

PERMIT AGREEMENT FOR CAR SHARE PARKING

This Agreement is made and entered into between the City of St. Paul, Minnesota, a home rule charter city, ("City") and car2Go N.A. LLC, a Delaware limited liability company ("Contractor").

WHEREAS, Contractor operates a free-floating, point-to-point car sharing business and requires formal parking arrangements to operate its business; and

WHEREAS, City controls parking within public rights of way located inside of its municipal boundaries ("City Right of Way"); and

WHEREAS, City operates and controls parking for Ramsey County streets and selected State of Minnesota Trunk Highways through other agreements; and

WHEREAS, the City Right of Way contemplated by this Agreement does not include areas not controlled by the City, such as private streets; and

WHEREAS, Contractor desires to utilize City Right of Way to operate the stationing component of its car sharing business; and

WHEREAS, allowing car sharing businesses to operate in the City Right of Way promotes the public's health, safety, and welfare by encouraging efficient and limited use of motor vehicles, thereby reducing traffic volumes, noise, and air pollution; and

WHEREAS, City desires to help facilitate car sharing by allowing trial use of the City Right of Way, subject to formal provisions outlining the terms and conditions under which such use will be allowed as part of a pilot program; and

WHEREAS, Contractor has a car sharing agreement with the City of Minneapolis; and

WHEREAS, Contractor has proposed a similar agreement with the City; and

WHEREAS, this Agreement is intended to outline the terms and conditions under which Contractor will be allowed to utilize the City Right of Way.

NOW, THEREFORE, for and in consideration of the following terms and conditions, the parties hereto agree as follows, to wit:

ARTICLE I. DURATION

This Agreement shall be effective from July 1, 2014, through December 31, 2015, unless terminated earlier under the provisions of this Agreement.

ARTICLE II. SCOPE OF SERVICES

Contractor shall operate a free-floating, point-to-point car sharing pilot program within the City of St. Paul. Contractor agrees to utilize a minimum of 185 vehicles under this Agreement. Contractor may,

upon City approval, add up to 100 additional vehicles between 6 to 12 months after initial launch date based on member demand. The service area for the duration of this Agreement will encompass the City Right of Way located within the entire City, excluding curbside parking not controlled by the City ("Service Area").

With implementation of this Agreement, it is mutually understood that the Contractor's Service Area for its customers includes both the Service Area as outlined in car2go N.A. LLC's permit agreement with Minneapolis and the St. Paul Service Area.

1. City's Obligations:

- A. City shall provide a permit to be displayed in each vehicle indicating that the vehicle is part of the pilot program governed by this Agreement ("Permitted Vehicles"). City shall not be responsible for any actions that may result from a permit that is lost or is not visibly displayed while a vehicle is parked.
- B. Permitted Vehicles shall be allowed to park at metered parking spaces without time limit or meter payment, except as outlined in this Agreement.
- C. Permitted Vehicles shall be allowed to park in Residential Permit Parking Areas ("RPPAs").
- D. Permitted Vehicles shall comply with all other signed parking regulations including but not limited to commercial loading zones, overnight street sweeping, no parking zones, rush hour no parking, hooded parking meters, temporary no parking signs, and disabled parking zones.
- E. Permitted Vehicles shall comply with all other unsigned parking regulations including no parking zones as defined in City Ordinances and State Statutes, no parking regulations as per a declared snow emergency, and any winter parking restrictions which are implemented.
- F. Permitted Vehicles shall comply with time limits within limited time zones which have a time limit of less than two (2) hours.
- G. City shall establish an annual rate per vehicle to be paid by Contractor ("Annual Rate").
- H. Based on the actual usage during the first year, City may at its sole discretion adjust the annual rate per vehicle for the second year of the term governed by this Agreement.
- I. City may temporarily or permanently restrict any part of the Service Area at any time.
- J. City will evaluate the success of Contractor's service in RPPAs, and any potential negative impact thereon, after one year of operation. Contractor may be required to abate any such negative impact at its own expense.

Contractor's Obligations (at Contractor's sole cost and expense):

- A. At any time during the term of this Agreement, as the City deems it necessary, Contractor may be required to provide off-street locations to deliver sufficient coverage in areas with limited on-street parking.
- B. At any time during the term of this Agreement, Contractor may be required to relocate vehicles from areas deemed over saturated.

- C. At any time during the term of this Agreement, Contractor may be required to relocate vehicles between Minneapolis and St. Paul as needed to maintain a balance of vehicles between the two cities.
- D. Contractor and its members shall comply with all applicable laws and regulations.
- E. Contractor shall be financially responsible for all penalties and fines as a result of parking tickets, towing charges and/or other enforcement actions.
- F. All vehicles operated by Contractor in the Service Area will be part of this Agreement for data collection and reporting purposes.
- G. Contractor shall be responsible for relocating vehicles that remain idle for more than 24 hours.
- H. Contractor must maintain a local office in the City of St. Paul and/or City of Minneapolis during the term of this Agreement, with the primary contact available during business hours, and Contractor shall inform City of its location and contact information.
- I. Contractor shall provide City emergency contact information during non-business hours, throughout the time this Agreement is in effect.
- J. Contractor shall meet with the City Contract Manager or other designee in-person once a month to discuss pending issues and concerns.
- K. Contractor shall provide City staff access to data, at least once every three months or upon request, as described below:
 - a. Vehicle movements that include vehicle license plate start address and GPS position, end address and GPS position, minutes rented, distance driven, end rental time;
 - b. Specific geographical distribution of membership;
 - c. Utilization for each vehicle in operation; and
 - d. Locations and durations of stationary vehicles.
- L. Contractor shall provide City staff a quarterly report containing summary data as described below:
 - a. Results of a membership surveys drafted by City approximately nine and eighteen months after the launch;
 - b. Membership numbers and rate of growth;
 - c. Information detailing member break down by zip code;
 - d. Information detailing trip break down (ending and beginning trips) by zip code; and
 - e. Total miles driven by members from certain neighborhoods and/or zip codes as requested by City.

ARTICLE III. PAYMENT TERMS AND CONDITIONS

Contractor shall receive no compensation from City under this Agreement, except for, if applicable, credits for Meter Revenue Recovery fees.

Contractor shall pay City \$975.00 per vehicle, per year for parking privileges. The cost breakdown is as follows:

Administrative Cost per vehicle: \$ 75.00 per year

Meter Revenue Recovery: \$ 500.00 per year

Residential Permits: \$ 400.00 per year

Meter Revenue Recovery Fees will be adjusted at the end of the first year based on actual usage. If the usage for the first year, as determined by City, exceeds the above listed amounts, Contractor will make a payment to City to cover the difference. On the other hand, if the parking charges are found to be less than the above listed amounts, City will issue Contractor credit towards the remaining term of the Agreement by reducing the permit fee for remaining term of the Agreement. This reduction will be independent of any additional reductions to the second year permit fee based on actual usage during the first year as described in Article II under City's Obligations.

Reimbursement to City for any additional vehicles added above the initial 185 shall be paid on a prorated basis based on the above cost basis.

At present time, City does not implement event parking rates for parking meters, and the hours of enforcement for parking meters Citywide is generally 8:00 AM to 5:00 PM Monday through Saturday. If the City revises the hours of enforcement and/or implements event parking rates during the term of this Agreement, City shall notify Contractor 45 days in advance and the Meter Revenue Recovery fee shall be adjusted accordingly based on actual usage.

Contractor shall make the \$975 per vehicle payment to City for first year of operation by July 18, 2015.

ARTICLE IV. REPRESENTATIONS AND COMPLIANCE

This Agreement shall not be construed so as to transfer ownership or control of the City Right of Way to Contractor or to any other party.

Contractor agrees to comply with all applicable Federal, State, and local laws. Contractor further acknowledges that its rights hereunder are subject to the police power of City to adopt and enforce general ordinances necessary to the safety and welfare of the public; and Contractor agrees to comply with all applicable general laws and ordinances enacted by City pursuant to such power.

ARTICLE V. GENERAL CONDITIONS

1. **DAMAGE TO PROPERTY, MAINTENANCE, SIGNAGE.** If any City Property is damaged by Contractor in connection with the Permitted Activities, Contractor shall, upon request by City, promptly repair (or arrange for the repair of) such damage at the sole cost and expense of Contractor.

2. **INDEMNITY, RELEASE.** Contractor shall indemnify, defend, and hold harmless and hereby releases City against any and all claims, demands, actions, suits, judgments, losses, damages, expenses, penalties, fines, sanctions, court costs, litigation costs, and reasonable attorneys' fees (collectively referred to herein as "Claims") asserted against or incurred by City, its successors, designees and assigns, for injuries to persons and/or entities (including, without limitation, loss of life), for damage, destruction or theft of property, or for any other losses or liabilities that may be sustained

directly or indirectly due to the condition of City property or City Right of Way, or the activities, operations or use of City Property or City Right of Way by Contractor, its successors, guests, customers, business invitees, agents, employees, and contractors of any kind, and all those claiming by or through them, and/or for breach of Contractor's covenant or obligation under this Agreement.

Contractor releases, waives, discharges and covenants not to sue City and its respective representatives, officials, attorneys and employees (collectively the "Releasees") from all liability, claims, demands, losses, and damages on account of injury, including death or damage to property, caused or alleged to be caused in whole or in part by the Releasees arising from or related to the entry upon and use of City property or City Right of Way by the undersigned and its customers, agents, invitees and employees.

3. INSURANCE. Contractor shall at its own expense obtain and keep in force, during the term of this Agreement: (i) commercial general liability policy in an amount not less than Two Million and no/100 Dollars (\$2,000,000.00) per person per occurrence and Three Million and no/100 Dollars (\$3,000,000.00) in the aggregate for bodily injury, including death, and Two Million and no/100 Dollars (\$2,000,000.00) per person per occurrence and Three Million and no/100 Dollars (\$3,000,000.00) in the aggregate for property damage, such policy to include express coverage for the liabilities assumed by Contractor under this Agreement; (ii) commercial automobile liability insurance with a combined single limit of at least Two Million and no/100 Dollars (\$2,000,000.00) per accident; and (iii) worker's compensation insurance in conformity with applicable laws. Each vehicle must also be individually insured as required under Minnesota state law. The commercial general liability policies shall contain an endorsement naming City as and additional insured as to the actions and omissions committed by Contractor, its employees, agents, and customers for which City could be held responsible. Prior to entering the Service Area, Contractor shall furnish certificates of insurance evidencing compliance with this Section, with coverage effective as of the date the operations are commenced, and a provision requiring Contractor's insurer to endeavor to provide written notice to City of cancellation or change in the policy. Contractor shall also immediately provide notice of such change or cancellation directly to City.

4. PERMITS AND LICENSES; COMPLIANCE WITH LAWS. Contractor shall secure all permits, approvals and licenses that may be required and shall comply with all applicable laws including, but not limited to, any laws, standards, regulations, and permit requirements and all city codes and ordinances.

5. DEFAULT; ENFORCEMENT OF AGREEMENT. In the event of a breach or a threatened breach by Contractor of its obligations under this Agreement, and after City's delivery of five (5) days' prior written notice of said breach or threatened breach (or, without any notice in the event of an emergency where public health or safety is endangered), Contractor agrees that it shall, upon request, promptly cease operations in and remove all vehicles from the City Service Area. Contractor further acknowledges and agrees that no remedy conferred upon or reserved to City is intended to be exclusive of any other available remedy or remedies, and City shall be entitled to full and adequate other relief under both law and equity to enforce Contractor's obligations hereunder, including, but not limited to an action for money damages. If Contractor defaults under any of the provisions of this Agreement and

City employs attorneys or incur other expenses for the collection of amounts due hereunder or the enforcement of performance of any obligation or agreement on the part of Contractor, Contractor will on demand pay the reasonable fee of such attorneys and such other expenses so incurred.

6. AGREEMENT EFFECTIVE WHEN SIGNED. This Agreement shall become effective on the execution and delivery by both parties (the "Effective Date").

7. TRANSFER/ASSIGNMENT. Contractor shall not transfer or assign any of its rights hereunder without the prior written consent of City. Any such transfer or assignment made without the prior written consent of City shall be null and void and of no force or effect and shall entitle City to terminate this Agreement.

8. GOVERNING LAW, VENUE. This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota, without reference to the choice of law rules thereof. All litigation arising out of this Agreement shall be venued in Ramsey County district court.

9. ENTIRE AGREEMENT. This Agreement is the full, complete, and entire agreement of the parties with respect to the subjects hereof, and any and all prior writings, representations, and negotiations with respect to those subjects are superseded by this Agreement.

10. NOTICES. All notices herein provided to be given, or that may be given by either party to the other, shall be deemed to have been fully given when served personally on City or Contractor or when made in writing and deposited in the United States Mail, certified and postage prepaid, to the addresses provided below.

If to Contractor:

Josh Johnson, Manager
car2go N.A. LLC
800 Washington Avenue North, Suite 104
Minneapolis, MN 55401

If to City:

Paul St. Martin, Assistant City Engineer
800 City Hall Annex
25 West 4th Street
St. Paul, MN 55102

The address to which the notice shall be mailed may be changed by written notice given by either party to the other.

11. TRADE NAMES. City acknowledges and agrees that "Mercedes-Benz," "Mercedes," "Maybach", and "Smart", the Three-Pointed Star Within a Circle, "car2go", the Maybach logo, the Smart logo and the car2go logo are the solely owned and validly registered trademarks and trade names of Daimler AG, the indirect parent company of car2go N.A., LLC.

City recognizes that it is not authorized to use any of Daimler AG's trademarks and trade names; provided, however, City may use the car2go trademark and logo in City marketing/advertising materials, website and social media under this Agreement.

12. NOTICE OF BREACH. In the event City breaches any of its obligations under this Agreement, and fails to cure such breach within a reasonable time after written notice thereof from Contractor, Contractor may, upon notice, terminate this Agreement. Upon such termination, Contractor will promptly cease operations in and remove all vehicles from the City Service Area.

CITY OF ST. PAUL, MINNESOTA

By: _____

Mayor

Date: _____

By: _____

Director of Public Works

Date: _____

By: _____

Office of Financial Services

Date: _____

Approved as to Form:

By: _____

City Attorney

Date: _____

CONTRACTOR

By: _____

Date: _____

Title: _____

By: _____

Date: _____

Title: _____