

Dockless Vehicle Permit and Revenue Agreement

This Dockless Vehicle Permit and Revenue Agreement (the Agreement) is made and entered into by and between the City of San Antonio, Texas, a home-rule municipal corporation, hereinafter called the “City” and _____, a _____ corporation, hereinafter called the “Permittee”. City and Permittee may be individually referred to as a “Party” and cumulatively referred to as the “Parties.”

This Permit is granted subject to the terms and conditions set forth below:

1. Term. This Permit shall expire on the 12th day of January, 2022, and may be renewed for one additional year at City’s discretion.
2. Definitions. For the purpose of this Permit, the following terms shall apply:
 - a. *ADA Ramp* means a combined ramp and landing to accomplish a change in level at a curb in order to provide access to pedestrians using wheelchairs, other devices or aids.
 - b. *City* means the City of San Antonio.
 - c. *Director* means the Director of the City’s Center City Development and Operations Department.
 - d. *Dockless Vehicle* means a bicycle equipped with GPS, an electric bicycle, or a motor assisted scooter that is available for use for a fee.
 - e. *Fleet* means all Dockless Vehicles owned by the Permittee operating in the City.
 - f. *Motor Assisted Scooter (Scooter)* means a self-propelled device, not including a pocket bike or mini-motorbike, with:
 - i. At least two (2) wheels in contact with the ground during operation;
 - ii. A braking system capable of stopping the device under typical operating conditions;
 - iii. A gas or electric motor not exceeding forty (40) cubic centimeters;
 - iv. A deck designed to allow a person to stand or sit while operating the device; and
 - v. The ability to be propelled by human power alone.
 - g. *Permittee* means the sole proprietorship, partnership, association, corporation, or agency that is the named holder of a permit issued by the City as identified above.
 - h. *Right of Way* means streets, sidewalks, alleys, and other pathways open to the public, excluding those found in public parks.

- i. *User* means the person who is in actual physical control of a Dockless Vehicle.

3. Permit. The City provides a revocable non-exclusive permit to Permittee that allows Permittee to provide and locate Dockless Vehicles within the City for Permittee's customers and Users to operate Dockless Vehicles subject to, and in accordance with, state and local laws. This authorization is not a lease or an easement, and may be revoked by the City consistent with the terms of this Agreement.

4. Dockless Vehicle Fleet. Permittee is authorized to operate and make available up to 1,000 Dockless Vehicles to Users. At the discretion of the Director, the number of Dockless Vehicles available for operation may be increased. All Dockless Vehicles that are part of the Fleet shall:

- a. Comply with all applicable local, state, and federal laws and regulations covering Dockless Vehicles;
- b. Include a front light that emits white light visible from a distance of at least 500 feet in front of the Dockless Vehicle and a rear red reflector or light that is visible when directly in front of motor vehicle headlamps from a distance between 50 to 300 feet to the rear of the Dockless Vehicle; or a lamp that emits a red light visible from the distance of 500 feet to the rear of the Dockless Vehicle;
- c. Be branded with an identification number and the Permittee's logo to identify Permittee's Dockless Vehicles;
- d. Be attractive, highly durable, theft and vandal resistant, able to reasonably withstand weather conditions, safe, and easy to use by a wide range of Users;
- e. Come with a self-locking mechanism and remain upright when parked; and
- f. Dockless Vehicles may not display any third-party advertisements unless expressly authorized and approved by the City.
- g. Permittee must seek and receive approval from the Director to augment the type or model of vehicle to be deployed in the right-of-way.

5. Timeframe for Correction. Permittee shall have one (1) hour to address violations within prohibited areas identified in City Code, for violations that create an obstruction that conflicts with ADA access, such as vehicles that do not leave 36" of clear walk path or that interfere with curb ramps as defined in section 6 of this agreement.

6. Dockless Vehicle Parking. The City may designate or create parking zones that will be identified and provided to Permittee. City may add, remove, or modify specific locations for parking in coordination with Permittees and such areas will be identified as an Attachment to this

Agreement that can be modified at the discretion of the Director. In addition to the creation of parking zones, the Director shall also have the discretion to prohibit deployment or parking in specific areas. This authority for the Director to prohibit deployment in a specific location is intended to address unforeseen safety issues or to address inappropriate deployment around specific features, such as landmarks or arenas. It does not extend to prohibiting deployment or use within neighborhoods, along major thoroughfares, or in larger geographic areas.

Notwithstanding the creation of designated parking zones, all parking must be in accordance with the following:

- a. Dockless Vehicles shall be parked in accordance with San Antonio City Code requirements;
- b. Dockless Vehicles must meet the following parking restrictions when parked on the sidewalk:
 - i. Dockless Vehicles can only be parked on hard surfaces (e.g. concrete, asphalt, brick);
 - ii. Dockless Vehicles shall not be parked at the corners of sidewalks or within five (5) feet of crosswalks or curb ramps, meaning within five feet of the slope change that signifies the start of the curb ramp;
 - iii. Permittee may not deploy more than six vehicles in a group or cluster on a sidewalk; no group of permittee's deployed vehicles can be within twenty-five (25) feet of another; and, permittee cannot deploy more than twenty-five vehicles on a single block face. Vehicles deployed within any on-street parking corral do not impact this maximum count and can be deployed in numbers larger than six within the corral.
 - iv. Dockless Vehicles parked on sidewalks must not reduce the minimum ADA clear sidewalk width of thirty-six (36) inches; and
 - v. Aside from specifics set out within this Agreement, all Dockless Vehicles must be parked in accordance with City Code requirements.
- c. Dockless Vehicles may be parked on private property only with the permission of the private property owner;
- d. Dockless Vehicles shall stand upright when parked;
- e. Permittee must actively manage the Dockless Vehicle Fleet to ensure orderly parking and the free and unobstructed use of the Right-of-Way.
- f. Permittee will use all of its communication platforms to educate Users on proper Dockless Vehicle parking and will incentivize proper parking. Specific parking incentives will be established in coordination with the companies

within the Parking Framework Plan.

- g. When permittee is notified that a Dockless Vehicle is incorrectly parked, it must be cured consistent with time period described in Section 5 of this agreement.
- h. If a Dockless Vehicle has not moved from the same location for three (3) consecutive days, the Permittee will relocate the vehicle to another block face.
- i. Permittee shall not allow parking of Dockless Vehicles or trips to terminate on properties that have been designated by the City as sensitive areas that should be geo-fenced to restrict operation, travel and parking in those areas.
- j. Parking Framework. The Director will issue a Parking Framework that addresses additional guidelines and specifications for parking and identifies prohibited areas for operations and parking. Upon completion, and consultation with Permittee, the Parking Framework will be made a part of this Agreement as Exhibit A.
- k. Impounding. The City shall have the option to impound Dockless Vehicles that are parked in violation of City standards and have not been corrected within the timeframe noted in Section 5 above, or may immediately impound Dockless Vehicles that create a potentially hazardous condition or safety concern for the public, such as vehicles within the road or in another dangerous condition. Dockless Vehicles that are impounded will continue to count towards the total number of permitted Dockless Vehicles within Permittee's Fleet.
- l. ADA Access. Permittee acknowledges that keeping access to ADA ramps and sidewalks clear for pedestrian use is a point of emphasis for the City and that failure to address these issues in a timely manner will subject the Permittee to possible penalties under this Agreement.

7. Communication with City and Operational Requirements.

- a. The Permittee must appoint a key point of contact for the Permittee's operations.
- b. The key point of contact or a designee must attend all meetings required by the City in order to implement, monitor, and evaluate the program in accordance with this permit. The Permittee must develop, prepare, update, and distribute reports as required by this agreement, unless otherwise instructed by the City.
- c. The Permittee shall be responsible for managing and directing the day-to-day operations of the program, including reporting on resolution of complaints or

concerns identified through the City's 311 service.

- d. The Permittee must designate and maintain a fleet manager with a presence within the City Limits during business hours Monday-Friday.
- e. Permittee must maintain an operational center within the City Limits throughout the life of this contract.
- f. An annual report citing the number of employees within City Limits by position type, the minimum and average wages paid to those positions, and a description of benefits shall be provided to the Director.

8. Customer Communication and Outreach. Permittee shall:

- a. Educate customers regarding laws applicable to riding and operating a Dockless Vehicle in the City, including but not limited to: prohibitions regarding sidewalk riding; prohibited areas of operation and riding (e.g. River Walk, Alamo Plaza, public parks); minimum age, and the prohibition of tandem riding. These specific rules must be prominently displayed on the vehicle either through an applied decal or an attached card or placard by February 12, 2020.
- b. Instruct customers on how to park a Dockless Vehicle legally and properly;
- c. Encourage the wearing of helmets while riding and operating a Dockless Vehicle within the City.
- d. Provide a mechanism for customers to easily and quickly notify the Permittee that there is a safety or maintenance issue with the Dockless Vehicle, such as in a mobile application;
- e. Provide sufficient staff to handle rentals, Dockless Vehicle dispatching, operations, customer relations, and other administrative responsibilities as required by this permit;
- f. Maintain a 24-hour customer service phone number for customers to report safety concerns or complaints, or ask questions with a minimum one (1) hour response time;
- g. Provide customer service via mobile application, website and toll-free phone number enabling customers, residents, or the City to ask questions, report Dockless Vehicles that are damaged or improperly parked, request refunds or otherwise receive support;
- h. At the discretion of the City, annually distribute a customer survey developed by the City.

- i. Lead outreach efforts to business associations, major developers and property managers, community groups and other key stakeholders, to solicit input on operations and obtain feedback.
- j. Hold at least two events per quarter that both provide information to Users regarding rider safety and free helmets to enrolled or prospective Users.
- k. Provide a method for users to contact a local operations center and receive a free helmet within 5 business days. City intends to place this information on its website. Permittee must notify City of any changes to this program or changes in related contact information.
- l. Make available 1,500 free helmets each calendar year.
- m. Provide a quarterly report to the Director or his/her designee(s) that outlines the number and location of events from the last quarter, the approximate number of attendees, the content covered, and the number of helmets distributed at the event.

9. Payment Options and Equity Programs

- a. Permittee agrees to offer cash and non-smartphone payment options consistent with the programs referenced within their proposal. Permittee will provide the low-income plans designed to maintain affordability and accessibility for low income users as outlined in their proposal submitted to the City. Such plans, including pricing and eligibility criteria, may not be substantially amended during the duration, including any extension period, of this agreement. Refer to Exhibit B for permittee's minimum requirements regarding equity programs, services to unbanked populations, and methods for use without a smart phone.
- b. Permit holder agrees to conduct a marketing campaign at its own cost to promote the use of Dockless Vehicles particularly among low-income residents.
 - i. At least four of the community events referenced in §8(j) of this agreement must be held within census tracts that permittee services that have an overall ranking of 8 or higher in the City's Equity Matrix + Demographic Indicator Maps. This tool can be found on the website of the Office of Equity. Community and education events at low income housing developments are encouraged.
- c. Permit holder shall maintain a website, application (App), and service agreement in both English and Spanish.

10. Technology

a. Permittee must use commercially reasonable efforts to offer state-of-the-art Dockless Vehicle-share technology utilizing the following advanced technologies:

- i. A mobile application to accept payments, handle all aspects of rental transactions, and provide information on Dockless Vehicle availability and locations;
- ii. GPS technology or equivalent technology to provide real-time tracking of Dockless Vehicle location and routes and to record trip data;
- iii. RFID and/or NFC technology that enables customers to rent Dockless Vehicles from mobile devices, access cards or other similar devices; and
- iv. Geofencing ability to virtually designate parking areas, and restrict or limit access to sensitive areas, to support Dockless Vehicle Fleet management.

1. As of the effective date of this agreement, permittee is required to have implemented geofencing around all prohibited areas city-wide (see §5). Through geofencing or BLE technology:

- i. Vehicles must slow to a maximum speed of 2 mph within prohibited areas;
- ii. The vehicle or the application must provide haptic and/or audible warnings alerting a rider they have entered a prohibited area;
- iii. A ride cannot end within a geofenced area.

2. To avoid unintended vehicle slowing while vehicles are being lawfully operated in roadways adjacent to prohibited areas, permittee may reasonably buffer prohibited areas to avoid this conflict.

v. All vehicles that permittee deploys must have a gyroscope or other feature(s) that can accurately sense whether a vehicle has tipped or fallen. Operators must proactively correct tipped vehicles within two hours without notice by the City.

1. Permittee shall provide a monthly report demonstrating the number of tipped vehicles, the average correction time, and a list of all instances where a tipped or fallen vehicle was not

corrected within two hours. The list of vehicles not corrected within two hours must include: the vehicle number, the date and time it fell, the date and time it was corrected, and the location with coordinates.

11. Condition of Right of Way

- a. City makes the Right-of-Way available to Permittee in an "AS IS" and "WITH ALL FAULTS" condition. City makes no representations or warranties concerning the condition of the Right-of-Way or its suitability for use by Permittee or its customers and Users, and assumes no duty to warn either Permittee or its customers and Users concerning conditions that exist now or may arise in the future; and
- b. City assumes no liability for loss or damage to Permittee's Dockless Vehicles, or other property. Permittee agrees that City is not responsible for providing security at any location where Permittee's Dockless Vehicles are stored or located, and Permittee hereby waives any claim against City in the event Permittee's Dockless Vehicles, or other property are lost, damaged, or stolen.

12. Maintenance and Care of portion of Right-of-Way: Permittee 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 Permittee's use of Right-of-Way and other City property. Should Permittee fail to repair, replace, or otherwise restore such real or personal property, Permittee expressly agrees to pay City's costs in making such repairs, replacements, or restorations. In the instance of failure to pay, the City may take whatever actions are necessary under this Agreement or at law, up to and including termination of the Agreement.

13. Operations & Maintenance.

- a. Permittee shall be responsible to maintain the Dockless Vehicle Fleet. Permittee shall be solely responsible for all maintenance and service costs in order to maintain the Dockless Vehicle Fleet and associated maintenance;
- b. Permittee must provide ground operations to ensure the safety, accessibility, and placement of Dockless Vehicles throughout the City. Permittee's operational responsibilities include but are not limited to:
 - i. Daily Bicycle or Dockless Vehicle rebalancing and distribution throughout the City to ensure functional Dockless Vehicles are operational daily;
 - ii. Pick-up and replacement of Dockless Vehicles found parked in violation of City Code and this Permit within the specified period of time;

- iii. Prompt pick-up and repair, or replacement, of Dockless Vehicles that are reported to be in unfit riding condition. In addition, all vehicles reported as broken must be immediately disabled to prevent rental and use.
- c. User Behavior. Permittee must provide a mechanism to track, educate, incentivize and penalize Users who do not operate and/or park Dockless Vehicles in accordance with the laws of the state and City Code. The City will coordinate with the Permittee to establish a reporting system for citations or violations issued by the City to Users.

Permittee will implement an escalating system to penalize and ban Users that violate parking and operation rules as further developed and included in Exhibit ___, including but not limited to the actions identified below:

- i. Inappropriate parking or discarding of a Dockless Vehicle;
 - ii. Underage riding (younger than 16 years of age);
 - iii. Multiple passengers or “tandem riding” of a Dockless Vehicle;
 - iv. Identified dangerous or unsafe operation of a Dockless Vehicle;
 - v. Sidewalk riding; and
 - vi. Cumulative violations of the above.
- d. Permittee will be required to develop or incorporate end of ride parking photos into their application as agreed upon by the Parties.

14. Impoundment of Dockless Vehicles

- a. The City may impound Dockless Vehicles which:
 - i. Are an immediate hazard to health and safety, such as vehicles left or fallen into a roadway; or
 - ii. Vehicles that are not operated and/or parked in accordance with state law and city ordinances and the Permittee has not timely responded to a complaint and/or collected a Dockless Vehicle in accordance with this Agreement;
- b. Every Dockless Vehicle that is impounded may only be redeemed and released by paying a fee of **ONE HUNDRED AND NO/100 DOLLARS (\$100.00)** to the City for each Dockless Vehicle; and

- c. Upon forty five (45) days notice of impoundment, each Dockless Vehicle that remains within the possession of the City shall become and remain the property of the City.
 - d. Impounded Dockless Vehicles will continue to be included in the total count of Dockless Vehicles authorized for the Permittee's Fleet. At the expiration of the forty five (45) day impoundment period the forfeited Dockless Vehicle may be replaced in the Fleet by Permittee.
15. Data Collection and Reporting. Permittee must provide the City and our designees with additional data in the format and frequency approved by the City. This includes, but is not limited to, providing and maintaining an Application Programming Interface "API" that provides the Mobility Data Specification "MDS", the General Bikeshare Feed Specification "GBFS", and any other database that becomes commonplace within the Dockless Vehicle industry. Further data requirements will be incorporated into the agreement through Exhibit C.
- a. Data Security:
 - i. Permittee shall be responsible for providing secure system applications; and
 - ii. Permittee shall provide the appropriate safeguards within the environment, and should include the use of encryption software and unique IDs and passwords to protect the data's confidentiality, integrity, and availability. All applications must meet security standards appropriate for the information type that they will be storing, processing or transmitting.
 - b. Permittee agrees to work with the City's Information Technology Services Department to identify the appropriate form of data and aggregation for the City's use.
 - c. The Parties acknowledge that information provided under this Agreement may be subject to disclosure under the Texas Public Information Act. Data collected by the City will be, except as otherwise required by law, kept confidential by the City. In the event of a request for disclosure, City will provide Permittee with notice of such request.
 - d. Any reporting required under this contract, or otherwise required by City, are to be provided to City within seven business days of the time period referenced for the report [e.g. monthly reports are required within seven business days following the last calendar day of the prior month.].
16. Financial Considerations.
- a. Permittee shall pay City an annual fee of **TEN DOLLARS AND NO/100**

DOLLARS per Dockless Vehicle that is authorized under this Agreement. For year one of this Agreement, payment shall be made within thirty (30) days of the execution of this Agreement. Payment will be due on January 1 of subsequent years of the Agreement.

- b. Permittee shall pay City a one-time non-refundable infrastructure fee of **TWENTY FIVE THOUSAND AND NO/100THS DOLLARS (\$25,000.00)** upon execution of this Agreement. Payment shall be made by January 12, 2020.
- c. Permittee will pay City a fee of 25 cents (\$.25) per ride on a quarterly basis. Payments shall be made by the 7th day of the first month of each quarter (January, April, July, October).
- d. All payments shall be paid to City at the following address:

*City of San Antonio
Finance – Revenue Collections
PO Box 839966
San Antonio, TX
78283*

17. Penalty Provisions. If the Permittee fails to meet the requirements set out in the Agreement, the City will have the option of assessing escalating penalties to ensure performance and adherence to the terms of this Agreement. The City is not required to utilize these penalty provisions and reserves the right to exercise its ability to revoke or suspend a permit for operation or to terminate this Agreement for material breaches of this Agreement or to otherwise act in accordance with the provisions of this Agreement. Penalties may be assessed for failing to comply with this Agreement as set out below:

- a. Failure to timely and adequately address issues related to ADA access. Examples of ADA issues include, but are not limited to, blocking curb ramps or parking or deployment on sidewalks that fails to provide 36” of clear walk path.
 - i. If Permittee fails to timely or adequately address and correct issues related to improper parking or other obstruction of ADA Ramps or other accessibility routes on more than five (5) occasions in one month, the City may penalize Permittee \$500.00 per additional violation.
 - ii. If Permittee fails to address and correct ADA issues on more than fifteen (15) occasions in a quarter, each subsequent violation may be penalized at \$1,000.00 per violation.

- iii. If Permittee fails to address ADA issues more than fifteen (15) times in a quarter, the City will have the option to reduce the permitted number of Dockless Vehicles in the Permittee's Fleet by 10% in the following quarter that Permittee continues to fail to address these issues on ten (15) or more occasions.
 - b. Failure to timely and adequately address all other violations, including the removal of vehicles from prohibited areas and correcting fallen vehicles.
 - i. If Permittee fails to timely or adequately address and correct improper parking issues on five (5) or more occasions within a month the City may penalize Permittee \$100.00 per additional violation.
 - c. Failure to comply with sections 13 and 15 of the Agreement.
 - i. Notwithstanding the cure provisions in this Agreement, if Permittee fails to comply with provisions set out in Sections 13 and 15 of the Agreement, the City may penalize Permittee \$100.00 per day, per violation.
 - d. The penalty provisions established above will not apply to the initial quarter of the Agreement period (January-March 2020).
- 18. Record Retention and Public Disclosure.
 - a. Permittee shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.
 - b. Permittee shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Permittee shall retain the records until the resolution of such litigation or other such questions. Permittee acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Permittee to return said documents to City prior to or at the conclusion of said retention.
 - c. The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government

Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Permittee receives inquiries regarding documents within its possession pursuant to this Agreement, Permittee shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition.

- d. City will provide notice to Permittee if it receives requests for information so that Permittee may provide any argument or information to the Texas Attorney General's Office regarding its belief that such requested information may be confidential or otherwise subject to being withheld from release.
- e. Each Party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

19. Termination. For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Section 1, or earlier termination pursuant to any of the provisions hereof.

- a. Termination Without Cause. This Agreement may be terminated by either party upon 90 calendar days written notice, which notice shall be provided in accordance with this Agreement.
- b. Termination For Cause. Upon written notice, which notice shall be provided in accordance with this Agreement, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
 - i. The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval by the City.
 - ii. Bankruptcy or selling substantially all of company's assets.
 - iii. Investigation or indictment of the Permittee or any of its executives for felonies or regulatory violations subject to penalties or enforcement actions that may materially affect Permittee's operations, or that may impact the integrity and reputation of the City.
- c. Defaults With Opportunity for Cure. Should the Permittee default in the performance of this Agreement in a manner stated below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. The Permittee shall have ten (10) calendar days after receipt of the written notice to cure such default. If the Permittee fails to cure the default within such ten-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as

City deems appropriate, and to contract with another entity to provide Dockless Vehicle services as established in this Agreement.

- i. Failing to perform or failing to comply with any covenant herein required.
 - ii. Performing unsatisfactorily.
- d. Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- e. Regardless of how this Agreement is terminated, Permittee shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the Agreement, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Permittee in accordance with the Records Retention provisions of this Agreement. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Permittee's sole cost and expense.
- f. Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Agreement, Permittee shall submit to City any remaining monies owed to City under this Agreement through the effective date of termination.
- g. Upon the effective date of expiration or termination of this Agreement, Permittee shall cease all operations within the City as authorized by this Agreement.
- h. Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Permittee for any default hereunder or other action.

20. Notice. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to the City:

Name
Title
Center City Development Office
Address
San Antonio, TX 78205

If to the Permittee:

Name
Title
Entity
Address
City, State, Zip

21. Insurance.

A) Prior to the commencement of any work under this Agreement, Permittee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City, which shall be clearly labeled “*Dockless Vehicle Operations*” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Center City Development and Operations. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) Permittee’s financial integrity is of interest to the City; therefore, subject to Permittee’s right to maintain reasonable deductibles in such amounts as are approved by the City, Permittee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Permittee’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of \$2,000,000 per occurrence; \$4,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability* a. Owned/leased vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per

b. Non-owned vehicles c. Hired Vehicles	occurrence
*If Respondent owns or uses any automobiles in the operation of the Contract.	
5. Cyber Liability	\$1,000,000 per claim \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
6. Umbrella	\$1,000,000.00 per occurrence combined limit <u>Bodily Injury</u> (including death) and <u>Property Damage</u> .
7. Pollution/Environmental Liability	\$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation. Coverage to be maintained and in effect for no less than five years subsequent to the completion of the project.

D) Permittee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Permittee herein, and provide a certificate of insurance and endorsement that names the Permittee and the CITY as additional insureds. Permittee shall provide the CITY with said certificate and endorsement prior to the commencement of any operations by Permittee. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Permittee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Permittee shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Center City Development and Operations
P.O. Box 839966
San Antonio, Texas 78283-3966

F) Permittee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Permittee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Permittee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon Permittee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Permittee to stop work hereunder, and/or withhold any payment(s) which become due to Permittee hereunder until Permittee demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which Permittee may be held responsible for payments of damages to persons or property resulting from Permittee's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that Permittee's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

L) Permittee and any subcontractors are responsible for all damage to their own equipment and/or property.

22. **INDEMNIFICATION.**

- a. **Permittee covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to Permittee' activities under this Agreement, including any acts or omissions of Permittee, any agent, officer, director, representative, employee, consultant or subcontractor of Permittee, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT PERMITTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- b. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Permittee shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or Permittee known to Permittee related to or arising out of Permittee' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Permittee's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving Permittee of any of its obligations under this paragraph.
- c. Defense Counsel - Permittee shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Permittee fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Permittee shall reimburse City for all costs related to retaining defense counsel until such time as Permittee retains Counsel as required by this section. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

- d. Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Permittee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Permittee or any subcontractor under worker’s compensation or other employee benefit acts.

23. Audit.

- a. The City reserves the right to conduct, or cause to be conducted an audit or review of all funds received under this Agreement at any and all times deemed necessary by City. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the City, may perform such audit(s) or reviews. The City reserves the right to determine the scope of every audit. In accordance herewith, the Permittee agrees to make available to City all accounting and records of Dockless Vehicle operations.
- b. Permittee shall during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after the termination of this Agreement, save and except there is litigation or if the audit report covering such agreement has not been accepted, Permittee shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by Permittee in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.
- c. The City may, in its sole and absolute discretion, require Permittee to use any and all of the City’s accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement, Permittee shall abide by such requirements.

24. Applicable Law. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

Any legal action or proceeding brought or maintained, directly or indirectly, as a result of

this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

25. Amendments. Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Permittee. The Director may execute parking plan, Fleet size, and sensitive area designations with no further requirement for City Council approval.

26. Severability. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

27. Legal Authority. The signer of this Agreement for Permittee represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Permittee and to bind Permittee to all of the terms, conditions, provisions and obligations herein contained.

28. Entire Agreement. This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with this Agreement. This Agreement shall supersede any and all prior written and oral agreements between the City and Permittee.

29. Assignment and Subletting. This Permit is personal to Permittee and may not be sold, transferred, assigned or sublet without prior written approval by an authorized representative of City.

30. Default. It is understood and agreed that, in case of default by Permittee in any of the terms and conditions herein stated and such default continues for a period of ten (10) calendar days after City notifies Permittee of such default, City may, at its election, terminate this Permit and upon such termination all rights of the Permittee hereunder shall cease and come to an end. If such termination results from Permittee's default there shall be no prorated refund to Permittee of the Permit fee for the then current term. However, in the event that termination of this Permit is for the convenience, City shall refund to Permittee the prorated portion of the Permit fee for the then current term. If Permittee files for bankruptcy it shall be a default under this Permit.

31. Authority to Sign. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Permit on behalf

of the parties hereto.

EXECUTED as of the _____ day of _____, 2019.

DRAFT

Exhibit A
Parking Framework

DRAFT

Exhibit B
Equity Programs, Options for the “Unbanked”, and Smart Phone Free Programs

DRAFT

Exhibit C
Data Requirements

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