

LICENSE AGREEMENT SHUTTLE SERVICE – PILOT PROGRAM

THIS AGREEMENT is made this October ^{18th}, 2016 (“Agreement Date”) between the CITY OF MANHATTAN BEACH, a municipal corporation (“City”), and ALLSOP AND KNAPP, LLC, a California limited liability company, dba THE DOWNTOWNER (“Operator”).

RECITALS

- A. Operator is engaged in the business of providing free transportation service to the public in Manhattan Beach (“Shuttle Service”) utilizing a ride-hailing mobile application similar to one used by Uber and Lyft and using six-passenger electric shuttle buses.
- B. City is the owner of the Metlox Parking Garage located at 1200 Morningside Drive in Manhattan Beach (“Metlox Garage”).
- C. Operator seeks to charge and park its vehicles at the Metlox Garage, including the right to install electrical charging stations.
- D. Operator and City agree to enter into a six-month Pilot Program whereby, in exchange for the right to park and charge its vehicles at the Metlox Garage, Operator is willing to agree to certain parameters for the Shuttle Service, and agrees to authorize City to control all of the advertising on one of the vehicles, as more particularly set forth herein.
- E. Under the terms of the Pilot Program Operator will only operate the Shuttle Service in the City of Manhattan Beach within the following boundaries: Pacific Avenue (East), City of El Segundo limits (North), City of Hermosa Beach (South) and Ocean Drive (West).
- F. Concurrently herewith, Operator and City are entering into a license agreement (“Charging Station License Agreement”), whereby City is authorizing Operator to install three electric vehicle charging stations (“Charging Stations”) in the Metlox Garage, subject to the terms and conditions thereof.

NOW, THEREFORE, City and Operator agree as follows:

1. License Granted

For the consideration provided for herein and subject to the terms and conditions of this Agreement, City hereby grants to Operator a revocable, non-exclusive license as follows:

(a) To park up to six electric shuttle vehicles used by Operator in providing the Shuttle Service (“Shuttle Vehicles”) in the area behind the main escalator at the Metlox Garage, as depicted on Exhibit A (“Shuttle Parking Area”);

(b) To use Charging Stations installed by Operator in the Shuttle Parking Area pursuant to the Charging Station License Agreement to charge the Shuttle Vehicles, at the sole cost and expense of Operator.

Operator shall have no rights to install any signage, fixtures, structures, or other improvements on or about the Parking Structure, including the Shuttle Parking Area, except as expressly authorized by this Agreement.

2. Operation of the Shuttle Service

In consideration of this License Agreement, Operator agrees to:

(a) Operate the Shuttle Service in compliance with all applicable laws and regulations, including obtaining and maintaining in good standing a City Business License, and all necessary City, state, and federal licenses and approvals of any kind or character required for it to provide the Shuttle Service, and to provide copies of such licenses and approvals to City within ten days of City's request for the same;

(b) Operate the Shuttle Vehicles in compliance with City's Shuttle Service Regulations, set forth in Exhibit B and incorporated herein by this reference;

(c) Maintain the Shuttle Vehicles in compliance with all manufacturer requirements, in good repair and in a clean and neat condition; and

(d) Comply with all parking regulations in the Metlox Garage.

3. Payment for Electricity

City shall submit to Operator an invoice on a monthly basis for the electricity used by the Charging Stations, including a proportionate share of all taxes, fees, and surcharges. Operator shall pay the full invoice amount within 30 calendar days after receipt.

4. Party Representatives

For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Operator Representative shall be Sam Knapp, Principal (the "Operator Representative"). The Operator Representative shall directly manage Operator's Services under this Agreement. Operator shall not change the Operator Representative without City's prior written consent.

5. Release

City makes no representation or warranty regarding the availability of electricity at the Parking Structure for the Charging Stations, or the suitability of the Parking Structure for the parking of the Shuttle Vehicles. Operator has been provided the opportunity to examine the Parking Structure and the proposed Shuttle Parking Area, and determined that it is appropriate for its needs. Operator hereby releases City from all claims or other liability arising from the loss of electricity at the Parking Structure, or from damage to the Shuttle Vehicles or Charging Stations arising from any cause.

6. Indemnification

Operator agrees to indemnify, defend and hold harmless City and its elective or appointed boards, officers, agents, attorneys and employees (collectively, the "City Indemnitees") from any and all claims, liabilities, expenses or damages of any nature, including, but not limited to, attorneys' fees arising out of, or in any way connected with Operator's, or its agents', officers', employees', subcontractors' or independent contractors' performance of this Agreement, except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of City, as determined by final arbitration or court decision or by the agreement of the parties. Operator shall defend the City Indemnitees, with counsel of City's choice, at Operator's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against the City Indemnitees. Operator shall reimburse the City Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits of any such insurance do not act as a limitation upon the amount of indemnification to be provided by Operator. All duties of Operator under this Section shall survive termination of this Agreement.

7. Insurance

(a) Operator agrees to maintain the following types of insurance coverage and limits provided below:

(1) **Commercial General Liability Insurance:** A policy for occurrence coverage, including all coverages provided by and to the extent afforded by insurance services office form CG0001 ed. 11/88 or 11/85. The limit for all coverage's under this policy shall be no less than Two Million Dollars \$2,000,000 per occurrence, and a general aggregate limit of Five Million Dollars (\$5,000,000). City of Manhattan Beach, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide City with 30 days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance or self-insurance maintained by City. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed by Operator under this Agreement. Operator further agrees to submit to City an endorsement form executed by the applicable insurance underwriters and in a form approved by City's Risk Manager.

(2) **Commercial Auto Liability Insurance:** A policy including all coverages provided by and to the extent afforded by Insurance Services Office Form CA0001, ed. 12/93, including Symbol 1 (any auto), with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. City, its employees, officials and agents, shall be added as additional insured's by endorsement to the policy. The insurer shall agree to provide City with 30 days' prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk-financing program maintained by City. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any

claim arising out of the work performed by Operator under this Agreement. Operator further agrees to submit to City an endorsement form executed by the applicable insurance underwriters and in a form approved by City's Risk Manager.

(3) **Workers' Compensation:** A policy, which meets all statutory benefit requirements of the Labor Code, or other applicable law of the State of California. The minimum coverage limits for said insurance shall be no less than One Million Dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of City.

(4) **Garage Liability:** A policy with a limit not less than One Million Dollars (\$1,000,000) per incident insuring against loss from fire, theft, explosion or collision. This policy shall include Metlox Garage keeper's coverage.

(5) **Proof of Insurance:** Prior to the exercise of the license granted by this Agreement, Operator shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 8. The endorsements are subject to City's approval. Operator may provide complete, certified copies of all required insurance policies to City. Operator shall maintain current endorsements on file with City's Risk Manager. Operator shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Operator shall furnish such proof at least two weeks prior to the expiration of the coverages.

(6) **Other:** The procuring of such required policies of insurance by Operator shall not be construed to limit Operator's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against City for payments of premiums or other amounts with respect thereto. Any deductibles or self-insured retentions must be declared to and approved by City. Any deductible exceeding any amount acceptable to City shall be subject to the following changes:

(i) Either the insurer shall eliminate or reduce such deductibles or self-insured retentions with respect to City, its employees, officials and agents (with additional premium, if any, to be paid by Operator); or

(ii) Operator shall provide satisfactory financial guaranty for payment of losses and relative investigations, claim administration, and defense expenses to City.

(7) **Subcontractor Insurance Requirements.** Operator shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 7.

(b) Operator agrees to not engage in any act(s), which may result in a cancellation of the insurance coverage's provided above.

8. Advertising

Operator has informed City that it sells advertising on each of the Shuttle Vehicles. In

consideration of this Agreement:

(a) Operator agrees to prohibit advertising of all alcohol and tobacco products. All products that simulate and/or encourage the act of smoking are also prohibited. Operator is encouraged to display advertising that is family friendly and community oriented.

(b) Operator hereby grants to City the exclusive right to place advertising on one of the Shuttle Vehicles, including but not limited to advertising for City events. City shall pay one-time costs related to printing ("wrapping") the City-selected advertisement on such vehicle in an amount not-to-exceed \$2,000; Operator shall pay all costs in excess of that amount.

9. Term

(a) This term of this Agreement shall commence on the Agreement Date and end at the first to occur of (i) expiration or termination of the Charging Station License Agreement or (ii) 12:00 midnight on the date that is six months after the Commencement Date, unless sooner extended or terminated by City in writing. The Commencement Date shall be the date that Operator has received written notice from the City Representative that Operator has satisfied the conditions in paragraph (b) of this Section 9. The term of this Agreement shall expire if the Commencement Date has not occurred by January 17, 2017, unless that date is extended in writing by the City Representative.

(b) Operator shall have no right to commence parking Shuttle Vehicles in the Shuttle Parking Area, or to use the Charging Stations, until the following has occurred:

(i) Operator has delivered to City evidence satisfactory to City's Risk Manager of the insurance required by Section 7;

(ii) The Charging Station License Agreement is in full force and effect, including delivery to City of the Agreement Security specified in Section 10 of the Charging Station License Agreement; and

(iii) The Charging Stations have been installed and are operational, and City's Building Official has confirmed in writing that all City requirements relating to installation of the Charging Stations have been satisfied.

10. Termination

(a) Operator's failure to comply with any of the terms and conditions of this Agreement shall be cause for City to immediately terminate this Agreement. Upon the occurrence of such default by Operator, City may, at its option, grant to Operator a ten-day period within which to cure such default. Should this option to cure be granted to Operator by City, whether the default has been cured shall be left to the sole determination and discretion of City.

(b) Either party may terminate this Agreement for any reason or no reason upon providing the other party with 30 days' written notice of the same.

11. Effect of Expiration of the Term or Termination

Upon the expiration or earlier termination of the term of this Agreement, Operator shall cause the restoration of the Shuttle Parking Area to its condition prior to the Agreement Date, including the removal of the Charging Stations.

12. Agreement Security

City is hereby authorized to apply the Agreement Security made by Operator pursuant to the Charging Station License Agreement to any sums due City under this Agreement.

13. Independent Contractor

Operator agrees that it is an independent contractor and that it is solely responsible for any and all City, state and federal tax withholdings for any and all monies it receives in its performance of its obligations under this Agreement and agrees to fully indemnify and hold harmless City as to any claims made by any municipal, state and federal agencies concerning tax withholdings. It is further understood by Operator that this Agreement does not create a joint venture, partnership or similar relationship between it and City.

14. Notice

A notice, demand, request, consent, approval or communication that any party is required to give the other or to any other person or entity pursuant to this Agreement shall be in writing and either served personally or sent by registered or certified U.S. Mail, Return Receipt Requested, at the following addresses:

- (a) As to Operator, the notice shall be addressed to:

Allsop and Knapp, LLC, dba The Downtowner
Attn: Sam Knapp
1240 West Balboa Boulevard, #C
Newport Beach, CA 92101

- (b) As to City, the notice shall be addressed to:

City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266
Attn: City Manager

(With a copy to):

City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

(c) Should the mailing address of one of the parties change, such party must notify the others of the same in writing within ten days of the date of the address change.

(d) All required notices issued pursuant to this Agreement shall be presumed communicated within 48 hours from the date of deposit in the U.S. Mail, except for those occurrences where notices have been personally served with a verified proof of service form evidencing such service.

15. Authorization to Execute

The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

16. Assignment

This Agreement is personal to Operator and may not be assigned to any other person or party without City's express written consent, which may be withheld for any reason.

17. California Law

This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Superior Court.

18. Miscellaneous

(a) Entire Agreement; Amendment. This Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes any prior understanding or written or oral agreement(s) between the parties relating to the subject matter hereof. This Agreement may not be modified or any provision waived except by a written instrument signed by a duly authorized officer or representative of each of the parties hereto. No oral explanation or oral information by either of the parties hereto will alter the meaning or interpretation of this Agreement.

(b) City not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Operator.

(c) No Waiver; Severability. Failure of either party to enforce at any time during the term of this Agreement any provision hereof shall in no way be construed to be a waiver of such provision nor in any way effect the validity of this Agreement. In the event that any provision of this Agreement shall be deemed to be unenforceable by any arbitrator or court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.

(d) Exhibits. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

(e) Attorneys' Fees. If a party commences any legal, administrative, or other action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith, in addition to such other relief as may be sought and awarded.

(f) Headings. Headings to paragraphs of this Agreement are for convenience of reference only and shall not be construed to alter or affect the meaning of any provision of this Agreement.

[signatures begin on next page]

IN WITNESS THEREOF, parties hereto have executed this Agreement on the day and year first shown above.

City of Manhattan Beach ("City")

Allsop and Knapp, LLC, a California limited liability company, dba The Downtowner ("Operator")

By:


Mark Danaj, City Manager

By:

Its:

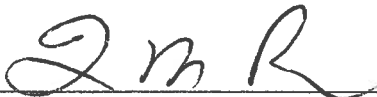

CFC

ATTEST:

 10-18-16

Liza Tamura, City Clerk

APPROVED AS TO FORM:



Quinn M. Barrow, City Attorney

APPROVED AS TO CONTENT:



Bruce Moe, Finance Director

Depiction of Shuttle Parking Area

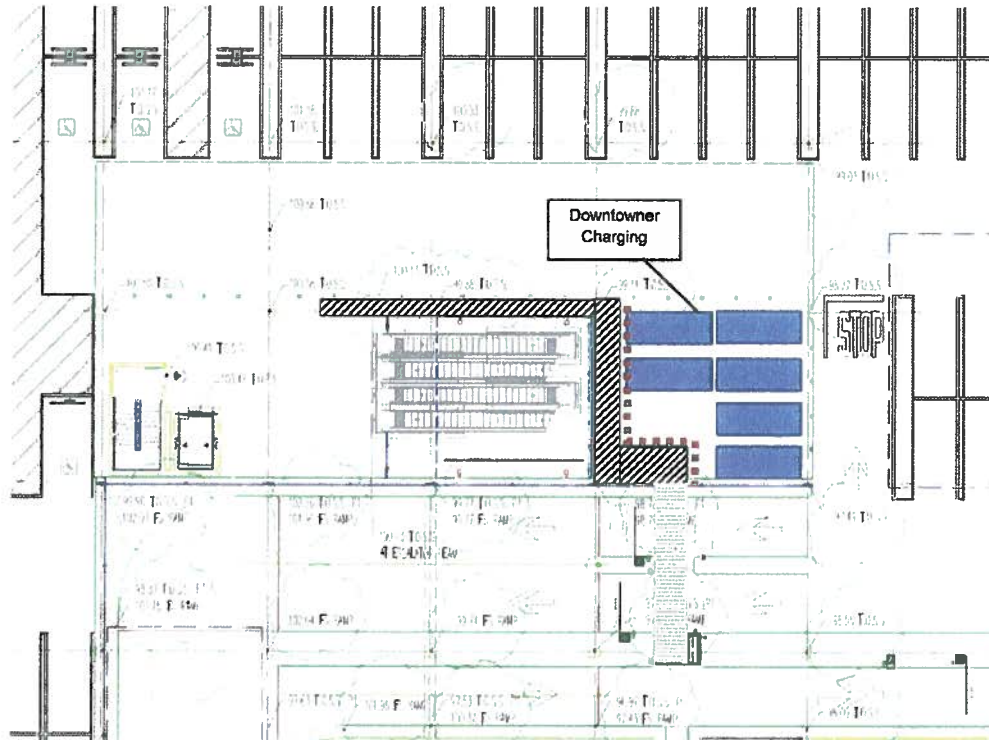


EXHIBIT B

Shuttle Service Regulations

Hours of operation shall be 11:00 a.m. – 11:00 p.m., Monday – Sunday

Shuttle Vehicles shall be operated in the City of Manhattan Beach, within the following boundaries: Pacific Ave (East), City of El Segundo limits (North), City of Hermosa Beach (South) and Ocean Drive (West).

Shuttle Vehicles can pull in to a public parking space to drop off passengers, but cannot wait for passengers or idle in public parking spaces.

Shuttle Vehicles can only drop off and pick up in designated areas as approved by the City Representative.

Shuttle Vehicle drivers shall obey all traffic rules and regulations.