



## **SHARED ACTIVE TRANSPORTATION VEHICLE TERMS AND CONDITIONS**

The Council of the City of Mesa has adopted the following Terms and Conditions to govern the use of Shared Active Transportation Vehicles as defined below and in the Mesa City Code ("MCC"). These Terms and Conditions are effective as of \_\_\_\_\_, 2019 and may be modified and amended from time to time by the Transportation Department Director.

### **RECITALS**

- A. Shared Active Transportation Vehicles ("SATVs") have proliferated in Mesa. This proliferation has raised an array of safety and legal concerns related to the use of the City's rights-of-way and public easements by (1) the operators of businesses that rent or license the use of SATVs to individual Users, and (2) the individuals who use SATVs.
- B. These Terms and Conditions, together with the City's Right-of-Way Management and Traffic Ordinances (MCC Title 9, Chapter 1 and MCC Title 10, Chapter 11, respectively), and an approved, fully-executed License issued to an Operator, comprise the municipal rules, procedures and agreements related to the operation of SATVs in Mesa's rights-of-way and public easements.
- C. As authorized by the MCC, Title 10, Chapter 1, Operators will Stage the Shared Active Transportation Vehicle in the ROW, and where permitted by License, on City-Owned Property.
- D. All City-Owned property approved for this use must retain its primary governmental purpose, and those Operators occupying public property must not interfere with those purposes in any way, nor shall their activities create a dangerous condition for the public.
- E. The purpose of these Terms and Conditions is to protect the health, safety, and welfare of the public.

### **1. DEFINITIONS**

- 1.1. "Applicable Laws" means the federal, state, county, and City of Mesa laws, ordinances, rules, regulations, and permit requirements that apply to Operator's use of the ROW.
- 1.2. "Application" means as defined in Section 3.1.
- 1.3. "Business Licensing Administrator" means the Business Licensing and Revenue Collections Administrator of the City or his/her designee.



- 1.4.** “City-Owned Property” means property owned by City on which Operator will Stage the Shared Active Transportation Vehicle.
- 1.5.** “Electric Miniature Scooter” means the same as defined in Arizona Revised Statutes §28-101.
- 1.6.** “Electric Standup Scooter” means the same as defined in Arizona Revised Statutes §28-101.
- 1.7.** “Impound Fee” means as defined in Section 5.2 below.
- 1.8.** “License Fee” means as defined in Section 5.1 below.
- 1.9.** “Operator” means the entity or person renting and Staging Shared Active Transportation Vehicles in the right of way pursuant to a license authorized by MCC, Title 10, Chapter 1.
- 1.10.** “Parking Surface” means concrete, asphalt, decomposed granite, bricks or pavers. A parking surface does not include a parking space utilized by motor vehicles.
- 1.11.** “Parties” means the City and an Operator, collectively.
- 1.12.** “Party” means the City or Operator, singularly.
- 1.13.** “Residential Street” means a street with a posted speed limit of 25 mph or less.
- 1.14.** “Right-of-Way” or “ROW” means a public roadway, highway, street, sidewalk, alley or utility easement. Right-of-Way does not include a federal interstate highway, a state highway or state route under the jurisdiction of the Arizona Department of Transportation, County-owned highway, a private easement, property that is owned by a special taxing district, or a privately-owned utility easement.
- 1.15.** “Schedule of fees and charges” means the current City schedule of fees and charges as approved by the City Council
- 1.16.** “Shared Active Transportation Vehicle” or “SATV” means commercially-rented coaster, electric standup scooter, electric miniature scooter, bicycle, electric bicycle, or any other mobile vehicle, excluding motor vehicles, with a self-containing locking mechanism that does not require locking to a bicycle rack, docking system or other structure
- 1.17.** “Stage”, “Staged” or “Staging” means the placement of the Shared Active Transportation Vehicle by the Operator.



- 1.18.** “Staging Area” means City-Owned Property or ROW within the City of Mesa where the Operator is allowed by execution of the License to Stage the Shared Active Transportation Vehicle.
- 1.19.** “Third Party Areas” means the portions of the Right-of-Way, such as canal and railroad crossings or other areas that for any reason have limited Right-of-Way dedications or that have regulatory use restrictions imposed by a third party.
- 1.20.** “Transportation Department Director” means the Director of the City’s Transportation Department and his or her designee.
- 1.21.** “User” means an Operator’s customer who is legally responsible for the rental and proper use of the Shared Active Transportation Vehicle

## **2. Licensing Scope**

- 2.1.** The scope of the License is solely for the Staging of Shared Active Transportation Vehicles in the ROW. The Operator is not authorized to and shall not offer or provide any other services not specified herein, or in the applicable License.
- 2.2.** The Operator is responsible for the study and evaluation of the existing City-Owned Property and ROW to be utilized by the Operator and for determining the fitness for the use by Operator. City specifically reserves to itself and excludes from an approved License a non-exclusive and delegable right over the ROW for all manner of real and personal improvements related to governmental activity or other improvement designed to benefit the public. Operator accepts the risk that the City and others may now or in the future install or modify the ROW that may make the ROW unavailable for Operator’s use. Such activities may include, but are not limited to any and all construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning, or otherwise accommodating all manner of streets, sidewalks, alleys, trails, traffic control devices, transit facilities, pipes, wires, cables, conduit, sewer, canals, drains, overpasses, culverts, bridges, and other encroachments, and any other use of the ROW that the City may determine from time to time to be a benefit to the public.
- 2.3.** There may be portions of the ROW, such as canal crossings, structures not owned or operated by the City, or other areas that are encumbered for the benefit of others, have limited dedications to the public, or that have regulatory use restrictions imposed by a third party. Areas subject to such encumbrances, restrictions, or regulation are Third Party Areas and a Shared Active Transportation Vehicle shall not be Staged in such areas without the express written permission from the third party or third parties that have property rights or regulatory authority over the specific Third-Party Area.



- 2.4. City shall have full authority to regulate use of the ROW and to resolve competing demands and preferences regarding use of the ROW and to require Operator to cooperate and participate in implementing such solutions. In exercising its authority, the City may consider any legal, timing, operational, financial and other factors affecting existing and future proposals and public needs of the ROW.

### **3. Licensing Procedures**

- 3.1. The Operator shall submit (1) a completed License, which shall be in the form attached as Exhibit A; (2) the License Fee; (3) insurance documentation as stated in Section 9 below; and (4) images and description of Shared Active Transportation Vehicle; ("Application") at the Licensing Office.
- 3.2. The Business Licensing Administrator shall administer the provisions of these Terms and Conditions. Pursuant to this duty, the Business Licensing Administrator will issue, renew, deny, or revoke a License in accordance with these Terms and Conditions.
- 3.3. Any change to the License Application or supporting documents of an approved License is void unless City agrees to the change in writing during the License approval process.
- 3.4. The Operator shall comply with any necessary zoning, building permit, traffic control, ROW management requirements, non-City utility permits, other permits as required, or other regulatory requirements ("Permits") that apply to this License.

### **4. Duration, Termination and Revocation**

#### **4.1. Term of License**

The License governed by these Terms and Conditions shall have a duration of one year.

#### **4.2. Renewal**

The License may be renewed annually at Operator's request and at the sole discretion of City, so long as Operator is in compliance with these Terms and Conditions, the related License, and all Applicable Laws. If Operator has received more than six (6) Notice of Impound the License may not be renewed.



#### **4.3. Early Termination**

City or Operator may terminate the License at any time upon notification of 60-days written notice to the other party. Upon termination of the License by either party, Operator's entire fleet of Shared Active Transportation Vehicle shall be removed from City-Owned Property and ROW. The removal of Operator's entire fleet of Shared Active Transportation Vehicle shall be completed within sixty (60) calendar days after date of termination, unless a different time period is agreed to by the City.

#### **4.4. Revocation**

License may be revoked for any violation of the Mesa City Code and these Terms and Conditions.

### **5. Fees**

**5.1. License Fee.** Operator shall pay the amount defined in the Schedule of Fees and Charges annually for each License at the time of issuance.

**5.2. Impound Fee.** If the City has to impound an SATV, Operator shall pay the amount defined in the Schedule of Fees and Charges to the City for the removal of each unauthorized SATV.

### **6. Staging and Parking**

**6.1.** The Operator shall not Stage any Shared Active Transportation Vehicle on City-Owned Property or in the ROW without an approved License. Placement of any Shared Active Transportation Vehicle on City-Owned Property or in the ROW without a License shall constitute trespass.

**6.2.** The Operator shall not Stage Shared Active Transportation Vehicles in any City Parks.

**6.3.** The Operator shall Stage all Shared Active Transportation Vehicles upright on a Parking Surface. When Staged, Shared Active Transportation Vehicles shall be parked upright on a Parking Surface and facing the same direction with no more than five (5) Shared Active Transportation Vehicles in a row. Groups of five (5) Shared Active Transportation Vehicles should be separated by a distance of at least 20 feet.

**6.4.** The Operator shall re-Stage all Shared Active Transportation Vehicles every 24 hours, which shall include removing all Shared Active Transportation Vehicles from Residential Streets and private property.



- 6.5. The Operator shall Stage Shared Active Transportation Vehicles at least 20 feet from Grid bicycle racks and business entrances.
- 6.6. The Operator shall not Stage Shared Active Transportation Vehicles directly under the shade canopy of transit shelter structures and must not impede the minimum 96" clear width required accessible devices on transit vehicles at bus stops.
- 6.7. The Operator shall Stage Shared Active Transportation Vehicles as to not block or impede pedestrian and wheelchair traffic in compliance with the American's with Disabilities Act (ADA). A clear width of 48" on a walking surface must be accessible at all times.
- 6.8. If the City deems the parked location an immediate safety hazard, the City reserves the right to immediately impound the Shared Active Transportation Vehicle and assess the Impound Fee. The City does not warrant or guaranty the safety or security of impounded Shared Active Transportation Vehicles while in City storage.
- 6.9. The Operator shall be required to remove any unauthorized Shared Active Transportation Vehicle within 24 hours of notification by City ("Notice of Impound"). If Operator fails to remove the unauthorized Shared Active Transportation Vehicle within 24 hours after notification by City, City may remove the unauthorized Shared Active Transportation Vehicle without incurring any liability, including but not limited to liability for interruption of service and assess the Impound Fee. The failure of the City to remove any unauthorized Shared Active Transportation Vehicle from an unauthorized location or not assess the Impound Fee shall not constitute permission or create a de facto License in any manner nor shall subsequent issuance of a License operate retroactively.

## **7. Standards for Operation, and Maintenance**

- 7.1. The Operator is required to maintain the Shared Active Transportation Vehicle in good and functioning condition as determined by the City in its discretion.
- 7.2. The Operator shall equip the Electric Standup Scooter, Electric Miniature Scooter, Motorized Skateboard, so that it is limited to a maximum speed of 15 miles per hour and an Electric Bicycle to a maximum speed of 20 miles an hour.
- 7.3. The Operator, at its sole expense, shall maintain the Shared Active Transportation Vehicle and promptly remove inoperable Shared Active Transportation Vehicle from the ROW.



- 7.4.** The Operator shall equip all Shared Active Transportation Vehicles with an on-board GPS device capable of providing real-time location data so that the Operator knows where the Shared Active Transportation Vehicles are always located.
- 7.5.** The Operator shall place a serial number on each Shared Active Transportation Vehicle that is visible to the User of the Shared Active Transportation Vehicle.
- 7.6.** The Operator shall provide the City with the name, direct telephone number and email address of the local staff member responsible for Staging Shared Active Transportation Vehicles. The Operator shall notify the City within one business day of any changes to the direct contact information.
- 7.7.** The Operator shall provide a 24-hour customer service phone number for Users and the public to report safety concerns, mechanical problems, complaints, Shared Active Transportation Vehicle removal requests or ask questions and imprint the customer service number prominently on the exterior of each Shared Active Transportation Vehicle.
- 7.8.** The Operator shall provide monthly reports to the City that includes a summary of system operations. The data shall reflect the License's applicable work during the month immediately preceding that calendar month and fiscal year to date (July 1-June 30), for all months as stated in Exhibit B.
- 7.9.** The Operator shall not install signage except as may be required for the safe use of SATVs by the City, Operator, Users, and others. Any such signs shall be maintained at all times, and shall include Operator's name, business address, telephone number, and emergency contact information. In no instance shall such signs contain a commercial message. Sign design, location and installation method is subject to approval by the City prior to installation.
- 7.10.** The Operator shall include language in its Terms and Use Agreement that educates Users on the laws applicable to operating a Shared Active Transportation Vehicle in Mesa and inform Users how to properly park a Shared Active Transportation Vehicle.
- 7.11.** The Operator shall provide supplemental safety outreach efforts in addition to providing the City with 100 helmets each year.
- 7.12.** The License does not provide Operator any ownership or leasehold interests in the City-Owned Property or ROW, nor does the License provide Operator with any of the City's rights to use the public property upon which the Shared Active Transportation Vehicle is Staged, other than those expressly provided herein or in the License.

- 7.13.** Any Operator issued a License must meet the standards for bicycles outlined in the Code of Federal Regulations under Title 16, Chapter II, Subchapter C, Part 1512. Additionally, the Operator shall meet the operation and safety standards outlined in the Arizona Revised Statutes.
- 7.14.** The Operator assumes all risk, costs and expenses related to the Staging of a Shared Active Transportation Vehicle and any loss of service that may occur due to damage, destruction or collapse of any City-Owned Property or ROW or due to any incompatibility of Operator's use with City's use, or other User's use, of the City-Owned Property or ROW. Operator shall be solely responsible for the relocation of any Shared Active Transportation Vehicle on property not owned by City or wrongly designated as a City-Owned Property and/or ROW at any time.

## **8. Operations Interference and Emergency Disruption**

- 8.1.** The Operator shall not use the City-Owned Property or the ROW in any way which interferes with the use of any portion of the City property by City. In the event City determines that Operator's use of the City-Owned Property or ROW interferes with the City's use of the City-Owned Property or ROW, City will notify Operator of such interference and Operator shall have twenty-four (24) hours to remedy the interference. If an Operator does not remedy the interference, such action shall be deemed a material breach by Operator and City shall have the right to terminate the License.

## **9. Indemnification**

The Operator agrees to defend, indemnify, and hold harmless the City, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands, and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses, and amounts paid in compromise, settlement, or judgment, and reasonable legal fees arising from any claim or litigation of every kind or nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of, in connection with, or which, in whole or in part, are in any way related to: (1) Operator's participation in the Shared Active Transportation Vehicle program; (2) the Operator's (including its officers, managers, employees, contractors, agents, and volunteers) business conduct and operations; (3) any violation of any laws by the Operator (including its officers, managers, employees, contractors, agents, and volunteers) or its Users; (4) Operator's negligence, and any other claim arising from its conduct during the term of the License; (5) any bodily injury including death or damage to property arising out of or in connection with any use, misuse, placement or misplacement of Operator's device (including, but not limited to, Operator's SATVs), property, or equipment by User or any person, and; (6) any placement or misplacement of Operator's device



(including, but not limited to, Operator's SATVs), property, or equipment by any person; the foregoing indemnity, duty to defend, and hold harmless shall apply to all such claims except for claims that are caused by the sole exclusive negligence or willful misconduct of the City. Operator will conduct all defenses pursuant to these Terms and Conditions at Operator's sole cost and expense, and City shall reasonably approve selection of the counsel to represent City as proposed by Operator. This indemnification, duty to defend and hold harmless shall apply to all claims and liability regardless of whether any insurance of Operator, its affiliates or other parties are applicable thereto. The policy limits of any insurance of Operator, its affiliates or other parties are not a limitation upon the obligation of Operator, including without limitation, the amount of indemnification to be provided by Operator. The User Agreement agreed to or bypassed and then agreed to by a User does not limit or obviate Operator's liability of this indemnification. The provisions of this section shall survive the termination of these Terms and Conditions.

## **10. Insurance**

**10.1.** Without limiting any liabilities or any other obligations of these Terms and Conditions and its related License, an Operator and its contractors and subcontractors shall provide and maintain, with forms and insurers acceptable to City, the minimum insurance coverage, as follows:

- 10.1.1.** Commercial General Liability Insurance, including coverage of contractual liability assumed under each License, affording protection of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence, combined single limit for bodily injury and property damage, against damages because of, or on account of, bodily injuries to or the death of any person or destruction of or damage to the property of any person, due in any way to the use, occupancy, maintenance or operation pursuant to these Terms and Conditions and its related License.
- 10.1.2.** Workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Operator's and Operator's contractor or subcontractor employees who may be working pursuant to these Terms and Conditions and its related License, and employer's liability with a minimum limit of ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- 10.1.3.** Commercial automobile liability insurance with a combined single limit for bodily injury and property damage of not less than TWO MILLION DOLLARS (\$2,000,000) each occurrence with respect to vehicles assigned to or used in the performance of the work, whether owned, hired, or non-owned.



- 10.2.** The policies required by Sections 10.1.1 and 10.1.3 herein shall include the City of Mesa, members of its governing bodies, its officers, agents and employees as additional insureds and shall stipulate that the insurance afforded for shall be primary insurance and that any insurance carried by the City of Mesa, members of its governing bodies, its officers, agents and employees shall be excess and not contributory.
- 10.3.** The Operator, its subcontractors and its insurers providing the required coverages shall waive all rights of subrogation against the City of Mesa, members of its governing bodies, its officers, agents and employees.
- 10.4.** With submission of the Application, the Operator shall furnish the City with Certificates of Insurance and related endorsements as evidence that policies providing the required coverage, conditions and limits are in full force and effect. Such certificates shall provide that not less than thirty (30) days' notice of cancellation, termination, or material change shall be sent directly to City.
- 10.5.** All insurance policies shall be obtained from companies duly authorized to issue such policies in the State of Arizona, having Best's ratings of "A" and acceptable to City.

## **11. Breach**

- 11.1.** Any breach of MCC, Title 10, Chapter 1, these Terms and Conditions or of any provisions of the License, if left uncured after 30-days' written notice, may be cause for revocation, denial of renewal or termination of the License.
- 11.2.** The City's remedies for breach are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available under the law.

## **12. Assignment**

The Operator may not assign the obligations of these Terms and Conditions and the related License without the City's written consent, City's consent not to be unreasonably withheld, conditioned or delayed. Any purported assignment in violation of this Section shall be void. Subcontracting, subleasing, sublicensing of the rights granted in the License is strictly prohibited. Any subcontracting, subleasing, sublicensing of the rights granted in this license shall be by operation of law, null and void and shall immediately terminate this license without prior notice to the Operator.

## **13. Disclaimer**

City expressly disclaims all warranties of merchantability and fitness for a purpose or absence of hazardous conditions associated with the City-Owned Property and ROW. City makes the City-Owned Property and ROW available for Operator's use "AS IS."



## EXHIBIT A

### Shared Active Transportation Vehicle License

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

Address: \_\_\_\_\_

\_\_\_\_\_

Local Contact: \_\_\_\_\_

Local Contact Phone Number \_\_\_\_\_

This Shared Active Transportation Vehicle License (this "License") is effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ("Effective Date"), by and between the City of Mesa, an Arizona municipal corporation ("City") and <<company name>>LLC, an Arizona limited liability company, d/b/a << company >> with an address at << address >> (telephone number << >>) (" Licensee"). City and Licensee are at times collectively referred to as "Parties" or individually as a "Party".

1. **License Terms.** The provisions of the Shared Active Transportation Vehicle Terms and Conditions are incorporated herein by reference as though fully set forth. Capitalized terms used but not defined in this License shall have the meanings defined in the Terms and Conditions.
2. **Fees.** << >> shall pay to City the License Fee as stated in Section 5.1 of the Terms and Conditions and Schedule of Fees and Charges for the City of Mesa. The Fee shall be paid annually at the time of submission of the initial Application or renewal Application of the License.
3. **Term of License.** The term of this License shall be for one (1) year from the Effective Date, unless earlier revoked.
4. **License Renewal.** This License, unless revoked, may be renewed in accordance with Section 4.2 of the Terms and Conditions. The completed renewal Application must be submitted by the Licensee no later than forty-five (45) calendar days prior to the expiration of this License along with the applicable renewal fee in the Schedule of Fees and Charges. The Licensing Office is authorized to obtain necessary information to update the original Application and to determine whether the License should be renewed in accordance with the requirements of the Terms and Conditions.

**5. Indemnification.** Operator agrees to defend, indemnify, and hold harmless the City, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands, and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses, and amounts paid in compromise, settlement, or judgment, and reasonable legal fees arising from any claim or litigation of every kind or nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of, in connection with, or which, in whole or in part, are in any way related to: (1) Operator's participation in the Shared Active Transportation Vehicle program; (2) the Operator's (including its officers, managers, employees, contractors, agents, and volunteers) business conduct and operations; (3) any violation of any laws by the Operator (including its officers, managers, employees, contractors, agents, and volunteers) or its Users; (4) Operator's negligence, and any other claim arising from its conduct during the term of the License; (5) any bodily injury including death or damage to property arising out of or in connection with any use, misuse, placement or misplacement of Operator's device (including, but not limited to, Operator's SATVs), property, or equipment by User or any person, and; (6) any placement or misplacement of Operator's device (including, but not limited to, Operator's SATVs), property, or equipment by any person; the foregoing indemnity, duty to defend, and hold harmless shall apply to all such claims except for claims that are caused by the sole exclusive negligence or willful misconduct of the City. Operator will conduct all defenses pursuant to the Terms and Conditions at Operator's sole cost and expense, and City shall reasonably approve selection of the counsel to represent City as proposed by Operator. This indemnification, duty to defend and hold harmless shall apply to all claims and liability regardless of whether any insurance of Operator, its affiliates or other parties are applicable thereto. The policy limits of any insurance of Operator, its affiliates or other parties are not a limitation upon the obligation of Operator, including without limitation, the amount of indemnification to be provided by Operator. The User Agreement agreed to or bypassed and then agreed to by a User does not limit or obviate Operator's liability of this indemnification. The provisions of this section shall survive the termination of the Terms and Conditions.

**6. Force Majeure**

**6.1** Neither City nor Operator shall be liable or responsible for a delay or failure in performing or carrying out any of its obligations (other than obligations to make payments) under this License caused by force majeure. Force majeure shall mean any cause beyond the reasonable control of City or Operator, as applicable, or beyond the reasonable control of any of their respective contractors, subcontractors, suppliers



or vendors, including without limitation: acts of God, including, but not necessarily limited to: lightning, earthquakes, adverse weather of greater duration or intensity than normally expected for the job area and time of year, fires, explosions, floods, other natural catastrophes, sabotage, acts of a public enemy, acts of government or regulatory agencies, wars, blockades, embargoes, insurrections, riots, or civil disturbances; labor disputes, including, but not necessarily limited to, strikes, work slowdowns, work stoppages, or labor disruptions, labor or material shortages, or delays or disruptions of transportation; orders and judgments of any federal, state or local court, administrative agency or governmental body; the adoption of or change in any federal, state or local laws, rules, regulations, ordinances, permits or licenses, or changes in the interpretation of such laws, rules, regulations, ordinances, permits or licenses, by a court or public agency having appropriate jurisdiction after the date of the adoption of the Terms and Conditions; or any suspension, termination, interruption, denial or failure to issue or renew by any governmental authority or other party having approval rights of any approval required or necessary hereunder or for either Party to perform its obligations hereunder, except when such suspension, termination, interruption, denial or failure to issue or renew results from the negligence or failure to act of the Party claiming the occurrence of an event of force majeure.

**6.2** If either City or Operator is rendered unable to fulfill any of its obligations under the Terms and Conditions or this License by reason of force majeure, such Party shall promptly notify the other and shall exercise due diligence to remove such inability with all reasonable dispatch; provided, that nothing contained in this Section 6 shall be construed as requiring City or Operator to settle any strike, work stoppage or other labor dispute in which it may be involved, or to accept any permit, certificate, license or other approval on terms deemed unacceptable to such Party, or to enter into any contract or other undertaking on terms which the Party deems to be unduly burdensome or costly.

**6.3** An event of force majeure is not a modification of and does not limit or reduce obligations under Section 5 above.

## **7. Breach**

It shall be a breach of this License to violate any provision of the Terms and Conditions or the Mesa City Code, Title 10, Chapter 1.

## **8. Termination, Revocation, or Denial of Renewal**



- 8.1. This License may be terminated or revoked at any time during the Term, or any renewal may be denied if any breach of Title 10, Chapter 1, the Terms and Conditions or of any provision of this License, is left uncured after 30-days' written notice.
- 8.2. City or Operator may terminate the License at any time upon notification of 60-days written notice to the other party. Upon termination of the License by either party, Operator's entire fleet of Shared Active Transportation Vehicle shall be removed from City-Owned Property and ROW. The removal of Operator's entire fleet of Shared Active Transportation Vehicle shall be completed within sixty (60) calendar days after date of termination, unless a different time period is agreed to by the City.

## **9. Appeal**

- 9.1. Any party aggrieved by a decision of the Business Licensing Administrator may appeal the decision to the Transportation Department Director. The appeal must be in writing and state the grounds for the appeal. The appeal must be filed with the City Clerk within ten (10) days of the date of the decision being appealed. The failure of an appeal to meet the requirements of this Section will entitle the Business Licensing Administrator to deny the appeal without further review.
- 9.2. If an appeal meets the requirements of Section 9.1 above, the Transportation Department Director will schedule a hearing within thirty (30) calendar days of receipt of the appeal and the Transportation Department Director will render a decision within sixty (60) calendar days of the hearing. The filing of an appeal meeting the requirements of Section 9.1 above will suspend the decision of the Business Licensing Administrator until the Transportation Department Director has rendered a decision. Any suspended decision of the Business Licensing Administrator, if upheld by the Transportation Department Director, will be reinstituted and dated as of the original date the decision was issued by the Business Licensing Administrator. The decision of the Transportation Department Director shall be final and binding on all parties.

## **10. Entire Agreement**

The Terms and Conditions and this License represent the entire agreement of the Parties. There are no other agreements or terms, written or oral. Except for those previously executed and enforceable contracts, the Terms and Conditions and this License supersede all previous communications and representations between the Parties on the same subject matter, whether oral



or written. All changes to this License agreed to by the Parties shall be in writing and must be executed by both Parties.

#### **11. Severability**

If any provision of the Terms and Conditions and this License is invalidated by a court of competent jurisdiction, all other provisions hereof shall continue in effect.

#### **12. Governing Law and Choice of Forum**

The Terms and Conditions and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Arizona without reference to principles of conflict of laws in Arizona or any other jurisdiction. Any proceeding shall be filed, prosecuted and resolved in the courts of the State of Arizona, state or federal, and venue for any litigation or other dispute shall be only in Maricopa County, Arizona. The Parties waive any and all rights to a jury.

#### **13. Notices**

[CONTACT INFORMATION HERE]

#### **14. Exhibits**

The forms of Exhibits attached to this License may change from time to time at the City's discretion, as technology and business needs change, but in any event will comply with all Applicable Laws.

The balance of this page is intentionally blank; signatures are on the next page.



**IN WITNESS, WHEREOF, the Parties hereto have set their hands and their respective seals the day and year first above written.**

**CITY:**

**City of Mesa**

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

**Printed Name:**      **Tim Meyer**

**Its:**              **Business Licensing Administrator**

**Date:** \_\_\_\_\_

**LICENSEE:**

\_\_\_\_\_

\_\_\_\_\_

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

**Printed Name:**

**Its:**

**Date:** \_\_\_\_\_



## **EXHIBIT B**

### **MONTHLY REPORTING REQUIREMENTS**

- Number of Shared Active Transportation Vehicles Staged per each day of the month, including the average number of Shared Active Transportation Vehicles Staged per month and the maximum daily number of Shared Active Transportation Vehicles for that month.
- Total miles traveled during the month and fiscal year-to-date.
- Total number of trips. A “trip” is the use of a Shared Active Transportation Vehicle from when it is unlocked to when it is locked during the month and fiscal year- to-date.
- Average duration per trip.
- Number of trips per day of the week.
- Number of crashes reported to the Operator during the month and location of the crash.
- Number of each type of crash outcome (traffic violation, property damage, personal injury, hospital visit, etc.)
- Summary of Shared Active Transportation Vehicle distribution in heat map format.
- Summary of Shared Active Transportation Vehicles Staging activities.

Periodically the City may require Operator to provide to the City reasonable written reports that may be generated without material additional cost (in addition to those described in subsections above) and may reasonably revise the categories of data to be provided in each report described above.