

CITY OF SAUSALITO BICYCLE CONGESTION MANAGEMENT AGREEMENT

This **BICYCLE CONGESTION MANAGEMENT AGREEMENT**, (this "Agreement") is made and entered into this 1st day of March, 2018, by and between the **CITY OF SAUSALITO**, a municipal corporation (hereinafter "City") and **SAUSALITO BIKE RETURN, LLC**, a California for profit corporation (hereinafter "SBR").

In consideration of the mutual promises contained herein, the parties hereto agree as follows:

Section 1. Services to be Provided by SBR.

During the Term of this Agreement (as defined in Section 2 below) SBR shall provide the following services related to bicycle congestion management (collectively the "Services"):

A. Bicycle Ambassadors.

1. Locations: SBR will staff two locations in the City with a minimum of one (1) Bicycle Ambassador at each location.

- a. On Alexander Avenue at East Road ("Station 1"), and
- b. At the intersection of Bridgeway and Princess Street ("Station 2").

2. Staffing Days and Hours:

a. During the month of March a Bicycle Ambassador will be at Station 1 three (3) days per week - Friday, Saturday and Sunday. From April 1 through and including October 14th a Bicycle Ambassador will be at Station 1 seven (7) days per week. Staffing hours will be 11:00 am - 4:00 pm at Station 1.

b. During the months of March, April, May, and October, and from September 11th through September 30th, Bicycle Ambassadors will be at Station 2 three (3) days per week - Friday, Saturday and Sunday. Station 2 will be staffed seven (7) days per week during the months of June, July and August and from September 1st through 10th. Staffing hours will be 11:00 am - 5:00 pm at Station 2, provided, however, SBR may adjust staffing at Station 2 in its discretion based on demand.

c. In addition, SBR will provide additional Bicycle Ambassador(s) at the direction of the City's Police Chief or his designee in order to protect the public health and safety.

3. Duties:

a. Ambassadors at Station 1 will count the rental bikes that enter the City and provide guidance and information to those bike riders who require it.

b. Ambassadors at Station 2 will remind bike riders about the bike parking restrictions, guide them to the parking areas (both paid and free) and keep the flow of bike traffic moving toward Tracy Way in order to avoid causing more congestion at that intersection.

B. Bicycle Parking.

SBR will manage and operate the bicycle parking lot located on Tracy Way in the area depicted on Exhibit A which is attached hereto and incorporated herein by reference. Bicycle Parking services will be provided seven (7) days a week during the Term from 11:00 am until 6:00pm. The fee for parking a bicycle shall be in the amount determined by the City's Chief of Police; provided, however, that no fee for Bicycle Parking shall be charged for Marin County residents or children under the age of 12 and no one shall be charged a fee for Bicycle Parking before 11:00 am.

C. Bicycle Return.

SBR will provide City visitors with rental bicycle return services as described in Exhibit C which is attached hereto and incorporated herein by this reference as though set forth in full (the "Return Service"). City hereby grants to SBR a license to use that portion of the City's property depicted on the map attached hereto as Exhibit B and incorporated herein by this reference which is located at the northwest corner of Parking Lot #1 at the corner of Anchor Street and Tracy Way during the Term solely for the Return Service. The fee for bicycle return shall be in the amount determined by the City's Chief of Police. The schedule for the Sausalito Bike Return team will fluctuate depending on the month, day of week and weather forecast each day.

D. Staffing Levels.

In addition to the Bicycle Ambassadors required under Section 1 A, SBR will provide the minimum staffing levels set forth in this Section 1 D provided, however, that the bike return manager will have the ability to increase or decrease staff as needed on a daily basis. In addition, SBR will increase staffing levels for Bicycle Parking and/or Return Services at the direction of the Chief of Police or his designee in order to protect the public health and safety.

1. During the months of March, April, May, and October and from September 11th through 30th, SBR will provide the following minimum staffing levels for Bicycle Ambassador, Bike Parking and Return Services from 11:00 am to 6:00 pm:

- a. Monday through Thursday:
 - i. three (3) employees
 - ii. one return driver (which is a specialized position) in the afternoon.
- b. Friday through Sunday:

- i. five (5) employees
- ii. one return driver in the morning and one return driver in the afternoon.

2. During the months of June, July and August and from September 1st through 10th SBR will provide the following minimum staffing levels for Bicycle Ambassador, Bike Parking and Return Services seven (7) days a week from 11:00 am to 6:00 pm:
- a. six (6) employees
 - b. one return driver in the morning and one return driver in the afternoon.

Section 2. Term.

SBR will commence the Services required here under hereunder on March 23, 2018 through and until October 14, 2018 (the "Term"). The License granted hereunder shall be in effect during the Term.

Section 3. Payment for Services.

A. On or before March 16, 2018 the City shall pay SBR the sum of Twenty Three Thousand dollars (\$23,000.00) for Services provided hereunder.

B. Commencing April 15th and monthly thereafter until December 15th, the City will remit 90% of receipts received for Bicycle Parking and Bicycle Return through the last day of the prior month, less expenses incurred by the City to SBR.

Section 4. Payment to City.

SBR shall pay the City twenty percent (20%) on any gross profits in excess of Seventy Thousand Dollars (\$70,000) earned by SBR during the Term. Payments shall be made by the 10th of the month, payable to the City of Sausalito and delivered to 420 Litho St., Sausalito, CA 94965, following each month during the Term. Gross profits on gross sales shall be calculated as cumulative gross sales less gross total expenditures. Both gross sales and gross profits on gross sales shall be calculated to include all prior months and adjusted for any changes in percentage in the payment made for the month in which gross sales exceed the most recent benchmark. SBR will provide to the City, at the time of each monthly payment, documentation of gross sales and expenditures.

Section 5. Amendments.

This Agreement may be amended, modified or terminated only by an instrument in writing executed by SBR and City agreeing to amend, modify or terminate this Agreement.

Section 6. Independent Contractor - Subcontractors.

It is specifically understood and agreed that in the making and performance of this Agreement, SBR is an independent contractor and is not and shall not be construed to be an employee, common law employee, agent, or servant of City. SBR shall be solely liable and responsible to pay all required taxes and other obligations, including, but not limited to, withholding taxes and Social Security taxes. SBR acknowledges and agrees that he/she is not entitled to the benefits of civil service status and/or the rights and privileges enjoyed by civil service employees and SBR hereby waives any and all claims to such rights and/or privileges.

Section 7. Indemnification, Hold Harmless and Release.

A. **Indemnification; Waiver.** SBR agrees to indemnify and hold City and its elected and appointed officials, employees, officers, directors, agents and contractors (collectively, "City's Representatives") harmless, and to defend City and the City's Representatives with counsel reasonably satisfactory to City, from and against any and all liabilities, losses, losses related to the presence, emission or release of hazardous substances, actions, damages, obligations, judgments, costs and expenses (including, without limitation, attorneys' fees) (collectively, "Liabilities") which City or any of the City's Representatives may incur or suffer arising out of or in any manner connected with (i) the Services provided under this Agreement; (ii) the use of City Property by SBR or (iii) the breach of or failure of SBR to perform any of SBR's covenants contained in this Agreement.

B. **Nonliability.** To the fullest extent permitted by law, neither City nor any of the City's Representatives shall bear any responsibility for any Liabilities arising out of or in any manner connected with SBR's use of City Property, and all persons using City Property pursuant to this Agreement do so completely at their own risk. SBR acknowledges and agrees that the Licensed Property is part of a large open area that is utilized by and accessible to City and other tenants and licensees of City. SBR is solely responsible for the security of the items stored by SBR on the Licensed Property. City makes no representations and assumes no responsibility for the security of the items stored by SBR pursuant to this Agreement.

C. **Release.** SBR hereby waives, releases and discharges forever the City and the City's Representatives, from all present and future Liabilities arising out of or in any way connected with SBR's provision of the Services under this Agreement and the use or operations within the City Property.

SBR acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

As it relates to the matters set forth in this Section, SBR hereby waives and relinquishes all rights and benefits which it may have under § 1542 of the California Civil Code. All persons or entities using the City Property by or through Licensee hereby irrevocably agree to the waiver and release provisions set forth above and acknowledge that their provision of the Services under this Agreement and the use of the City Property is subject thereto.

Section 8. Insurance.

SBR shall take out and maintain during the life of the License: (a) Comprehensive General Liability and insurance in an amount not less than \$2,000,000 combined single limit applying to bodily injury, personal injury and property damage; Accident Insurance in the amount of \$500,000 (b) comprehensive business liability insurance in the amount of \$1,000,000 per claim and \$2,000,000 aggregate.

The liability policy(ies) are to contain, or be endorsed to contain, the following provisions:

The City, its officers, elected and appointed officials, employees, contractors and agents must be named as a Named Insured under the coverage afforded with respect to the work being performed under the Agreement.

Section 9. Nondiscrimination.

There shall be no discrimination against any employee who is employed in the Work, or against any applicant for such employment because of race, religion, color, sex or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Section 10. City Personnel Conflict of Interest.

No officers, member, or employee of City and no member of the governing body of City who exercises any functions or responsibilities in the review, approval of the undertaking or carrying out of the project, shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which she is, directly or indirectly interested; nor shall any such officer, member or employee of City have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 11. SBR Conflict of Interest.

SBR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. SBR further covenants that in the performance of this Agreement, no persons having any such interest shall be employed.

Section 12. Assignment.

SBR shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of City.

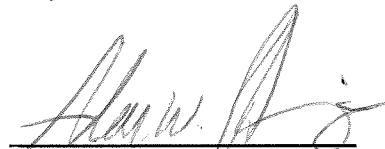
Section 13. Termination.

City may terminate this Agreement at any time without reason stated or required by giving written notice of the same and specifying the effective date thereof, at least seven calendar days before the effective date of such termination.

In Witness Whereof, City and SBR have executed this Agreement as of the date first written above.

City of Sausalito

SBR



Adam W. Politzer
City Manager

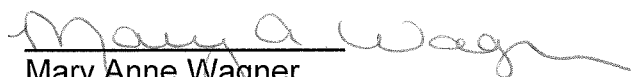


By: John Scopazzi
Its: Owner



By: Lisa Scopazzi
Its: Owner

approved as to form:



Mary Anne Wagner
City Attorney

EXHIBIT A

Map of Bike Parking

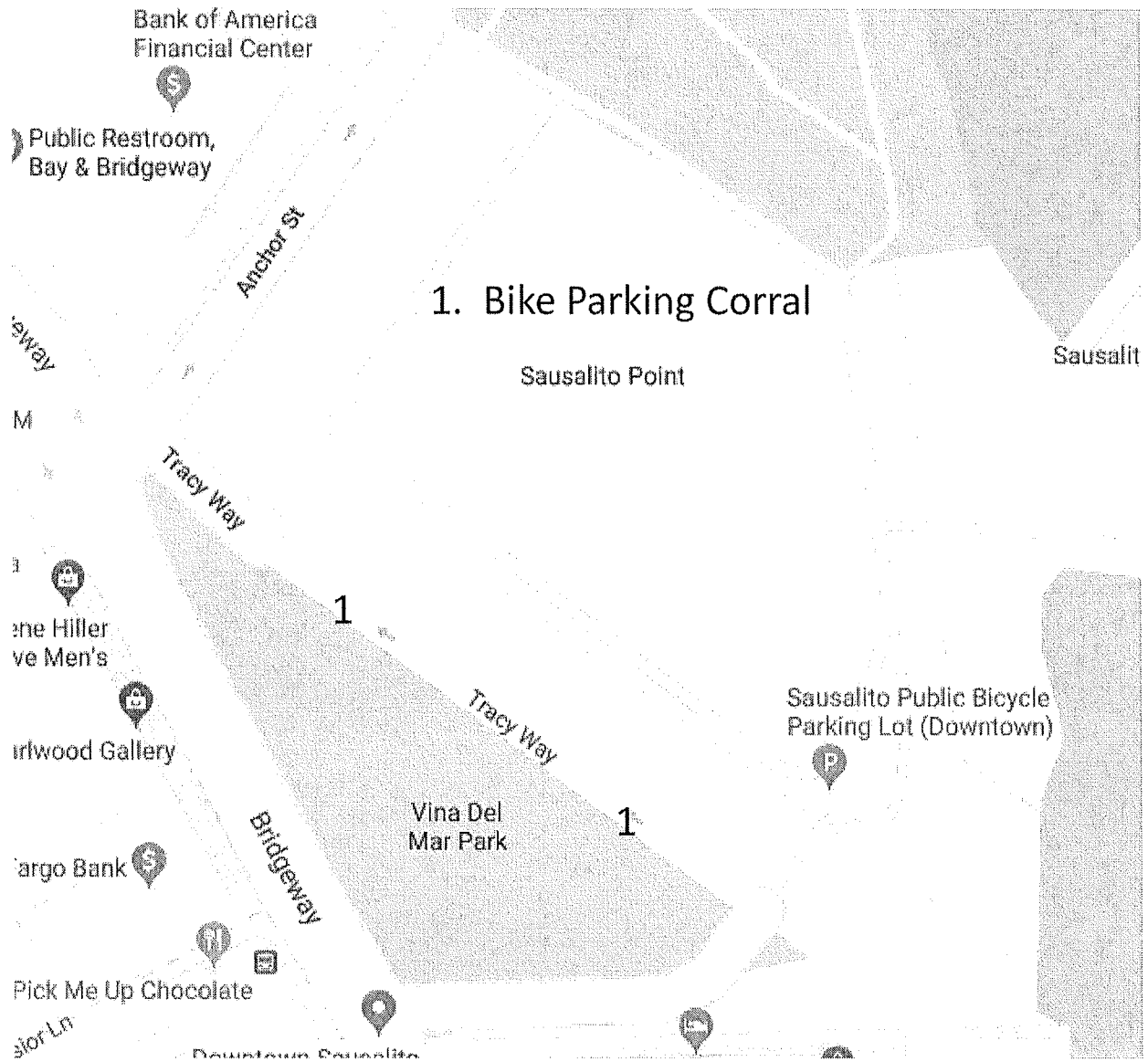


EXHIBIT B

MAP OF LICENSED PROPERTY

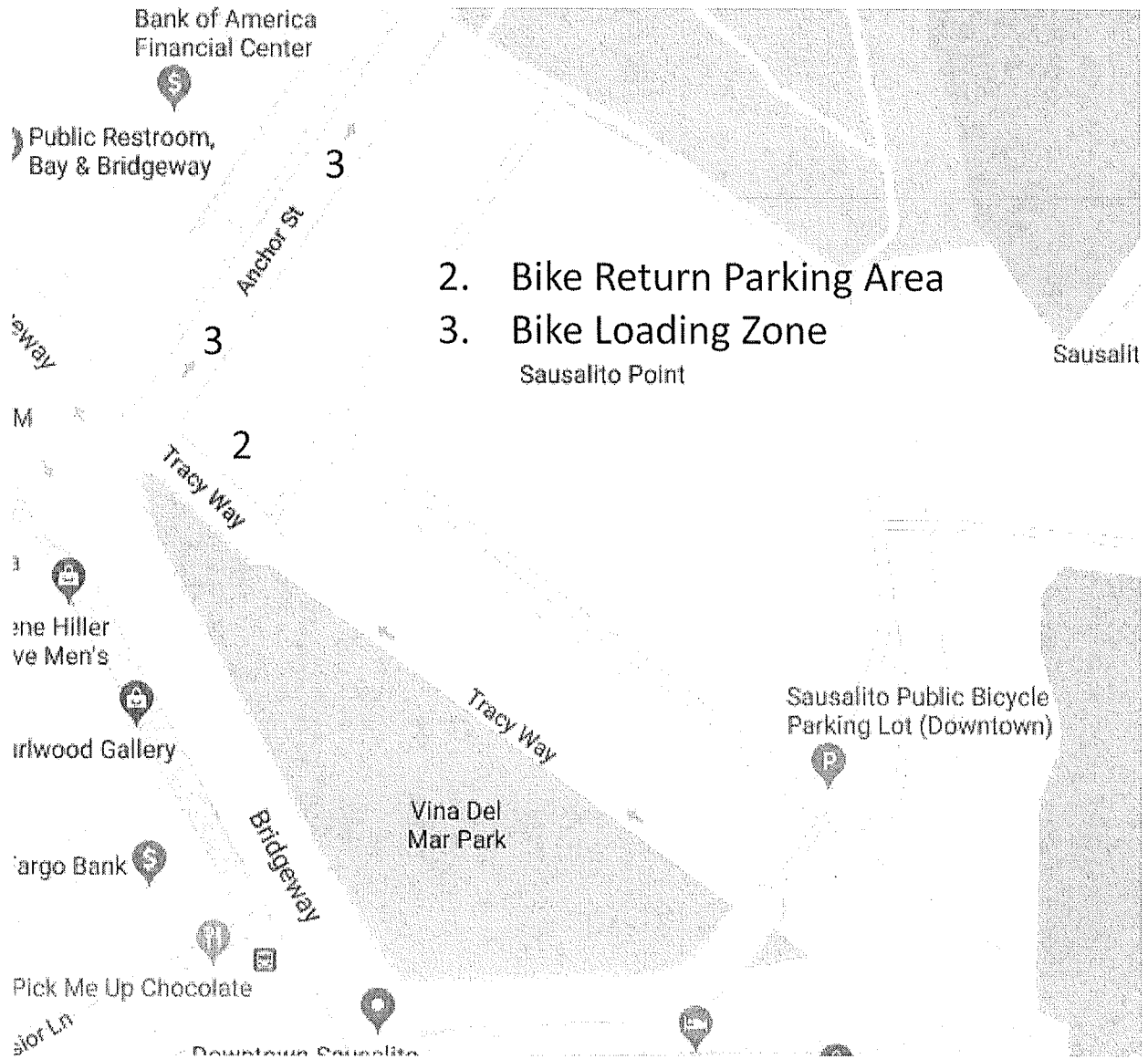


EXHIBIT C

ALLOWED USE

1. Sausalito Bike Return will staff a bicycle return depot located at the northwest corner Parking Lot #1 at the corner of Anchor Street and Tracy Way. They will load bicycles on an equipped truck approved by the Police Department on the western end of Anchor Street for return to the bicycle rental companies.
2. Sausalito Bike Return is responsible for all financial transactions related to providing its services.
3. The Bicycle Return Service will generally be open to the public from 11:00 a.m. until 6:00 p.m. daily or as demand and weather permit.

Loading and removal of bicycles will occur on Anchor Street generally in the afternoon hours, but also as needed based on demand up to three (3) times daily, blocking approximately two spaces normally

4. Customers of the bicycle rental companies may voluntarily turn in their rental bicycles to Sausalito Bike Return and pay a fee for the return of said bicycles to the originating company. This transaction is between said customers, Sausalito Bike Return, and the bicycle rental companies. The City is providing the land upon which the service is provided in recognition of appropriate compensation and the expectation that the Bicycle Return Service will improve bike flow, adherence to local ordinances and safety.