be required to provide the other party with 60 days prior written notice of termination.

B. Failure on the part of the Licensee to perform any material obligation imposed upon it shall constitute a default and a material breach of this License. In such event, the City shall be entitled to exercise all rights and remedies hereby reserved under this License or made available under applicable Laws. For the purposes of this License, a “material obligation” shall include, without limitation, any failure of the Licensee to give any required notice to the City, and the failure to pay, collect or remit any fee or tax.

Section 3 - LICENSE FEES

Licensee agrees to pay the City a License Fee of one dollar per year for the initial one year term of this agreement as consideration for exclusive use of the property. The License Fee may be renegotiated upon the renewal of the agreement beyond the initial term.

Section 4 - LIMITATIONS AND RESTRICTIONS

A. City hereby agrees to permit Licensee, subject to reservations, covenants and conditions herein contained, to provide Car Sharing Services at designated parking spaces that are owned by the City.

B. This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to lawfully use any or all of the City-owned facilities in the performance of its duties. No use of any property under this Agreement shall create or vest in Licensee or its successors any ownership interest in the property or other interest of City. Nothing in this Agreement shall be deemed to grant, convey, create, or vest a perpetual real property interest in land in Licensee, including any fee or leasehold interest in land, easement, or any franchise rights.

C. This Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances and claims of title which may affect the designated parking spaces, and it is understood that Licensee, at its own cost and expense, shall obtain such permission as may be necessary, consistent with any other existing rights. Subject to the provisions of this Agreement, City hereby licenses and permits Licensee to obtain exclusive use of the designated parking spaces for carsharing service and to place signage in support of the of Licensee’s business operations. Any work performed pursuant to the rights granted to Licensee under this Agreement shall be subject to the prior review and approval of the City.

D. The installation, operation, maintenance and removal of any physical improvements to support the carsharing service shall be accomplished without cost or expense to City and in such

ATTACHMENT 2

a manner as not to endanger persons or property, or unreasonably obstruct travel on any road, walk or other access on the City's property.

Section 5 - REMOVAL OF VEHICLES

The City shall have the right to temporarily prohibit all automobiles from being parked in one or more licensed spaces as the need arises. The Parties recognize that occasional repairs are required, that licensed spaces may be closed due to flooding, debris, or other impediments, and that public property is occasionally occupied for the purposes of conducting repairs, parades, festivals, and other events, whether such event is conducted by the City or any person not a party to this License Agreement. In the event licensed spaces are removed from service by the City, the City will work with the Licensee to identify nearby alternative locations for the duration of time that the licensed spaces are unavailable. The duration of time allowed for a temporary closing or relocation shall be an amount of time that reasonable for such purpose.

Section 6 - COMPLIANCE WITH STANDARDS

A. Licensee agrees to keep said carsharing facilities in good and safe condition and free from any nuisance, to the reasonable satisfaction of City's Director of Public Works.

B. Licensee shall construct, install, operate and maintain all carsharing facilities in accordance and in conformity with all applicable City, State, Federal and regulatory agency laws, ordinances, rules and regulations.

Section 7 - NO FRANCHISE RIGHTS CREATED

Nothing in this Agreement shall be construed as granting or creating any franchise rights.

Section 8 - REMOVAL AND RELOCATION

If any portions of the parking spaces covered under this Agreement are no longer used by Licensee, or are abandoned for a continuous period in excess of six months, Licensee shall notify City and shall either promptly vacate or remove any improvements, such as signage and striping, at its own expense or, at City's discretion, may be allowed to abandon some or all of the improvements in place. If Licensee is permitted by City to abandon its improvements in place, any such abandoned improvements shall be deemed conveyed to City and Licensee shall have no further obligation to remove, relocate or maintain said improvements, except as provided hereinafter.

Section 9 - CONSTRUCTION ENCROACHMENT PERMIT AND FEES

Licensee shall apply for a project specific encroachment permit for all work within the public right-of-way and any other regulatory permits. Licensee shall furnish detailed plans of the work and other such information as required by the Director of Public Works, including a detailed map showing the layout of the proposed facilities and all existing facilities located in or immediately adjacent to the area subject to the encroachment permit, and shall pay or deposit within City all

ATTACHMENT 2

applicable costs such as processing fees, field marking, plan review, engineering and inspection fees related to the proposed work, and City's actual legal fees for the preparation of this agreement prior to issuance of permit (or subsequent work being performed in the case of costs or expenses not covered by a deposit) in accordance with the rates in effect at the time when work is performed. Any improvements shall be constructed and installed in accordance with the City Municipal Code street opening permit general conditions and any specific encroachment permit requirements, and as further provided in this Agreement.

Section 10 - DAMAGE TO PUBLIC FACILITIES

If any City property is damaged by Licensee or its invitees in connection with Licensee's activities pursuant to this Agreement, Licensee shall, upon City's request, promptly repair (or arrange for the repair of) such damage at Licensee's sole cost and expense and to the satisfaction of City.

Section 11 - HOLD HARMLESS AND INDEMNIFICATION

Licensee, jointly and severally, for itself, its successors, agents, contractors and employees, hereby agrees to hold harmless, defend (with counsel selected by Licensee and reasonable satisfactory to City) and indemnify City, its elected and appointed officials, employees and agents (all of the above hereinafter collectively known as "Indemnitees"), from and against all claims, cause of actions, proceedings, losses, damages, liability, cost and expense (including, without limit, any fines, penalties, judgments, litigation costs, attorney's fees and consulting, engineering and construction costs) for actual loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) ("Liability") when caused by, arising out of or related to the activities or Facilities described in this Agreement. The duty of Licensee to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the Civil Code. It is the express intent of the parties that Licensee will indemnify and hold harmless Indemnitees from any and all claims, suits or actions arising from any cause whatsoever as set forth above regardless of the existence or degree of fault or negligence on the part of City, Licensee or any subcontractor or employee of any of these, except to the extent the Liability was the result of the gross negligence or willful misconduct or criminal acts of the City, its directors, officer, employees and agents. The obligations of Licensee under this Section shall survive termination of this Agreement.

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Section 12 - INSURANCE

Any person, firm or corporation Licensee authorizes to work upon the City's property, including any subcontractor, shall be deemed to be Licensee's agent and shall be subject to all the applicable terms of this Agreement. Prior to entry upon or occupation of City's property by such agents, Licensee shall provide City with satisfactory evidence (e.g., in the form of a Certificate of Insurance and endorsement) that it and its contractors or other agents who will obtain access to the City's property pursuant to this Agreement are insured in accordance with the following, which insurance shall remain in effect throughout the term of this Agreement and shall be at the sole cost and expense of Licensee (or its agents). Prior to the start of the work or entry onto City property, Licensee agrees to procure and maintain, and to require its contractor(s) to procure and maintain, at its (or its contractors') sole cost and expense (and to provide to City's reasonable satisfaction that it remains in effect throughout the work) the kinds of insurance described below:

a. Workers' Compensation and Employers' Liability Insurance.

Licensee shall secure the payment of workers' compensation in accordance with the provisions of Section 3700 of the California Labor Code (and any amendments thereto or successor acts or statutes) and Licensee shall furnish City with a certificate evidencing such coverage together with a verification thereon as follows:

"I am aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against a liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work under this Agreement."

The Licensee shall also maintain Employer's Liability coverage with minimum limits of \$2,000,000.

Licensee shall furnish the City with the Certificate(s) of Insurance and endorsement required hereunder prior to the commencement of work. The Certificate shall also provide that Licensee's policy will not be cancelled or have coverage reduced without 30 days prior written notice.

b. Commercial General Liability Insurance.

Licensee shall, at its own cost and expense, also procure and maintain Commercial General Liability Insurance which shall include as additional insureds the City, its elected and appointed officials, employees and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

Insurance shall provide bodily injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim and a general aggregate limit of at least \$2,000,000. This insurance shall include but not be limited to premises and operations;

ATTACHMENT 2

contractual liability covering the indemnity provisions contained in this Agreement; personal injury; explosion, collapse, and underground coverage, products and completed operations, and broad form property damage.

Prior to commencing work or entering onto the Property, Licensee shall file a Certificate(s) of Insurance and endorsement with the City Manager evidencing coverage, and upon request, a certified duplicate of original of the policy. Said Certificate(s) shall stipulate:

(1) The insurance company(ies) issuing such policy(ies) shall give written notice to the City Manager of any material alteration, or reduction in aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation.

(2) That the policy(ies) is(are) Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Licensee is liable for under this Section, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the City.

(3) The policy(ies) shall also stipulate: Inclusion of the City as an additional insured shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Licensee. Said policy(ies) shall protect Licensee and the City in the same manner as though a separate policy had been issued to each, but nothing in said policy(ies) shall operate to increase the insurance company's liability as set forth in its policy(ies) beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

c. Automobile Insurance. Licensee shall, at its own cost and expense, procure and maintain Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least \$2,000,000 per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance. Such insurance shall include as an additional insured the City and its elected and appointed officials, employees and agents while acting in such capacity, and their successors or assignees, as they now or as they may hereafter be constituted, singly, jointly or severally.

d. Property Insurance. Licensee shall, at its own cost and expense, procure and maintain property insurance to protect its interest in the equipment to be used in performance of this Agreement and the City's interest in materials or property affected by the installation, covering all risks of physical loss or damage to such equipment and property. The coverage under such policy shall have limits of liability adequate to protect the value of the equipment and property to be installed.

e. Other Insurance Requirements.

(1) Term. The Worker's Compensation and Automobile Insurance shall remain in force until all work to be performed is satisfactorily completed, all of Licensee's personnel and equipment have been removed from City property, and the work has been formally accepted. The Property Insurance shall remain in force for the term of this License Agreement. The failure

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to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

All policies will be issued by insurers acceptable to the City. Upon evidence of financial capacity satisfactory to City, Licensee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

(2) Insurance Companies: Insurance companies must be admitted in California, be in good standing with the California Department of Insurance and have an A.M. Best's rating of at least A:VII (or equivalent).

(3). Deductible and Self-Insured Retentions and Proof of Insurance: Prior to the commencement of work under the Agreement, any deductibles or self-insured retentions must be stated on Certificates of Insurance, and the Certificate of Insurance and endorsement must be sent to and approved by City.

Section 13 – DEFAULT; ENFORCEMENT OF AGREEMENT

In the event of a breach or a threatened breach by Licensee of its obligations under this Agreement, and after the City's delivery of five days prior written notice of said breach or threatened breach (or, without any notice in the event of an emergency where public health or safety is endangered), Licensee agrees that it shall, upon City's request, promptly cease operations in and remove all vehicles from the licensed spaces. Licensee further acknowledges and agrees that no remedy conferred upon or reserved to the City is intended to be exclusive of any other available remedies, and the City shall be entitled to full and adequate other relief under both law and equity to enforce Licensee's obligations. If Licensee defaults under any of the provisions of this Agreement and the City employs attorneys or incurs other expenses for the collection of amounts due or the enforcement of this Agreement, Licensee will on demand pay the reasonable fee of such attorneys and such other expenses so incurred.

Section 14 - ASSIGNMENT

This Agreement shall not be assignable by Licensee without the explicit written approval of City, which approval shall not be unreasonably withheld, provided, however, that Licensee may assign the rights granted herein to a parent, successor, subsidiary, joint venture or affiliate of Licensee now or hereinafter existing, by only providing notice to City of such assignment. However, this Agreement shall be binding on successors and assigns and shall be disclosed to assignee. Assignee shall unconditionally acknowledge Agreement in writing within ninety (90) days of assignment or it terminates without further action.

Section 15 - ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.

ATTACHMENT 2

Section 16 - SEVERABILITY

If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this Agreement, and the parties shall negotiate in good faith to replace any such covenant, agreement or portion found to be null and void.

Section 17 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

Section 18 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

Section 19 – INDEPENDENT PARTY

Licensee shall at all times be considered an independent party hereunder, and neither Licensee nor its employees, agents or representatives shall, under any circumstances, be considered employees of the City, a partner with the City, or an agent of the City; and the City shall not be legally responsible for negligence or other wrongdoing, either intentional or unintentional, by Licensee or Licensee's employees, agents or representatives.

This License Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

ATTACHMENT 2

Section 20 - THIRD-PARTY MODIFICATIONS

This Agreement shall be subject to such changes or modifications as may be required or authorized by any regulatory body or commission in the exercise of its lawful jurisdiction and any modification, revision, renewal, or extension of this Agreement shall so state.

Section 21 - TERMINATION

This License may be terminated, for cause, by the City Manager or his/her designee at any time upon ten Business Days prior written notice to the Licensee.

This Agreement may be terminated by City in the event of nonuse or abandonment, defined in paragraph 15, upon 30 days written notice to the Licensee.

Section 22 - NOTICE

All notices and payments given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States Postal Service, or by private delivery systems, or by facsimile if followed by United States Postal Service, or by private delivery systems as follows:

To City: City of San Mateo
 ATTN: _____

To Licensee: _____

Section 23 - COSTS AND ATTORNEY'S FEES

Attorney fees in total amount not exceeding \$5,000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5,000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither party shall have to pay the other more than \$5,000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

ATTACHMENT 2

City:

Licensee:

CITY OF SAN MATEO

By: _____
(Print Name) _____
Title: _____

By _____
(Print Name) _____
Title: _____

Approved as to form:

Gabrielle Whelan
Assistant City Attorney