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 DEVICES 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 DEVICE 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 AREAS and the PUBLIC RIGHT-OF-WAY to efficiently and effectively provide SHARED MOBILITY DEVICES.

5. Franchisee's FLEET consists of a SHARED MOBILITY DEVICE as defined in the City of Fresno Municipal Code.

AGREEMENT

1. Franchise Fee. Franchisee shall pay to City a permit application fee of $5,000 and an annual 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. Other Fees.
    a. $70.00 per SHARED MOBILITY DEVICE per year in its deployed FLEET.
    b. $100.00 per occurrence of an impounded SHARED MOBILITY DEVICE.

3. Permitted Use. Franchisee may deploy a maximum FLEET of 500 SHARED MOBILITY DEVICES in active service. The franchisee must receive written approval prior to placing additional devices into active service.

    Franchisee customers may use the PUBLIC RIGHT-OF-WAY solely for parking of SHARED MOBILITY DEVICE 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 RIGHT-OF-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 RIGHT-OF-WAY or along other property or PUBLIC RIGHT-OF-WAY owned or controlled by the City d) not create conditions which are a threat to public safety and

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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 RIGHT-OF-WAY.
d. 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 GEOFENCING to prevent operation on private property/non-City right-of-way as requested by the City or property owner. Initial areas for GEOFENCING to prevent operation are indicated in Exhibit A.

4. 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:
        i. 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;
        ii. Any loading zone;
        iii. Any accessible parking zone;
        iv. Any street furniture that require pedestrian access;
        v. Any curb ramp;
        vi. Any bike lane;
        vii. Any entrance or exit from any building;
        viii. Any fire hydrant;
        ix. Any driveway; and
        x. Any raingarden and/or drainage facilities.
    f. Shall not be parked:
        i. In the travel lane of any street or alleyway;
        ii. In violation of California Vehicle Code;
        iii. On City sidewalks or other City property on the block adjacent to a location designated by the City for SHARED MOBILITY DEVICES; and
        iv. Within six feet in any direction of any transit sign, shelter, or street furniture.
    g. 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.
    h. If a SHARED MOBILITY DEVICE is parked in violation of Section 9-3406(d) of Fresno Municipal code and City staff impound said device, the City shall provide the OPERATOR with a timestamped and geotagged photo of the SHARED MOBILITY DEVICE, evidencing that it materially blocked the PUBLIC RIGHT-OF-WAY or ADA path of travel.

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5. Condition of City Property
    a. City makes the PUBLIC RIGHT-OF-WAY available to Franchisee in an "as is" condition. City makes no representations or warranties concerning the condition of the PUBLIC RIGHT-OF-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.

6. 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.

7. 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.

    a. USERS may not begin trips on SHARED MOBILITY DEVICES after 11pm or before 5am each day.

    b. OPERATOR shall provide an incentive program for USERS to park SHARED MOBILITY DEVICES in designated areas, when such areas are made available.

8. 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.

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

10. 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 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

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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 this Franchise Agreement. 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.

1. 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 with City Council approval for one additional one-year term.

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

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amendment.

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. At the end of the pilot program, OPERATOR shall report on the number of independent contractors, full-time, and part-time staff hired in the Fresno area.

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. GEOFENCING zones in the PUBLIC RIGHT-OF-WAY or on City-owned property shall be implemented/updated upon request of the City or, if non-City property upon request of the property owner. The OPERATOR shall provide a specific email account or online portal for submitting GEOFENCING requests, respond to all requests within 72 hours, and complete all requests within five business days.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY:
CITY OF FRESNO,
a California municipal corporation

By: _____
Wilma Quan
City Manager

Date: _____

LICENSEE:

_____

_____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Tracy N. Parvanian Date
Senior Deputy City Attorney

ATTEST:
Yvonne Spence, MMC
City Clerk

By: _____
Date

REVIEWED & RECOMMENDED FOR APPROVAL:

By: _____
Thomas W. Gaffery, IV Date
Parking Division Manager
Planning & Development Department

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EXHIBIT A

AREAS FOR GEOFENCING TO PREVENT OPERATION OF SHARED MOBILITY DEVICES

1. Fresno City College
2. Clovis Community College
3. California State University, Fresno
4. Fashion Fair Mall
5. River Park
6. Fresno Pacific University

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