

Discussion Item

Capital Bike Share
Agreement

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of this ____ day of April, 2022 ("Effective Date") between **PARKFAIRFAX CONDOMINIUM UNITOWNERS ASSOCIATION**, a Virginia condominium association, ("Licensor") and **THE CITY OF ALEXANDRIA**, a Virginia municipal corporation ("Licensee"). The Licensor and Licensee are sometimes hereinafter separately referred to as "Party" and jointly referred to herein as the "Parties".

WHEREAS, Licensor, pursuant to Section 55.1-1956 B. of the Virginia Condominium Act (Äct") is the attorney-in-fact on behalf of all of owners with respect to the common elements of the condominium to grant easements, including this License Agreement pertaining to the real property and all improvements thereon, located at 3360 Gunston Road, Alexandria, VA 22302 as shown on **Exhibit A** attached hereto (collectively, "Property"); and

WHEREAS, Licensee desires to establish, operate, and maintain elements of a self-service bicycle rental system ("Services") on the Property; and

WHEREAS, Licensor has agreed to allow Licensee to install, operate, and maintain the bicycle rental docking station that is specified on **Exhibit A** attached hereto ("Docking Station") on that portion of the Property more particularly shown on **Exhibit A** hereto ("Licensed Area"), in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the promises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1 License. The term "User(s)" is defined to include Licensee and all of Licensee's officers, employees, agents, contractors, customers, guests, invitees, successors, and assigns. Licensor acknowledges and agrees that any member of the public at large may become a User simply by using any of the Services and that each User must be allowed full access to the Licensed Area, in connection with using any of the Services. Licensor does hereby grant the following non-exclusive licenses (collectively, "License"): (i) to Licensee and its successors and assigns: the right and license to construct, install, upgrade, alter, expand, renew, maintain, repair, replace, remove, relocate, and use the Docking Station and all related bicycles and other equipment within the Licensed Area, and to use and enjoy all rights appurtenant thereto, including the right to enter the Property as may be reasonable and appropriate to exercise all License rights and the right to remove all obstructions as Licensee may deem necessary; (ii) to all Users: the right and license to enter and use the Licensed Area in connection with using any of the Services, which may include using the Docking Station or any related bicycles or other equipment within the Licensed Area; and (iii) to Licensee and its successors and assigns: the right and license to enter the Property to enjoy, undertake, or perform any of Licensee's rights or obligations arising under this Agreement. The Licensed Area shall be used only for the Docking Station and other purposes related to the License or the Services, and Licensor must not block or impair any User's full and ready access to the Docking Station (24 hours per day, 365 days per year) or otherwise materially interfere with or alter any User's use or enjoyment thereof.

Section 2 Fee. Licensee and all other Users have no obligation to pay any fee or rent with

respect to the License or this Agreement.

Section 3 Term and Termination. This license shall commence on the Effective Date. Either Party may terminate this Agreement by providing the non-terminating Party with a written termination notice at least 180 days before the termination date specified in such notice.

Section 4 Insurance. Licensee's self-insurance program will provide liability coverage for claims, suits or actions arising from injuries to persons and property sustained in connection with the improvements made to the Licensed Area throughout the duration of this Agreement.

Notice of claims, suits or actions brought on account of any injury or damages sustained to any person, or to the property of any person as a result of Licensee's installation, operation, or maintenance of the Docking Station and related equipment or other performance under this Agreement should be directed to Office of the City Attorney, Attention Joanna Anderson,, 301 King Street, Suite 1300, Alexandria, VA 22314.

Section 5 Site Preparation. At no cost or expense to Licensors, Licensee is fully responsible for obtaining all permits and for preparing the Licensed Area for the installation of the Docking Station.

Section 6 Station Installation and Removal. Licensee shall install and remove the Docking Station at its sole cost and expense.

Section 7 Maintenance. Licensee, at its sole cost and expense, shall: (i) maintain the Docking Station in good condition; and (ii) communicate as necessary with Users and other third parties, including responding to User inquiries. Licensors has no authority to communicate with anyone on Licensee's behalf.

Section 8 Surrender. Within sixty (60) days after the date of termination by either Party, Licensee must remove the Docking Station and all related bicycles and other equipment from the Licensed Area, and must restore the Licensed Area as near as is practicable to the condition it was in upon the Effective Date, ordinary wear and tear excepted.

Section 9 Disputes. This Agreement is governed by, and must be construed and enforced in accordance with, the laws of the Commonwealth of Virginia. For every dispute regarding this Agreement: (i) each Party shall pay its own attorney fees (whether incurred at trial, on appeal, or otherwise) incurred in resolving or settling the dispute; (ii) each Party consents to the jurisdiction of the Commonwealth of Virginia, and avers that such courts have personal jurisdiction over each Party; (iii) venue must be in the Circuit Court of Alexandria, Virginia. All rights and remedies are cumulative and nonexclusive.

Section 10 Final Agreement. This Agreement contains the complete, final, and entire integrated agreement between the parties with respect to its subject matter and supersedes all other agreements relating thereto. Any amendment to this Agreement must be in writing and signed by all parties.

Section 11 Representations. Each Party represents and warrants to the other Party that: (i) it has the legal power and authority to enter into this Agreement and to undertake and perform all

of its duties and obligations hereunder; (ii) there is no contract or other legal obligation that prevents it from entering into this Agreement or from undertaking or performing all of its duties and obligations hereunder; and (iii) this Agreement is its legally binding and fully enforceable agreement.

Section 12 Notices. All notices and other communications provided hereunder must be in writing and are deemed given: (i) at the time of hand-delivery; (ii) the day after sending by a nationally recognized overnight delivery service (with confirmation of transmission); or (iii) 3 days after sending by certified mail (return receipt requested). All notices shall be sent to the following addresses:

IF TO LICENSOR: Parkfairfax Condominium Unit Owners Association
3360 Gunston Road
Alexandria, VA 22302
Attn: President and General Manager

IF TO LICENSEE: The City of Alexandria, Virginia
301 King Street
Alexandria, VA 22314
Attn: City Manager

With a copy to: City Attorney
The City of Alexandria, Virginia
301 King Street, Suite 1300
Alexandria, VA 22314

Section 13 Counterparts. This Agreement may be executed in original counterparts, where all counterparts taken together create the binding Agreement.

Section 14 No Waiver of Sovereign Immunity. Nothing in this Agreement, nor any action taken by any of the Parties pursuant to this Agreement, nor any document or documents that arise out of this Agreement, shall constitute or be construed as a waiver of the sovereign immunity of the City, including its elected and appointed officials, officers, and employees.

Section 15 No Rights in Third Parties. The Parties agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, any right as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.

Section 16 Appropriation of Funds. All of the Licensee's obligations under this Agreement are subject to appropriation of funds by the City Council, for the specific purpose of satisfying the payment and performance of such obligations. If funds are not appropriated for the specific

purposes of satisfying the obligations of the Licensee, at the beginning of any one of the City's fiscal years during the Term, then this Agreement shall become null and void and shall terminate on the last day of the City's fiscal year for which appropriations were received for such purpose, without any termination fee or other liability whatsoever to the Licensee. The Parties agree that, notwithstanding any provision in this Agreement to the contrary, this section shall supersede any and all obligations imposed by any other provisions of this Agreement. No subsequent amendment to this License shall abrogate, diminish, or compromise the full legal effect or implication of this section.

Section 17 Role of City. Execution of this Agreement on behalf of the City shall not constitute the granting of governmental approval to the Licensor for any governmental approval or consent required to be obtained by the Licensor. Nothing in this Agreement shall be construed to waive any of the City's powers, rights, or obligations as a governing authority or local governmental body, including, but not limited to, its police powers, right to grant or deny permits, right to collect taxes or fees, or any other power, right or obligation whatsoever.

Section 18 No Indemnification or Hold Harmless. Notwithstanding any other term or provision or this Agreement to the contrary, the Licensee shall have no obligation to explicitly or implicitly indemnify or hold harmless the Licensor or any third party or parties from any liability whatsoever.

Section 19 No Partnership, Joint Venture, Lease, or Easement. The Parties hereby agree that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, a landlord and tenant relationship, or an easement interest in any portion of the Licensed Area.

Section 20 Severability. If any of the terms and conditions in this Agreement are, at any time during the Term or any extension thereof, held by any court of competent jurisdiction to be invalid or unenforceable, then such terms and conditions shall be severed from the remainder of this Agreement, and such severance shall not affect the enforceability of the remaining terms and conditions in accordance with the intent of this Agreement.

The parties execute this Agreement as of the Effective Date.

WITNESS the following signature(s):

[The signatures appear on the following pages.]

LICENSOR:

By: _____

Print Name: _____

Print Title: _____

COMMONWEALTH OF VIRGINIA
CITY of Alexandria

The foregoing instrument was acknowledged before me on this ____ day of April, 2022, by _____, President of Parkfairfax Condominium Unit Owners Association, a Virginia condominium association, Licensor.

Notary Public: _____

My Commission Expires: _____

LICENSEE:

Accepted this _____ day of April, 2022, on behalf of the City of Alexandria, Virginia.

By: _____
For the City of Alexandria, Virginia

Name:

Title:

COMMONWEALTH OF VIRGINIA
CITY OF ALEXANDRIA, to-wit:

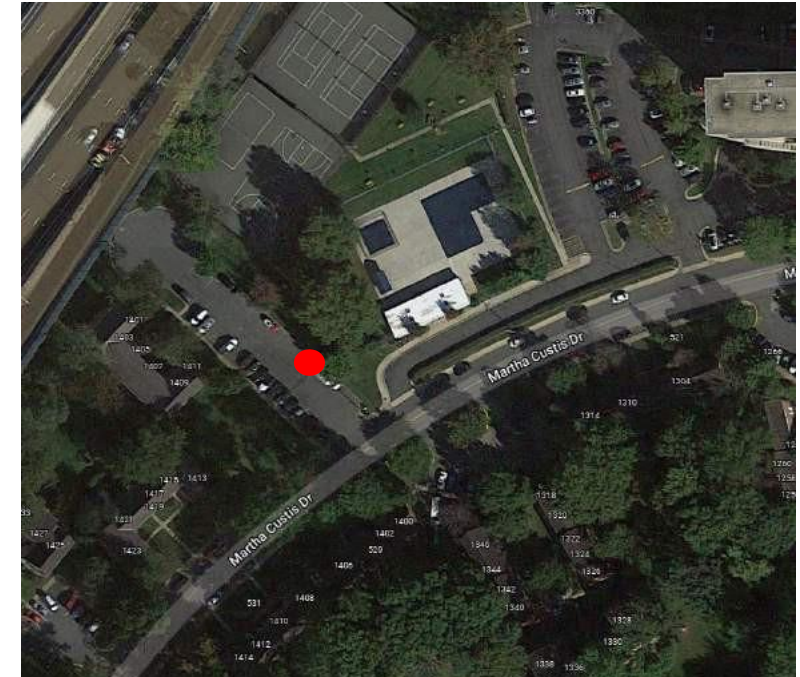
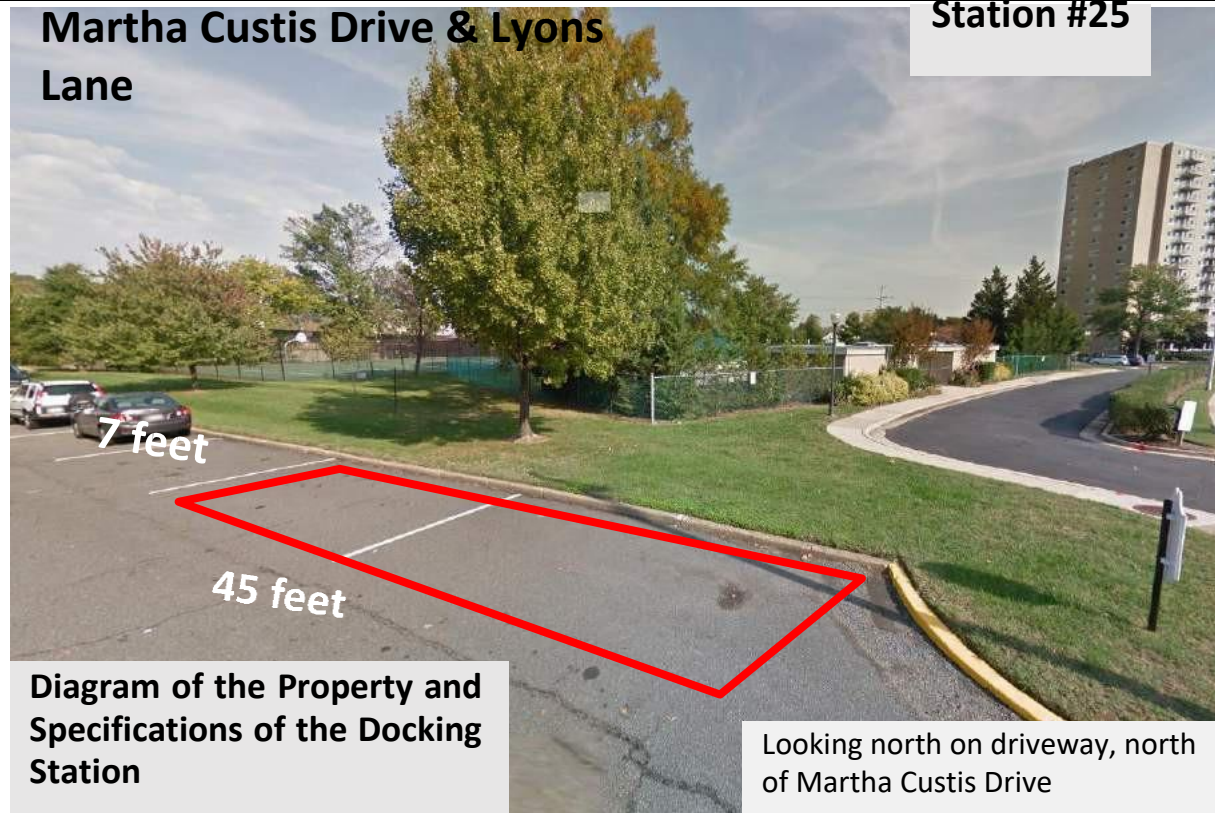
The foregoing instrument was acknowledged before me on this _____ day of April, 2022
by _____, on behalf of the CITY OF ALEXANDRIA, VIRGINIA, a municipal
corporation, Licensee.

Notary Public: _____
My Commission Expires: _____

APPROVED AS TO FORM: _____
SENIOR ASSISTANT CITY ATTORNEY

EXHIBIT A
DIAGRAM OF THE PROPERTY AND
SPECIFICATIONS OF THE DOCKING STATION AND VICINITY MAP OF
LICENSED AREA

Exhibit A – Diagram of the Property, Specifications of the Docking Station, and Vicinity Map of Licensed Area



Vicinity Map Of Licensed Area:

Notes: No concrete pad needed. To be located on Parkfairfax Condominiums (private property).

1. Station funded by VDOT and so would need to submit to VDOT documentation of a license agreement between the City and Parkfairfax Condominiums (VDOT re-approval could take several months, up to a year).

Station Size and Configuration: 45' x 7' (15 docks)

Signage Needs: Map to be included

metro bike

capital bikeshare



Date Submitted: