

CONSENT CALENDAR
June 4, 2013

To: Honorable Mayor and Members of the City Council

From: (Christine Daniel, City Manager

Submitted by: Andrew Clough, Director, Public Works

Subject: License Agreement: City CarShare for Electric Vehicle Charging in City

Parking Garages and Lots

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a license agreement with City CarShare for installation and operation of electric vehicle service equipment and plug-in electric vehicles in City parking garages and lots.

FISCAL IMPACTS OF RECOMMENDATION

This agreement is expected to be revenue neutral in terms of electricity and equipment costs, and off-street parking revenue. Under the terms of the agreement, City CarShare (CCS) will pay the City's established monthly permit parking fees, the cost of the electricity used, and all costs of installation and operation of the electric vehicle service equipment (EVSE) and plug-in electric vehicles (EV). CCS will retain ownership of the equipment and vehicles, and the City will own any electrical upgrades provided by CCS during installation.

The current monthly parking permit fee established by Council is \$150, which will be paid by CCS. CCS will also pay a premium fee of \$43.75 per month for electricity use for each parking space equipped with an EVSE, which is based on estimated electricity costs. At the end of the first 12 months of operation the City will review the actual energy use and costs, and it has the right to modify the premium fee to more accurately recover the costs.

Both the parking fee and premium will be paid to LAZ, Inc., the City's contracted parking management vendor, and deposited into the following revenue accounts:

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^{*} Berkeley Way Lot payments may be paid directly to the City, since LAZ does not manage City surface parking lots.

The License Agreement between City of Berkeley and City CarShare has been entered into the City's contract database and been assigned Contract Management System No. VDNFN.

CURRENT SITUATION AND ITS EFFECTS

CCS began operating a plug-in hybrid Toyota Prius at the City's Center Street Garage in 2009 as part of the City's Fleet Carshare Program (FCP). The vehicle has been well utilized by City staff and the public. CCS is now planning to expand its use of electric vehicles in Berkeley, including the Chevy Volt, plug-in Prius, and others, and they have requested placement of electric carsharing vehicles at City parking garages and lots. Installation of the required charging equipment by CCS in City facilities requires execution of a license agreement. The agreement will allow for EVSE installation in all City parking facilities, conditional on approval by the Traffic Engineer and provision of insurance certificates for each facility. The Center Street Garage will be the first facility to be developed under this agreement, and use of other parking facilities may be requested by CCS in the future.

CCS is also preparing to launch the nation's first shared network of electric-assist bicycles and cargo bicycles. This effort is funded by a grant from the Federal Highway Administration, and Berkeley and San Francisco are the two pilot cities. This license agreement would pertain to the electric bicycle charging infrastructure and bikes, as well as electric shared cars.

BACKGROUND

In 2002, the City provided CCS with seed funding to establish the first 2 carshare vehicles in Berkeley. Today, CCS operates 48 vehicles from 31 locations in Berkeley. There are now nearly 1,700 CCS members in Berkeley, including approximately 300 City employees who are enrolled in the Fleet Carsharing Program that began in 2005. The City and CCS launched the City's FCP in an effort to reduce municipal fleet operation costs and efficiently provide low-emission hybrid-electric vehicles to employees who need them for work trips. In 2009, the City provided a parking space in the Center Street garage for a plug-in hybrid-electric vehicle, which has been managed as part of the City FCP.

The City's Climate Action Plan (CAP) calls for expansion of car sharing and the use of low-emission vehicles. The CAP also supports development of policies to create incentives for high-efficiency vehicles, including electric vehicles and plug-in hybrids, and proposes City action to pursue opportunities to install charging stations for electric and plug-in hybrid vehicles.

Parking spaces in City parking facilities can be designated for carshare use by the City's Supervising Traffic Engineer, in accordance with Berkeley Municipal Code Section 6.24.135 (Attachment C of Exhibit A.)

RATIONALE FOR RECOMMENDATION

CCS's request to operate a vehicle sharing service with electric vehicles will provide mobility for City employees, visitors and residents using low emission vehicles. This

also supports the goals of the City's CAP, including expansion of car sharing and the use of low-emission vehicles, without expense to the City.

The potential for using City parking facilities for a ground-breaking electric-assist bicycle program will also meet the City's environmental and transportation goals, and will provide residents and employees a convenient new travel choice.

ALTERNATIVE ACTIONS CONSIDERED

The City could decline CCS's request to support the expansion of electric shared vehicle in City facilities. In that case, CCS could seek to locate charging facilities and electric vehicles in privately-owned parking facilities, or might not expand the use of EVs in Berkeley. Alternatively, the City could install and maintain any EVSE in our own parking facilities, and lease the equipment and spaces to vendors such as CCS and the public.

CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works, 981-7061 Matt Nichols, Principal Transportation Planner, Public Works, 981-7068 Danette Perry, Parking Services Manager, Public Works, 981-7057

Attachments:

1: Resolution

Exhibit A: License Agreement

Attachment A: Map of City Parking Facilities

Attachment B: Payment Terms

Attachment C: Traffic Engineer Regulation Implementing BMC 6.24.135

RESOLUTION NO. ##,###-N.S.

LICENSE AGREEMENT: CITY CARSHARE FOR INSTALLATION AND OPERATION OF ELECTRIC VEHICLE SERVICE EQUIPMENT AND ELECTRIC VEHICLES IN CITY PARKING GARAGES AND LOTS

WHEREAS, City CarShare has operated in Berkeley parking facilities since 2002; and

WHEREAS, City CarShare has operated a plug-in hybrid-electric vehicle in the City of Berkeley's Center Street Garage since 2009; and

WHEREAS, City CarShare wants to expand the availability of electric shared vehicles in Berkeley for City employees and the general public; and

WHEREAS, the City of Berkeley owns and operates three off-street parking garages and two parking lots; and

WHEREAS, expanding vehicle sharing and the use of electric vehicles will help Berkeley meet the City's Climate Action Plan goals; and

WHEREAS, City CarShare's installation of electric vehicle charging equipment and signage, and use of designated parking spaces will not interfere with the City's other uses of its parking facilities; and

WHEREAS, the parking revenue and a premium fee for the estimated cost of electricity used will be paid by City CarShare to the City and deposited into the City's Off-Street Parking Fund 835 and Parking Meter Fund 840; and

WHEREAS, a License Agreement between City of Berkeley and City CarShare has been entered into the City's contract database and been assigned Contract Management System No. VDNFN.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a License Agreement and any amendments with City CarShare for the installation and operation of CCS's electric vehicle service equipment and electric vehicles in City parking garages and lots for the purpose of providing low emission electric vehicle sharing services.

Exhibit A: License Agreement

Attachment A: Map of City Parking Facilities

Attachment B: Payment Terms

Attachment C: Traffic Engineer Regulation Implementing BMC 6.24.135

Exhibit A LICENSE AGREEMENT

This License Agreement (the "Agreement") is entered into as of January 1, 2013 (the "Effective Date") by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Licensor"), and CITY CARSHARE, a California public benefit corporation ("Licensee").

1. LICENSE

- a) City hereby grants a non-exclusive License to Licensee, subject to all the terms and conditions herein, to use certain of the City's property for the installation and operation of electric vehicle service equipment ("EVSE") requiring electrical supply to serve designated parking spaces in onstreet City parking facilities and the operation of a vehicle sharing service utilizing plug-in electric vehicles ("PEV".)
- b) This License is granted for the sole purpose of operating an electric vehicle sharing service that makes certain vehicles owned or leased by Licensee available to its members on a per-use basis, thereby making it practical for many Bay Area residents and workers to forego private automobile ownership. This service will make plug-in electric vehicles, electric-assist bicycles, and potentially other types of electric vehicles available to the city residents, workers and visitors.
- c) Licensor is the owner and/or operator of certain parking garages and parking lots located in the City of Berkeley. Licensee acknowledges that this License grants it the privilege to occupy and use certain parking garages and lots for the purposes stated herein, but does not convey an estate in land or a leasehold interest in those parking garages or lots, does not create a City/Lessee relationship, and is not a Lease.
- d) The "Premises" are defined as off-street parking facilities owned and operated by the City of Berkeley (shown in Attachment A), and consist of:
 - i. Center Street Parking Garage, located in Downtown Berkeley at 2025 Center Street:
 - ii. The TelegraphChanning Garage (formerly Sather Gate Garage), located at 2450 Durant Avenue;
 - iii. The Oxford Garage, located at 2200 Fulton Street, with the entrance at 2165 Kittredge Street between Oxford Street & Shattuck Avenue;
 - iv. The Berkeley Way Parking Lot, located on Berkeley Way between Shattuck Avenue and Milvia Street; and
 - v. The Elmwood Parking Lot, located on Russell Street west of College Avenue.
- e) In order to establish or expand an electric vehicle sharing program in one or more parking garages or lots that together comprise the Premises, Licensee shall:

- i. Submit a request in writing to the City's Supervising Traffic Engineer to use specific parking spaces within a designated City parking facility. Parking spaces to be used for motor vehicle sharing or bicycles in Premises shall be designated by the City's Supervising Traffic Engineer, in accordance with the Traffic Engineer Regulation implementing Berkeley Municipal Code Section 6.24.135 (Attachment C.)
- ii. If a request is approved, Licensee will submit a Certificate of Insurance that covers the parking garage or parking lot designated in the request which meets all the Insurance Requirements described in Section 14.
- iii. Licensee will launch a new location for a shared motor vehicle or bike only after written notification by the City that a particular parking garage or parking lot within the Premises may be used.

2. FEE/RENT

- a) During the Initial Term defined in Section 3 below, the rent ("Base Rent") for each motor vehicle parking space shall be the monthly parking fee established by City Council, which is updated from time to time.
- b) In addition to the Base Rent, Licensee shall pay Licensor a Premium fee ("Premium") for each parking space equipped with EVSE when such space is actually used for PEV parking. Licensee will provide a monthly report of actual energy usage, which is provided by the EVSE charging equipment. The City may adjust Premium based on the actual energy use and cost. The parties hereby acknowledge and agree that this Premium is intended to reimburse Licensor at a fixed rate for electricity consumed by the EVSE. (See Attachment B for Payment Terms.) See Paragraph 4 below for notification requirements.
- c) Vehicles that are designated as part of the City Fleet Carsharing Program, per Contract #6745, and are reserved for City employees during standard working hours, shall be exempted from the Base Rent. However, the Premium Fee shall apply.
- d) Bicycles are not currently charged parking fees in City parking facilities. Therefore, during the Initial Term defined in Section 3 below, no base rent will be assessed for Licensee's shared bicycle parking, unless and until the City Council adopts such fees, after which time such fees would apply.

3. TERM

The initial term of this Agreement shall be three (3) years, commencing on the Effective Date, subject to the following:

- a) Licensee has the right to terminate this License for any reason upon sixty (60) days prior written notice to the City. Licensor shall have the right to terminate this Agreement upon sixty (60) days notice to the Licensee.
- b) Licensor hereby grants to Licensee one (1) option (the "Extension Option") to extend the Term of this License for an additional term of three (3) years (the "Option Term"), upon the same terms and conditions contained in this Agreement, providing that Licensee is in compliance with all material terms and conditions of this agreement, and except that the Base Rent for the Option Term shall be established by a Fee Hearing at City Council. Licensee shall deliver written notice of its intent to exercise the Extension Option to Licensor no later than 90 days, and no earlier than 180 days, prior to the expiration of the Initial Term ("Extension Option Notice"). Licensor shall have 60 days to determine whether Licensee is in compliance with the terms and conditions of the License and if an option term shall be granted. If an option term is granted, references in this Agreement to the Term shall be deemed to include the Option Term unless the context clearly provides otherwise.
- c) Either party may terminate this Agreement by notice to the other in the case of an Event of Default. For purposes of this Section, the occurrence of any one of more of the following events which remains uncured after notice and the expiration of the applicable cure period shall constitute an "Event of Default":
 - i.) Licensee fails to pay Base Rent or Premium when due; provided, however, that Licensor shall deliver written notice of the failure to pay such Rent to Licensee, and Licensee shall have a grace period of five (5) business days from its receipt of such Licensor's notice within which to pay such Rent without creating a Default hereunder.
 - ii.) Either party fails to observe or perform any of its non-monetary agreements or obligations herein contained within thirty (30) days after written notice specifying the Default, or the expiration of such additional time period as is reasonably necessary to cure such default, provided the defaulting party immediately commences and thereafter proceeds with all due diligence and in good faith to cure such default;
 - iii.) Either party makes any assignment for the benefit of creditors;
 - iv.) A petition is filed or any proceeding is commenced against either party, or by a party any federal or state bankruptcy or insolvency laws and such petition or proceeding is not dismissed within thirty (30) days;
 - v.) A receiver or other official is appointed for a party, or for a substantial part of such party's assets;
 - vi.) Any attachment or execution against a substantial part of a party's assets remains unstayed or undismissed for a period of more than thirty (30) days.

4. NOTICES

All notices, requests, demands, and other communications under this Agreement must be in writing and shall be considered to have been duly given on the date of service if served personally on the party to whom notice is to be given or faxed to that party, or on the third (3rd) day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

If to the Licensor, to:

Parking Services Manager Transportation Division, Public Works Dept. City of Berkeley 1947 Center Street, 3rd Fl. Berkeley, CA 94704 If to Licensee, to:

Electric Vehicle Program Manager City CarShare, Inc. 1182 Market Street, Suite 300 San Francisco, CA 94102 Fax: (415) 995-8589

With a copy to:
Dalsin Law, LLP
88 Willow Avenue
Walnut Creek, CA 94595
Fax (925) 933-9010

Any party may change its address for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

5. PUBLICITY

In consideration of the License, Licensee may publicize this Agreement in certain advertisements, publications, and promotional materials, all in such form as shall be reasonably acceptable to Licensor and Licensee.

6. MAINTENANCE

a. Licensor shall permit and accommodate the authorized vendors of Licensee to perform on-site PEV and EVSE maintenance and repair as needed, so long as it does not interfere with Licensor's operation of the facility, the circulation of vehicles in the facility, or public access to other parking spaces. Vehicle maintenance includes minor services and repairs such as tire changes, battery jump-starts and fluid checks and does not include periodic or major services or other major repairs.

- b. Licensor shall permit Licensee-authorized vendors to clean vehicles on the Premises. The method for cleaning vehicles on-site must comply with BMC 17.20.03, so as to not discharge anything other than stormwater to the facility's storm drain. To comply, Licensee must: a) contain and discharge the washwater to the sanitary sewer; or b) not wash cars in the parking facilities, but instead use a commercial car wash facility that is properly connected to the sanitary sewer; or c) use extremely low discharge ("waterless") car wash techniques, which typically use less than 1 cup of water per vehicle, and then absorb and dispose of virtually all liquid used using micro-fiber towels or similar absorbent products. Licensee-authorized vendors shall provide all equipment and water necessary to perform these functions.
- c. Licensee shall not dispose of liquid or any other waste in or about the Space(s), nor cause any nuisance or other condition or act that may interfere with the authorized use of the Premises. Licensor shall be responsible for all other cleaning and maintenance of the parking spaces, except for the EVSE.
- d. Licensor shall provide access to electrical equipment rooms in the Premises in order to switch off EVSE circuits from circuit breakers upon reasonable notice to Licensor. Licensor will facilitate such access to such equipment rooms upon reasonable notice. Access by Licensee and authorized vendors (including access to Premises in order to switch of EVSE circuits from the circuit breakers located on the power panel in the Premises equipment room) to perform these functions shall be provided by Licensor at no charge to Licensee, providing reasonable notice has been given and providing access is requested Monday through Friday 8 a.m. to 5 p.m..

7. <u>USE OF PREMISES; OPERATION</u>

- a. During the Term, Licensee and its members shall have the exclusive right to use the spaces designated for use by Licensee by the Supervising Traffic Engineer ("Space(s)") for parking shared vehicles in the Space(s) in connection with the Licensee's carsharing program. Licensee is not obligated to occupy the space, but is obligated to pay Base Rent regardless of occupancy. Licensee shall use the Space(s) for the sole purpose of parking and charging vehicles. Licensee may elect to park conventional vehicles in Space(s) where EVSE is installed. Licensee may request in writing that Premium payment be terminated if PEV's are replaced with convention vehicles. Sixty (60) days notice is required after which the Premium shall not apply.
- b. As of the Commencement Date, Licensor agrees to license to Licensee, on an exclusive basis, designated parking space(s) within City parking garages or lots that are part of the Premises after request is made and agreed to in writing by Licensor. Licensee must

request spaces and EVSE locations in writing and include the number, location and EVSE specification requirements. Licensor shall review a request within thirty (30) days and transmit the decision to Licensee. Space(s) will be designated in accordance with Licensor's Traffic Engineer Regulation implementing Berkeley Municipal Code Section 6.24.135 and in consultation with Licensor's Parking Services Manager.

8. IMPROVEMENTS

- a) Licensee shall have the right, at its own cost and expense, to install EVSE in the designated Space(s). EVSE are equipped with metering technology that allows Licensee to remotely monitor electricity consumption. The purchase, installation, operation and maintenance of the EVSE shall be the sole responsibility of Licensee. Licensor hereby agrees to provide all access to the Premises reasonably necessary for the installation and maintenance of EVSE by Licensee's employees or designated, licensed electrical contractor.
- b) EVSE installation shall include installation of electrical wiring and conduit connecting to the main electrical system of the parking garage or parking lot and additional circuit breakers on the main electrical panel, or, if necessary, installation of subpanels on the main electrical panel ("Electrical Upgrade"), mounting of the EVSE at the corresponding spaces, and work ancillary thereto. Upon installation, the Electrical Upgrade shall become the property of Licensor. The EVSE shall remain the property of Licensee and upon the expiration or earlier termination of this Agreement shall be removed by Licensee within 30 days. Licensee shall repair any damage to the Premises and Spaces caused by the installation, maintenance or removal of EVSE or any Electrical Upgrade.
- c) Licensor shall permit Licensee to install signage at each Space(s), including information signage on the EVSE, and directional signage both inside and outside the parking garage or lot in which the Space(s) are located. The size and form of such signage shall be subject to Licensor's reasonable approval. Licensor shall permit Licensee to install wheel stops and parking barriers as necessary. In instances where concrete pillars or like structures are immediately adjacent to the Spaces, Licensor shall permit Licensee to install protective wrapping as necessary to prevent vehicle damage.

9. ACCESS TO PROPERTY BY OTHERS

Licensor and its authorized representatives shall have the right to inspect any Spaces within the Premises at all reasonable times for any of the following purposes: to determine whether the Spaces are in good condition and whether Licensee is complying with its obligations under the License; to do any acts that may be

necessary to protect Licensor's interest in the Spaces; or to perform Licensor's duties under this License. Licensor shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Licensor's inspection of the Spaces as provided in this section, except damage resulting from the acts or omissions of Licensor or its authorized representatives.

10. TAXES, ASSESSMENTS, AND OTHER CHARGES

Licensee shall pay all personal property taxes levied on account of personal property owned by Licensee, and pay any in-lieu, possessory interest, or use taxes imposed by reason of Licensee's use of occupancy of any of the Premises. Licensee shall pay for all local, state and federal permits and licenses necessary for the operation of its business.

11. ASSIGNMENT AND SUBLICENSING PROHIBITED

This License is personal and exclusive to Licensee. Licensee may not assign or sublicense this License in whole or part without the Licensor's prior written consent. No reference to sublicenses or assignees elsewhere in this License shall be construed to the contrary. If Licensee attempts to assign or sublicense this License without the Licensor's prior consent, the Licensor shall have the sole option to terminate the License, and at Licensor's election, shall constitute a default. No consent to any assignment or sub-license shall constitute a further waiver of the provision of this section.

12. INDEMNIFICATION

a) To the fullest extent permitted by law, Licensee shall (i) immediately defend and (ii) indemnify Licensor, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with this License and Licensee's use of any one or more of the Premises. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Licensee's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

b) The duty to defend is a separate and distinct obligation from the Licensee's duty to indemnify. The Licensee shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Licensor, Licensor and its directors, officers, and employees, immediately upon submittal to the Licensee of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Licensee from its separate and distinct obligation to defend Licensor. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Licensee asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Licensee may submit a claim to the Licensor for reimbursement of reasonable attorneys' fees and defense costs.

13. INSURANCE

During the Term, Licensee shall, at Licensee's sole cost and expense, obtain and keep in full force and effect comprehensive general liability insurance insuring Licensee against liability arising out of the use of parking facilities and parking spaces and/or maintenance of the Space(s) or resulting from any injury, loss or damage caused by Licensee members' operation of any Vehicle or EVSE on any one or more of the Premises. Said insurance shall be in the amount of no less than One Million Dollars (\$1,000,000) in the event of personal injury to any number of persons or of damage to property arising out of any one occurrence.

Licensee shall have the option of providing the required insurance for one or more of the parking garages and lots used by Licensee under the terms of this License, or for all parking garages and lots included in the Premises. A Certificate of Insurance that governs each parking garage or parking lot used must be provided before any parking garage or parking lot can be used under the terms of this agreement.

All insurance shall name the City, its officers, agents, volunteers and employees as additional insureds. All of such insurance shall be primary and noncontributing with any insurance which may be carried by Licensor. All such insurance shall insure performance by Licensee of the preceding indemnity provisions. If the insurance referred to above is written on a Claims Made Form, then following termination of

the License, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this license.

If Licensee employs any person, it shall carry workers' compensation and employers' liability insurance and shall provide a certificate of insurance to the Licensor. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and condition of said insurance except upon thirty (30) days prior written notice to the Licensor; provide for a waiver of any right to subrogation against Licensor to the extent permitted by law; and be approved as to form and sufficiency by the Licensor's Risk Manager. Licensee shall provide proof of said liability insurance to Licensor prior to the commencement of this Agreement and thereafter on an annual basis on the anniversary date of this Agreement.

Licensee shall forward all insurance documents to: City of Berkeley Real Property Administrator 1947 Center Street, 4th Floor Berkeley, CA 94704

14. RISK OF LOSS

Licensee bears all risk of loss or damage to any Vehicle parked in the Space(s) and for the EVSE and Electrical Upgrade except for damage caused by the gross negligence of Licensor. Licensor shall not be obligated to provide insurance for any Vehicle parked in the Space(s) and is not responsible for any damage to or loss of any Vehicle, the contents of any Vehicle, or EVSE, or Electrical Upgrade, whether caused by fire, water, earthquake, liquefaction, theft, vandalism or any risk other than the gross negligence or Licensor.

15. CONFORMITY WITH LAW AND SAFETY

Licensee shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the activities of Licensee. Licensee shall release, defend, indemnify and hold harmless Licensor, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

16. INDEPENDENT CAPACITY

For purposes of this License, and for the duration of this License, Licensee and its agents and employees shall be, and are, an independent contractor and not an agent or employee of the Licensor. Licensee has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Licensee in the performance of this License. Licensee shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security withholding taxes and all regulations governing such matters, and shall be solely responsible for its own acts and those of its agents and employees.

17. CITY NON-DISCRIMINATION ORDINANCE

Licensee agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26, as amended from time to time. In the performance of this License, the Licensee agrees as follows:

- a. The Licensee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.
- b. The Licensee shall permit the Licensor access to records of employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision, and will, in addition, fill-out in a timely fashion, forms supplied by the City to monitor these non-discrimination provisions.

18. NUCLEAR FREE BERKELEY

Licensee agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

19. OPPRESSIVE STATES

In accordance with City of Berkeley Resolution No. 59,853-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this License to forego contractual relations to provide personal services to or to purchase, sell, license or distribute commodities in the conduct of business with, the following entities:

a. The governing regime in any Oppressive State.

- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.
- d. For purposes of this License, the Tibet Autonomous Region and the provinces of Ado, Kham, and U-Tsang shall be deemed oppressive states.
- e. Licensee's failure to comply with this section shall constitute a default of this License and City may terminate this License.

20. BERKELEY LIVING WAGE ORDINANCE

- a. Licensee agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Licensee employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Licensee will be required to provide all eligible employees with City mandated minimum compensation during the term of this License, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.
- b. Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to Berkeley's Living Wage Ordinance (LWO). If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the licensed Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the licensed property, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the License. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default.
- c. If Licensee is subject to the LWO, Licensee shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Licensee enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the licensed Premises.
- d. If Licensee fails to comply with the requirements of this the LWO and this License, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Licensee failure to comply with this Section shall constitute default of the License, upon which City may terminate this License. In addition, at City's sole discretion, Licensee may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Licensee's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Licensee's breach.

21. BERKELEY EQUAL BENEFITS ORDINANCE

- a. Licensee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Licensee is currently subject to the Berkeley Equal Benefits Ordinance, Licensee will be required to provide all eligible employees with mandated equal benefits during the term of this License, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.
- b. If Licensee is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Licensee agrees to supply Licensor with any records the Licensor deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default of this License.
- c. If Licensee fails to comply with the requirements of this Section, Licensor shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Licensee's failure to comply with this Section shall constitute default of the License, upon which Licensor may terminate this License. In addition, at Licensor's sole discretion, Licensee may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Licensee's failure to provide its employees with equal benefits will result in damages being sustained by Licensor; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Licensee's breach.

22. EXCUSABLE DELAYS

If the performance of any act required of Licensee or Licensor is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, acts of the public enemy, fire, floods, epidemics, freight embargoes or other cause beyond the control of the party required to perform an act, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for thirty (30) days.

23. HOLDING OVER

If Licensee continues to use or remain in possession of the Premises with Licensor's consent after the expiration of the term of this License without having received a written amendment or modification of this License, such use or possession by Licensee shall be construed to be on a month-to-month basis, terminable on thirty (30) days' notice given at any time by either party. All provisions of this License, except those pertaining to term, shall continue to apply.

24. SURRENDER OF PREMISES, REMOVAL OF PERSONAL PROPERTY

At the termination of this License, Licensee shall: a) give up and surrender the Premises, in its current condition as of the Commencement Date, subject to reasonable use and wear and tear thereof, damage by fire and the elements excepted; and b) remove all property which is not a fixture of or permanent attachment to the Premises and which is owned and was installed by Licensee during the term of this License or any previous lease or license.

IN WITNESS WHEREOF, City CarShare and City have executed this License as of the date written on the first paragraph of this License.

<u>CITY</u>	CARSHARE
By:	
	CEO
<u>CITY</u>	OF BERKELEY
By:	
·	City Manager
APPR	OVED AS TO FORM:
REGIS	City Attorney STERED BY:
ATTE	ST:
	City Auditor
ATTE	ST:
	City Clerk



Attachment A

City of Berkeley Garages and Lots:

- Center Street Parking Garage, located in Downtown Berkeley at 2025 Center Street
- ii. **The Telegraph/Channing Garage** (formerly Sather Gate Garage), located at 2450 Durant Avenue
- iii. The Oxford Garage, located at 2200 Fulton Street, with the entrance at 2165 Kittredge Street between Oxford Street & Shattuck Avenue
- iv. **The Berkeley Way Parking Lot**, located on Berkeley Way between Shattuck Avenue and Milvia Street
- v. **The Elmwood Parking Lot**, located on Russell Street west of College Avenue.

Attachment B

PAYMENT TERMS

Licensee shall submit payments to the City via the City's parking garage management contractor as described below. Payment is due in full per the terms of the invoice.

- 1. Licensee will pay the Base Rent for each parking space used by a publically available shared vehicle. Vehicles that are part of the City Fleet CarSharing program and reserved for City employees during standard working hours are exempted from the Base Rent. Base rent shall be the Monthly Parking Permit Fee as established by the Berkeley City Council, and as amended from time to time. As of January 2013, the Base Rent is \$150 per month.
- 2. City CarShare shall also pay "Premium" for each EVSE device, unless CCS has provided a Notice of EVSE Termination. The Premium shall be \$43.75 per month per EVSE.

The Premium is an estimate of predicted electricity costs, made using the following assumptions:

- o Electricity use per EVSE: 250 kWh/month
- o Electricity rate: of \$0.175 per Kilowatt Hour (annual average assuming \$0.20459 per watt in summer and \$0.14430 per in winter.)
- o PG&E rate A1
- No demand charges

Premium fee may be modified pursuant to Licensor review of assumptions above, records of actual energy use, and actual energy costs from EVSE usage reports and Licensor's utility bills.

3. Base Rent and Premium payment shall be made monthly. Remittance shall be payable to the "City of Berkeley," and submitted to:

LAZ Parking Telegraph Channing Garage 2450 Durant Avenue Berkeley, CA 94704

Attachment C



TRAFFIC ENGINEER REGULATION IMPLEMENTING BERKELEY MUNICIPAL CODE SECTION 6.24.135 Established January 19, 2012

- 1. <u>Purpose</u>. The purpose of this Traffic Engineer regulation is to implement Berkeley Municipal Code section 6.24.135, which authorizes the Traffic Engineer to designate spaces in municipal parking lots for Vehicle Sharing Pods.
- 2. <u>Definitions.</u> For purposes of this regulation, the following definitions apply.
 - a. "Vehicle Sharing", or "Car Sharing", means a membership based service that:
 - 1. Offers membership to all qualified drivers in the City;
 - 2. Does not require a separate written agreement or human intervention to access vehicles each time a member reserves and uses a vehicle;
 - 3. Offers members access to a dispersed network of shared vehicles, each available 24 hours per day, 7 days a week (except where restricted by parking facility operating hours), at self-service locations where the vehicles are not attended:
 - 4. Provides vehicle usage without restriction at hourly and/or per mile rates that include fuels (gas), insurance, maintenance, and reserved parking;
 - 5. Charges rates and prices that are directly proportional to usage; and
 - 6. Is primarily designed for shorter time and shorter distance trips as an extension of the public transportation network, in order to enhance mobility options.
 - b. "Vehicle Sharing Pod", or "Car Sharing Pod", means any location reserved for shared vehicles that:
 - 1. Is located in a municipal parking lot or in a specifically designated on-street parking space;
 - Does not involve more than 5 parking spaces used by shared motor vehicles; or bicycles;
 - 3. Where the shared vehicles must be parked in assigned spaces in conformance with all applicable laws and ordinances, and where the shared bicycles must be parked in conformance with all applicable laws and ordinances.
- 3. <u>Standards</u>. The Traffic Engineer will act on requests to reserve spaces for Vehicle Sharing Pods on a first come, first served basis. The Traffic Engineer may approve or disapprove requests, or approve them for a reduced number of spaces, in his or her sole discretion, subject to the limitation set forth herein. The Traffic Engineer may revoke designation of spaces if spaces are abandoned, not utilized, or used in any manner which is deemed to be not in compliance with Berkeley Municipal Code section 6.24.135 or this regulation.
- 4. <u>Limitations</u>. No more than 10% of the parking spaces in a municipal parking lot, but not to exceed 5 parking spaces, may be reserved for shared vehicles.