

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

City of Burlingame
501 Primrose Road
Burlingame, CA 94010
Attention: City Clerk

*Space Above This Line Reserved for Recorder's Use
Exempt from Recording Fee Per Government Code Section 27383*

AGREEMENT

BY AND BETWEEN

CITY OF BURLINGAME
a municipal corporation

AND

ENTERPRISE RENT-A-CAR CO OF SAN FRANCISCO, LLC

Effective Date: , 2025

AGREEMENT

This AGREEMENT (“**Agreement**”) dated as of _____, 2025 (“**Effective Date**”), is entered into by and between ENTERPRISE RENT-A-CAR CO OF SAN FRANCISCO, LLC, (“**Enterprise**”) and the CITY OF BURLINGAME, a California municipal corporation (“**City**”). Enterprise and City are sometimes referred to individually herein as a “**Party**” and collectively as “**Parties**.”

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties, and the following recitals are a substantive part of this Agreement and incorporated herein; terms are defined throughout this Agreement as indicated in **bold** language.

A. Enterprise has used the property located at 778 Burlway Road (“**Property**”; further described and depicted on Exhibit A hereto) for car rental services uses since 1985. Sometime after 1985, the City updated its Zoning Code, and car rental services were prohibited on the Property. The Property is in the Bayfront Commercial Zoning District, which is intended to provide opportunities for research and development and local and tourist commercial uses, including but not limited to restaurants, office, and personal services. The car rental services use is thus currently a legal non-conforming use.

B. Prior to the Effective Date of this Agreement, there existed a Conditional Use Permit (last revised September 2020 “**CUP**”) regulating the existing rental car use on the Property. The CUP has been modified and extended several times. In October 2016, Enterprise was anticipating relocation of its car rental use to an alternative site, so one such modification to the CUP included an agreement from Enterprise to adhere to certain redevelopment timelines and to provide the City with payments designed to offset the impacts of the non-conforming use while it remained in place.

C. At this time, the City and Enterprise desire to amend and restate the CUP and enter into this Agreement establishing the rights and obligations of the Parties with respect to redevelopment of the Property.

D. On September 15, 2025, the City Council considered and approved this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is acknowledged, Enterprise and the City agree as follows:

AGREEMENT

ARTICLE 1. GENERAL PROVISIONS

Section 1.1 Property Subject to the Agreement. All of the Property shall be subject to this Agreement. The Parties hereby acknowledge that, as of the Effective Date, Enterprise has a legal and/or equitable interest in the Property. Enterprise further agrees that all persons holding

legal or equitable title in the Property shall be bound by this Agreement, including any and all successors and assigns.

ARTICLE 2. ENTERPRISE OBLIGATIONS

Section 2.1 Enterprise Obligations, Generally. In consideration of the rights and benefits conferred by City to Enterprise under this Agreement, Enterprise shall perform and provide the specific obligations described in this Article 2.

Section 2.2 Enterprise Redevelopment and Payment Obligations.

A. Redevelopment of Property; Fees for Failure to Redevelop. Enterprise shall diligently pursue redevelopment of the Property to a conforming use, as follows:

1. Enterprise shall diligently pursue redevelopment of the Property, shall cease the existing nonconforming uses on the Property, and shall receive entitlements for conforming uses on the Property within five (5) years of the Effective Date of this Agreement (collectively, achievement of an “**Entitled Project**”), subject to the Annual Fee payments for Year 6 and beyond contained in section 2.2.B, below.

2. Enterprise’s obligation to pay the Annual Fee described in section 2.2.B below shall cease upon issuance of the first vertical building permit for the Entitled Project, except that a prorated Annual Fee is due in any partial year of the Term.

3. Enterprise’s obligation to pay the Flat Rentals Fee or the Gross Rentals Fee, as the case may be and as described in section 2.2.C, below shall cease upon issuance of the first vertical building permit for the Entitled Project, except that a prorated Flat Rentals Fee or a prorated Gross Rentals Fee are due in any partial year of the Term.

4. Notwithstanding sections 2.2.A.2 and 2.2.A.3 above, in the event that Enterprise fails to obtain a certificate of occupancy for the Entitled Project within five (5) years of issuance of the first vertical building permit, Enterprise’s obligation to pay the Annual Fee, Flat Rentals Fee or Gross Rentals Fee shall be reinstated, and said fees shall be paid in accordance with this section 2.2 and this Agreement until a certificate of occupancy for the Entitled Project is obtained.

B. Annual Fee. Enterprise shall remit payments to the City on October 1 or the first business day thereafter of each year that the use of the Property remains the same use that exists as of the Effective Date, with the first fee due in full on October 1, 2025 (the “**Annual Fee**”). Such Annual Fee payments shall begin at \$500,000 for the first year (“**Year 1**”) and shall increase by 5% each year through the fifth year (“**Year 5**”). Thereafter, beginning in the sixth year (“**Year 6**”), the Annual Fee will increase by 10% per year for the Term of this Agreement as defined herein. In sum, Enterprise shall pay the Annual Fee as follows:

Year 1 Annual Fee (October 1, 2025)	Year 2 Annual Fee (October 1, 2026)	Year 3 Annual Fee (October 1, 2027)	Year 4 Annual Fee (October 1, 2028)	Year 5 Annual Fee (October 1, 2029)	Year 6 and Beyond Annual Fees (Beginning October 1, 2030, and every October 1 thereafter)
\$500,000	\$525,000	\$551,250	\$578,813	\$607,753	10% increase from preceding Annual Fee

C. Flat Rentals Fee and Gross Rentals Fee. Enterprise shall remit \$36,500 per year on July 1 or the first business day thereafter of each year that the use of the Property remains the same as the condition on the Effective Date, with the first fee due on July 1, 2026 (the “**Flat Rentals Fee**”). If 1% of Enterprise’s gross car rental revenue exceeds \$36,500 (excluding San Francisco Airport contracts), Enterprise shall not pay the Flat Rentals Fee and shall instead pay a fee equal to 1% of the gross rentals to the City on an annual basis by July 1 or the first business day thereafter (the “**Gross Rentals Fee**”), with the first fee due on July 1, 2026.

ARTICLE 3. EFFECTIVE DATE AND TERM

Section 3.1 Effective Date. As described above, this Agreement shall become effective on the date of execution by the City.

Section 3.2 Term. The Term of this Agreement has been established by the Parties as a reasonable estimate of the time required for Enterprise to obtain an Entitled Project (“**Term**”).

A. Initial Term. The “**Initial Term**” of this Agreement shall commence on the Effective Date and shall end five (5) years thereafter.

B. Extended Term. The Term shall extend automatically beyond the Initial Term for one-year periods (each one-year period an “**Extended Term**”).

C. Termination. Except as otherwise provided herein and subject to section 2.2, the Parties’ obligations contained in this Agreement shall continue unless and until Enterprise achieves an Entitled Project and receives a certificate of occupancy for the Entitled Project.

D. Force Majeure Delay. The Term of this Agreement and the time within which either Party shall be required to perform any act under this Agreement may also be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by Force Majeure, and as unforeseen at the time this Agreement was executed by the parties. For purposes of this Agreement, “**Force Majeure**” is defined as strikes, lock outs, and other similar labor difficulties not within the control of either Party; Acts of God; unusually severe weather, but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays that cumulatively exceed twenty (20) days for any winter season; changes in local, state, or federal laws or regulations; any development moratorium or any action of other public agencies that regulate land use, development, or the provision of services that prevents, prohibits, or delays compliance with the Parties’ obligations herein; or enemy action; civil disturbances; wars; terrorist acts; epidemic; pandemic; quarantine; fire; unavoidable casualties; or mediation, arbitration,

litigation, or other administrative or judicial proceeding involving this Agreement (each a “**Force Majeure Delay**”). Enterprise’s inability or failure to obtain financing shall not be deemed to be a cause outside the reasonable control of the Enterprise and shall not be the basis for a Force Majeure Delay or any other excused delay under the terms of this Agreement.

E. Extension of Times of Performance for Force Majeure Delay. An extension of time for any Force Majeure Delay shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the Party claiming such extension is sent to the other Party within sixty (60) days of the commencement of the cause and provided that the Party claiming a delay avails itself of any available remedies. If Notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such Notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Enterprise, provided that the same does not affect the Term of this Agreement.

F. Effect of Termination. Upon termination, this Agreement shall be of no further force and effect, subject, however, to the provisions set forth in Section 6.6 (“**Surviving Provisions**”) below.

Section 3.3 City Representations and Warranties. City represents and warrants to Enterprise that:

A. City is a municipal corporation and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council action, and all necessary approvals have been obtained.

C. This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

D. The foregoing representations and warranties are made as of the Effective Date. During the Term of this Agreement, City shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 3.3 not to be true, immediately give written Notice of such fact or condition to Enterprise.

Section 3.4 Enterprise Representations and Warranties. Enterprise represents and warrants to City that:

A. Enterprise is duly organized and validly existing under the laws of the State of California and is authorized to do business in California and has all necessary powers to own property interests and in all other respects enter into and perform the undertakings and obligations of Enterprise under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of Enterprise hereunder have been duly authorized by all necessary company action, and all necessary member approvals have been obtained.

C. This Agreement is a valid obligation of Enterprise and is enforceable in accordance with its terms.

D. Enterprise has not: 1) made a general assignment for the benefit of creditors; 2) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Enterprise's creditors; 3) suffered the appointment of a receiver to take possession of all, or substantially all, of Enterprise's assets; 4) suffered the attachment or other judicial seizure of all, or substantially all, of Enterprise's assets; 5) admitted in writing its inability to pay its debts as they come due; or 6) made an offer of settlement, extension, or composition to its creditors generally.

E. The foregoing representations and warranties are made as of the Effective Date. During the Term of this Agreement, Enterprise shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.4 not to be true, immediately give written Notice of such fact or condition to City.

ARTICLE 4. AMENDMENT OF AGREEMENT

Section 4.1 Amendment of Agreement by Mutual Consent. This Agreement may be terminated, modified or amended from time to time in whole or in part only by mutual written consent of the Parties hereto or their successors-in-interest or assigns.

ARTICLE 5. ASSIGNMENT, TRANSFER AND NOTICE

Section 5.1 Transfers and Assignments. Except as otherwise provided herein, Enterprise shall have the right to sell, assign, or transfer ("**Transfer**") in whole or in part its rights, duties, and obligations under this Agreement to a third party, including MILLENNIUM PARTNERS, LLC, with consent and approval of City, subject to this section 5.1.

A. Upon Enterprise's request, City, at Enterprise's expense, shall cooperate with Enterprise and any proposed transferee to allocate rights, duties, and obligations under this Agreement.

B. Enterprise shall notify City in writing of any requested Transfer. At least 45 days prior to the effective date of any Transfer, Enterprise shall deliver to City a draft of the proposed written assignment and assumption agreement in which the transferee expressly agrees to assume the rights and obligations of Enterprise under this Agreement being transferred. Such assignment and assumption agreement must be in a form acceptable to the City Attorney.

ARTICLE 6. DEFAULT; REMEDIES; TERMINATION

Section 6.1 Breach and Default. The failure by a Party to perform any material action or covenant required by this Agreement within 30 days following receipt of written Notice from the other Party specifying the failure shall constitute a "**Default**" under this Agreement; provided,

however, that if the failure to perform cannot be reasonably cured within such 30 day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the 30 day period and thereafter diligently prosecutes the cure to completion. The waiver by either Party of any Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement, including the right to terminate this Agreement as set forth in Section 6.2 below.

Section 6.2 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right, but not the obligation, to pursue any and all available remedies at law or in equity and/or to terminate this Agreement upon giving the defaulting party Notice of the termination pursuant to this section 6.2. In the event that this Agreement is terminated pursuant this Section 6.2 and the validity of such termination is challenged in a legal proceeding that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

Section 6.3. City Remedies. In the event of a breach of this Agreement, its invalidation and/or termination, in addition to any remedies provided herein, the City may, in its sole discretion, institute appropriate actions to withhold, condition, suspend or revoke any legislative action, permit, license, or other entitlement for the Entitled Project, including without limitation final inspections for occupancy and/or certificates of occupancy, in accordance with the requirements of the City's Municipal and Zoning Code, it being understood that nothing herein is intended to limit the City's rights to exercise its police powers.

Section 6.4 Legal Actions.

A. Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct, or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the terms of this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Mateo, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

B. Acceptance of Service of Process. In the event that any legal action is commenced by Enterprise against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Enterprise, service of process on Enterprise shall be made by personal service upon Enterprise's registered agent for service of process, or in such other manner as may be provided by law.

Section 6.5 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

Section 6.6 Surviving Provisions. In the event this Agreement expires or is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations set forth in section 7.1 (Indemnification) or otherwise expressly set forth herein as surviving the termination of this Agreement. In the event litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Agreement, neither Party shall have any obligations whatsoever under this Agreement, except for those obligations which by their terms survive termination hereof.

ARTICLE 7. MISCELLANEOUS PROVISIONS

Section 7.1 Indemnification. To the fullest extent permitted by law, Enterprise shall defend (with counsel reasonably acceptable to City), indemnify, defend, release, assume all responsibility for, and hold harmless City, its elected and appointed officials, employees, and agents (“**City Parties**”), from and against, any and all claims, causes of action, damages, demands, defense costs, injuries or deaths, liabilities, obligations, and costs or expenses, including attorneys’ fees and costs, arising directly or indirectly from or in connection with, or caused, or on account of: (a) the process for development of the Entitled Project, including any approval with respect thereto; and/or (b) any other transaction contemplated by this Agreement, whether such claims shall accrue or be discovered before or after expiration or termination of this Agreement. The City shall, after receipt of Notice of the existence of such a claim for which it is entitled to indemnity hereunder, notify Enterprise in writing of the existence of such claim or commencement of such action. Enterprise’s indemnity obligations under this Section 7.1 shall not extend to claims occasioned by the sole negligence or willful misconduct of City. The provisions of this Section 7.1 shall survive termination or expiration of this Agreement.

Section 7.2 Incorporation of Recitals, Exhibits, and Introductory Paragraph. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and the Exhibits attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

Section 7.3 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

Section 7.4 Construction. This Agreement has been reviewed and revised by legal counsel for City and Enterprise, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 7.5 Notices. Any notice or communication required hereunder between City and Enterprise (“**Notice**”) must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. Courtesy notice may be given by email but shall not constitute Notice under this Agreement. If personally delivered, a Notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such Notice shall be deemed to have been given and received on the first to occur of (A) actual receipt by any of the addressees designated below as the Party to whom Notices are to be sent, or (B) five (5)

days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written Notice to the other Party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the Parties at their addresses set forth below:

To City: City of Burlingame
501 Primrose Road
Burlingame, CA 94010
Attn: City Manager

With a copy to: City Attorney's Office
501 Primrose Road
Burlingame, CA 94010
Attn: City Attorney

and:

To Enterprise: Eric Street
Enterprise Rent-A-Car Co of San Francisco,
LLC
2633 Camino Ramon
Suite 400
San Ramon, CA 94583

With a copy to: Vanguard Real Estate Holdings LLC
c/o Enterprise Holdings, Inc.
600 Corporate Park Drive
St. Louis, MO 63105
Attention: Real Estate Dept.

Section 7.6. Counterparts and Exhibits; Entire Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original. This Agreement constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

Section 7.7 Recordation of Agreement. No later than 10 days after City and Enterprise enter into this Agreement, Enterprise shall record this Agreement in the Official Records of the County of San Mateo. Thereafter, if this Agreement is terminated, modified, or amended, Enterprise shall record notice of such action in the Official Records of the County of San Mateo.

Section 7.8 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that:

A. Any development of the Property is a private development;

B. City has no interest or responsibilities for, or duty to, third parties concerning any improvements on the Property, public or private, until such time, and only until such time, that City accepts the same;

C. Enterprise shall have full power over and exclusive control of the redevelopment process and achievement of an Entitled Project as described herein described, subject only to the limitations and obligations of Enterprise under this Agreement and applicable law; and

D. City and Enterprise hereby renounce the existence of any form of agency relationship, joint venture, or partnership between City and Enterprise and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Enterprise.

Section 7.9 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

Section 7.10 City Approvals and Actions. Whenever reference is made herein to an action or approval to be undertaken by City, the City Manager or their designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

Section 7.11 Estoppel Certificates. A Party may, at any time during the Term of this Agreement, and from time to time, deliver written Notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, the following: 1) this Agreement is in full force and effect and a binding obligation of the Parties; 2) this Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments; 3) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults; and, 4) any other information reasonably requested. The requesting Party shall be responsible for all reasonable costs incurred by the Party from whom such certification is requested and shall reimburse such costs within 30 days of receiving the certifying Party's request for reimbursement. The Party receiving a request hereunder shall execute and return such certificate, or give a written, detailed response explaining why it will not do so, within 30 days following the receipt thereof. The failure of either Party to provide the requested certificate within such 30 day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. The City Manager shall have the right to execute any certificate requested by Enterprise hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

Section 7.12 No Third Party Beneficiaries. City and Enterprise hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

Section 7.13 Further Actions and Instruments. Each Party to this Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Agreement, subject to satisfaction of the conditions of this Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

Section 7.14 Limitation on Liability. In no event shall any partner, officer, director, member, shareholder, employee, manager, representative, or agent of Enterprise or any manager or member of Enterprise be personally liable for any breach of this Agreement by Enterprise, or for any amount which may become due to City under the terms of this Agreement; or any elected or appointed official, member, officer, agent, or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Enterprise under the terms of this Agreement.

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IN WITNESS WHEREOF, this Agreement has been entered into by and between Enterprise and City as of the day and year first above written.

CITY:

CITY OF BURLINGAME, a California
municipal corporation

By:

Lisa K. Goldman, City Manager
[signature must be notarized]

APPROVED AS TO FORM:

By:

Michael Guina, City Attorney

ATTEST:

By:

Meaghan Hassel-Shearer, City
Clerk

ENTERPRISE:

By:

[signature must be notarized]

EXHIBIT A

PROPERTY DESCRIPTION

APN: 026-113-510

LEGAL DESCRIPTION: PARCEL 1 8.411 AC MOL PARCEL MAP VOL 69/17-18