

## Franchise Agreement - Mobility Sharing Services

This Franchise Agreement (Agreement) is made as of \_\_\_\_\_, 2019, by and between the City of Fresno (City) and \_\_\_\_\_ (Franchisee).

### RECITALS

1. A goal of City is to provide safe and affordable multi-modal transportation options to all residents, reduce traffic congestion, and maximize carbon free mobility.
2. Shared mobility services are a component to help the City achieve its transportation goals and the City desires to make mobility share services available to residents and those who work in the City.
3. Franchisee is a qualified provider of shared mobility products and services and proposes to operate a mobility share program within the City.
4. Franchisee will abide by all city ordinances and rules governing the use of public space to efficiently and effectively provide shared mobility services.
5. Franchisee's fleet consists of a shared mobility device as defined in the City of Fresno Municipal Code.
6. Franchisee possesses cellular, GPS, self-locking technology in its fleet such that shared mobility devices may be locked and opened by users with an app and tracked to provide for operations and maintenance.
7. Franchisee has made their program data available according to the latest version of the [Mobility Data Specification](#) as published by the City of Los Angeles.

### Definitions

1. "Abandon" shall mean leaving an item unattended for any length of time.
2. "Operator" shall mean any person or business entity granted a permit and franchise by the City to operate a shared mobility device service.
3. "Public Area" shall mean any outdoor area that is open to the public for public use, whether owned or operated by the City or a private party.
4. "Public Right-of-Way" shall mean any public alley, parkway, public transportation path, roadway, sidewalk, or street that is owned, granted by easement, operated, or controlled by the City.
5. "Shared Mobility Device" shall mean any bicycle, tricycle, scooter, hoverboard, skateboard, pedal car, or other similar device, whether powered or non-powered, that is displayed, offered, or placed for rent in any Public Area or Public Right-of-Way. A Shared Mobility Device does not include automobiles registered by the

California Department of Motor Vehicles, nor devices used as assistive mobility devices by persons with disabilities.

6. "User" means a person who rents and uses a Shared Mobility Device from an Operator.

### **Agreement**

1. Franchise Fee. Franchisee shall pay to City a permit application fee of \$5,000 and an annual fee of \$100 fee per device in active service to operate shared mobility devices within the City. The franchisee must pay additional per-device fees prior to placing additional devices into service.
2. Permitted Use. Franchisee may deploy shared mobility devices within the excluding areas specified in paragraph 21 of this document, with a maximum fleet size of 300 devices in active service. The franchisee must receive written approval prior to placing additional devices into active service.

Franchisee customers may use the public way solely for parking of shared mobility devices owned and maintained by Franchisee for use in the mobility share program. Franchisee shall not place or attach any personal property, fixtures, or structures to City Property without the prior written consent of City.

- a. Use of the public way, and Franchisee's operations within the City, shall, at a minimum: a) not adversely affect City Property or the City's streets, or sidewalks; b) not adversely affect the property of any third parties; c) not inhibit pedestrian or vehicular movement within the public way or along other property or rights-of-way owned or controlled by the City) not create conditions which are a threat to public safety and security.
  - b. Speeds shall not exceed 15 mph
  - c. Upon termination of this AGREEMENT by either party, Franchisee shall, at its sole cost and expense, immediately remove its property from the public way.
  - d. Shared mobility devices may initially be deployed in locations identified in Exhibit A. City and Franchisee will work closely to identify other possible locations for deployment of shared mobility devices, in consultation with local business owners. No shared mobility devices shall be deployed by the franchisee in front of a business if so requested by the business. The franchisee shall use geo-fencing to prevent operation on private property/non-city right of way as requested by the City or property owner.
3. Parking. A Shared Mobility Device that is not in use:
    - (a) Shall be parked in such a way that leaves at least six feet of unobstructed passage in the public right of way, which shall be documented by a suitable photograph taken by the user upon conclusion of the ride if there is no permanent docked station for the Shared Mobility Device;
    - (b) May be parked in the grassplot, the grassy section of public right-of-way between the sidewalk and street, but may not park in any landscaped areas (shrubbery, flowers, other plantings) in the public right-of-way between the sidewalk, street or buildings;

- (c) Shall be parked at a bicycle rack or docking station, if available;
- (d) Shall be parked in an upright manner;
- (e) Shall not be parked in a way to obstruct
  - (1) Any transit infrastructure, where parking blocks ADA accessibility, docked bikeshare stations, or bus operations including but not limited to bus stops and signs, shelters, BRT stations, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
  - (2) Any loading zone;
  - (3) Any accessible parking zone;
  - (4) Any street furniture that require pedestrian access;
  - (5) Any curb ramp;
  - (6) Any entrance or exit from any building;
  - (7) Any driveway; and
  - (8) Any raingarden and/or drainage facilities.
- (f) Shall not be parked in any street or alleyway. The City Manager or designee may by regulation limit the locations at which a Shared Mobility Device may operate or cause Shared Mobility Devices to be stored or parked.

4. Condition of City Property

- a. City makes the public way available to Franchisee in an "as is" condition. City makes no representations or warranties concerning the condition of the public way or its suitability for use by Franchisee or its customers, and assumes no duty to warn either Franchisee or its customers concerning conditions that exist now or may arise in the future.
- b. City assumes no liability for loss or damage to Franchisee's shared mobility devices or other property. Franchisee agrees that City is not responsible for providing security at any location where Franchisee's shared mobility devices are stored or located, and Franchisee hereby waives any claim against City in the event Franchisee's shared mobility devices or other property are lost or damaged.

5. Maintenance and Care of Portion of City Property: Franchisee expressly agrees to repair, replace or otherwise restore any part or item of real or personal property that is damaged, lost or destroyed as a result of the Franchisee's use of City Property. Should Franchisee fail to repair, replace or otherwise restore such real or personal property, Franchisee expressly agrees to pay City's costs in making such repairs, replacements or restorations.

6. Operations & Maintenance. Franchisee will cover all maintenance costs for the shared mobility device fleet and maintenance to minimum level of service. Franchisee shall provide City its published maintenance program to ensure shared mobility devices are in good working order.

7. Indemnification. Franchisee shall defend, pay, indemnify and hold harmless City, its officers, officials, employees, agents, invitees, and volunteers (collectively "City Parties") as set forth in the Business License.

8. Insurance. Franchisee shall procure and maintain for the duration of this agreement insurance as set forth in the Business License.

9. Compliance with Law. Franchisee at its own cost and expense, shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities applicable to its use of City Property and the operation of its shared mobility device share program, including but not limited to laws governing operation of shared mobility devices. If any license, permit, or other governmental authorization is required for Franchisee's lawful use or occupancy of City Property or any portion thereof, Franchisee shall procure and maintain such license, permit and/or governmental authorization throughout the term of this agreement. City shall reasonably cooperate with Franchisee, at no additional cost to City, such that Franchisee can properly comply with this Section and be allowed to use City Property as specified in Section 3, above.

If a shared mobility device is blocking public right-of-way or otherwise poses a safety hazard, Franchisee must remove the shared mobility device within two hours. If a shared mobility device is not removed within two hours, City shall have the right, but not the obligation, to remove the shared mobility device and shall be entitled to reimbursements of its costs as listed in the City's master fee schedule. If a shared mobility device poses an immediate safety hazard, Franchisee shall remove the shared mobility device immediately. City shall have the right, but not the obligation, to remove any shared mobility device posing an immediate safety hazard, without first notifying Franchisee, and shall be entitled to reimbursement for its costs as listed in the City's master fee schedule.

10. Required Reports. Franchisee shall provide reports to the City concerning utilization of its shared mobility devices and route usage not less than monthly, and shall cooperate with the City in the collection and analysis of aggregated data concerning its operations.
11. No Joint Venture. Nothing herein contained shall be in any way construed as expressing or implying that the parties hereto have joined together in any joint venture or liability company or in any manner have agreed to or are contemplating the sharing of profits and losses among themselves in relation to any matter relating to this Agreement.
12. Pilot Program Term: The term of this Agreement is for six months from the date of Agreement execution as stated above. At the conclusion of the pilot program term, the Agreement may be extended by mutual consent of the parties.
13. Termination. This Agreement may be terminated prior to the expiration date set forth in Section 12, above, upon the occurrence of any of the following conditions:
- a. Upon delivery of written notice from City to the Franchisee terminating this agreement for any reason, or for no reason, by giving at least thirty (30) days' notice to the Franchisee of such termination.
  - b. An attempt to transfer or assign this agreement.

Franchisee shall not terminate this agreement without first by giving at least 180 days' written notice of plans for termination.

14. Safety. Franchisee shall provide to City its published safety awareness program which shall include, without limitation, a program for deterring unsafe riding and

improper parking of shared mobility devices, and related enforcement activities, and a means for riders to obtain free helmets from Franchisee.

15. Economic Equity. Franchisee shall offer an economic equity program offering reduced fares and alternative payment methods for economically disadvantaged rider as stated in attachment \_\_\_\_. This program shall only be modified through written amendment. City.
16. Amendment. This Agreement may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated in written amendments to this agreement and executed by duly authorized representatives of the parties.
17. License. Franchisee shall be required to obtain a business license to operate its shared mobility device business within the City.
18. Applicable Law and Venue. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.
19. Counterparts. This agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
20. Fleet Management. Each shared mobility device shall be equipped with a locking mechanism and/or smart technology equipment to prevent theft, as well as permanently affixed real-time GPS tracking device in order to track ridership data, owned and provided by the Operator.
21. Geofencing – Geofencing technology shall be used to limit speeds in in specific areas and/or safely disable any shared mobility device that has entered a zone that prohibits use. Geofenced zones in the City’s right-of-way/property shall be implemented/updated upon request of the City or, if non-City property upon request of the property owner.

Executed the day and year first above written, by the parties as follows:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Fresno:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SAMPLE