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INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY

_____
City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. 13355 C.M.S.

ORDINANCE GRANTING A FRANCHISE TO BAY AREA MOTIVATE, LLC. TO OPERATE A BIKE SHARE PROGRAM, AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO NEGOTIATE AND EXECUTE A FRANCHISE AGREEMENT, AND CERTIFYING CEQA EXEMPTION FINDINGS

WHEREAS, the City of Oakland recognizes the practice of bike sharing as a beneficial mode of transportation that reduces demand for private vehicles, decreases per capita greenhouse-gas emissions, and creates more affordable mobility options for all of Oakland's residents; and

WHEREAS, the Energy and Climate Action Plan (Resolution No. 84126 C.M.S.) calls for a 36% reduction in greenhouse gas emissions and 20% reduction in vehicle-miles traveled from 2005 levels by 2020; and

WHEREAS, the City of Oakland, through its "Alternative Modes Policy" (Resolution No.73036 C.M.S.) supports transportation alternatives to private, single-occupant vehicles; and

WHEREAS, the City of Oakland applied for Transportation Fund for Clean Air funding and received $660,616.00 for the Oakland bike share program; and

WHEREAS, the City of Oakland adopted a Bike Sharing Policy (Resolution No. 85715 C.M.S.) which calls for the implementation of a bike sharing program that facilitates the "last mile" of transit trips and non-auto short trips; and

WHEREAS, the City of Oakland approved resolution (No. 85715 C.M.S.) to adopt a Bike Sharing Policy and authorize the city administrator to negotiate and enter into an Intergovernmental Agreement ("Coordination Agreement," attached hereto and incorporated herein as ***Exhibit A***) with the Metropolitan Transportation Commission ("MTC") consistent with the Bike Sharing Policy; and

WHEREAS, this Coordination Agreement has also been negotiated and entered into between the MTC and the cities of Berkeley, Emeryville, Oakland, San Francisco, and San Jose (the Bike Sharing Program "Participating Cities"); and

WHEREAS, the regional bike share project manager, the MTC, approved a sole source agreement ("Program Agreement" attached hereto and incorporated herein as ***Exhibit B***) for expansion with Bay Area Motivate, LLC. ("Motivate"), the largest bike share vendor and operator in the U.S.; and

WHEREAS, it is the intent of the City to grant a franchise to Motivate, contingent on the City's successful negotiation and execution of a Bike Sharing Program Franchise Agreement with Motivate, to operate a Bike Share Program with Bicycle Share Stations where members of the public can dock and undock public bicycles, electric assist bicycles, tricycles, and electric mopeds using a key fob, credit card, mobile phone application, or other technology suited to the purpose, with payment kiosks and wayfinding elements, and advertise a program sponsor on the equipment, as more fully described in the Program Agreement and the Coordination Agreement; and

WHEREAS, the City of Oakland has the authority, pursuant to City Charter Article X, Section 1000 to grant or issue franchises for the transaction of business, providing of services or for the use of public streets or other public places, and to assess fees or other compensation to be paid therefor and the penalties for violations thereof; and

WHEREAS: This action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines §15303 (New Construction or Conversion of Small Structures), §15061(b)(3) (no significant effect on the environment), and §15183 (projects consistent with a community plan, general plan, or zoning).

Now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Bike Sharing Franchise. The City Council does hereby find and declare that the above recitals are true and correct and that the award of a Franchise to Motivate for a bike share program is a proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefit of the inhabitants of the City. The City will grant Motivate the right to operate a bike share program only for an automated, point-to-point program as described in the Coordination Agreement and is contingent on the City's successful negotiation and execution of a Bike Sharing Program Franchise Agreement with Motivate, for the operation of the Bike Sharing Program.

Section 2. Term of Franchise. For an initial term of ten (10) years, commencing on the Effective Date of the Franchise Agreement and shall end on the last day of the calendar month in which the 10th anniversary of the earlier of (a) the date that Phase I is completed, and (b) the Agreed Phase I Completion Date occurs (the "Initial Term") as set forth in Section 2.2 of the Program Agreement, unless the Initial Term is reduced as set forth in Section 2.3 of the Program Agreement.

Section 3. Renewal Term. If the Initial Term has not been reduced pursuant to Section 2.3 of the Program Agreement and Motivate is in substantial compliance with the terms of the Program Agreement, Coordination Agreement, and the Franchise Agreement, one year prior to the expiration of the then current Term, then, upon mutual agreement of the Parties, the Term may be extended for 2 (two) five (5) year renewals terms (each a "Renewal Term") on substantially equivalent terms applicable to the Initial Term, in accord with Section 2.4 of the Program Agreement and the terms and conditions of the Franchise Agreement.

Section 4. Shared Revenue Formula. When revenue is paid to the Metropolitan Transportation Commission (the "MTC") when the qualifications for such share payments are met in accord with the Program Agreement, the City will receive from the MTC a share of revenue generated by the Bike Share Program in accord with the "Shared Revenue Formula" and the terms and conditions set forth in Section 10, 11, and 12 of the Coordination Agreement, which provide that:

A. When Bike Share Program revenue is shared between the Participating Cities, such shared revenue will be distributed as follows: 20% to MTC for administration of the program, 80% to be split between the Participating Cities according to the formula described in Section 10 of the Coordination Agreement.
B. When revenue is shared between the Participating Cities, unless otherwise stated, the revenues shall be split according to the following formula: The share of Bike Sharing Docks in each Participating City will count for 70% of the allocation, and the share of Trips in each Participating City will count for 30% of the allocation. The share of Docks and Trips will be calculated from the monthly reports provided by Operator. The share of Docks will be measured as an average of the number of Docks at the beginning and end of each month in each Participating City. The share of Trips will be measured as a total of the most recent 12 months, beginning with the completion of Phase I. As an example, a Participating City with 14% of the Program's Docks and 20% of the Program's total Trips would receive 15.8% of the funds that are to be shared among the Participating Cities.

Section 5. Siting of Bike Share Program Stations. Siting of Bike Sharing Stations will be in accord with Section 4 of the Coordination Agreement and with the City's Bike Share Siting Criteria to be established by the City in accord with the following guidelines:

A. All stations shall be located within the service area, unless otherwise agreed to in writing by the City.
B. The City Of Oakland shall approve all station sites.
C. 20% of total stations shall be in East and West Oakland. East Oakland is defined as areas east of 14th Avenue, West Oakland is defined as areas west of 980 Highway.
D. Stations will be sited in locations that ensure maximum visibility and safety and that provide unrestricted public access.
E. Stations will be located to avoid conflicts with driveways, hydrants, and other features that require regular or emergency access.
F. Stations will not be located in areas that create conflicts or encourage disruptive bicycling behavior, such as sidewalk riding or riding into driveways.
G. Stations will not interfere with existing pedestrian travel patterns and where possible will be placed in line with other street furniture.
H. Given that sidewalks in Oakland are generally narrow and have an abundance of existing street furniture and fixtures, wherever feasible, stations will be located in the parking lane, similar to parklets and on-street bicycle parking corrals.
I. Where possible, stations will be sited so that they may be serviced and rebalanced easily and without disrupting traffic; alternatively, identify areas that could be designated as rebalancing "loading zones" for a particular area.
J. Motivate shall minimize the extent to which the use of the streets or other property of the City is disrupted.
K. Station plates shall not cover or in any way obstruct any utility access points, drains, or any kind of ground access point.

Section 6. The City Administrator is authorized to negotiate and execute a non-exclusive Franchise Agreement with Motivate, subject to the review and approval of the City Attorney.

Section 7. The City Administrator is further authorized to conduct all negotiations and execute all documents including but not limited to Franchise Agreement amendments, modifications, notices, and related actions which may be necessary and consistent with the basic intent and purpose of this Ordinance.

Section 8. The City Council has independently reviewed and considered this environmental determination and finds and determines that the action complies with CEQA and directs the City's Environmental Review Officer to file a Notice of Exemption.

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 02 2016

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND PRESIDENT GIBSON MCELHANEY -8

NOES- Ø

ABSENT- Ø

ABSTENTION- Ø

ATTEST: LaTonda Simmons

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: 2/5/16

Introduction Date
JAN 19 2016

COORDINATION AGREEMENT

between

THE METROPOLITAN TRANSPORTATION COMMISSION,
BAY AREA MOTIVATE, LLC, as Operator of the Bay Area Bike Share Program;
THE CITY OF BERKELEY,
THE CITY OF EMERYVILLE,
THE CITY OF OAKLAND,
THE CITY AND COUNTY OF SAN FRANCISCO by and through
THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, and
THE CITY OF SAN JOSE

for

THE BAY AREA BIKE SHARE PROGRAM

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APPENDIX A COST OF EQUIPMENT

COORDINATION AGREEMENT
FOR THE BAY AREA BIKE SHARE PROGRAM

This coordination agreement (hereinafter, this "Agreement") has been executed and delivered as of [__,] 2015 (the "Effective Date") by and between the METROPOLITAN TRANSPORTATION COMMISSION ("**MTC**"), BAY AREA MOTIVATE, LLC, as Operator ("**Operator**") of the Program (as defined in the last recital below) , and the following entities which shall be collectively referred to as the "**Participating Cities**": the CITY OF BERKELEY ("**Berkeley**"), the CITY OF EMERYVILLE ("**Emeryville**"), the CITY OF OAKLAND ("**Oakland**"), the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**San Francisco**") acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY ("**SFMTA**"), and the CITY OF SAN JOSE ("**San Jose**") (each of MTC and Operator and each of the Participating Cities is referred to herein as a "party" and collectively as the "parties").

RECITALS

On August 29, 2013, the Bay Area Air Quality Management District (the "Air District"), in association with local and regional partners, launched a bike share pilot system ("Pilot") with 70 docking stations and 700 bicycles in San Francisco, Redwood City, Palo Alto, Mountain View, and San Jose. The Air District selected Alta Bicycle Share, Inc. ("Alta") as the operator for the Pilot.

Bikeshare Holdings LLC purchased Alta in October 2014 and assumed operations of the Pilot under the name "Motivate".

In January 2015, Motivate delivered an unsolicited proposal to MTC to use private funding to expand the bike share program in San Francisco and San Jose and to bring the bike share program to Berkeley, Emeryville, and Oakland.

On May 27, 2015, following negotiations with Motivate, the MTC Commission authorized MTC's Executive Director or designated representative to enter into a contract with Operator. The MTC Commission also approved a term sheet that outlines the agreed upon properties of the expanded system.

Concurrently with entry into this Agreement, MTC and Operator are entering into the Bay Area Bike Share Program Agreement ("Program Agreement"), which provides for the creation and operation of a bike share program in Berkeley, Emeryville, Oakland, San Francisco, and San Jose (the "Program").

The parties therefore agree as follow:

PURPOSE

The purpose of this Agreement is to establish the certain rights, liabilities, and responsibilities of each party with respect to the Program, and to define the organizational, management, and operational structure for the successful development of the Program.

SECTION 1.0 DEFINITIONS

1.1 "AAA" has the meaning given such term in Section 34.3.

1.2 "Adjustment" shall mean permanent or temporary changes to a Station's size or configuration, and changes to Street Treatments and Street Markings as necessitated by such, without changes to the Station location.

1.3 "Advertising" shall mean any printed matter, including, but not limited to, words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual messages or information for the sale or use of a product or service, but in no event shall it include any textual information that is required to be posted on any Equipment by any federal, state or local law, rule or regulation, or by this Agreement.

1.4 "Advertising Restrictions" has the meaning given such term in Section 29.5.1.

1.5 "Agents" has the meaning given such term in Section 36.1.

1.6 "Agreed Completion Dates" has the meaning given such term in the Program Agreement.

1.7 "Agreed Site Permit Submission Dates" has the meaning given such term in the Program Agreement.

1.8 "Agreement" has the meaning given such term in the Preamble.

1.9 "Air District" has the meaning given such term in the Recitals.

1.10 "Alcohol Advertising" shall mean Advertising or Sponsorship, the purpose or effect of which is (i) to identify a brand of an alcohol product, a trademark of an alcohol product or a trade name associated exclusively with an alcohol product, or (ii) to promote the use or sale of an alcohol product.

1.11 "Alta" has the meaning given such term in the Recitals.

1.12 "Annual Membership Fees" has the meaning given such term in the Program Agreement.

1.13 "Bicycle" shall mean a vehicle with pedals and with 2 wheels held in a frame and aligned one behind the other and steered with a steering wheel as further described in Appendix D of the Program Agreement. "Bicycle" shall not include motorized vehicles, including scooters or mopeds. For the avoidance of doubt, electric assisted bicycles constitute Bicycles and do not constitute motorized vehicles.

1.14 "Bicycle Fleet Level" has the meaning given such term in the Program Agreement.

1.15 "BIDs" has the meaning given such term in Section 20.2.1.

1.16 "Bikeshare Holdings" shall mean Bikeshare Holdings LLC, a Delaware limited liability company, the sole member of Operator, and its successors.

1.17 "Claims" has the meaning given such term in Section 13.2.

1.18 "CPI" shall mean the Consumer Price Index for the Consolidated Metropolitan Statistical Area covering San Francisco-Oakland-San Jose, as measured by the Consumer Price Index for All Urban Consumers, as published from time to time by the Bureau of Labor Statistics, U.S. Department of Labor.

1.19 "CPI Adjustment" shall mean, with respect to a specific cost, that such cost is subject to annual adjustment each January 1 based on changes in the CPI from the Effective Date to the date of adjustment.

1.20 "Communities of Concern" shall mean areas within the Participating Cities designated by MTC as Communities of Concern as set forth at http://gis.mtc.ca.gov/samples/Interactive_Maps/cocs.html. Such designation is subject to change from time to time.

1.21 "Community of Concern Requirement" has the meaning given such term in Section 17.4.

1.22 "Contract Year" has the meaning given such term in the Program Agreement.

1.23 "Deactivation" shall mean, at a minimum, shut-down of Kiosk (or display of messaging on Kiosk screen indicating that Station is out of service) removal of all Bicycles present, installation of physical barriers on all Docks that prevent docking of Bicycles, and designation of the Station as "Out of Service" on the Program website, app, and all other real-time data sources. A Deactivation event is not over until the Station has been reactivated.

1.24 "Default" has the meaning given such term in the Program Agreement.

1.25 "De-Installation" shall mean, at a minimum, (i) the temporary or permanent full removal of the Station and its associated Street Treatments, and, (ii) the designation of the Station as "Out of Service" on, or removal of the Station from, the Program website, app, and all other real-time data sources.

1.26 "Dispute Resolution Process" has the meaning given such term in Section 34.1.

1.27 "Discretionary Request" shall mean any De-Installation and/or Re-Installation or Station Adjustment requested by the Participating City that is not related to Public Works, Other Special Events, or Public Safety Emergencies.

1.28 "Docks" shall mean the locking mechanisms contained on a Station that are designed to receive a Bicycle for locked storage.

1.29 "E-Bikes" has the meaning given such term in Section 32.2.

1.30 "Effective Date" has the meaning given such term in the Preamble.

1.31 "Equipment" shall include Stations, Kiosks, Docks and Bicycles, either individually or in any combination thereof.

1.32 "Event of Force Majeure" shall mean a delay, suspension or interruption due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the party claiming an Event of Force Majeure, provided in each case that such party has taken and continues to take all reasonable actions to avoid or mitigate such delay, suspension or interruption and provided that such party notifies the other party to this Agreement in writing of the occurrence of such delay, suspension or interruption within 5 business days, or if not reasonably practicable, as soon thereafter as reasonably practicable, of the date upon which the party claiming an Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an "Event of Force Majeure" unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the party claiming Event of Force Majeure has taken and continues to take all reasonable steps to pursue such decision. The financial incapacity of Operator shall not constitute an Event of Force Majeure.

1.33 "Executive Director" shall mean the Executive Director of MTC, or any successor in function to the Executive Director.

1.34 "Free Memberships" has the meaning given such term in Section 37.1.

1.35 "Firearms Advertising" shall mean Advertising or Sponsorship, the purpose or effect of which is (i) to identify a brand of firearms or ammunition, a trademark of a firearm or ammunition or a manufacturer of firearms or ammunition, or a trade name associated exclusively with a firearms or ammunition, or (ii) to promote the use or sale of firearms or ammunition.

1.36 "For Profit and Political Special Events" shall mean temporary events permitted by the Participating City that:

1.36.1 Have entry fees for participation (e.g., road races, cycling tours); or

1.36.2 Have the purpose of selling products (e.g., street fairs, food festivals, holiday fairs, film festivals, film shoots); or

1.36.3 Have a title sponsor; or

1.36.4 Are political events.

1.37 "Hacking" shall mean unauthorized and intentional access to the Computer Hardware for the Program and/or Software.

1.38 "Indemnified Party" and "Indemnified Parties" have the meaning given such terms in Section 13.2.

1.39 "Infill" shall mean the placement of additional Stations within the Program Area in order to address unmet demand or community request.

1.40 "Initial Meeting Date" has the meaning given such term in Section 34.2.

1.41 "Initial Ride Period" has the meaning given such term in the Program Agreement.

1.42 "Installation Scheduling Permits" shall mean permits required for the scheduling of the installation of Station-related Equipment at Sites proposed for Stations for which a Site Permit has been issued as a check for conflicts with other activities at the same location. The "temporary occupancy permit" issued by the San Francisco Department of Public Works is an example of an Installation Scheduling Permit.

1.43 "Key Performance Indicators" (or "KPIs") shall mean the key metrics used to evaluate performance of the Operator on various operational factors and defined as listed in Appendix A of the Program Agreement.

1.44 "Kiosk" shall mean the payment terminal that provides Bicycle rental instructions, contains payment equipment (e.g., a credit card device), and includes all other physical means necessary for the rental of Bicycles.

1.45 "Liabilities" has the meaning given such term in Section 13.2.

1.46 "MTC" has the meaning given such term in the Preamble, together with any successor thereto.

1.47 "Operator" has the meaning given such term in the Preamble. The term "Operator" shall also include the permitted successors and assigns of the Operator named herein.

1.48 "Other Special Events" shall mean temporary events permitted by the Participating City other than For Profit and Political Special Events (e.g., heritage or cultural parades).

1.49 "Participating City" and "Participating Cities" have the meaning given such terms in the Preamble.

1.50 "Participating City Delay" has the meaning given such term in Section 16.8.

1.51 "party" and "parties" have the meaning given such terms in the Preamble.

1.52 "Person" shall mean any human being or any association, firm, partnership, joint venture, corporation, limited liability company, governmental entity, or other legally recognized entity, whether for profit or not for profit.

1.53 "Phase" has the meaning given such term in the Program Agreement.

1.54 "PPI" shall mean the Producer Price Index for the United States, as measured by the Producer Price Index for final demand, as published from time to time by the Bureau of Labor Statistics, U.S. Department of Labor.

1.55 "PPI Adjustment" shall mean, with respect to a specific cost, that such cost is subject to annual adjustment each January 1 based on changes in the PPI from the Effective Date to the date of adjustment.

1.56 "Program" has the meaning given such term in the Recitals.

1.57 "Program Area" shall mean the entire area of all Participating Cities.

1.58 "Program Agreement" shall mean the Bay Area Bike Share Program Agreement identified in the Recitals, and also includes any Replacement Agreement.

1.59 "Program Density" shall mean the distribution of Stations within the Service Area.

1.60 "Program Density Requirements" shall mean the average target densities specified in Section 17.2.

1.61 "Prohibited Advertising" shall mean outdoor advertising that is prohibited by local laws, regulations or ordinances of the Participating City.

1.62 "Public Entity Parties" shall mean MTC and the Participating Cities.

1.63 "Public Safety Emergency" shall mean an instance when:

1.63.1 Program Equipment is damaged or in an unsafe state so as to cause an immediate danger to the public; or

1.63.2 Circumstances or situations immediately surrounding Program Equipment create an imminent danger to the public; or

1.63.3 The area around a Station becomes unsafe or is required by police department or other emergency responders of a Participating City in order to respond to a natural disaster or avoid a calamity.

1.64 "Public Works" shall mean all instances where a Participating City (including a utility owned by a Participating City) or its contractors (including any private contractors hired by a Participating City) are undertaking construction, maintenance, repairs or other public improvements.

1.65 "Regular Annual Member" has the meaning given such term in the Program Agreement.

1.66 "Regular Annual Membership" has the meaning given such term in the Program Agreement.

1.67 "Replacement Agreement" has the meaning given such term in the Program Agreement, and, for purposes of this Agreement, also includes a replacement agreement under Section 19.5 of the Program Agreement.

1.68 "Recognized Lender" has the meaning given such term in the Program Agreement.

1.69 "Scheduled Phase Completion Date" has the meaning given such term in the Program Agreement.

1.70 "Scheduled Phase V Plus 90 Days Date " has the meaning given such term in the Program Agreement.

1.71 "Security Fund" shall mean the deposit provided by the Operator to MTC prior to installation of the first new Station and as further defined in Section 15 of the Program Agreement.

1.72 "Service Area" shall mean, as of the date of determination, the portions of the Program Area that are located within 0.25 mile of a Station as measured radially.

1.73 "Services" shall mean the installation, operation and maintenance of the Stations and the acquisition, placement, maintenance and rental to users of the Bicycles.

1.74 "Site" shall mean a designated area on publicly or privately owned real property, which area contains a Station that conforms to the Siting Criteria.

1.75 "Site Permits" shall mean permits for installation of Station-related Equipment at Sites proposed for Stations (other than Installation Scheduling Permits or Special Traffic Permits).

1.76 "Siting Criteria" shall have the meaning given such term in Section 19.1.

1.77 "Site Plan" shall mean a scaled plan view of the Site, illustrating existing surface features and proposed improvements and meeting the requirements given such term in Section 18.

1.78 "Software" shall means the software and the Equipment it runs on required to operate the Equipment.

1.79 "Solicitation" has the meaning given such term in Section 32.3.

1.80 "Special Traffic Permit" shall mean a permit required if installation of Station-related Equipment will interfere with pedestrian, bicycle, transit or vehicular traffic in a material respect. The Special Traffic Permit issued by the San Francisco Municipal Transportation Authority (SFMTA) in accordance with SFMTA's Regulations for Working in San Francisco Streets is an example of a Special Traffic Permit.

1.81 "Sponsorship" shall mean an arrangement pursuant to which, in connection with a payment or payments that will be used to help defray the costs of installing or operating the Program, the Person contributing such payment or payments is acknowledged by the parties for such contribution.

1.82 "Stand-Alone Sponsorship Stand" shall mean a stand-alone element located at each Station the purpose of which is to provide Sponsorship recognition and Wayfinding Elements.

1.83 "State" means the State of California.

1.84 "Station" shall mean a Kiosk, map module, a variable number of Docks and, when applicable, Street Treatment(s) and Street Markings, designed in accordance with the functional specifications set forth in Appendix D of the Program Agreement.

1.85 "Station Locators" shall mean the text-based signage posted on every Station, indicating the location of that Station.

1.86 "Street Marking(s)" shall mean thermoplastic paint markings and/or striping on the pavement for the express purpose of demarcating a Station.

1.87 "Street Treatments" shall mean the three-dimensional objects used to demarcate the Station, and protect it from adjacent parking and moving traffic. Such objects may include, but are not limited to, delineators and wheel stops.

1.88 "Street Treatment Requirements" shall mean a Participating City's requirements with respect to Street Treatments as set forth in the Siting Criteria for such Participating City.

1.89 "Term" has the meaning given such term in Section 2.

1.90 "Title Sponsorship" shall mean Operator's system-wide Sponsor for the entire Program.

1.91 "Trips" shall mean the use of a Bicycle from one Station to another Station or back to the initial Station.

1.92 "Tobacco Advertising" shall mean Advertising or Sponsorship that bears a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product (any substance that contains tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

1.93 "Underperforming Station" shall mean a Station for which Station Usage is less than 1 trip per Dock per day, excluding days that the Station is Deactivated or temporarily De-Installed.

1.94 "Wayfinding Elements" shall mean the maps posted on every Station, showing the location of each Station.

SECTION 2.0 TERM OF THE AGREEMENT

2.1 This Agreement will become effective on the Effective Date and will continue in effect until termination of the Program Agreement and any Replacement Agreement.

SECTION 3.0 COSTS

3.1 Except as otherwise provided, each party shall bear its own costs in connection with the Program, if such costs are applicable, including, but not limited to, costs incurred in connection with: negotiating this Agreement and the Program Agreement and preparing the Siting Criteria ; Site selection; the review required for issuance of Site Permits, Installation Scheduling Permits, Special Traffic Permits and other permits; Equipment installation; exercising enforcement, inspection and audit rights; prosecuting or defending claims arising from the Program, and marketing, to the extent that MTC and/or the Participating Cities choose to undertake marketing.

3.2 Except as otherwise provided in Section 3.3, MTC and the Participating Cities shall not be obligated to pay or bear any of the costs associated with or expenses incurred for the Equipment, Software, or Services.

3.3 Each Participating City may elect, if additional incremental dedicated capital and operating funds becomes available for the Program, to expand the Program within its borders by adding Stations, Docks and Bicycles, provided that such Participating City shall be responsible for securing funds to pay for the cost of purchasing, installing, maintaining and operating the Equipment required for such expansion as set forth in Appendix A.

3.4 Operator shall reimburse a Participating City for any other work performed by such Participating City under this Agreement in furtherance of the Program, provided that prior to performing such work such Participating City shall notify Operator that such work will be performed at the expense of Operator, such Participating City provides an

itemized invoice for any such work, and Operator is billed for the actual cost incurred by such Participating City without a markup or premium. For San Jose, the cost will be determined based on the then current time and materials fee set forth in the City of San Jose's Public Works Permit Fee schedule. Operator shall pay for such work within 30 days following receipt of the itemized invoice therefor. In connection with the installation of a Station, such other work may include, but is not limited to, (i) any necessary changes to signs, parking meters and curb paint, and (ii) installation of any striping, delineators or parking blocks outside the perimeter of a Station if the foregoing items are not installed by Operator.

SECTION 4.0 STEERING COMMITTEE

4.1 MTC and the Participating Cities agree to create and hereby establish a Steering Committee to coordinate the activities of the Program and make decisions regarding its overall operation.

4.2 The Steering Committee will consist of one designated representative from MTC, and one designated representative from each of the Participating Cities. Each party with a designated representative shall have the right to change its designated representative upon five (5) days written notice to the other parties. Each party with a designated representative may appoint an alternate representative that will have full voting rights as the representative.

4.3 The Steering Committee shall hold such meetings as it deems necessary, which may be called at any reasonable time by any designated representative. A Steering Committee meeting or teleconference cannot be held unless a majority of the designated representatives, or alternates in their absence, are present or available by telephone. Designated representatives and any staff of a party may attend meetings in person or by teleconference. An absent designated representative may vote by giving a written proxy to another designated representative.

4.4 The goal of the Steering Committee will be to reach decisions by a unanimous vote. The Steering Committee shall endeavor in good faith to reach consensus in resolving all material matters. However, if a pending decision has been discussed at two Steering Committee meetings without reaching consensus, at the conclusion of the second meeting, the decision will be made by MTC. In addition, if the Steering Committee has been unable to reach consensus on a material matter for 30 days since such matter was brought to the attention of the Steering Committee for any reason, including failure to achieve quorums at scheduled meetings or inability to schedule timely meetings, MTC shall have the right to decide such matter. MTC shall also have the right to make decisions on those matters that MTC reasonably believes are not material or to make decisions after consulting with one or more members of the Steering Committee whose Participating City may be disproportionately (or solely) affected by such decisions. In no event shall MTC have the right to make any of the decisions enumerated in Section 33.

4.5 A party shall convey all communications and documents intended for the Steering Committee through that party's designated representative. The Steering

Committee shall convey all communications and documents intended for a party to that party's designated representative.

4.6 Decisions to be made by Steering Committee shall include, but are not limited to:

4.6.1 Whether Operator is in Default, under Section 18 of the Program Agreement;

4.6.2 KPI Adjustments, as described in Section 2.6.2(a) of the Program Agreement;

4.6.3 Title Sponsorship approval, as described in Section 7.1 of the Program Agreement.

4.7 All decisions made by the Steering Committee or by MTC in accordance with this Section 4 shall be binding on the Participating Cities.

SECTION 5.0 RESPONSIBILITIES OF MTC

5.1 MTC shall:

5.1.1 Serve as the program administrator;

5.1.2 Organize and facilitate Steering Committee meetings by, for example:

(a) Determining designated representative availability for meetings:

(b) Providing notice of meetings; and

(c) Distributing materials and information as required;

5.1.3 Serve as the fiscal agent for the program;

5.1.4 Maintain records of the Program and its operation;

5.1.5 Provide system data to the Participating Cities; and

5.1.6 Distribute program revenues.

SECTION 6.0 RESPONSIBILITIES OF THE PARTICIPATING CITIES

6.1 Each Participating City shall:

6.1.1 Provide any Site Permits, Installation Scheduling Permits, Special Traffic Permits, and any other necessary permits, leases, licenses or other preferred implementing mechanisms to Operator;

6.1.2 Within the Participating City's sole discretion, assist with third party leases, licenses or permits within their jurisdiction as needed;

6.1.3 Notify MTC as permits are completed so that MTC may administer requirements under the Program Agreement;

6.1.4 Maintain all necessary records and documentation to support the permits and California Environmental Quality Act (CEQA) compliance for Program activities;

6.1.5 Perform or assist with any required CEQA or environmental reviews as needed;

6.1.6 Provide MTC semi-annually with a summary of local efforts and activities regarding local bicycle share, which summary shall also include data on efforts made by the Participating Cities to inform the public of the Program, comments made by the public to the Participating Cities on the Program, and the response of the Participating Cities to such comments; and

6.1.7 Notify MTC and Operator immediately of any public emergencies affecting the bike share program. If the designated representative of a Participating City determines that a Public Safety Emergency exists, such Participating City shall promptly notify Operator's designated representative so that Operator may take such action as such Participating City deems necessary to address such emergency, including, but not limited to, removing, replacing, relocating, reinstalling or locking all or any portion of the Equipment and having repair and restoration work performed.

SECTION 7.0 DATA SHARING

7.1 MTC shall send to the Participating Cities monthly reports and other data or reports as they are received from Operator pursuant to Section 21.3 of the Program Agreement. MTC may also request data from Operator upon request from the Participating Cities.

7.2 The Participating Cities shall provide documentation of any Key Performance Indicator (KPI) failures that they wish to report in addition to the measurement tools used, as described in Appendix A of the Program Agreement.

SECTION 8.0 REALLOCATION OF EQUIPMENT

8.1 Solely for the purposes of this section, the deadline for delivering the required Site Permits or other permits, leases, or licenses to provide for the minimum number of Stations is the Scheduled Phase V Plus 90 Days Date, as defined in Section 8.2.4 of the Program Agreement.

8.2 If any Participating City fails to deliver the required Site Permits or other permits, leases, or licenses to provide for the minimum number of Stations for their respective city, MTC retains the right to work with Operator to reallocate the amount of

Equipment that has not been timely permitted for installation to another Participating City to avoid the credit described in Section 8.2.4 of the Program Agreement.

SECTION 9.0 ACCESS TO THE SECURITY FUND

9.1 MTC and Operator shall have the sole right of access to the Security Fund.

9.2 At any time, any Participating City may request that MTC withdraw funds from the Security Fund on the Participating City's behalf for the purposes expressly set forth in the Program Agreement by providing MTC with a written request for the withdrawal and supporting documentation for the request. MTC shall then make the appropriate withdrawal from the Security Fund if permitted by the Program Agreement and transfer the amount directly to the affected party within 90 days. MTC will notify Steering Committee members of its actions.

SECTION 10.0 SHARED REVENUE FORMULA

10.1 When revenues are shared between the Public Entity Parties in accordance with Sections 11 and 12 of this Agreement, unless otherwise stated, the revenues shall be split according to the following formula: The share of Docks in each Participating City will count for 70% of the allocation, and the share of Trips in each Participating City will count for 30% of the allocation.

10.2 The share of Docks and Trips will be calculated from the monthly reports provided by Operator. The share of Docks will be measured as an average of the number of Docks at the beginning and end of each month in each Participating City. The share of Trips will be measured as a total of the most recent 12 months, beginning with the completion of Phase I.

10.3 As an example, a Participating City with 14% of the Program's Docks and 20% of the Program's total Trips would receive 15.8% of the funds that are to be shared among the Participating Cities.

SECTION 11.0 LIQUIDATED DAMAGES

11.1 Liquidated damages from KPI violations are payable to MTC from Operator quarterly, based on invoices from MTC and any good faith contests from Operator. Where a KPI failure directly affects one or more Participating Cities but is not Program-wide, MTC will transfer the whole amount of liquidated damages received to the affected Participating Cities. Where a KPI failure is Program-wide, MTC will distribute the funds according to the formula described in Section 10. MTC will calculate liquidated damages following receipt of each monthly report and will share the results at the following Steering Committee meeting. MTC will transfer the amounts to the respective cities within 90 days of receiving liquidated damages from Operator.

SECTION 12.0 REVENUE SHARING

12.1 Revenue Share, as described in the Program Agreement, is paid to MTC annually when the qualifications are met. If MTC receives revenue from Operator in a given Contract Year, MTC will distribute the revenue according to the following: 20% to MTC for administration of the program, 80% to be split between the Participating Cities according to the formula described in Section 10.

SECTION 13.0 INDEMNIFICATION

13.1 To the extent Operator is not required to indemnify the Public Entity Parties pursuant to Section 13.2, each Public Entity Party shall indemnify the other Public Entity Parties, their officers, commissioners, agents and employees from and against all claims, injury, suits, demands, liability, losses, and damages (including all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of the indemnifying Public Entity Party, its officers, commissioners, agents, employees, or any of them, under or in connection with this Agreement. The indemnifying Public Entity Party further agrees to defend any and all such actions, suits, or claims arising from the indemnifying Public Entity Party's negligence or otherwise wrongful act or omission and pay all reasonable charges of attorneys and all other costs, expenses, settlements, or judgments arising therefrom or incurred in connection therewith.

13.2 Operator shall defend, indemnify, and save harmless MTC, the Participating Cities, and their respective commissioners, officers, agencies, departments, agents, and employees (each, an "Indemnified Party"; and collectively, "Indemnified Parties") from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys' fees and other costs of defense) (collectively, with Claims, "Liabilities"), resulting from, or arising out of, the operation of the Program and the provision of Services, whether such operation or Services is performed or provided by Operator or by Operator's subcontractors or any other person acting for or on behalf of Operator.

13.3 Notwithstanding the foregoing, the following shall be excluded from Operator's indemnification and defense obligations contained in the preceding paragraph:

13.3.1 Any Liabilities to the extent resulting from, or arising out of:

(a) the gross negligence or willful misconduct of any Indemnified Party;

(b) Operator complying with the written directives or written requirements of a Participating City, if Operator has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of any Station in relation to the street or sidewalk on which such Station is located or to which it adjoins, or (B) a Participating City's Street Treatment Requirements; or

(c) the condition of any public property outside of the perimeter of a Station and not otherwise controlled by Operator (and expressly excluding from this clause (c) the condition of the Bicycles or other Equipment).

13.4 If any Claim against Operator includes claims that are covered by clause (c) above or claims contesting a Participating City's authority to issue a permit for a Station, then each party shall be responsible for its own defense against such claims.

13.5 Upon receipt by any Indemnified Party of actual notice of a Claim to which such Indemnified Party is entitled to indemnification in accordance with Sections 13.2 and 13.3, such Indemnified Party shall give prompt notice of such Claim to Operator. Operator shall assume and prosecute the defense of such Claim at the sole cost and expense of Operator. Operator may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.

SECTION 14.0 OTHER PROVISIONS

14.1 Nothing in this Agreement is intended to expand or limit the existing authority of any signatory.

14.2 This Agreement may not be modified, or the term extended, except by written instrument executed by the Executive Director, his or her designated representative, or the governing body for each of the respective Participating Cities, as appropriate, and Operator.

14.3 Each party represents and warrants that it has the right, power, and authority to execute this Agreement. Each party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this Agreement for it, to enter into this Agreement.

14.4 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

14.5 Subject to the requirement that disputes be addressed in accordance with the Dispute Resolution Process, each party hereby irrevocably submits to the jurisdiction of any State or federal court sitting in San Francisco County, California, over any suit, action or proceeding arising out of or relating to this Agreement. Each party hereby irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to such venue as being an inconvenient forum. Notwithstanding the foregoing, with respect to any dispute arising out of or relating to this Agreement in which the sole parties are and remain San Jose and Operator, each such party hereby irrevocably submits to the jurisdiction of any State or federal court sitting in Santa Clara County, California.

14.6 Should any party employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, including but

not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding. The "prevailing party" means the party in whose favor a judgment, decree, or final order is rendered.

14.7 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement shall be binding upon the receipt of facsimile or scanned signatures.

14.8 If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

14.9 This Agreement is not intended for the benefit of any person or entity not a signatory to this Agreement and is not enforceable by any third party, subject to Section 35.1 with respect to a Recognized Lender.

14.10 Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled, and shall apply to all parties' respective successors and assigns.

SECTION 15.0 NOTICES

15.1 All notices, demand, requests or reports under this Agreement shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, by electronic mail (email), by overnight mail, or by personal delivery, in each case to the address listed below, or to such other location or person as any party may designate in writing from time to time by sending a notice to the other parties in accordance with this Section15.1. Any notice, demand or request shall be deemed given on the date of receipt or rejection by the intended recipient.

To MTC:	Kevin Mulder Metropolitan Transportation Commission 101 Eighth St. Oakland, CA 94607 Telephone: [_____] Email: [_____]
To THE CITY OF BERKELEY:	Transportation Division Manager City of Berkeley Department of Public Works 2180 Milvia Street Berkeley, CA 94704 Telephone: [_____] Email: [_____]

To THE CITY OF EMERYVILLE:	Director of Public Works City of Emeryville 1333 Park Avenue Emeryville, CA 94608 Telephone: [_____] Email: [_____]
To THE CITY OF OAKLAND:	Carlos Hernandez City of Oakland 250 Frank Ogawa Plaza Suite 4344 Oakland, CA 94612 Telephone: [_____] Email: [_____]
To SFMTA:	Heath Maddox San Francisco Municipal Transportation Agency 1 South Van Ness Avenue, 7th Floor San Francisco, CA [_____] Telephone: 415-701-4605 Email: heath.maddox@sfmta.com
To THE CITY OF SAN JOSE:	Paul Smith, Deputy Director Department of Transportation City of San Jose 200 East Santa Clara Street, 8th Floor San Jose, CA 95113 Telephone: 408-793-6942 Email: paul.smith@sanjoseca.gov
To OPERATOR, as Operator of the Bay Area Bike Share Program:	Bay Area Motivate, LLC, 5202 Third Avenue Brooklyn, New York 11220 Attention: Chief Executive Officer: Telephone: [_____] Email:[_____] Attention: General Counsel

Telephone: [_____]
Email: [_____]
Attention: Designated Representative
Telephone: [_____]
Email: [_____]

SECTION 16.0 PERMITTING PROCESS

16.1 Within 15 business days of the Effective Date, Operator will meet with appropriate permitting staff of each Participating City to finalize the process for permit review and issuance, and provide an estimate of the time needed to obtain such permits.

16.2 This process will specify each Participating City's requirements for submitting applications for Site Permits, Installation Scheduling Permits and Special Traffic Permits, including drawings, photos, surveying and required paperwork.

16.3 Operator will hire an outside planning and siting firm familiar with each Participating City to assist with the permitting process and reduce workload on the staff of the Participating City. Operator will solicit input from the Participating City to identify suitable consultants.

16.4 If staff time exceeds estimates of the time needed to review applications for the issuance of permits, due to errors or omissions by Operator or its contractors in its submissions , Operator will reimburse each Participating City for reasonable and documented direct staff time in excess of such estimates to the extent arising from such errors and omissions, as follows:

16.4.1 In Berkeley, staff time shall be reimbursed at the then current rate set forth in the City of Berkeley Master Fee Schedule. Such fee, as of the Effective Date, is $160 per hour.

16.4.2 In Emeryville, staff time shall be reimbursed at $125 per hour.

16.4.3 In Oakland, staff time shall be reimbursed at $190 per hour.

16.4.4 In San Jose, staff time shall be reimbursed at the then current time and materials fee set forth in the City of San Jose's Public Works Permit Fee schedule. Such fee, as of the Effective Date, is $120 per hour.

16.4.5 In San Francisco, staff time shall be reimbursed at $150 per hour, subject to 3% annual increases effective January 1, 2017 and on each anniversary date thereof.

For purposes of this Section 16.4, the rejection of a permit application because of political, local or community opposition to a Site does not constitute an error or omission by Operator or its contractor, and Operator will not be responsible for the cost of staff time attributable to such rejection. If a Participating City intends to charge Operator for the cost of staff time

pursuant to this provision, such Participating City shall provide Operator with a detailed accounting of the time to be charged to Operator.

16.5 No permitting fees for Site Permits, Installation Scheduling Permits, Special Traffic Permits or other permits will be charged to the Operator for initial installations of Stations, except in Berkeley, Operator shall pay $200 per Station, and in Emeryville, Operator shall pay $250 per Station. In addition, permitting fees may be charged for Sites located on the property of the San Francisco Recreation & Parks Department and the Port of San Francisco.

16.6 Permit fees do not apply to Deactivations, De-Installations, reinstallations or relocations requested by utilities, the Participating City or other public agencies. For requests for Station moves by special events or private companies, Operator can request reimbursement for Operator's fees from the sponsor of a special event or such private company.

16.7 Nothing in this Agreement shall be construed as a waiver of any local law, rule or regulation of each Participating City or of each Participating City's right to require Operator to secure the appropriate permits or authorizations for Equipment installation on public sites.

16.8 Delays in Approval: The following constitute delay ("Participating City Delay") for which Operator is entitled to an extension in the Agreed Site Permit Submission Dates and the Agreed Completion Dates:

16.8.1 Identification of Sites. If, notwithstanding fulfillment of Operator's obligations under this Agreement regarding community engagement, field work and outreach, Operator fails to identify, by a date that is not less than 2 months prior to the Agreed Site Permit Submission Date for a Phase, 75% of the Sites required for such Phase, such Sites being both viable and acceptable to the Participating Cities and the applicable communities, or Operator fails to identify, by a date that is not less than 1 month prior to such Agreed Site Permit Submission Date, the remaining 25% of the Sites required for such Phase, such Sites being both viable and acceptable to the Participating Cities and the applicable communities, then such Agreed Site Permit Submission Date shall be extended by any reasonably necessary additional period required by Operator to identify a sufficient number of viable and acceptable Sites for such Phase.

16.8.2 Issuance of Site Permits. If Operator timely submits complete applications for the Site Permits for any Phase by the applicable Agreed Site Permit Submission Date but the Participating Cities fail to issue Site Permits for 75% of the Stations by the date that is 3 months prior to the Scheduled Phase Completion Date for such Phase other than on account of errors or omissions by Operator or valid reasons for denial, then such failure shall constitute Participating City Delay and Operator shall have the right to delay submission of applications for Site Permits for the next following Phase until a reasonable period after the Participating Cities issue Site Permits for 75% of the Stations for such Phase.

16.8.3 Installation Scheduling Permits. If the period of time for the Participating Cities to issue Installation Scheduling Permits exceeds, on average, 7 days after final submission of the required materials by Operator, or if more than 25% of the Installation Scheduling Permits are issued 14 days or longer after final submission of the required materials, other than on account of errors or omissions by Operator or valid reasons for denial, then the Agreed Completion Dates shall be extended to reflect any reasonably necessary additional period required by Operator to complete the Phases.

SECTION 17.0 PLANNING CRITERIA

17.1 The minimum number of Bicycles and the minimum number of Stations in each Participating City is as follows:

17.1.1 Berkeley: Bicycles-400; Stations-37

17.1.2 Emeryville: Bicycles-100; Stations-10

17.1.3 Oakland: Bicycles-850; Stations-70

17.1.4 San Francisco: Bicycles-4,500; Stations-320

17.1.5 San Jose: Bicycles-1,000; Stations-80

17.2 Except as set forth in Sections 17.2.1 and 17.2.2, the target density within each Participating City is an average of 12 Stations per square mile within the Service Area. Except as set forth in Section 17.2.1, Operator may elect in its sole discretion to increase the number of Stations per square mile in certain areas.

17.2.1 In Berkeley, the target density is an average of 12 Stations per square mile within the Service Area, with the density ranging to a maximum of 16 Stations per square mile within the Service Area.

17.2.2 In San Francisco, the target density is an average of 20 stations per square mile within the Service Area.

17.3 All Stations shall be located within the current Program Area, unless otherwise agreed to in writing by Operator and each Participating City.

17.4 Operator shall locate not less than 20% of Stations in each Participating City within Communities of Concern located within such Participating City or within other areas designated by such Participating City in lieu of Communities of Concern (the "Community of Concern Requirement").

17.4.1 Operator shall locate Stations within all 7 distinct Communities of Concern located in San Francisco.

17.4.2 Emeryville hereby designates the Transit Hub Overlay of the General Plan Land Use Map in Emeryville as an area in lieu of Communities of Concern.

17.5 No Station shall be more than 0.5 mile from another Station as measured radially, except for variations in distance arising from Section 17.8.

17.6 Operator shall utilize both each Participating City's demand analysis heretofore performed by each Participating City and the demand analysis performed by Operator's consultant as a basis to determine Station sizes. Site locations will be prioritized based on demand (i.e., the anticipated usage of Bicycles located at such Site).

17.7 All Station sites on public property owned or controlled by a Participating City shall be subject to the approval of such Participating City.

17.8 If in accordance with the foregoing target densities and the Siting Criteria Operator selects a Site that is rejected by a Participating City, then Operator will propose 3 alternative Sites within 1,000 feet of the rejected Site. If such Participating City rejects the 3 alternative Sites, then such Participating City will propose a viable alternative Site within 1,000 feet of the initial rejected Site.

17.9 In order to be counted toward Program Density Requirements, a Station must:

17.9.1 Have 12 or more Docks;

17.9.2 Be accessible to the public 24 hours per day, 365 days per year, except in cases of special events or temporary construction; and, by mutual agreement of a Participating City and Operator, Stations may be located in areas with less than 24 hour per day, 365 days per year access;

17.9.3 Be located on sidewalks, streets, parks, other Participating City-owned property, other public property owned by public agencies or other public entities other than each Participating City, or private property; and

17.9.4 Have a Dock to Bicycle ratio of at least 1.7:1 (which ratio is measured on a Program-wide basis).

17.10 A Bicycle stationed at a Station meeting the above-requirements will count toward Bicycle Fleet Level requirements.

17.11 Operator shall cooperate with each Participating City to produce Wayfinding Elements and Station Locators for Station Kiosks. Operator shall bear production, printing and installation costs for these elements. Wayfinding maps shall include maps of each Participating City's bicycle network.

17.12 Nothing in this Agreement shall restrict the right of Operator to enter into an agreement with the owner of private property, on terms mutually acceptable to Operator and such owner, to locate a Station on such owner's property. Any Station located on private property shall not constitute a Station for purposes of Sections 17.1 to 17.11 unless such Station meets the requirements of Section 17.9, in which event such Station shall constitute a Station for purposes of Sections 17.1 to 17.4 and 17.9 to 17.11.

SECTION 18.0 SITE PLANS ON PUBLIC PROPERTY

18.1 In connection with the submission of an application for a Site Permit for a Site on public property, Operator shall provide photographs of such Site along with a Site Plan for approval by the applicable Participating City. No Station on public property may be installed, re-installed or adjusted absent approval by the applicable Participating City of the Site Plan for such Station.

18.2 A Site Plan for Stations on public property shall conform with all elements and dimensions relevant to the Siting Criteria including but not limited to Street Treatment Requirements, relevant utilities, doorways, street and sidewalk widths and obstructions, building numbers and amenities. All Site Plans shall be prepared to scale and must be signed by a California-licensed engineer or architect.

18.3 All work on public property must conform to the Site Plan approved in connection with the issuance of a Site Permit.

18.4 In the event that changes to the Site Plan as so approved are required at the time of installation or Adjustment, Operator shall obtain approval from the applicable Participating City for the necessary changes prior to such installation or Adjustment and provide such Participating City with an updated Site Plan reflective of the Station's actual, installed condition within 30 days of such installation or Adjustment.

18.5 Operator shall schedule and complete Station installation, De-Installation, relocation, Re-installation or Adjustment upon receipt of permits and direction from each Participating City and within the relevant timeframes as specified in Appendix A of the Program Agreement.

SECTION 19.0 SITING CRITERIA

19.1 On or prior to the Effective Date, each Participating City shall deliver to Operator the criteria for siting Stations in such Participating City (the "Siting Criteria"), which shall include Street Treatment Requirements of such Participating City. Each Participating City has the right to amend its Siting Criteria, provided that a Participating City shall give Operator not less than 60 days' notice prior to the effective date of any such amendment, and no such amendment shall apply retroactively to Stations that have theretofore been installed.

19.2 In Berkeley, if Stations occupy more than 20 metered parking spaces in the aggregate, Operator will pay Berkeley for the loss of parking meter revenue for all metered spaces occupied by Stations beyond 20 metered spaces.

SECTION 20.0 PROGRAM AREA SITE SELECTION PROCESS

20.1 Operator shall work with each Participating City to apply its Siting Criteria. Operator shall survey the Program Area using the Siting Criteria to identify viable Station locations.

20.2 Operator will hire, at Operator's own expense, a community relations firm to assist Operator in organizing and hosting community meetings and in conducting outreach to community groups, residents and businesses within affected localities. Each Participating City shall designate a representative to coordinate the respective Participating City's community engagement efforts and the permitting process. The cost of any coordination or participation by a Participating City in community outreach shall be borne by such Participating City. Operator shall keep each such representative informed with respect to Operator's outreach activities. Operator shall make staff available to represent itself and to assist each Participating City during any informal or formal public review processes, including presentations to community groups or any public hearings. Each Participating City and Operator shall agree upon a clear process for Site selection and community outreach that may include, but is not limited to:

20.2.1 Briefings for elected officials, community boards, business improvement districts ("BIDs"), and other community organizations and stakeholders;

20.2.2 Open houses, informational forums, or equipment demonstrations;

20.2.3 Online crowd sourcing tool to collect input on the Program and Station locations;

20.2.4 Receipt of written input from stakeholders;

20.2.5 Presentations to relevant stakeholders including, but not limited to BIDs, elected officials, civic and community organizations, large property holders, block associations, city agencies, and public authorities, of all technically viable vetted Station location options;

20.2.6 Community workshops to provide education about the program and hand-on forums for the public to discuss and suggest Station sites;

20.2.7 Receipt of detailed feedback on potential Station Sites from all stakeholders;

20.2.8 Planning work to synthesize input for all sources;

20.2.9 Presentations and briefings to stakeholders on draft final Station Site Plans;

20.2.10 Postings online by Operator of draft final and final Station Site Plans; and

20.2.11 Site-specific in-person notification.

SECTION 21.0 AD-HOC SITE SELECTION PROCESS

21.1 Ad-Hoc Station siting may be required in, but not limited to, the following situations:

21.1.1 Temporary Station De-Installation for a period of longer than 15 business days requiring a replacement Station location to be selected for Re-Installation.

21.1.2 Permanent Station relocation.

21.1.3 Infill to address unmet demand or to address a request of the community or a Participating City.

21.2 Each Participating City and Operator shall agree upon a clear process of ad-hoc Station siting and selection. This process will include the Participating City and Operator convening regularly scheduled meetings to discuss De-Installations, Re-Installations, Adjustments, and Infill. These meetings will include, but will not be limited to, a review of all available sites in the area where ad-hoc siting is occurring.

21.2.1 If the ad-hoc Site selection process is initiated in response to an Operator request to permanently relocate a Station, Operator shall:

(a) Produce metrics to assess Station productivity. Metrics may include, but are not limited to overall Program Density and geographic extent, Station Usage, maintenance reports, and history of public comments; and

(b) Provide the Participating City with a minimum of 3 months of metric data and any resulting analysis supporting the proposed Station relocation.

21.3 Ad-Hoc Stations count toward meeting Program Density Requirements.

SECTION 22.0 CONSTRUCTION AND TECHNICAL REQUIREMENTS

22.1 Operator shall have displayed (a) on each Station and each Bicycle within the Program Area, a unique identifying number that shall be tracked by Operator and made available to MTC and the Participating Cities, and (b) on the handlebars of each Bicycle within the Program Area, safety instructions, including bicycle rules.

22.2 During installation of a Station, Operator shall undertake appropriate efforts, in conformance with all applicable rules and regulations, to insure safety and to prevent accidents at its work sites, including, if necessary, the placing and maintenance of proper guards, fences, barricades, security personnel and bollards at the curb and suitable and sufficient lighting.

22.3 Operator shall provide, install and maintain, during the installation of a Station, appropriate traffic markings and devices as may be reasonably required by the Participating Cities for on-street locations pursuant to this Agreement.

22.4 Operator shall participate in the Underground Service Alerts program (http://usanorth811.org) to automatically get alerts when utilities are doing work that may affect the Stations.

22.5 All traffic control, warning and guidance devices employed by the Operator during Station installation must conform to the California Manual on Uniform Traffic Control Devices (MUTCD). Operator is further responsible for complying with all applicable city, state, and federal codes, rules and regulations.

22.6 In San Francisco, for all Station installations, Operator should follow the rules and guidance detailed in SFMTA's Regulations for Working in San Francisco Streets (the Blue Book), interfering as little as possible with pedestrian, bicycle, transit and vehicular traffic. For Station installations that cannot be accomplished in compliance with the Blue Book, Operator will need to apply to the SFMTA for a Special Traffic Permit.

SECTION 23.0 STATION DEACTIVATION, DE-INSTALLATION, REINSTALLATION AND ADJUSTMENT

23.1 All Station Deactivations, De-Installations, reinstallations and Adjustments shall meet the requirements of this Agreement, unless otherwise agreed to in writing by Operator and each Participating City.

23.2 Operator shall perform Station Deactivations, De-Installations, reinstallations and Adjustments to accommodate changing conditions, as instructed by each Participating City or, in the event of requests by third parties to Operator, upon a Participating City's approval.

23.3 Operator shall not perform any Station Deactivations, De-Installations, reinstallations and Adjustments without a Participating City's prior approval.

23.4 Operator shall have the right to relocate Underperforming Stations so long as Operator notifies the applicable Participating City of the intended relocation, obtains a permit for the new location and complies with the Community of Concern Requirement after giving effect to any relocation.

23.5 Operator may charge a fee for certain types of Station Deactivations, De-Installations, reinstallations, Adjustments and temporary relocations in accordance with a fee schedule to be maintained by Operator in accordance with Section 24.1.

23.6 Participating City Discretionary Requests:

23.6.1 If a Participating City finds that the location of a newly installed Station is unsuitable, the Participating City may, within 30 days of the Station's installation, request that the Station be relocated at Operator's cost.

23.6.2 For Discretionary Requests made after 30 days following installation of a Station, a Participating City shall pay Operator in accordance with the fee schedule to be maintained by Operator in accordance with Section 24.1. However, during the Term, each Participating City will have the right to require Operator to relocate 10% of the number of Stations installed within such Participating City without paying Operator such fee, net of any prior Station relocations performed without reimbursing Operator, except Emeryville has the right to relocate 3 Stations without paying such fee to Operator. For example, if a Participating

City has 100 installed Stations, then the Participating City has a total of 10 Station relocations without cost to the Participating City, net of any prior Station relocations without cost to the Participating City. If the number of installed Stations increases to 200, then the Participating City has a total of 20 Station relocations without cost to the Participating City. For any additional Station relocations performed at the request of a Participating City, the Participating City will be charged a fee in accordance with such fee schedule for implementing the relocation.

23.7 Operator, after consulting with each Participating City at Operator's request, shall conduct all necessary planning, design, and outreach prior any De-Installation, reinstallation or Adjustment.

23.8 Operator, after consulting with each Participating City, at Operator's request, shall conduct Site-specific outreach prior to any De-Installation, reinstallation or Adjustment. Such outreach shall include, for example, but is not limited to:

23.8.1 Properties fronting to the Station location – outreach shall be made in-person to storefronts, and in-person or via telephone to property management/ownership; and

23.8.2 Relevant elected officials, BIDs, and community groups – outreach shall be made via letter, email, telephone, or in person.

23.9 Nothing in this Agreement shall be construed as a waiver or release of the rights of each Participating City in and to the property of each Participating City. In the event that all or part of the property of a Participating City is eliminated, discontinued, closed or de-mapped, any use of such property as a Station location shall cease upon the effective date of such elimination, discontinuance, closing or demapping, unless Operator can obtain the right to continue to use such site from any private owner of such property.

SECTION 24.0 <u>FEES</u>

24.1 Operator shall maintain a fee schedule for Deactivations, De-Installations, reinstallations, Adjustments and temporary relocations. The fee for Deactivation shall cover the cost of relocating the Station on a temporary basis and of reactivating the Station. The fee for Station De-installation shall cover the cost of relocating the Station on a temporary basis and the cost of reinstalling the Station. The fee schedule provides for CPI Adjustment. Operator shall provide the fee schedule to Participating Cities within five business days of any update.

24.2 Operator may charge the following parties for Deactivations, Station De-Installations and Station Adjustments:

24.2.1 Private property owners and their contractors;

24.2.2 Contractors performing non-emergency work on public property (excluding contractors performing Public Works, which is covered in Section 24.3.1);

24.2.3 Event producers or organizers of For Profit and Political Special Events (for which Participating Cities will have no responsibility for billing or collecting fees);

24.2.4 A Participating City for Discretionary Requests by such Participating that exceed the cap for such Participating City set forth in Section 23.6.2.

24.3 Operator may not charge fees for Station Deactivations, Station De-Installations and Station Adjustments related to:

24.3.1 Public Works;

24.3.2 Other Special Events;

24.3.3 Public Safety Emergencies;

24.3.4 Discretionary Requests by a Participating City that do not exceed the cap for such Participating City set forth in Section 23.6.2; or

24.3.5 A relocation of a Station at the election of Operator.

24.4 Operator shall be solely responsible for charging and collecting fees for Station Deactivation, Station De-Installation and Station Adjustments from the requesting parties.

24.5 Operator shall perform Station Deactivations, Station De-Installations and Station Adjustments as directed by each Participating City in accordance with the timeframes in Appendix A of the Program Agreement, regardless of whether it has received payment for such work, except in the case of private property owners and their contractors.

24.6 To the extent practical, each Participating City shall include information about the fee schedule and how to contact Operator on all relevant event and construction permits.

SECTION 25.0 NOTIFICATIONS

25.1 By the 15th of the month, each Participating City will provide a proposed schedule for all instances during the next month where Station Deactivation, Station De-Installation or Station Adjustment will be required.

25.2 Operator must acknowledge the schedule, in writing, with its plans for each instance at least 4 days before the action occurs.

SECTION 26.0 DEACTIVATIONS

26.1 Station Deactivations may be done on a temporary basis.

26.2 Operator shall complete Station Deactivations at least 2 hours before event set-up or work begins.

26.3 Operator shall reactivate a Station within 24 hours after the event or work ends. Station Deactivations for Public Safety Emergencies shall be reactivated within 72

hours after the end of the emergency condition, as determined by the affected Participating City or Cities.

26.4 Unless agreed to in writing by the Participating City, Operator shall reactivate a Station in the original location and configuration.

26.5 Deactivation may require the removal of all Street Treatments as specified by the Participating City.

SECTION 27.0 DE-INSTALLATIONS

27.1 Station De-Installations may be performed at a specific location on either a temporary or permanent basis.

27.2 Operator shall complete Station De-Installations in accordance with the timeframe set forth in Appendix A of the Program Agreement, unless otherwise instructed by the Participating City.

27.3 For all temporary Station De-Installations, Operator shall remove all Street Treatments, but not Street Markings, unless otherwise instructed by the Participating City.

27.4 For all permanent Station De-Installations, Operator shall remove all Street Treatments, but not Street Markings, unless otherwise instructed by the Participating City. All De-Installations shall include general clean-up at the Station site, including the removal of debris generated by the removal of Street Treatments and Equipment.

27.5 Operator shall reinstall the Station(s) within 72 hours of the conclusion of the event or work. The time allotted for Station reinstallations may be increased to more than 72 hours, upon request to the Participating City if the Station(s) are Underperforming Stations.

27.6 Unless agreed to in writing by the Participating City, Operator shall reinstall the Station(s) in the original location and configuration.

27.7 Whenever Station De-Installations are done to accommodate work or events that are expected to last longer than 2 weeks, Operator shall temporarily reinstall the Station(s) in a new, approved location unless the Participating City provides otherwise in writing.

27.7.1 The Participating City shall approve the new Station site not less than 48-hours prior to the scheduled Station De-Installation.

27.7.2 Operator shall temporarily reinstall a Station in a new, approved location within 72 hours of Station De-Installation.

27.7.3 The time allotted for Station reinstallation may be increased to more than 72 hours, upon request to the Participating City, if a Station is an Underperforming Station.

27.8 Operator shall provide resources for creation, printing and installation of new Wayfinding Elements and Station Locators for temporary or permanent Station reinstallations in new location(s) with a planned duration greater than 120 days.

27.9 Operator shall install all Street Treatments within 5 business days of the Station reinstallation.

27.10 Operator shall install all Street Markings if it is estimated that a Station will be in the new location for longer than 4 months.

27.11 To the best of its ability, each Participating City shall expedite all permitting for Station reinstallation.

27.12 In cases of temporary Station De-Installations for Participating City paving work which are reinstalled in their original locations, the Participating City, at its cost, shall replace all approved Street Markings, provided that full, complete, accurate site drawings are provided to the Participating City for approval at least 5 business days prior to Station De-Installation (which condition will have been satisfied if accurate Site Plans were submitted in connection with the Site Permit application).

27.13 For permanent, non- emergency Station reinstallations in a new location, Operator is required to follow the regular permitting process (i.e., the submission of applications, review, notice and hearings, as applicable), except each Participating City shall, to the best of its ability, expedite all permitting for Station reinstallation.

27.14 For temporary Station relocations of up to 90 days (e.g., to accommodate events or short construction projects), Operator may move Station without following the regular permitting process as long as the event promoter or contractor includes the temporary occupancy of the Station at the new location in the event or construction permit.

27.15 For temporary Station relocations of 90 days or longer (e.g., to accommodate major construction projects), Operator shall follow the same process described in Section 27.14 to allow for a short-term relocation and then complete the regular permitting process *ex post facto* for the longer term but temporary relocation .

SECTION 28.0 <u>ADJUSTMENTS</u>

28.1 Station Adjustments may be performed on either a temporary or permanent basis.

28.2 Station Adjustments shall not result in reductions in or conflicts with Program operability.

28.3 Operator shall conduct all necessary planning work and outreach prior to making any Station Adjustments. All Station Adjustments are subject to Participating City approval.

28.4 Participating Cities and Operator shall agree upon a clear process for determining Station Adjustments in compliance with local law. Part of the process will include the Participating Cities and Operator convening regularly scheduled meetings to discuss Station De-Installations, Station reinstallations, Station Adjustments and Infill.

28.5 For all Station Adjustments:

28.5.1 Operator shall adjust Street Treatments as necessary to accommodate the new size or configuration within 10 business days of the Station Adjustment.

28.5.2 Operator shall adjust all Street Markings within 10 business days of the Station Adjustment if it is estimated that the Station will be in the new configuration or size for longer than 4 months.

SECTION 29.0 ADVERTISING AND SPONSORSHIP

29.1 In consideration of Operator's performance of its obligations under this Agreement, MTC and the Participating Cities hereby grant to Operator the exclusive right throughout the Term, subject to the specifications, terms, reservations and restrictions of this Agreement and to the extent consistent with local law and any applicable advertising restrictions under existing contracts to which a Participating City is bound, (i) to sell and place Advertising and Sponsorship acknowledgments on the Equipment in the Program Area, for the purpose of publicly identifying and associating the Program with one or more Sponsors, and (ii) to collect all revenues generated by such Advertising and Sponsorship activities. Notwithstanding anything to the contrary herein, the effectiveness of the grant of exclusive rights contained in the preceding portion of this Section 29.1 by the City of Oakland, and the grant to Operator of any right to advertise in the public rights-of-way of the City of Oakland, are subject to the adoption by the Council of the City of Oakland of a franchise ordinance pursuant to Article X-Section 1000 of the City Charter of the City of Oakland.

29.2 Subject to applicable local law, advertising restrictions, and zoning regulations for the Participating City, Operator may install at each Station electronic media (including LCD panels) for public information about the Program, electronic Advertising and Sponsorship acknowledgments (it being noted that use of electronic media, including LCD panels, is specifically subject to Sections 29.7.1 and 29.7.4).

29.3 Backlighting of printed posters shall be permitted, subject to applicable local law, advertising restrictions, and zoning regulations for the Participating City for property adjacent to the Site (it being noted that use of backlighting is specifically subject to Section 29.7.1).

29.4 If any material displayed or placed in violation of any provision of this Section 29 is not removed by Operator within 24 hours of notice from MTC or a Participating City, the Participating City shall have the right to remove such material and Operator shall pay to the Participating City all reasonable costs incurred in connection with such removal.

29.5 General Restrictions on Advertising and Sponsorship applicable to all Participating Cities:

29.5.1 Operator shall not install, or permit to be installed, on any Equipment, any Tobacco Advertising, Alcohol Advertising, Firearms Advertising or other Prohibited Advertising. Advertising on any Equipment, including electronic media, shall be consistent with guidelines adopted by each Participating City for outdoor advertising as set forth in this Agreement. Operator shall not place any Advertising or Sponsorship acknowledgment matter that is indecent, in obvious bad taste, or demonstrates a lack of respect for public morals or conduct. (The prohibitions and restrictions in Section 29 are referred to collectively as the "Advertising Restrictions".)

29.5.2 Operator shall comply with all applicable laws, rules and regulations in force as of the Effective Date and which may hereafter be adopted, to the extent not grandfathered under the law, with respect to Advertising and Sponsorship.

29.6 Content-related restrictions on Advertising for Berkeley, Oakland and Emeryville:

29.6.1 Berkeley: Prohibited Advertising in Berkeley includes:

(a) Advertisements for or promoting the use of tobacco products.

(b) Advertisements for or promoting the use of alcoholic beverages.

(c) Any sign depicting physical violence against any person or animal

(d) Advertising which depicts violence, anti-social behavior or related to illegal behavior.

(e) Advertising which holds up an individual or groups of people to public ridicule, derision or defames any individual or group, including but not limited to a person's race, religion, ethnicity, or sexual orientation.

(f) Advertising which promotes the sale or use of firearms.

(g) Any display containing any of the following:

(h) Any statements or words describing explicit sexual acts, sexual organs, or excrement.

(i) Any nudity (picture or illustration) showing genitals, pubic hair, perineum, anuses, or anal regions of any person or animal, or any portion of the breast, at or below the areola thereof, of any female person.

(j) Explicit sexual acts, including depictions of sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, masturbation or lewd exhibition of the genitals, whether any of the above conduct is depicted or described as being performed among or between members of the same or opposite sex or between humans and animals, or other acts involving any physical contact with a person or animals' genitals, pubic region, pubic hair, perineum, anus, or anal region.

(k) Any display specifically prohibited by law or order of any court of competent jurisdiction.

(l) Any Advertising prohibited by the City Manager of Berkeley.

29.6.2 Oakland: Prohibited Advertising in Oakland includes:

(a) Advertising promoting the sale of alcohol, guns/firearms or tobacco.

(b) Advertisements that are known to the Operator to be false, misleading or deceptive; clearly defamatory; obscene or pornographic according to local community standards; in advocacy of unlawful violent action; or all or any combination of the foregoing.

29.6.3 Emeryville: Prohibited Advertising in Emeryville includes:

(a) Advertising promoting the sale of alcohol, guns/firearms/ammunition or tobacco.

(b) Advertisements for or promoting the use of alcoholic beverages.

(c) Explicit sexual acts, including depictions of sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, masturbation or lewd exhibition of the genitals.

(d) Any display specifically prohibited by law or order of any court of competent jurisdiction.

29.7 Advertising Restrictions applicable to Berkeley, San Francisco, San Jose and Emeryville:

29.7.1 Berkeley: Electronic or LCD panels may not be used for Advertising or Sponsorship acknowledgments; and backlighting of printed posters may not be done on blocks zoned exclusively for residential use.

29.7.2 Berkeley: Upon written request by the City Manager of Berkeley to Operator, the City Manager of Berkeley has the right to review and approve of Advertising in advance of their placement at each Station.

29.7.3 San Francisco: Any Advertising in the public right-of-way, which is subject to the San Francisco's approval and conformance with local law.

29.7.4 San Jose: Advertising in the public right-of-way is prohibited.

29.7.5 Emeryville:

(a) Advertising in any public right-of-way is prohibited.

(b) The City Manager has the right to review and approve Sponsorship acknowledgements in advance of their placement.

(c) In Emeryville, the phrase "Sponsored by (name of Sponsor)" must be used, unless the name of the Sponsor is apparent from the logo or other graphics, in which case, only the words, "Sponsored by" may be used.

(d) Electronic or LCD panels may not be used for Sponsorship acknowledgements, and may only be used for information about the status of bike share facilities. A dimmer switch shall be installed as part of all illuminated sign installations, and the signs shall be dimmed to the satisfaction of the Director of Community Development if the Director determines the illumination to be too bright. Backlighting is prohibited in residential zones, as defined in the City's Municipal Code.

29.8 Advertising and Sponsorship Recognition Restrictions applicable to Specific Equipment:

29.8.1 Stand-Alone Sponsorship Stand: Each Station shall have a Stand-Alone Sponsorship Stand having 2 Sponsorship Panels. Each Stand-Alone Sponsorship Stand shall be no higher than 84 inches and each Sponsorship Panel shall be no wider than 42 inches. On one Sponsorship Panel, there will be Wayfinding Elements. On the other Sponsorship Panel, Operator may:

(a) Install Sponsorship recognition, which may be static or digital as long as it complies with local regulations.

(b) San Jose: no commercial Advertising shall be installed on Sponsorship Stand.

(c) San Francisco: the Stand-Alone Sponsorship Stand shall not include any Advertising .

(d) Berkeley: the Stand-Alone Sponsorship Stand may not be digital.

(e) Emeryville: the Stand-Alone Sponsorship Stand shall not be digital and shall not include any Advertising.

29.8.2 Kiosks: Each Station shall have one Kiosk. For each Kiosk, Operator may:

(a) Install Sponsorship recognition graphics.

(b) San Jose: no commercial Advertising shall be installed on Kiosks or Kiosk panels.

(c) San Francisco: the Kiosk panel shall not provide any Advertising .

(d) Berkeley: the Kiosk panel may not be digital.

(e) Emeryville: the Kiosk may not contain any Advertising and may not be digital.

29.8.3 Docks: For each Dock, Operator may:

(a) Install Sponsorship recognition graphics, provided that such graphics may not exceed 1.5 feet squared per side; and permit one Sponsor.

(b) San Jose: no commercial Advertising shall be installed on Docks.

29.8.4 Bicycles: For each Bicycle, Operator may:

(a) Install Sponsorship recognition graphics, provided that such graphics may not exceed 2.5 feet squared per side;

(b) Install Sponsorship recognition graphics on the following elements of the Bicycle (but on no other elements):

(i) Baskets;

(ii) Back and front mudguards; and

(iii) Bicycle frame.

(c) San Jose: no commercial Advertising shall be installed on Bicycles.

(d) San Francisco: no Advertising shall be installed on Bicycles.

(e) Emeryville: no Advertising shall be installed on Bicycles.

29.8.5 Other Assets: Subject to compliance with each Participating City's permitting requirements to the extent applicable to the following assets, Operator may additionally utilize the following assets for Advertising or Sponsorship recognition placements,

except that to the extent any of the following assets are displayed on Kiosks, Docks or Bicycles, such assets shall be subject to the restrictions set forth above:

(a) Membership swipe cards and keys;

(b) User receipts;

(c) Maintenance vehicles;

(d) Staff uniforms;

(e) Launch campaign literature;

(f) Media partnerships;

(g) Website;

(h) Mobile applications;

(i) Printed maps and materials;

(j) Registration packets and Program newsletters;

(k) Safety campaigns;

(l) Bike counters;

(m) Wayfinding signs;

(n) Water Dispensers;

(o) Station air pumps and bike tool kits; and

(p) Such other assets as may be approved by MTC and the Participating City.

SECTION 30.0 MERCHANDISING, LICENSING, AND INTELLECTUAL PROPERTY

30.1 If Operator and/or any of its affiliates, business partners or sublicensees desires to use , during the Term, the trademarks, logos, service marks, and other intellectual property rights of MTC and/or the Participating Cities, then prior to any such use Operator and its affiliates, business partners, and sublicensees, as applicable, shall enter into a non-exclusive license agreement with MTC and/or any of the Participating Cities to use, during the Term, such trademarks, logos, service marks, and other intellectual property rights.

SECTION 31.0 MARKETING

31.1 During each calendar year of the Term, Operator shall offer not less than one safety training class every other quarter in each Participating City, except:

31.1.1 If pursuant to Section 3.3 a Participating City expands the number of Bicycles by at least 20% compared to the number of Bicycles on the previous January 1 or if it commences participation in the Program after not participating in the Program on the previous January 1, then Operator shall offer one safety training class per quarter in such Participating City during the first 4 quarters following such expansion or commencement; and

31.1.2 Without duplication of any safety training classes under Section 31.1.1, if a Participating City elects to expand the Program within its borders pursuant to Section 3.3 of this Agreement, then Operator shall offer one safety training class per quarter in such Participating City during the first 4 quarters following such expansion.

31.2 Operator shall create a marketing plan for the Program, subject to approval by MTC, which approval will not be withheld so long as the plan is not in bad taste, offensive, obscene or derogatory to MTC or any Participating City. Following such approval, Operator shall market the Program in accordance with such plan. The marketing budget and the allocation of such budget shall be determined by Operator, in its sole discretion. The marketing plan shall include, at a minimum, demonstrations, events, social media outreach, programs, partnerships and other efforts to educate residents of the Participating Cities about bike share, to launch the Program and to grow membership and ridership in a financially sustainable manner.

31.3 A portion of Operator's marketing plan will include marketing and outreach to low-income communities, disadvantaged communities, and communities for which English is not the native language, shall be subject to the approval of MTC and the Participating Cities, shall comply with local requirements regarding language access for each Participating City, shall comply with local standards for decency and not be offensive to the general public. MTC retains the non-exclusive right to conduct marketing and outreach to low-income neighborhoods and limited English proficiency neighborhoods. Operator's marketing activities shall not violate the Advertising Restrictions.

SECTION 32.0 GRANT OF EXCLUSIVE RIGHTS

32.1 Exclusive Rights and Exceptions. The Participating Cities hereby grant to Operator the exclusive right to operate a bike share program in the public rights-of-way in the Participating Cities during the Term, with the exception of (i) non-automated non-self-service (i.e., renting a bike requires direct in-person human interaction) bike rental operations, (ii) electric scooter sharing program, and (iii) automated (i.e., renting a bike requires no direct in-person human interaction) roundtrip bike share operations (i.e., where the renter is required to return the bike to the same location from which it was rented).

32.2 Waiting Period. Operator has the exclusive right to operate a bike share program with e-assist or electric bikes ("E-Bikes") in the public rights-of-way in the Participating Cities until June 30, 2016. Prior to June 30, 2016, no Participating City shall

do any of the following: conduct a procurement, solicit or request proposals, solicit operators, or commence negotiations with another operator for E-Bikes or announce the intent to have a point-to-point E-Bike share system in public rights-of-way.

32.3 Right of First Offer. If at any time during the Term but after June 30, 2016, a Participating City intends to issue a Request for Proposals or initiate another type of procurement (each of the foregoing, a "Solicitation") to operate a bike share program with E-Bikes, then prior to issuance of such Solicitation, such Participating City shall offer to Operator the opportunity to operate bike share program with E-Bikes. Following such offer, Operator and such Participating City shall negotiate in good faith the terms of such program. If within 3 months following such offer, Operator and such Participating City are unable to reach agreement on the terms of such program, then such Participating City shall have the right to issue a Solicitation, and Operator shall have the right to respond to such Solicitation, pursuant to the procurement rules applicable in said Participating City.

32.4 Notwithstanding anything to the contrary herein, the effectiveness of the grant of exclusive rights to use the public rights-of-way of the City of Oakland as set forth in this Section 32 is subject to the adoption by the Council of the City of Oakland of a franchise ordinance pursuant to Article X-Section 1000 of the City Charter of the City of Oakland; and the effectiveness of the grant of rights to use the public rights-of-way of the City of Berkeley as set forth in this Section 32 is subject to the adoption by the City Council of the City of Berkeley of a franchise ordinance pursuant to Article XII, Section 75 of the Charter of the City of Berkeley.

SECTION 33.0 RIGHTS RESERVED TO THE PARTICIPATING CITIES

33.1 The Participating Cities hereby withholds authorization from MTC to make any and all of the following decisions or take any and all of the following actions under the Program Agreement, and any other decisions or actions that are expressly and specifically reserved to the Participating Cities under the Program Agreement: The decision to expand the program within the borders of a Participating City as provided in Section 3.3 of the Program Agreement.

33.2 Decisions and actions to be taken by a Participating City under this Agreement are expressly and specifically reserved to such Participating City.

SECTION 34.0 RESOLUTION OF DISPUTES BETWEEN OPERATOR AND THE PARTICIPATING CITIES UNDER THIS AGREEMENT

34.1 In the event of a dispute between Operator and MTC and/or a Participating City arising under this Agreement or with respect to the Program, such dispute shall be addressed and resolved as follows (the "Dispute Resolution Process"):

34.2 MTC's Program Manager and the Participating City's Program Manager, as applicable, assigned to the Program and Operator's General Manager of the Program, or their respective delegates, shall meet, within 10 days after receipt by one disputing party of notification from the other party(ies) of such dispute, to negotiate in good faith in order to try to resolve such dispute (the date of the first such meeting, or the expiration of such 10-

day period if the meeting is not timely held, being the "Initial Meeting Date"). If such persons fail to resolve such dispute within 15 days after the Initial Meeting Date, then the Executive Director of MTC and/or the equivalent executive-level personnel of the Participating City (and in the case of San Francisco, the Executive Director of the SFMTA), as applicable, and the President of Bikeshare Holdings shall meet promptly and negotiate in good faith in order to resolve such dispute. If such persons fail to resolve such dispute within 30 days after the Initial Meeting Date, then such dispute shall be subject to mediation under Section 34.3. As used in this Section 34.2, a meeting may be held in person, by conference call or by video conference. By agreement of the parties to such dispute, any of the deadlines set forth in this Section 34.2 may be extended or shortened. The process described in this Section 34.2 shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

34.3 Unless the parties to the dispute otherwise agree, mediation shall be administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Rules, or similar service. A request for mediation shall be made in writing, delivered to the other disputing part(ies) and filed with the applicable mediation service. Any disputing party may submit such request. The disputing parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in San Francisco. The disputing parties shall be represented by individuals of their choosing. Settlement agreements entered into by the disputing parties shall be binding on such parties and enforceable against such parties in a State or Federal Court of competent jurisdiction sitting in San Francisco County, and such parties shall comply with the terms of any such settlement agreement. The mediation process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

34.4 If mediation fails to resolve a dispute, then the exclusive forum for resolving such dispute shall be any State or federal court sitting in San Francisco County, California, except as otherwise provided in the last sentence of Section 14.5.

34.5 As used in this Agreement, "final resolution" of a dispute or a dispute being "finally resolved" means that (a) the parties to the dispute have entered into a settlement agreement to resolve such dispute, or (b) if a party to the dispute has initiated a judicial proceeding to contest such dispute, that a final-non-appealable order of a court of competent jurisdiction has been issued for such dispute.

SECTION 35.0 ASSIGNMENT BY OPERATOR

35.1 Operator has the same right to assign this Agreement, including the rights, benefits and obligations of Operator hereunder, as Operator has to assign the Program Agreement. If a Recognized Lender or its designee succeeds to Operator's interest under the Program Agreement in accordance with the terms thereof, such Recognized Lender or its designee shall automatically succeed to Operator's interest under this Agreement. This Agreement shall be binding upon and inure to the benefit of the Operator named herein and the respective permitted successors and assigns of the Operator named herein.

SECTION 36.0 INSURANCE

36.1 Minimum Coverages. The insurance requirements specified in this section shall cover Operator's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Operator authorizes to work under this Agreement (hereinafter referred to as "Agents"). Operator shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

36.2 Operator shall include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the Agent. To the extent that an Agent does not procure and maintain such insurance coverage, Operator shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Operator's indemnity obligation under Section 13.2 as to itself or any of its Agents in the absence of such coverage.

36.3 In the event Operator or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Operator's or its Agent's insurance, as the case may be, be primary without right of contribution from MTC.

36.3.1 Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than $1,000,000 per employee for injury by disease and $1,000,000 for injury for each accident, and any and all other coverage of Operator's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Operator is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

36.3.2 Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Operator and Operator's officers, agents, and employees and with limits of liability which shall not be less than $1,000,000 combined single limit per occurrence with a general aggregate liability of not less than $2,000,000, and Personal & Advertising Injury liability with a limit of not less than $1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. In addition, the entities listed in Section 36.12 and their respective commissioners, directors, officers, representatives, agents and employees are also to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.

36.3.3 Business Automobile Insurance for all automobiles owned (if any), used or maintained by Operator and Operator's officers, agents and employees, including but not

limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than $1,000,000 combined single limit per accident.

36.3.4 Umbrella Insurance in the amount of $4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

36.3.5 Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of $5,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. The policy shall provide coverage for all work performed by Operator and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Operator. Operator may delegate the obligation to maintain Errors and Omissions Professional Liability Insurance to an Agent, but the failure of such Agent to maintain such insurance shall not relieve Operator of its obligation to maintain such insurance.

36.3.6 Property Insurance. Property Insurance covering Operator's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

36.4 Acceptable Insurers. All policies will be issued by insurers qualified to do business in California and with a Best's Rating of A-VIII or better.

36.5 Self-Insurance. Operator's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

36.6 Deductibles and Retentions. Operator shall be responsible for payment of any deductible or retention on Operator's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

36.7 In the event that MTC is entitled to coverage as an additional insured under any Operator insurance policy that contains a deductible or self-insured retention, Operator shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Operator, subconsultant, subcontractor, or any of their employees, officers or directors, even if Operator or subconsultant is not a named defendant in the lawsuit.

36.8 Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Operator shall:

36.8.1 Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;

36.8.2 Maintain and provide evidence of similar insurance for at least three (3) years following the expiration or termination of this Agreement, including the requirement of adding all additional insureds; and

36.8.3 If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the commencement of any work hereunder, Operator shall purchase "extended reporting" coverage for a minimum of three (3) years after the expiration or termination of this Agreement.

36.9 Failure to Maintain Insurance. All insurance specified above shall remain in force until the expiration or termination of this Agreement. . Operator must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

36.10 Certificates of Insurance. Prior to commencement of any work hereunder, Operator shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

36.11 Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Operator are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Operator pursuant hereto, including, but not limited to, liability assumed pursuant to Section 16 .

36.12 Additional Insureds. The following entities are to be named as Additional Insureds under applicable sections of this Section 36 and as Indemnified Parties pursuant to Section 13.2 of this Agreement.

36.12.1 Metropolitan Transportation Commission (MTC)

36.12.2 City of Berkeley

36.12.3 City of Oakland

36.12.4 City of San Francisco

36.12.5 City of Emeryville

36.12.6 City of San Jose

SECTION 37.0 FREE MEMBERSHIPS

37.1 Operator shall provide the City of Berkeley with 10 Regular Annual Memberships (with membership keys) free of Annual Membership Fees (the "Free Memberships") for the Term, subject to compliance with the following conditions:

37.1.1 The Free Memberships shall be used only by employees of the City of Berkeley and only for the conduct of official business of the City of Berkeley.

37.1.2 Prior to an employee's initial use of a Bicycle under a Free Membership, such employee shall sign Operator's standard waiver form and returned the signed waiver to Operator.

37.1.3 As a condition precedent to Operator's delivery to the City of Berkeley of the membership keys for the Free Memberships, (a) the City of Berkeley shall submit to Operator written procedures to be applied by the City of Berkeley for ensuring compliance with Sections 37.1.1 and 37.1.2, which written procedures shall be subject to Operator's reasonable satisfaction, and (b) the City of Berkeley and Operator shall agree on an acceptable method for payment to Operator of all amounts due Operator under this Section 37 (other than Section 37.1.4).

37.1.4 The City of Berkeley shall defend, indemnify and save harmless Operator from and against all Liabilities resulting from, or arising out of, (a) the use of the Free Memberships by any person other than an employee of the City of Berkeley in the conduct of official business of the City of Berkeley, or (b) the failure of an employee of the City of Berkeley to sign and return Operator's standard waiver form as required by Section 37.1.2.

37.1.5 The City of Berkeley shall be responsible for usage fees if any usage exceeds the Initial Ride Period at the rate charged by Operator to Regular Annual Members.

37.1.6 The City of Berkeley shall be responsible for the fees for damaged, lost, stolen or otherwise unreturned Bicycles at the rate charged by Operator to Regular Annual Members. Such fees shall not be subject to waiver.

37.1.7 The City of Berkeley shall promptly report any loss or theft of membership keys and be responsible for the cost of replacing membership keys at $25 per key (including taxes) for each key that needs to be replaced.

37.2 Operator shall accommodate the request of any other Participating City for Free Memberships, so long as Operator and such Participating City, each acting reasonably, are able to agree on the number of Free Memberships for such Participating City, which in no event shall be more than 10 Free Memberships, and on the terms and conditions for the use of the Free Memberships.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

METROPOLITAN TRANSPORTATION COMMISSION

_____
Steve Heminger, Executive Director

DATE:
_____

BAY AREA MOTIVATE, LLC.,
as Operator of the Bay Area Bike Share Program

_____
[NAME, TITLE]
DATE:_____

THE CITY OF BERKELEY

_____
[NAME, TITLE]
DATE:_____

THE CITY OF EMERYVILLE

_____
[NAME, TITLE]
DATE:_____

THE CITY OF OAKLAND

_____

[NAME, TITLE]
DATE:_____

THE CITY AND COUNTY OF SAN FRANCISCO

_____

[NAME, TITLE]
DATE:_____

THE CITY OF SAN JOSE

_____

[NAME, TITLE]
DATE:_____

APPENDIX A, COST OF EQUIPMENT

EXPANSION OF PROGRAM WITHIN THE ORIGINAL PARTICIPATING CITIES:

- Cost to purchase new Equipment: As set forth in the New Equipment Price Schedule below. The prices set forth in such schedule are subject to PPI Adjustment.
- Cost to install new Equipment (including site planning and drawings): $4,000 per Station, subject to CPI Adjustment.
- Cost to operate and maintain the Equipment: $100 per Dock per month, except for a new Station that is not more than 0.25 miles from an existing Station, in which case the cost is $0.

New Equipment Price Schedule

Station Size (No. of Bicycles)	No. of Docks	Cost (Excluding Sales Tax)
8	15	$ 47,166.98
10	19	$ 55,503.56
12	23	$ 63,840.15
14	27	$ 72,176.74
16	31	$ 80,513.33
18	35	$ 88,849.92
20	39	$ 97,186.51

BAY AREA BIKE SHARE PROGRAM AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION

and

BAY AREA MOTIVATE, LLC

[_____], 2015

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ATTACHMENT

ATTACHMENT A AGREEMENT TO CONTINUE PILOT BIKE SHARE PROGRAM

BAY AREA BIKE SHARE PROGRAM AGREEMENT

THIS BAY AREA BIKE SHARE PROGRAM AGREEMENT (this "Agreement"), has been executed and delivered as of [_____ __,] 2015 (the "Effective Date") by and between the METROPOLITAN TRANSPORTATION COMMISSION, an agency of the State of California established pursuant California Government Code § 66500 et seq., having an office at 101 Eighth Street, Oakland, California ("MTC"), and BAY AREA MOTIVATE, LLC, a Delaware limited liability company, having any office at 5202 Third Avenue, Brooklyn, New York 11220 ("Operator").

WITNESSETH:

WHEREAS, self-service bicycle sharing programs are revolutionizing the way residents commute and tourists travel within cities in Europe and North America, and a regional self-service bicycle sharing program with public access has been determined by MTC and the Participating Cities (as defined below) to be a desirable and valuable mode of alternative public transportation for the San Francisco Bay Area; and

WHEREAS, a bike sharing program will provide a 24-hour transportation network that complements existing transit and transportation options, increases multi-modal travel options in the region and encourages bicycle use as a healthy, environmentally friendly and congestion-reducing transportation option; and

WHEREAS, MTC authorized its Executive Director to negotiate an agreement with Operator to design, build, operate, maintain and market a network of publicly available bicycles in a bike share system within the cities of Berkeley, Emeryville, Oakland, San Francisco and San Jose (each a "Participating City", and collectively, the "Participating Cities");

WHEREAS, accordingly, MTC and Operator have negotiated this Agreement for the design, build, operation, maintenance and marketing of a network of publicly available bicycles in a bike share program in the Participating Cities;

WHEREAS, this Agreement also addresses the continuation of the pilot bike share program established in 2013 in San Francisco, Redwood City, Palo Alto, Mountain View and San Jose (the "Pilot Program") pursuant to Bike Share Program Agreement dated February 6, 2013 (as amended, the "AD Agreement") between Alta Bicycle Share, Inc. and The Bay Area Air Quality Management District (the "Air District");

WHEREAS, concurrently with the execution and delivery of this Agreement, Operator, the Participating Cities, and MTC are executing a Coordination Agreement ("Coordination Agreement") that sets forth certain rights, liabilities, and responsibilities of each party thereto with respect to the Program, and defines the organizational, management, and operational structure for the successful development of the Program.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

SECTION 1

DEFINED TERMS

For purposes of this Agreement and the Appendices and Exhibits, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section.

1.1 "AAA" has the meaning given such term in Section 23.1.2.

1.2 "AD Agreement" has the meaning given such term in the Recitals.

1.3 "AD Equipment" shall mean bike share equipment paid for by the Air District or Pilot Cities under the AD Agreement.

1.4 "Adjustment" shall mean permanent or temporary changes to a Station's size or configuration, and changes to Street Treatments and Street Markings as necessitated by such, without changes to the Station location.

1.5 "Advertising" shall mean any printed matter, including, but not limited to, words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual messages or information for the sale or the use of a product or service, but in no event shall it include any textual information that is required to be posted on any Equipment by any federal, state or local law, rule or regulation, or by this Agreement.

1.6 "Advertising Restrictions" has the meaning given such term in Section 7.2.

1.7 "Agents" has the meaning given such term in Section 17.1.

1.8 "Agreed Completion Dates" shall mean, collectively, the Agreed Phase I Completion Date, the Agreed Phase II Completion Date, the Agreed Phase III Completion Date, the Agreed Phase IV Completion Date and the Agreed Phase V Completion Date.

1.9 "Agreed Phase I Completion Date" has the meaning given such term in Section 3.4.1.

1.10 "Agreed Phase II Completion Date" has the meaning given such term in Section 3.4.2.

1.11 "Agreed Phase III Completion Date" has the meaning given such term in Section 3.4.3.

1.12 "Agreed Phase IV Completion Date" has the meaning given such term in Section 3.4.4.

1.13 "Agreed Phase V Completion Date" has the meaning given such term in Section 3.4.5.

1.14 "Agreed Phase I Site Permit Submission Date" has the meaning given such term in Section 3.4.1.

1.15 "Agreed Phase II Site Permit Submission Date" has the meaning given such term in Section 3.4.2.

1.16 "Agreed Phase III Site Permit Submission Date" has the meaning given such term in Section 3.4.3.

1.17 "Agreed Phase IV Site Permit Submission Date" has the meaning given such term in Section 3.4.4.

1.18 "Agreed Phase V Site Permit Submission Date" has the meaning given such term in Section 3.4.5.

1.19 "Agreed Site Permit Submission Dates" shall mean, collectively, the Agreed Phase I Site Permit Submission Date, the Agreed Phase II Site Permit Submission Date, the Agreed Phase III Site Permit Submission Date, the Agreed Phase IV Site Permit Submission Date and the Agreed Phase V Site Permit Submission Date.

1.20 "Agreement" has the meaning given such term in the Preamble, together with all Appendices and Exhibits, and all amendments or modifications hereof or thereof.

1.21 "Air District" has the meaning given such term in the Recitals.

1.22 "Alcohol Advertising" shall mean Advertising or Sponsorship, the purpose or effect of which is (i) to identify a brand of an alcohol product, a trademark of an alcohol product or a trade name associated exclusively with an alcohol product, or (ii) to promote the use or sale of an alcohol product.

1.23 "Annual Member" shall mean a user having an Annual Membership.

1.24 "Annual Membership" has the meaning given such term in Section 9.2.1.

1.25 "Annual Membership Fee" has the meaning given such term in Section 9.2.1.

1.26 "Annual Membership Fee Cap" has the meaning given such term in Section 9.2.1.

1.27 "Applicable Interest Rate" in effect at any date shall mean the prime rate as most recently published in the Eastern edition of the Wall Street Journal on or prior to such date plus 3%.

1.28 "Assessment Period" has the meaning given such term in Section 2.6.2(b).

1.29 "Back-end Software" designates all Software components of the central application provided by Operator's Software vendor and stored on the servers of such vendor, used for operation of such vendor's equipment, and accessible online from a remote location using the Hosted Infrastructure.

1.30 "Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as amended (Title 11 (U.S.C.).

1.31 "Bicycle" shall mean a vehicle with pedals and with 2 wheels held in a frame and aligned one behind the other and steered with a steering wheel as further described in Appendix D. "Bicycle" shall not include motorized vehicles, including scooters or mopeds. For the avoidance of doubt, electric assisted bicycles constitute Bicycles and do not constitute motorized vehicles.

1.32 "Bicycle Availability" shall mean conformance with the required Bicycle Fleet Level.

1.33 "Bicycle Fleet Level" shall mean the number of Bicycles that are operational, on-the-street and available for public use.

1.34 "Bicycle Maintenance" shall mean, at a minimum, that the following checks are performed on a Bicycle, with deficient elements repaired or replaced as necessary:

1.34.1 Check tire pressure, and add air as may be needed, to recommended Pounds per Square Inch measurement;

1.34.2 Check tightness of handlebars, headset bearings, and full handlebar range of motion (left to right);

1.34.3 Check tightness of seat, seat post quick-release, and see that seat post moves freely in full range of motion (up and down);

1.34.4 Check brake function (front and rear);

1.34.5 Check grips for wear and brake levers for tightness and damage;

1.34.6 Check bell for tightness and correct function;

1.34.7 Check handlebar covers for damage and instruction stickers;

1.34.8 Check front basket for tightness and damage, and check bungee cord for wear;

1.34.9 Check for correct gears and shifter function through all 5 gears;

1.34.10 Check fenders (front and rear) for damage, and clean outside of fenders;

1.34.11 Check tires (front and rear) for damage or wear;

1.34.12 Check wheels (front and rear) for trueness, broken or bent spokes and hub or axle tightness;

1.34.13 Check LED lights (front and rear) for function;

1.34.14 Check reflectors on wheels, seat and basket, to ensure they are present, clean, and undamaged;

1.34.15 Check pedals and cranks for tightness;

1.34.16 Lubricate and clean chain and check chain tensioner for correct function;

1.34.17 Check kickstand for correct function; and

1.34.18 Take brief test ride to ensure overall correct function of Bicycle.

1.35 "Bikeshare Holdings" shall mean Bikeshare Holdings LLC, a Delaware limited liability company, the sole member of Operator, and its successors.

1.36 "Claims" has the meaning given such term in Section 16.1.

1.37 "Cluster" shall mean, with respect to any Station, the Stations located within one-third of a mile from such Station, unless fewer than 3 other Stations are located within one-third of a mile from such Station, in which case such Station's Cluster shall mean the 3 other Stations located closest to such Station.

1.38 "Cluster Outage" shall mean an instance when either:

1.38.1 There are no empty, Operable Docks available at any of the Stations in a Cluster;

1.38.2 There are no Bicycles available for use at any of the Stations in a Cluster. (Bicycles Wrenched in Docks are not considered as available for use.)

1.39 "Computer Hardware" electronic component that provides information or controls a mechanical device and that is controlled by local or remote software.

1.40 "Contract Year" has the meaning given such term in Section 8.1.1.

1.41 "Coordination Agreement" has the meaning given such term in the Recitals.

1.42 "CPI" shall mean the Consumer Price Index for the Consolidated Metropolitan Statistical Area covering San Francisco-Oakland-San Jose, as measured by the Consumer Price Index for All Urban Consumers, as published from time to time by the Bureau of Labor Statistics, U.S. Department of Labor.

1.43 "CPI Adjustment" shall mean, with respect to a specific cost, that such cost is subject to annual adjustment each January 1 based on changes in the CPI from the Effective Date to the date of adjustment.

1.44 "Deactivation" shall mean, at a minimum, shut-down of Kiosk (or display of messaging on Kiosk screen indicating that Station is out of service) removal of all Bicycles present, installation of physical barriers on all Docks that prevent docking of Bicycles, and designation of the Station as "Out of Service" on the Program website, app, and all other real-time data sources. A Deactivation event is not over until the Station has been reactivated.

1.45 "Default" has the meaning given such term in Section 18.1.

1.46 "De-Installation" shall mean, at a minimum, (i) the temporary or permanent full removal of the Station and its associated Street Treatments, and, (ii) the designation of the Station as "Out of Service" on, or removal of the Station from, the Program website, app, and all other real-time data sources.

1.47 "Designated Representative" has the meaning given such term in Section 25.1.

1.48 "Discovery" shall mean any Operator employee gaining actual knowledge by personal observation of such employee or by Notification of any defect in the Equipment or Program.

1.49 "Dispute Resolution Process" has the meaning given such term in Section 23.1.

1.50 "Docks" shall mean the locking mechanisms contained on a Station that are designed to receive a Bicycle for locked storage.

1.51 "Electing City" shall mean a Pilot City or other Eligible City that elects, in accordance with Section 3.2, to participate in the Program.

1.52 "Effective Date" has the meaning given such term in the Preamble.

1.53 "Eligible City" shall mean any city located in the MTC Area.

1.54 "Equipment" shall include Stations, Kiosks, Docks and Bicycles, either individually or in any combination thereof.

1.55 "Escrow Agreement" means an escrow agreement to be executed among the vendor of the Software, Operator, and a nationally reputable company that provides escrow deposit services with respect to software and technology, as escrow agent, for the deposit, storage and release of the proprietary source code of Vendor for all of Vendor's software made available to Operator to operate the Equipment, which agreement shall be in form acceptable to the parties thereto and in form reasonably acceptable to MTC.

1.56 "Event of Force Majeure" shall mean a delay, suspension or interruption due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the Party claiming an Event of Force Majeure, provided in each case that such Party has taken and continues to take all reasonable actions to avoid or mitigate such delay, suspension or interruption and provided that such Party notifies the other Party to this Agreement in writing of the occurrence of such delay, suspension or interruption within 5 business days, or if not reasonably practicable, as soon thereafter as reasonably practicable, of the date upon which the Party claiming an Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an "Event of Force Majeure" unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the Party claiming Event of Force Majeure has taken and continues to take all reasonable steps to pursue such decision. The financial incapacity of Operator shall not constitute an Event of Force Majeure.

1.57 "Executive Director" shall mean the Executive Director of MTC, or any successor in function to the Executive Director.

1.58 "Firearms Advertising" shall mean Advertising or Sponsorship, the purpose or effect of which is (i) to identify a brand of firearms or ammunition, a trademark of a firearm or ammunition or a manufacturer of firearms or ammunition, or a trade name associated exclusively with a firearms or ammunition, or (ii) to promote the use or sale of firearms or ammunition.

1.59 "Functional Specifications" shall mean the specifications set forth in Appendix D, subject to Section 6.7.

1.60 "Hacking" shall mean unauthorized and intentional access to the Computer Hardware for the Program and/or Software.

1.61 "Hosted Infrastructure" means the hosting of the Back-end Software and associated network access designed and controlled by Operator's Software vendor, which renders the Back-end Software accessible to Operator and its end users;

1.62 "Indemnified Party" and "Indemnified Parties" have the meaning given such terms in Section 16.1.

1.63 "Infill" shall mean the placement of additional Stations within the Program Area in order to address unmet demand or community request.

1.64 "Initial Meeting Date" has the meaning given such term in Section 23.1.1.

1.65 "Initial Ride Period" has the meaning given such term in Section 9.2.3.

1.66 "Initial Term" has the meaning given such term in Section 2.2.

1.67 "Installation Scheduling Permits" shall mean permits required for the scheduling of the installation of Station-related Equipment at Sites proposed for Stations for which a Site Permit has been issued as a check for conflicts with other activities at the same location. The "temporary occupancy permit" issued by the San Francisco Department of Public Works is an example of an Installation Scheduling Permit.

1.68 "Institutional Lender" shall mean any savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States or any state thereof, a religious, educational or eleemosynary institution, a federal, state or municipal employee's welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency, a credit union, trust or endowment fund, or any combination or syndicate of Institutional Lenders or other lenders that is led by an agent that qualifies as an Institutional Lender (in which case such combination or syndicate shall, for purposes of this Agreement, constitute a single Institutional Lender); provided, that each of the above entities (or, in the case of any such combination or syndicate, the agent) shall qualify as an Institutional Lender only if it (a) is subject to service of process within the State of California and (b) has a net worth of not less than $50,000,000 and net assets of not less than $250,000,000. A wholly-owned subsidiary of any of Person that qualifies as an Institutional Lender is also an Institutional Lender.

1.69 "Key Performance Indicators" (or "KPIs") has the meaning given such term in Appendix A.

1.70 "Kiosk" shall mean the payment terminal that provides Bicycle rental instructions, contains payment equipment (e.g., a credit card device), and includes all other physical means necessary for the rental of Bicycles.

1.71 "KPI Contest Notice" has the meaning given such term in Section 2.6.3(b).

1.72 "KPI Change Request" has the meaning given such term in 2.6.2(a).

1.73 "KPI Failure Notice" has the meaning given such term in 2.6.3 (a).

1.74 "KPI LD Payment Date" has the meaning given such term in Section 2.6.3(b).

1.75 "Liabilities" has the meaning given such term in Section 16.1.

1.76 "Membership Fee" has the meaning given such term in Section 9.1.

1.77 "MTC" has the meaning given such term in the Preamble, together with any successor thereto.

1.78 "MTC Area" means the 9 counties in the San Francisco Bay Area within MTC's jurisdiction.

1.79 "MTC/Participating City Property" shall mean the trademarks, logos, servicemarks, and other intellectual property rights of MTC and/or the Participating Cities.

1.80 "Notification" shall mean all information provided by MTC, a Participating City or the general public to Operator about a specific defect or problem concerning the Program, Equipment or operations of the Program by written document, email to Operator's public information email address for the Program, or telephone call to Operator's call-in center for the Program.

1.81 "Operable Dock" shall mean a Dock that can both rent and receive bicycles from all Program users and is not physically obstructed in a manner that would prevent such use.

1.82 "Operator" has the meaning given such term in the Preamble.

1.83 "Operator Property" has the meaning given such term in Section 10.3.

1.84 "Operator Software" shall mean software and other intellectual property for the operation of the Program developed by Operator (such as the Program's website and mobile apps).

1.85 "Operable Station" shall mean a Station at which at least 90 percent of all installed Docks are Operable Docks from which an Annual Member can check out and return a Bicycle.

1.86 "Participating City" and "Participating Cities" have the meaning given such terms in the Preamble.

1.87 "Participating City Delay" has the meaning given such term in Section 4.2.

1.88 "Parties" shall mean MTC and Operator, and "Party" shall mean one of them, as the context requires. The term "parties" shall mean, collectively, Operator, MTC and the Participating Cities.

1.89 "Payment Breach" has the meaning given such term in Section 15.3.1.

1.90 "Peak Hours" has the meaning given such term in Section 2.6.2(b).

1.91 "PII" has the meaning given such term in Section 2.15.

1.92 "Person" shall mean any human being or any association, firm, partnership, joint venture, corporation, limited liability company, governmental entity or other legally recognized entity, whether for profit or not for profit.

1.93 "Pilot Cities" shall mean the cities of Mountain View, Palo Alto and Redwood City.

1.94 "Pilot Program" has the meaning given such term in the Recitals.

1.95 "Phase" shall mean any one of Phase I, Phase II, Phase III, Phase IV and Phase V, as the context requires, and Phases shall mean, collectively, Phase I, Phase II, Phase III, Phase IV and Phase V.

1.96 "Phase I" has the meaning given such term in Section 3.4.1.

1.97 "Phase II" has the meaning given such term in Section 3.4.2.

1.98 "Phase III" has the meaning given such term in Section 3.4.3.

1.99 "Phase IV" has the meaning given such term in Section 3.4.4.

1.100 "Phase V" has the meaning given such term in Section 3.4.5.

1.101 "Phase I Stations" has the meaning given such term in Section 3.4.1.

1.102 "Phase II Stations" has the meaning given such term in Section 3.4.2.

1.103 "Phase III Stations" has the meaning given such term in Section 3.4.3.

1.104 "Phase IV Stations" has the meaning given such term in Section 3.4.4.

1.105 "Phase V Stations" has the meaning given such term in Section 3.4.5.

1.106 "PPI" shall mean the Producer Price Index for the United States, as measured by the Producer Price Index for final demand, as published from time to time by the Bureau of Labor Statistics, U.S. Department of Labor.

1.107 "PPI Adjustment" shall mean, with respect to a specific cost, that such cost is subject to annual adjustment each January 1 based on changes in the PPI from the Effective Date to the date of adjustment.

1.108 "Program" shall mean Equipment, Sites, website, Backend Software and Computer Hardware and the Services.

1.109 "Program Area" shall mean the entire area of all Participating Cities.

1.110 "Program Fleet" shall mean the total number of Bicycles required to serve the Program Area as specified in Section 3.

1.111 "Program Name" has the meaning given such term in Section 10.2.

1.112 "Program Property" shall mean (a) the Equipment, and (b) all relevant licenses and rights to the Equipment and the Software (excluding Operator Software) reasonably necessary or desirable to operate the Program.

1.113 "Program Property Assignment Conditions" shall mean the following: (a) Operator and the purchaser of the Program Property have agreed on the purchase price for the Program Property, which shall be based on the fair market value of the Program Property as an installed system at the time of the purchase, and (b) such purchaser has paid Operator the agreed upon purchase price for the Program Property, and with respect to licenses for the Software (excluding Operator Software), such purchaser and Vendor shall have entered into a license agreement.

1.114 "Prohibited Advertising" shall mean outdoor advertising that is prohibited by local laws, regulations or ordinances of the Participating City.

1.115 "Property Damage Breach" has the meaning given such term in Section 15.3.2.

1.116 "Rebalancing" shall mean actions taken by Operator to prevent or rectify Cluster Outages, subject, however, to Section 2.6.2(b).

1.117 "Recognized Lender" shall mean the holder of a Recognized Loan.

1.118 "Recognized Loan" shall mean any loan that is held by an Institutional Lender.

1.119 "Regular Annual Member" has the meaning given such term in Section 9.2.1.

1.120 "Regular Annual Membership" has the meaning given such term in Section 9.2.1.

1.121 "Renewal Term" has the meaning given such term in Section 2.4.

1.122 "Renewal Condition" has the meaning given such term in Section 2.4.

1.123 "Replacement Agreement" has the meaning given such term in Section 19.4.

1.124 "Revenue Sharing Credit Period" has the meaning given such term in Section 8.2.4.

1.125 "Ridership Revenue" has the meaning given such term in Section 8.1.2.

1.126 "Ridership Revenue Hurdle" has the meaning given such term in Section 8.1.3.

1.127 "Scheduled Phase I Completion Date" has the meaning given such term in Section 3.4.1.

1.128 "Scheduled Phase II Completion Date" has the meaning given such term in Section 3.4.2.

1.129 "Scheduled Phase III Completion Date" has the meaning given such term in Section 3.4.3.

1.130 "Scheduled Phase IV Completion Date" has the meaning given such term in Section 3.4.4.

1.131 "Scheduled Phase V Completion Date" has the meaning given such term in Section 3.4.5.

1.132 "Scheduled Phase V Plus 90 Days Date" has the meaning given such term in Section 8.2.4.

1.133 "Scheduled Phase Completion Date" shall mean any of the Scheduled Phase I Completion Date, the Scheduled Phase II Completion Date, the Scheduled Phase III Completion Date, the Scheduled Phase IV Completion Date or the Scheduled Phase V Completion Date, as the context requires.

1.134 "Security Fund" has the meaning given such term in Section 15.1.

1.135 "Self-Help Situation" has the meaning given such term in Section 15.3.3.

1.136 "Services" shall mean the installation, operation and maintenance of the Stations and the acquisition, placement, maintenance and rental to users of the Bicycles.

1.137 "Site" shall mean a designated area on publicly or privately owned real property, which area contains a Station that conforms to the Siting Criteria.

1.138 "Site Permits" shall mean permits for installation of Station-related Equipment at Sites proposed for Stations (other than Installation Scheduling Permits or Special Traffic Permits).

1.139 "Siting Criteria" has the meaning given such term in the Coordination Agreement.

1.140 "Software" shall means the software and the Equipment it runs on required to operate the Equipment.

1.141 "Special Traffic Permit" shall mean a permit required if installation of Station-related Equipment will interfere with pedestrian, bicycle, transit or vehicular traffic in a material respect. The Special Traffic Permit issued by the San Francisco Municipal Transportation Authority (SFMTA) in accordance with SFMTA's Regulations for Working in San Francisco Streets is an example of a Special Traffic Permit.

1.142 "Sponsor" means a Person contributing payments for the Program in exchange for acknowledgment of its contribution.

1.143 "Sponsor Property" has the meaning given such term in Section 10.2.

1.144 "Sponsorship" shall mean an arrangement pursuant to which, in connection with a payment or payments that will be used to help defray the costs of installing or operating the Program, the Person contributing such payment or payments is acknowledged by the Parties for such contribution.

1.145 "Sponsorship Revenue" has the meaning given such term in Section 8.1.4.

1.146 "Sponsorship Revenue Hurdle" has the meaning given such term in Section 8.1.5.

1.147 "State" shall mean the State of California.

1.148 "Station" shall mean a Kiosk (subject to Section 6.5), map module, a variable number of Docks and, when applicable, Street Treatment(s) and Street Markings, designed in accordance with the Functional Specifications set forth in Appendix D.

1.149 "Station Cleaning" shall mean, at a minimum that the following tasks are performed by Operator at a Station:

1.149.1 Removal of litter at the Station; and

1.149.2 As needed power washing of the Docks and Street Treatments comprising a Station and the pavement area on which a Station is situated.

1.150 "Street Marking(s)" shall mean thermoplastic paint markings and/or striping on the pavement for the express purpose of demarcating a Station.

1.151 "Street Treatments" shall mean the three-dimensional objects used to demarcate the Station, and protect it from adjacent parking and moving traffic. Such objects may include, but are not limited to, delineators and wheel stops.

1.152 "Street Treatment Requirements" shall mean a Participating City's requirements with respect to Street Treatments as set forth in the Siting Criteria for such Participating City.

1.153 "Term" has the meaning given such term in Section 2.2.

1.154 "Title Sponsor" shall mean Operator's system-wide Sponsor for the entire Program.

1.155 "Tobacco Advertising" shall mean Advertising or Sponsorship that bears a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product (any substance that contains tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

1.156 "Trips" shall mean the use of a Bicycle from one Station to another Station or back to the initial Station.

1.157 "Vendor" shall mean the company selected by Operator to provide the Software (other than the Operator Software).

1.158 "Wayfinding Elements" shall mean the maps posted on every Station, showing the location of each Station.

1.159 "Wrench" shall mean the action of locking a Bicycle in a Dock such that it cannot be released by Program users pending action by Operator.

SECTION 2

SCOPE OF SERVICES

2.1 General Requirements. Operator shall (a) provide the Services in conformance with the terms of this Agreement, (b) provide all of the Equipment and Software required to operate the Program, (c) procure all of the relevant licenses and rights to use the Equipment and Software to operate the Program, (d) procure all licenses and permits from applicable governmental agencies that are required to provide the Services from all applicable governmental agencies, and (e) comply with all applicable laws, rules and regulations of the United States, the State and the Participating Cities.

2.2 Initial Term. The term (the "Term") of this Agreement shall commence on the Effective Date and shall end on the last day of the calendar month in which the 10th anniversary of the earlier of (a)

the date that Phase I is completed, and (b) the Agreed Phase I Completion Date occurs (the "Initial Term"), subject to Section 2.3.

2.3 Reduction of Initial Term. If Operator does not complete 75% of Phase I, Phase II, Phase III, or Phase IV by the Agreed Phase I Completion Date, the Agreed Phase II Completion Date, the Agreed Phase III Completion Date, the Agreed Phase IV Completion Date, respectively, or 100% of Phase V by the Agreed Phase V Completion Date, then MTC shall have the right, by notice to Operator given with 60 days of the respective missed Completion Date, to reduce the Initial Term by 5 years, subject to the rights of the Recognized Lender set forth in Section 19.5. In addition, if on the 4th anniversary of the earlier of (a) the date that Phase I is completed, and (b) the Agreed Phase I Completion Date, a Default exists under Section 18.1.5, then MTC shall have the right, by notice to Operator given with 60 days of such 4th anniversary, to reduce the Initial Term by 5 years, subject to the rights of the Recognized Lender set forth in Section 19.5. Any amounts due pursuant to Section 8.2 shall be due within 120 days after expiration of the Term as reduced pursuant to this Section 2.3.

2.4 Renewal Term. If the Initial Term has not been reduced pursuant to Section 2.3 and Operator is in substantial compliance with the terms of this Agreement one year prior to the expiration of the then current Term (the "Renewal Condition"), then, upon mutual agreement of the Parties, the Term may be extended for 2 5-year renewals terms (each a "Renewal Term") on substantially equivalent terms applicable to the Initial Term. Subject to Operator's satisfaction of the Renewal Condition and the mutual agreement of the Parties to extend the Term, MTC and Operator shall engage in good faith negotiations on a mutually acceptable agreement for each Renewal Term commencing one year prior to the expiration of the then current Term with the goal of the Parties entering into an agreement for the respective Renewal Terms prior to the commencement of each Renewal Term. Until such agreement is entered into for the initial Renewal Term, this Agreement shall govern the relationship between the Parties, and until such agreement is entered into for the second Renewal Term, the agreement for the initial Renewal Term shall govern the relationship between the Parties.

2.5 Non-Renewal. Notwithstanding anything to the contrary contained in Section 2.4, Operator has the right not to renew the Term for either Renewal Term by notice given to MTC not later than 6 months prior to the expiration of the then current Term. If Operator gives MTC a non-renewal notice in accordance with the preceding sentence, then this Agreement shall end upon the expiration of the then current Term.

2.6 Services.

2.6.1 Subject to Events of Force Majeure, following completion of Phase I, Operator shall operate the Program so that it is fully operational at all Stations, consistent with the Key Performance Indicators as set forth in Appendix A, 24 hours per day, seven days per week, every day of each year, during the Term.

2.6.2 Adjustments to KPIs.

(a) KPIs in General. Notwithstanding anything to the contrary, if at any time and from time to time either Party in good faith believes that the KPIs should be updated, including by amending, supplementing or replacing them, (a) on account of technological developments incorporated into the Program by Operator, or (b) because the Party seeking changes believes the KPIs are ineffective, or not as effective as the KPIs could be, in strengthening the Program, the customer experience, and

Operator's performance, then the Party seeking changes to the KPIs shall submit proposed changes to the KPIs together with an explanation of how the proposed changes would address the deficiencies in the then existing KPIs ("KPI Change Request"). Within 10 business days thereafter, the other Party shall either accept the KPI Change Request in writing, or reject the KPI Change Request along with the reasons for the rejection. In the case of such rejection, at the request of the Party submitting the KPI Change Request, the matter will be referred to discussion in accordance with Section 23.1.1, except the matter will not be subject to mediation in accordance with Section 23.1.2. If the matter is not resolved within 30 business days of the KPI Change Request, the KPIs shall not be changed pursuant to the KPI Change Request. In lieu of rejecting or accepting a proposed KPI change, the Parties may agree to test trials to test proposed changes and then defer any decision until the conclusion of the trial period.

(b) Rebalancing. It is the objective of Operator to maximize the utility of the Program and the customer experience at all times, but particularly during the hours between 6:00 AM and 10:00 PM ("Peak Hours"), in a cost effective manner. Maximizing utility requires that Operator take affirmative steps to address severe imbalances in the demand for and supply of available Bicycles and empty Operable Docks during Peak Hours, which imbalances typically arise from patterns in demand and usage in which Bicycles typically travel in one direction. Operator's objective is to minimize instances, and minimize the duration of those instances, in a cost effective manner, when the demand for an empty Operable Dock or an available Bicycle at a Station is not met by the available supply at that Station. Achieving this objective is a multistep and collaborative process requiring the involvement, cooperation and flexibility on the part of Operator, MTC and the Participating Cities. To achieve this objective, during the period commencing upon the completion of Phase I and ending 6 months after the completion of Phase V (the "Assessment Period"), the parties will (i) observe demand and use patterns as the Program is being implemented to identify the times and locations that a shortage of empty Operable Docks and/or a shortage of available Bicycles arises and the extent of the shortages at those time and locations; and (ii) assess alternative approaches to alleviating outages, including, by way of example, by (A) enlarging existing Stations or adding new Stations in areas in which there is a shortage, (B) finding and utilizing storage areas located near Stations that experience Bicycle shortages so that additional Bicycles can be deployed quickly, (C) prioritizing Stations by demand and time of demand so that Operator may, at any particular time, focus more attention on those Stations with the highest demand at that time and less attention on those Stations with weaker demand at that time and have greater flexibility to address those Stations with weaker demand, and (D) identifying the optimal time of day for Operator to transport Bicycles from areas in which there is a shortage of empty Operable Docks to areas in which there is a shortage of Bicycles, which optimality will take into account when it is most efficient for Operator to transport the Bicycles in order to meet the anticipated demand at the transferee Stations. As the parties are developing approaches to alleviating outages during the Assessment Period, the parties shall also reformulate a commercially reasonable KPI for Rebalancing. While Operator will strive to reduce and eliminate Cluster Outages at all times commencing on the completion of a Phase, liquidated damages for the Rebalancing KPI will not be assessed for any Phase until 6 months after the completion of such Phase. The Rebalancing KPI will be refined and reformulated during the Assessment Period, and the KPI, as refined and reformulated, will be fully implemented and effective immediately after the end of the Assessment Period. The parties recognize that as patterns of use and demand, as well as levels of use and demand, change from and after the Assessment Period, different outages may arise, which will also need to be addressed in the manner set forth above.

2.6.3 Subject to Events of Force Majeure, if Operator fails to comply with the KPIs, Operator shall be required to pay MTC liquidated damages as calculated in Appendix

A, provided that the maximum aggregate liquidated damages payable by Operator in any calendar year for failure to comply with the KPIs is 4% of Ridership Revenue for such calendar year.

(a) MTC is entitled to liquidated damages for failure of Operator to comply with the KPIs by notice (a "KPI Failure Notice") given to Operator (i) not more frequently than once per quarter, and (ii) not later than 120 days after the occurrence of the related failure, except with respect to the failure to comply with a KPI that is measured on an annual basis, for which the KPI Failure Notice shall be given by March 31 of the following calendar year. Each KPI Failure Notice shall provide specific and detailed information about the failure to comply and the amount of the liquidated damages due in connection therewith.

(b) Prior to the later of (a) 30 days after Operator's receipt of a KPI Failure Notice and (b) the end of the calendar quarter in which such KPI Failure Notice is given (the later of (a) and (b) being the "KPI LD Payment Date"), Operator shall either pay the full amount of liquidated damages set forth in the KPI Failure Notice or 50% of such amount along with a notification to MTC that Operator seeks to contest, in good faith, the assessment of the liquidated damages (a "KPI Contest Notice"). The KPI Contest Notice shall provide specific and detailed information that rebuts or challenges the information contained in the corresponding KPI Failure Notice. After a KPI Contest Notice is given, any disputes relating to the subject matter of the KPI Failure Notice and the KPI Contest Notice shall be resolved in accordance with the Dispute Resolution Process.

(c) If Operator does not timely give a KPI Contest Notice in response to a KPI Failure Notice, then interest on the liquidated damages set forth in the KPI Failure Notice shall accrue at the Applicable Interest Rate in effect from time to time commencing on the KPI LD Payment Date. If Operator does timely give a KPI Contest Notice in response to a KPI Failure Notice and the Dispute Resolution Process results in Operator being required to pay liquidated damages, then Operator shall make such payment within 30 days following the date that the liquidated damages dispute is resolved in accordance with the Dispute Resolution Process, and interest on the liquidated damages shall accrue at the Applicable Interest Rate in effect from time to time commencing on such 30th date.

2.7 [INTENTIONALLY OMITTED]

2.8 Ownership of Equipment. Except as provided in Sections 3.2 and 3.3, all Equipment shall at all times be the property of Operator, subject to the lien thereon by any Recognized Lender.

2.9 Costs of Program.

2.9.1 Except as otherwise provided, each party shall bear its own costs in connection with the Program, if such costs are applicable, including, but not limited to, costs incurred in

connection with: negotiating this Agreement and the Coordination Agreement and preparing the Siting Criteria; Site selection; the review required for issuance of Site Permits, Installation Scheduling Permits, Special Traffic Permits and other permits; Equipment installation; exercising enforcement, inspection and audit rights; prosecuting or defending claims arising from the Program, and marketing, to the extent that MTC and/or the Participating Cities choose to undertake marketing.

2.9.2 Except as otherwise provided in Section 2.9.3, MTC and the Participating Cities shall not be obligated to pay or bear any of the costs associated with or expenses incurred for the Equipment, Software, or Services.

2.9.3 Each Participating City may elect, if additional incremental dedicated capital and operating funds becomes available for the Program, to expand the Program within its borders by adding Stations, Docks and Bicycles, provided that such Participating City shall be responsible for securing funds to pay for the cost of purchasing, installing, maintaining and operating the Equipment required for such expansion as set forth in Appendix A of the Coordination Agreement.

2.9.4 Operator shall reimburse a Participating City for any other work performed by such Participating City under this Agreement in furtherance of the Program, provided that prior to performing such work such Participating City shall notify Operator that such work will be performed at the expense of Operator, such Participating City provides an itemized invoice for any such work, and Operator is billed for the actual cost incurred by such Participating City without a markup or premium. Operator shall pay for such work within 30 days following receipt of the itemized invoice therefor. In connection with the installation of a Station, such other work may include, but is not limited to, (i) any necessary changes to signs, parking meters and curb paint, and (ii) installation of any striping, delineators or parking blocks outside the perimeter of a Station if the foregoing items are not installed by Operator.

2.10 Use of Data. All data generated by the Program will be owned by Operator. Operator will grant MTC and the Participating Cities a non-exclusive, royalty-free, irrevocable, perpetual license to use all data generated by the Program, other than personally-identifiable information that can identify individual users, their addresses, their credit card information and other personal information about users, for non-commercial purposes and on a real-time basis; and MTC and each of the Participating Cities shall have the right to grant to others a sublicense to use all such data for non-commercial purposes.

2.11 [INTENTIONALLY OMITTED]

2.12 [INTENTIONALLY OMITTED]

2.13 No Discrimination. Operator shall not discriminate in the implementation of the Program or in the provision of Services on the basis of race, creed, color, national origin, sex, age, marital status, or real or perceived sexual orientation.

2.14 Accessibility. In implementing and operating the Program, Operator shall comply with all applicable requirements of the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973 and all other applicable federal, state and local requirements relating to persons with disabilities,

including any rules or regulations promulgated thereunder. Such compliance shall extend to the location and design of Equipment as well as the Program's website and any mobile application for the Program.

2.15 Personally Identifiable Information ("PII"). All PII obtained or maintained by Operator in connection with this Agreement shall be protected by Operator from unauthorized use and disclosure. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement. Operator agrees to properly secure and maintain any computer systems (hardware and software applications) or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII that may be used, transmitted, or stored on such systems in the performance of this Agreement. Operator agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 et.seq.). In addition, Operator warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California relating to the handling and confidentiality of PII and, as provided in Section 16, agrees to indemnify MTC against any loss, cost, damage or liability by reason of Operator's violation of this provision.

SECTION 3

PROGRAM AREA AND EXPANSION; PROGRAM SIZE; PROGRAM TIMING

3.1 Program Area. As of the Effective Date, the Program Area encompasses the entirety of the cities of Berkeley, Emeryville, Oakland, San Francisco and San Jose.

3.2 Program Area Expansion. Following expiration of the Pilot Program, each of the Pilot Cities may elect, by notice to Operator, to continue the bike share program in such Pilot City, provided that the Pilot Cities shall be responsible for paying the cost of upgrading, purchasing, installing, maintaining and operating the Equipment in accordance with the schedule applicable to the Pilot Cities set forth in Appendix B. Following the completion of Phase V, the other Eligible Cities may elect, by notice to Operator, to develop a bike share program in the Eligible Cities, provided that the other Eligible Cities shall be responsible for paying the cost of purchasing, installing, maintaining and operating the Equipment in accordance with the schedule applicable to the other Eligible Cities set forth in Appendix B. Operator shall be required to maintain the Equipment purchased by an Electing City in a state of good repair throughout the Term, and at the end of the Term, Operator shall return such Equipment to the Electing City in good working order but subject to reasonable wear and tear from use and subject to loss and damage caused directly by users. Each Electing City shall enter into with Operator a separate service agreement to establish the number of Stations, Docks and Bicycles for such city, and the schedule for installation of the Equipment for such city, which agreement will also address, among other matters, (i) Siting Criteria, the Site selection process, Street Treatment Requirements, the protocols and procedures for the submission and review of applications and the issuance of permits and approvals, and the Electing City's requirements with respect to each of the foregoing, (ii) De-installations, Adjustments and Deactivations, and (iii) advertising and sponsorship.

3.3 Program Size. The Program Fleet for Phases I through V is 7,000 to 7,055, allocated among the Participating Cities as follows:

3.3.1 4,500 in San Francisco;

3.3.2 1,000 in San Jose;

3.3.3 1,400 in East Bay, as follows:

(a) 850 in Oakland

(b) 100 in Emeryville

(c) 400 in Berkeley

(d) 50 to be determined based on additional system planning analysis;

3.3.4 If Palo Alto elects to participate in the Program, 37 Bicycles will be distributed to Palo Alto; if Mountain View elects to participate in the Program, 59 Bicycles will be distributed to Mountain View; and if Redwood City elects to participate in the Program, 59 Bicycles will be distributed to Redwood City; if the sum of the Bicycles to be distributed to the Pilot Cities that elect to participate in the Program is less than 100, then Operator will distribute in San Francisco, San Jose and East Bay an additional number of Bicycles equal to the difference between 100 and such sum; and if none of the Pilot Cities elect to participate in the Program, then Operator will distribute an additional 100 Bicycles in San Francisco, San Jose and East Bay.

3.3.5 The minimum number of Stations in the Participating Cities is 500.

3.4 Program Timing. The schedule for Operator to obtain Site Permits and to install the Equipment is as follows:

3.4.1 Phase I. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing 25% of the total Bicycles for San Jose, East Bay and San Francisco (the "Phase I Stations") by the date that is 5 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase I Site Permit Submission Date"). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is 5 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase I Stations and shall complete such installation for all such Sites by the date that is 5 months after the issuance by the Participating Cities of Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase I Completion Date"; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being "Phase I"). Any AD Equipment that is acquired by Operator will count toward the Bicycles and related Equipment required for Phase I. Based on the schedule set forth in this paragraph, the objective of the Parties is for Operator to complete Phase I by the date that is 10 months after the Effective Date (such date being the "Scheduled Phase I Completion Date"). Notwithstanding anything to the contrary contained in this

Agreement, if Operator fails to submit to the Participating Cities complete applications for Site Permits for 75% of the Phase I Stations by the date that is 30 days after the Agreed Phase I Site Permit Submission Date, or if Operator fails to place a purchase order, taking into account AD Equipment to be used by Operator, for 75% of the Phase I Bicycles and 75% of the Phase I Stations, by the date that is 30 days after the issuance by the Participating Cities of Site Permits for 75% of the Phase I Stations, then as the sole remedy of MTC and the Participating Cities under this Agreement for such failures, MTC shall have the right to terminate this Agreement upon 10 days' notice to Operator without any further right of Operator or any Recognized Lender to remedy such failure. Operator shall provide evidence of such purchase order reasonably promptly following a request by MTC.

3.4.2 Phase II. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing an additional 15% of the total Bicycles for San Jose, East Bay and San Francisco (the "Phase II Stations") by the date that is 9 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase II Site Permit Submission Date"). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is 5 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase II Stations and shall complete such installation for all such Sites by the date that is 5 months after the issuance by the Participating Cities of Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase II Completion Date"; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being "Phase II"). Based on the schedule set forth in this paragraph, the objective of the Parties is for Operator to complete Phase II by the date that is 14 months after the Effective Date (such date being the "Scheduled Phase II Completion Date").

3.4.3 Phase III. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing the remaining 60% of the total Bicycles for East Bay (the "Phase III Stations") by the date that is 12 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase III Site Permit Submission Date"). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is 5 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase III Stations and shall complete such installation for all such Sites by the date that is 5 months after the issuance by the Participating Cities of Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase III Completion Date"; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being "Phase III"). Based on the schedule set forth in this paragraph, the objective of the Parties is for

Operator to complete Phase III by the date that is 17 months after the Effective (such date being the "Scheduled Phase III Completion Date").

3.4.4 Phase IV. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing an additional 30% of the total Bicycles for San Jose and San Francisco (the "Phase IV Stations") by the date that is 16 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase IV Site Permit Submission Date"). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is 5 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase IV Stations and shall complete such installation for all such Sites by the date that is 5 months after the issuance by the Participating Cities of Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase IV Completion Date"; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being "Phase IV"). Based on the schedule set forth in this paragraph, the objective of the Parties is for Operator to complete Phase IV by the date that is 20 months after the Effective Date (such date being the "Scheduled Phase IV Completion Date").

3.4.5 Phase V. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing 30% of the total Bicycles for San Jose and San Francisco (the "Phase V Stations") by the date that is 22 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase V Site Permit Submission Date"). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is 5 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase V Stations and shall complete such installation for all such Sites by the date that is 5 months after the issuance by the Participating Cities of Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase V Completion Date"; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being "Phase V"). Based on the schedule set forth in this paragraph, the objective of the Parties is for Operator to complete Phase V by the date that is 26 months after the Effective Date (such date being the "Scheduled Phase V Completion Date").

3.5 Failure to Achieve Completion of any Phase. Notwithstanding anything to the contrary in this Agreement, for the avoidance of doubt, the sole remedy of MTC and the Participating Cities against Operator under this Agreement for Operator's failure to complete Phases I, II, III, IV or V by the Agreed Phase I Completion Date, the Agreed Phase II Completion Date, the Agreed Phase III Completion Date, the Agreed Phase IV Completion Date, and the Agreed Phase V Completion Date, respectively, is to reduce the Initial Term pursuant to Section 2.3, subject to the rights of the Recognized Lender.

3.6 Pilot Program. Attachment A sets forth the terms and conditions pursuant to which MTC and Operator have agreed that Operator will continue operation of the Pilot Program.

SECTION 4

SITING

4.1 General. The Coordination Agreement, together with the Siting Criteria, sets forth, among other matters, (a) the Siting Criteria and the Site selection process for determination and approval of locations of the Stations in each Participating City, and (b) the protocols and procedures for the submission materials by Operator to each Participating City for, and the issuance by the Participating City of, Site Plan approvals and permits to install the Equipment at each Station.

4.2 Delays in Approval: The following constitute delay ("Participating City Delay") for which Operator is entitled to an extension in the Agreed Site Permit Submission Dates and the Agreed Completion Dates:

4.2.1 Identification of Sites. If, notwithstanding fulfillment of Operator's obligations under this Agreement regarding community engagement, field work and outreach, Operator fails to identify, by a date that is not less than 2 months prior to the Agreed Site Permit Submission Date for a Phase, 75% of the Sites required for such Phase, such Sites being both viable and acceptable to the Participating Cities and the applicable communities, or Operator fails to identify, by a date that is not less than 1 month prior to such Agreed Site Permit Submission Date, the remaining 25% of the Sites required for such Phase, such Sites being both viable and acceptable to the Participating Cities and the applicable communities, then such Agreed Site Permit Submission Date shall be extended by any reasonably necessary additional period required by Operator to identify a sufficient number of viable and acceptable Sites for such Phase.

4.2.2 Issuance of Site Permits. If Operator timely submits complete applications for the Site Permits for any Phase by the applicable Agreed Site Permit Submission Date but the Participating Cities fail to issue Site Permits for 75% of the Stations by the date that is 3 months prior to the Scheduled Phase Completion Date for such Phase other than on account of errors or omissions by Operator or valid reasons for denial, then such failure shall constitute Participating City Delay and Operator shall have the right to delay submission of applications for Site Permits for the next following Phase until a reasonable period after the Participating Cities issue Site Permits for 75% of the Stations for such Phase.

4.2.3 Installation Scheduling Permits. If the period of time for the Participating Cities to issue Installation Scheduling Permits exceeds, on average, 7 days after final submission of the required materials by Operator, or if more than 25% of the Installation Scheduling Permits are issued 14 days or longer after final submission of the required materials, other than on account of errors or omissions by Operator or valid reasons for denial, then the Agreed Completion Dates shall be extended to reflect any reasonably necessary additional period required by Operator to complete the Phases.

SECTION 5

RESERVED

SECTION 6

IMPROVEMENTS, MAINTENANCE, REPAIR AND OPERATION

6.1 Operator shall establish and maintain during the Term prompt and efficient procedures for handling complaints from the public for which Operator receives a Notification. Such procedures shall be consistent with all applicable laws, rules and regulations and the provisions of this Section. Such procedures shall be set forth in writing and copies thereof shall be maintained at Operator's office and shall be available to the public and the Participating Cities upon request.

6.2 Operator will operate a primary call center that will answer calls in person 24 hours per day, 7 days per week. Operator shall conspicuously post a notice on each Station and each bicycle advising the general public that they may direct their complaints and comments to Operator's call center. Such call center shall have a full-time availability to handle calls in English, Spanish and Cantonese, whether by in-house staff or by utilization of a translation service.

6.3 Operator shall maintain written, accurate and complete records of all complaints, and those records shall be available to MTC through appropriate Software or, at MTC's reasonable advance request, in written form. Such records shall indicate: (i) the specific Equipment, including its identifying number and location at a specific point in time, for which the complaint was made; (ii) the type of complaint; (iii) the date and time of complaint; (iv) if the complaint is in written form (non-electronic) and the information is available, the name, address, and telephone number of the Person filing the complaint; (v) Operator's action to address the complaint; and (vi) to the extent applicable, the date of resolution of the complaint. All such records shall be retained by Operator throughout the Term. Within 7 business days following a request by MTC, Operator shall provide MTC with records of complaints by location or time period, and statistical reports by type of complaint, location of complaint, Station or Bicycle, and time of complaint.

6.4 Following the Effective Date, MTC may, at its option, request that Operator provide it with a full inventory of Bicycles, including numbers and dates of lease or purchase.

6.5 Operator may, without incurring any liquidated damages or causing a default hereunder, (a) shut down the Program or reduce the number of Bicycles and Stations deployed and/or operating in the Program Area for weather-related or other emergencies for the duration of the emergency in its reasonable discretion, (b) reduce the number of Bicycles and Stations deployed and/or operative in the Program Areas as needed to implement upgrades to the Functional Specifications, and (c) phase-out Kiosks when they have become obsolete on account of the availability and usage of mobile phone apps.

6.6 Operator shall incorporate Wayfinding Elements on each Station as directed and approved by MTC with input from the Participating Cites.

6.7 Nothing in this Agreement shall limit Operator's right to upgrade the Functional Specifications.

SECTION 7

ADVERTISING AND SPONSORSHIP

7.1 Operator is responsible for identifying Sponsors and developing branding for the Program tied to the Sponsors. In no event shall any Sponsor of Operator produce or sell alcohol products, tobacco products, firearms, other products banned by the Participating Cities or products otherwise deemed offensive to the general public. MTC, in consultation with the Participating Cities, shall provide written approval to Operator prior to Operator entering into a Sponsorship agreement with the Title Sponsor, which approval shall not to be unreasonably withheld or delayed. If MTC declines to give consent or approval referred to hereunder, it will so advise Operator and provide Operator an opportunity to discuss with MTC and an opportunity to attempt to meet MTC's objections.

7.2 Operator shall not install, or permit to be installed, on any Equipment, any Tobacco Advertising, Alcohol Advertising, Firearms Advertising or other Prohibited Advertising. Advertising on any Equipment, including electronic media, shall be consistent with guidelines adopted by each Participating City for outdoor advertising as set forth in this Agreement. Operator shall not place any Advertising or Sponsorship acknowledgment matter that is indecent, in obvious bad taste, or demonstrates a lack of respect for public morals or conduct. (The prohibitions and restrictions in this Section 7 and in Section 29 of the Coordination Agreement are referred to collectively as the "Advertising Restrictions".)

7.3 Operator shall comply with all applicable laws, rules and regulations in force as of the Effective Date and which may hereafter be adopted, to the extent not grandfathered under the law, with respect to Advertising and Sponsorship.

7.4 Neither MTC nor any Participating City shall have any liability or obligation with regard to any Advertising or Sponsorship that survives the termination or expiration of this Agreement, except MTC and the Participating Cities, at no cost to MTC or the Participating Cities, shall cooperate with the Recognized Lender to keep the Sponsorship agreement in effect while a replacement operator is being pursued and will continue to cooperate if a replacement operator is selected.

SECTION 8

REVENUE SHARING

8.1 Definitions.

8.1.1 "Contract Year" shall mean (a) the period commencing on the Agreed Phase I Completion Date and ending on December 31 of the calendar year in which the Agreed Phase I Completion Date falls, which period shall constitute Contract Year 1, and (b) each subsequent calendar year during the Term, the first of which is Contract Year 2

8.1.2 "Ridership Revenue" shall mean all revenues to the extent actually collected by Operator as determined on a GAAP basis as Program membership or user payments (including but not limited to annual, weekly and daily membership payments), and any other Program revenue generated through Bicycle ridership, net of sales taxes or other taxes imposed by law that Operator is obligated to collect and net of credit card fees netted out of amounts due to Operator by the credit company prior to payment to

Operator and other billing related charges treated by the party imposing such charges in a similar manner.

8.1.3 "Ridership Revenue Hurdle" shall mean $18,000,000 per calendar year, subject to CPI Adjustment. The Ridership Revenue Hurdle shall be prorated for any Contract Year that is not 365 days.

8.1.4 "Sponsorship Revenue" shall mean all revenues to the extent actually collected by Operator as determined on a GAAP basis as a result of Program advertising and sponsorships, including without limitation revenue generated in connection with (a) naming rights related to the Program and (b) Sponsorship or Advertising placements on Bicycles, Stations, Equipment, website, mobile applications or other physical or web-based materials, net of sales taxes or other taxes imposed by law that Operator is obligated to collect and net of credit card fees and other billing related charges.

8.1.5 "Sponsorship Revenue Hurdle" shall mean $7,000,000 per calendar year, subject to CPI Adjustment. The Sponsorship Revenue Hurdle shall be prorated for any Contract Year that is not 365 days.

8.2 Within 120 days following the end of each Contract Year during the Term, Operator shall:

8.2.1 Deliver to the MTC a schedule, certified by a senior officer of Operator, setting forth the Ridership Revenue and the Sponsorship Revenue for such Contract Year; and

8.2.2 Pay to MTC an amount equal to 5% of the excess of Ridership Revenue for such Contract Year over the Ridership Revenue Hurdle for such Contract Year, subject to Section 8.2.4.

8.2.3 Pay to MTC an amount equal to 5% of the excess of Sponsorship Revenue for such Contract Year over the Sponsorship Revenue Hurdle for such Contract Year, including all Sponsorship Revenue for the period between the Effective Date and Contract Year 1, provided that Operator may defer payment of any amount owed for Sponsorship Revenue for Contract Years 1 through 5 during the Term until Contract Years 6 through 10 during the Term, subject to Section 8.2.4. Operator shall pay any amounts so deferred in equal monthly instalments during Contract Years 6 through 10 during the Term. If the Term is reduced pursuant to Section 2.3, then Operator shall pay the amounts so deferred within 120 days following the expiration of this Agreement.

8.2.4 Notwithstanding anything to the contrary herein, if Participating City Delay results in an insufficient number of Site approvals for Operator to accommodate 500 Stations (being the minimum number of Stations identified in Section 3.4) by the Scheduled Phase V Completion Date plus 90 days (the "Scheduled Phase V Plus 90 Days Date"), then in lieu of MTC's share of Ridership Revenue and Sponsorship Revenue being determined in accordance with the 5% amount set forth in Sections 8.2.2 and 8.2.3, such percentage shall be reduced to the product of 5% and a fraction whose numerator is the number of Stations for which a Site approval has been issued by such date and whose denominator is 500, and such reduced amount shall apply retroactively and prospectively until Site approvals for an aggregate of 500 Stations have been issued.

Any amounts theretofore paid by Operator to MTC under this Section 8.2 in excess of such amount due to MTC shall be credited against amounts thereafter payable to MTC under this Section 8.2. Notwithstanding the foregoing, if at any time during the period commencing on the Scheduled Phase V Plus 90 Days Date and ending on the date on which Site approvals for an aggregate of 500 Stations have been issued (such period being the "Revenue Sharing Credit Period") the Ridership Revenue or the Sponsorship Revenue is less than the Ridership Revenue Hurdle or the Sponsorship Revenue Hurdle, respectively, then Operator shall be entitled to a credit against amounts thereafter payable to MTC under this Section 8.2 equal to the sum of (a) the product of (i) the amount by which the Ridership Revenue Hurdle for such period exceeds the Ridership Revenues during such period, and (ii) the amount by which the percentage above has been reduced from 5% in accordance with the reduction set forth on the first sentence of this paragraph, and (b) the product of (i) the amount by which the Sponsorship Revenue Hurdle for such period exceeds the Sponsorship Revenues during such period, and (ii) the amount by which the percentage above has been reduced from 5% in accordance with the reduction set forth on the first sentence of this paragraph. If the Revenue Sharing Credit Period is less than one year, then the calculations in the preceding sentence shall be pro-rated based on the duration of the Revenue Sharing Credit Period. If the Revenue Sharing Credit Period is longer than one year, then the calculations for any fractional period shall be similarly pro-rated.Any amount not paid to MTC when due under Section 8.2 shall accrue interest on the overdue amount at the Applicable Interest Rate in effect from time to time.

8.3 No acceptance of any payment due pursuant to Sections 8.2 shall be construed as an accord that the payment is the correct amount, nor shall such acceptance of payment be construed as a release of any claim that MTC may have for further or additional sums payable under this Agreement.

SECTION 9

PRICE SCHEDULES.

9.1 Operator agrees that the amount and terms of the fees it charges users of the Program shall be consistent with the provisions of this Section. Membership Fees and Initial Ride Periods shall be consistent with Section 9.2, the Annual Membership Fee for users eligible for the affordability subscription specified in Section 9.3.1 shall be as described in said Section 9.3.1, the maximum Bicycle usage charge shall be consistent with Section 9.5 and the fees for damaged, lost, stolen or otherwise unreturned Bicycles shall be consistent with Section 9.6 initially charged by Operator shall be consistent with this Section. A "Membership Fee" is an amount that entitles the purchaser of the membership (a "member", for the period of such purchased membership) to check out (as defined below) one or more Bicycle(s) at a time, for the length of time described below, provided that the member shall be charged a usage fee associated with the time period the Bicycle is checked out beyond the Initial Ride Period. A Bicycle is "checked out" for the period from the time it is removed from a Dock to the time it is returned to a Dock. A member may check out and return a Bicycle from or to any Dock at any Station in the Program, for an unlimited number of times, at any time during the period of the member's membership, with the usage fee applicable to each such checkout and return sequence being calculated separately (so, for example, a Regular Annual Member may, within the member's membership period, check out a Bicycle and return it within the first 30 minutes after checkout, and then subsequently check out a Bicycle

and return that Bicycle within the first 30 minutes after that checkout, without incurring any usage fee for either checkout period).

9.2 Membership Fees, New Ridership Programs/Arrangements, and Initial Ride Periods:

9.2.1 Operator shall offer an annual membership ("Annual Membership") for a fee (the "Annual Membership Fee") in an amount not to exceed the Annual Membership Fee Cap in effect from time to time. The Annual Membership Fee Cap shall be $149 for a one-year period, subject to increase on the first anniversary of the Effective Date and on each subsequent anniversary of the Effective Date by a percentage amount equal to the CPI increase for the trailing 4 calendar quarters preceding each such anniversary plus 2% (so, for example, if the CPI increase were 1% for the trailing four calendar quarters preceding a particular anniversary of the date hereof, the applicable permitted percentage increase in the Annual Membership Fee Cap as of that anniversary would be 3%). An Annual Member whose Annual Membership Fee is subject to the Annual Membership Fee Cap is sometimes referred to as a "Regular Annual Member" and the corresponding Annual Membership is the "Regular Annual Membership." The period of an Annual Membership shall run from the day the annual membership is activated until the first anniversary of the date on which the Annual Membership had been activated (but a membership purchased on February 29 shall expire on March 1 of the following year);

9.2.2 Annual Memberships may be paid in 12 equal monthly instalments at a price not greater than 120% of the Annual Membership Fee;

9.2.3 All memberships will include a free period of usage (the "Initial Ride Period"), which is the length of time at the beginning of each individual Trip to which additional usage fees will not be applied. For Regular Annual Memberships and affordability memberships, the Initial Ride Period is 30 Minutes. Usage fees will be applied to all Trips that exceed the Initial Ride Period; and

9.2.4 For monthly, weekly and daily memberships, and for usage of the Program by non-members, Operator will determine the applicable fees, usage fees, and periods of use for members beyond the Initial Ride Period in its sole discretion.

9.2.5 Nothing in the foregoing shall limit the right of Operator to offer premium memberships featuring an Initial Rider Period longer than 30 minutes for an Annual Membership Fee greater than $149.

9.3 Affordability Option:

9.3.1 Notwithstanding the permitted rate for a Regular Annual Membership set forth in Section 9.2.1 (as adjusted pursuant to Section 9.11), Operator shall charge those eligible for an "affordability subscription" no more than $60 per annum (excluding sales tax) as the Annual Membership Fee, or $5.00 per month for a 12-month membership. Such rate is subject to annual CPI increase on the first anniversary of the Effective Date and on each subsequent anniversary of the Effective Date for the trailing 4 calendar quarters preceding each such anniversary plus 2%.

9.3.2 Members of households enrolled in the Utility Lifeline Programs (also known as California Alternative Rates for Energy (CARE)) available in the MTC Area are eligible for affordability memberships. At least 30 days prior to the completion of Phase I, Operator shall propose, for MTC's review and approval, procedures for verifying enrollment in CARE. In San Francisco, those who meet Muni Lifeline income requirements as determined by the City of San Francisco's Human Services Agency are also eligible for the affordability membership. Upon mutual agreement of the Parties, eligibility may expand to include other categories of persons so long as the eligibility is determined by third parties.

9.3.3 Members enrolling through the affordability program shall be entitled to the same rights and privileges as Regular Annual Members.

9.3.4 The usage fees for affordability members shall not exceed the rate charged to Regular Annual Members.

9.4 The checkout period for the purposes of calculating usage fees shall always commence with the time a Bicycle is actually removed from a Dock, and it shall not be based on the time of insertion of a payment or identification card.

9.5 The maximum Bicycle usage charge initially charged with respect to any member shall be $100 per 24 hour period, not including charges for damaged, lost, stolen or otherwise unreturned Bicycles.

9.6 Fees for damaged, lost, stolen or otherwise unreturned Bicycles initially charged shall be (i) $1,200, if not returned, or (ii) if returned, the sum of all direct costs of the repair, including all labor and parts, as determined by Operator in its reasonable discretion, plus a 10% administrative fee; provided, however, that the fees charged to affordability members for unreturned or damaged Bicycles shall be not more than 33% of the fees set forth in the preceding clauses (i) and (ii). Operator shall waive such fees for an any member who is not at fault for the unreturned or damaged Bicycle.

9.7 Operator shall at all times post on all Stations and on Operator's website a complete and up-to-date fee description that sets forth each and every current membership and usage fee offered by Operator, the methods of purchasing memberships and paying fees, available discounts on such fees, the applicability and terms of such discounts and, to the extent applicable, how to apply for or qualify for such discounts, and fees associated with damaged, lost, stolen or otherwise unreturned Bicycles. Operator shall furnish written copies of such material to the public upon request.

9.8 Operator shall accept credit card and debit card payments online and at all Stations but in the case of debit cards only those that have a Visa or Mastercard logo on them. Operator may employ such other methods of payment as it may determine.

9.9 All required state sales and use taxes with respect to membership and usage fees shall be collected and paid by Operator, as required by applicable law.

9.10 Operator shall be permitted to create Program pricing discount programs, which may be targeted in connection with marketing and outreach efforts, and in connection with Sponsorship or

Advertising programs, to expand or enable Program use among different communities or for other lawful purposes.

9.11 At any time and from time to time, Operator shall have the right:

9.11.1 To adjust the amount of the Annual Membership Fee specified in Section 9.2.1 downwards at any time and upwards on each anniversary of the Effective Date by an amount not to exceed the Annual Membership Fee Cap then in effect;

9.11.2 To adjust the amount of the maximum Bicycle usage charge specified in Section 9.5 and the fees for damaged, lost, stolen or otherwise unreturned Bicycles specified in Section 9.6 downwards at any time and upwards on each anniversary of the Effective Date by a percentage amount equal to the CPI increase for the trailing 4 calendar quarters preceding each such anniversary plus 2% (so, for example, if the CPI increase were 1% for the trailing 4 calendar quarters preceding a particular anniversary of the date hereof, the applicable permitted percentage increase in the Annual Membership Fee Cap as of that anniversary would be 3%);

9.11.3 Any upwards adjustment permitted under this Section 9.11 and not made as of any anniversary date may be made at any time after such anniversary date without derogation of Operator's right to make any other upwards adjustments permitted under this Section 9.11;

9.11.4 To adjust in its sole discretion all other fees, time periods and charges specified hereunder other than those fees, time periods and charges specified in Section 9.2.1 and Section 9.3; and

9.11.5 To adjust upward the duration of the Initial Ride Period.

9.12 MTC shall have the right to review and approve the initial Program membership waiver and any material changes thereto, which approval shall not be unreasonably withheld.

9.13 At any time and from time to time, Operator may, in its sole discretion, offer discounts and promotions for the Program.

SECTION 10

MERCHANDISING, LICENSING AND INTELLECTUAL PROPERTY

10.1 [INTENTIONALLY OMITTED]

10.2 Subject to the limitations, terms and conditions as may be imposed by the Sponsor in the Sponsor's discretion, upon request by MTC and the Participating Cities, Operator shall seek to obtain for MTC and the Participating Cities, or shall assist MTC and the Participating Cities to obtain, for the benefit of MTC, the Participating Cities and their respective business partners and sublicensees, non-exclusive licenses to use during the term of any Sponsorship agreement the Sponsor trademarks, logos, servicemarks, and other similar intellectual property identified for use in connection with the Sponsorship agreement (individually and/or collectively the "Sponsor Property") to market and promote the Program under the name or title for the Program adopted by Operator for the Program (the "Program Name"),

which name shall be subject to the consent of MTC and the Participating Cities, as applicable, to the extent the Program Name consists of MTC/Participating City Property; provided, however, the use of any Sponsor Property by MTC or the Participating Cities shall comply with reasonable quality control measures required by the Sponsorship agreement. To the extent that the Program Name incorporates MTC/Participating City Property, MTC and/or one or more of the Participating Cities, as the case may be, shall own the portion of any Program Name that consists of MTC/Participating City Property. For further clarity, with respect to obtaining the aforementioned licenses, Operator is not the agent of MTC or the Participating Cities and has no authority to enter into agreements on behalf of or otherwise bind MTC or the Participating Cities.

10.3 Subject to the limitations, terms and conditions as may be imposed by the Sponsor in the Sponsor's discretion to the extent the Operator Property incorporates any Sponsor Property, including, without limitation, the Sponsor's consent, Operator hereby grants to MTC and the Participating Cities and their respective business partners and sublicensees a non-exclusive, royalty-free license to use any trademarks, logos, servicemarks, and other similar intellectual property developed by Operator (individually and/or collectively the "Operator Property") required in connection with marketing and promoting the Program during the Term.

10.4 MTC hereby grants to Operator the exclusive right to use during the Term the name "Bay Area Bike Share" and variations thereof (individually and/or collectively "Bay Area Bike Share"). Such right shall terminate upon expiration or termination of this Agreement, but subject to the rights of the Recognized Lender.

10.5 Notwithstanding the foregoing Sections, the Recognized Lender shall not be precluded from collateralizing any intellectual property of Operator.

SECTION 11

RESERVED

11.1 [INTENTIONALLY OMITTED]

11.2 [INTENTIONALLY OMITTED]

11.3 [INTENTIONALLY OMITTED]

SECTION 12

RESERVED

12.1 [INTENTIONALLY OMITTED]

12.2 [INTENTIONALLY OMITTED]

12.3 [INTENTIONALLY OMITTED]

SECTION 13

MARKETING

13.1 Operator shall create a marketing plan for the Program, subject to approval by MTC, which approval will not be withheld so long as the plan is not in bad taste, offensive, obscene or derogatory to MTC or any Participating City. Following such approval, Operator shall market the Program in accordance with such plan. The marketing budget and the allocation of such budget shall be determined by Operator, in its sole discretion. The marketing plan shall include, at a minimum, demonstrations, events, social media outreach, programs, partnerships and other efforts to educate residents of the Participating Cities about bike share, to launch the Program and to grow membership and ridership in a financially sustainable manner.

13.2 A portion of Operator's marketing plan will include marketing and outreach to low-income communities, disadvantaged communities, and communities for which English is not the native language, shall be subject to the approval of MTC and the Participating Cities, shall comply with local requirements regarding language access for each Participating City, shall comply with local standards for decency and not be offensive to the general public. MTC retains the non-exclusive right to conduct marketing and outreach to low-income neighborhoods and limited English proficiency neighborhoods. Operator's marketing activities shall not violate the Advertising Restrictions.

13.3 [INTENTIONALLY OMITTED]

SECTION 14

WEBSITE

14.1 Operator shall create and maintain a Program website, subject to the MTC's prior review. The Program's website shall include, at a minimum, all of the following elements:

14.1.1 Eligibility requirements;

14.1.2 Subscription information and rate schedules;

14.1.3 Payment and subscription processing information;

14.1.4 Method for subscribers to update required information;

14.1.5 Subscriber agreement and acceptance of terms;

14.1.6 Map of network of Stations and real-time availability of Bicycles at each Station;

14.1.7 Frequently Asked Questions;

14.1.8 Safety requirements and information (including malfunctions and crashes);

14.1.9 News and operational updates;

14.1.10 Special events notices;

14.1.11 Links to other bike programs and events;

14.1.12 Call center contact information;

14.1.13 Real-time information on Bicycles and Docks for app developers (e.g. JSON Feed);

14.1.14 System-wide anonymized historical data;

14.1.15 For individual members, that member's ridership history;

14.1.16 For individual members, that member's payment history; and

14.1.17 Operator's privacy policy; and

14.1.18 Translation capability to Cantonese, Spanish, and Vietnamese at a minimum.

14.2 Operator shall keep all information on the Program's website updated.

SECTION 15

SECURITY FUND

15.1 Prior to installation by Operator of the first new Station, Operator shall deposit with MTC a security deposit ("Security Fund") in the amount of $250,000.00. Interest on the Security Fund shall accrue in an interest bearing bank account for the benefit of Operator, and all such interest shall be paid annually to Operator on each anniversary of the Effective Date.

15.2 Operator shall maintain $250,000.00 in the Security Fund at all times during the Term and for 90 days after the end of the Term. Upon expiration of the foregoing period, the remaining balance of the Security Fund shall be disbursed to Operator, unless prior to the expiration of such 90-day period MTC commences litigation against Operator, the underlying claim is covered by the Security Fund, and such litigation is not finally resolved prior to the expiration of such period, in which case an amount of the Security Fund equal to the amount of the outstanding claim shall be retained and only until such claim is resolved. Any amounts remaining in the Security Fund that are not being retained in accordance with this paragraph shall be promptly returned to Operator, and MTC shall fully and timely cooperate with the payment of the Security Fund to Operator.

15.3 The Security Fund shall serve as security for the faithful performance by Operator of all terms, conditions and obligations of this Agreement and shall be available for withdrawal under the following circumstances:

15.3.1 If Operator breaches a payment obligation under this Agreement and fails to remedy such breach within 10 business days following notice by MTC to Operator (a "Payment Breach"), other than the payment of liquidated damages under Section 2.6.3, which is addressed in Section 15.3.5. In the event of a Payment Breach, MTC shall be entitled to withdraw from the Security Fund the amount of the money that is due and payable as set forth in such notice, unless within such 10 business day period Operator initiates the Dispute Resolution Process by giving MTC notice stating that it contests the occurrence of such Payment Breach or the amount thereof. This Section 15.3.1 does not cover a Default under Section 18.1.1 (which is covered in Section 15.3.4).

15.3.2 If Operator commits a non-monetary breach under this Agreement that results in damage to any municipal structure or property of MTC or a Participating City, Operator fails to repair such damage within 30 days following notice by MTC to Operator and in response thereto MTC or the applicable Participating City undertakes such repair (a "Property Damage Breach"), in which event MTC shall be entitled to withdraw from the Security Fund the costs incurred by MTC or the applicable Participating City to undertake such repair, provided such costs are reasonable. Notwithstanding MTC's withdrawal from the Security Fund for a Property Damage Breach, Operator shall have the right to contest such Property Damage Breach or the costs incurred by initiating the Dispute Resolution Contest, provided that Operator gives MTC notice thereof not later than 30 days after such withdrawal.

15.3.3 If Operator fails to undertake any other non-monetary obligation under this Agreement within the period required under this Agreement and in response thereto MTC or a Participating City exercises self-help to perform such obligation pursuant to a provision of this Agreement that expressly permits self-help or with respect to which self-help is a reasonable response (e.g., a failure of Operator to timely complete a Station De-Installation; or failure of Operator to remove advertising that violates Advertising Restrictions within 24 hours of notice to Operator) (a "Self-Help Situation"), in which event MTC shall be entitled to withdraw from the Security Fund the costs incurred by MTC or the applicable Participating City to undertake such self-help, provided such costs are reasonable. Notwithstanding MTC's withdrawal from the Security Fund for a Self-Help Situation, Operator shall have the right to contest such Self-Help Situation or the costs incurred by initiating the Dispute Resolution Contest, provided that Operator gives MTC notice thereof not later than 30 days after such withdrawal. This Section 15.3.3 does not cover a breach of Section 16 or matters covered by Section 15.3.2 or 15.3.4.

15.3.4 Operator commits a Default, in which event MTC shall be entitled to withdraw the actual, direct damages arising from such Default unless prior to the expiration of the applicable cure period set forth in Section 18.1 Operator initiates the Dispute Resolution Process by giving MTC notice stating that it contests the occurrence of such Defaults. This Section 15.3.4 does not cover matters covered by Section 15.3.1, 15.3.2, 15.3.3 or 15.3.5.

15.3.5 Operator fails to pay any amount of liquidated damages, and interest, if any due to MTC pursuant to Section 2.6.3 within the time periods provided therein.

15.4 Each notice by MTC to Operator under Section 15.3 of a failure, breach or Default, as applicable, shall provide specific and detailed information about Operator's non-compliance, together with the amount MTC is intending to withdraw and detailed support for such amount, if then known. Each notice from Operator to MTC under Section 15.3 to contest the occurrence of such non-compliance or the amount to be withdrawn, which notice shall commence the Dispute Resolution Process, shall provide specific and detailed information that rebuts or challenges the information contained in the corresponding notice provided by MTC. Within 2 days following any withdrawal from the Security Fund, MTC shall notify Operator of the date and amount of the withdrawal, together with detailed support for the amount of the withdrawal.

15.5 MTC may not seek recourse against the Security Fund for any cost or damages for which MTC has previously been compensated by Operator or from the Security Fund. The withdrawal of the amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of Operator.

15.6 If a withdrawal from the Security Fund is made, Operator shall be required to replenish the Security Fund by the amount withdrawn within 30 days after receipt of notice of such withdrawal. Notwithstanding the foregoing, if Operator is contesting in good faith MTC's right to withdraw in accordance with the Dispute Resolution Process, then Operator shall not be obligated to replenish on account of such withdrawal until 30 days after such dispute is finally resolved in accordance with the Dispute Resolution Process. Interest on the amount required to be replenished shall accrue at the Applicable Interest Rate in effect from time to time commencing on such 30th date.

15.7 The obligation to perform and the liability of Operator pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Security Fund required by this Section 15.

SECTION 16

INDEMNITY

16.1 Indemnification. Operator shall defend, indemnify and save harmless MTC, the Participating Cities, and their respective commissioners, officers, agencies, departments, agents, and employees (each, an "Indemnified Party"; and collectively, "Indemnified Parties") from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys' fees and other costs of defense) (collectively, with Claims, "Liabilities"), resulting from, or arising out of, the operation of the Program and the provision of Services, whether such operation or Services is performed or provided by Operator or by Operator's subcontractors or any other person acting for or on behalf of Operator.

16.2 Notwithstanding the foregoing, the following shall be excluded from Operator's indemnification and defense obligations contained in the preceding sentence: any Liabilities to the extent resulting from, or arising out of, (i) the gross negligence or willful misconduct of any Indemnified Party, (ii) Operator complying with the written directives or written requirements of a Participating City, if the Operator has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of any Station in relation to the street or sidewalk on which such Station is located or to which it adjoins or (B) a Participating City's Street Treatment Requirements, or (iii) the condition of any public property outside of the perimeter of a Station and not otherwise controlled by Operator (and expressly excluding from this clause (iii) the condition of the Bicycles or other Equipment). If any Claim against Operator includes claims that are covered by clause (iii) of the preceding sentence or claims contesting a Participating City's authority to issue a permit for a Station, then each Party shall be responsible for its own defense against such claims.

16.3 Upon receipt by any Indemnified Party of actual notice a Claim to which such Indemnified Party is entitled to indemnification in accordance with Sections 16.1 and 16.2, such Indemnified Party shall give prompt notice of such Claim to Operator. Operator shall assume and prosecute the defense of such Claim at the sole cost and expense of Operator. Operator may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.

SECTION 17

INSURANCE

17.1 Minimum Coverages. The insurance requirements specified in this section shall cover Operator's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Operator authorizes to work under this Agreement (hereinafter referred to as "Agents"). Operator shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

17.2 Operator shall include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the Agent. To the extent that an Agent does not procure and maintain such insurance coverage, Operator shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Operator's indemnity obligation under Section 16 as to itself or any of its Agents in the absence of such coverage.

17.3 In the event Operator or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Operator's or its Agent's insurance, as the case may be, be primary without right of contribution from MTC.

17.3.1 Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than $1,000,000 per employee for injury by disease and $1,000,000 for injury for each accident, and any and all other coverage of Operator's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Operator is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

17.3.2 Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Operator and Operator's officers, agents, and employees and with limits of liability which shall not be less than $1,000,000 combined single limit per occurrence with a general aggregate liability of not less than $2,000,000, and Personal & Advertising Injury liability with a limit of not less than $1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. In addition, the entities listed in Section 17.12 and their respective commissioners, directors, officers, representatives, agents and employees are also to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.

17.3.3 Business Automobile Insurance for all automobiles owned (if any), used or maintained by Operator and Operator's officers, agents and employees, including but not limited to

owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than $1,000,000 combined single limit per accident.

17.3.4 Umbrella Insurance in the amount of $4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

17.3.5 Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of $5,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. The policy shall provide coverage for all work performed by Operator and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Operator. Operator may delegate the obligation to maintain Errors and Omissions Professional Liability Insurance to an Agent, but the failure of such Agent to maintain such insurance shall not relieve Operator of its obligation to maintain such insurance.

17.3.6 Property Insurance. Property Insurance covering Operator's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

17.4 Acceptable Insurers. All policies will be issued by insurers qualified to do business in California and with a Best's Rating of A-VIII or better.

17.5 Self-Insurance. Operator's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

17.6 Deductibles and Retentions. Operator shall be responsible for payment of any deductible or retention on Operator's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

17.7 In the event that MTC is entitled to coverage as an additional insured under any Operator insurance policy that contains a deductible or self-insured retention, Operator shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Operator, subconsultant, subcontractor, or any of their employees, officers or directors, even if Operator or subconsultant is not a named defendant in the lawsuit.

17.8 Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Operator shall:

17.8.1 Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;

17.8.2 Maintain and provide evidence of similar insurance for at least three (3) years following the expiration or termination of this Agreement, including the requirement of adding all additional insureds; and

17.8.3 If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the commencement of any work hereunder, Operator shall purchase "extended reporting" coverage for a minimum of three (3) years after the expiration or termination of this Agreement.

17.9 Failure to Maintain Insurance. All insurance specified above shall remain in force until the expiration or termination of this Agreement. Operator must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

17.10 Certificates of Insurance. Prior to commencement of any work hereunder, Operator shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

17.11 Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Operator are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Operator pursuant hereto, including, but not limited to, liability assumed pursuant to Section 16 .

17.12 Additional Insureds: The following entities are to be named as Additional Insureds under applicable sections of this Section 17 and as Indemnified Parties pursuant to Section 16.

17.12.1 Metropolitan Transportation Commission (MTC)

17.12.2 City of Berkeley

17.12.3 City of Oakland

17.12.4 City of San Francisco

17.12.5 City of Emeryville

17.12.6 City of San Jose

SECTION 18

TERMINATION AND DEFAULT

18.1 The following events shall be a Default under this Agreement:

18.1.1 A breach by Operator of a payment obligation under Section 8 [Revenue Sharing] and the failure to remedy such breach within 10 business days after receipt by Operator from the Executive Director of written notice of such breach;

18.1.2 A breach by Operator of a material obligation under Section 7 of this Agreement or Section 29 of the Coordination Agreement [Advertising and Sponsorship]; Section 9 [Price Schedules], Section 10 of this Agreement or Section 30 of the Coordination Agreement [Merchandising, Licensing and Intellectual Property]; any separate licensing agreement between Operator (or its affiliate) and MTC and/or a Participating City; Section 31 of the Coordination Agreement [Marketing, Promotions and Reporting]; Section 14 [Website]; Section 15 [Security Fund]; Section 16 [Indemnity]; Section 20 [Employment and Purchasing]; and Section 21 [Inspection and Audit], and the failure to remedy such breach within 10 business days after receipt by Operator from the Executive Director of written notice of such breach;

18.1.3 A breach by Operator of Section 22 [Assignment];

18.1.4 A breach by Operation of Section 17 [Insurance] and the failure to remedy such breach within 5 business days after receipt by Operator from the Executive Director of written notice of such breach;

18.1.5 (a) Operator's chronic Program-wide failures to abide by its obligations under Sections 2, 3, 4 and 6 of this Agreement and Section 22 of the Coordination Agreement, which failures materially and adversely affect the non-pecuniary benefits to be derived by MTC and the Participating Cities under this Agreement, (b) the failure of Operator to submit to MTC and the Participating Cities, within 15 business days following receipt by Operator from the Executive Director of written notice of such failures, a credible business plan for Operator to proactively and comprehensively address Operator's deficiencies, which plan shall be subject to approval by MTC in consultation with the relevant Participating Cities, and (c) the failure of Operator to take concrete steps to implement such response plan within 30 days of MTC's approval of such plan;

18.1.6 If the Security Fund balance falls below $50,000 and Operator does not replenish the full amount of the Security Fund within 10 days following notice thereof from the Executive Director. However, if Operator is then contesting one or more prior withdrawals from the Security Fund in accordance with the Dispute Resolution Process and the aggregate amount in dispute exceeds $200,000, then such $50,000 may only be used pursuant to Section 15.3.2 or Section 15.3.3 until such dispute has been finally resolved;

18.1.7 The commencement of any proceeding by Operator under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of Operator for the benefit of creditors;

18.1.8 The commencement of any involuntary proceeding against Operator under the Bankruptcy Code that has not been stayed or dismissed within 120 days of its commencement;

18.1.9 If Operator or any of its officers, directors or senior management has been convicted after the Effective Date under any state or federal law of any of the matters listed in clauses (a) through (e) of this Section 18.1.9: (x) in connection with a matter that is not directly or indirectly connected with this Agreement or the Program and, in the case of the conviction of an individual, such individual has not been terminated by Operator within 30 days after Operator receives notice of such conviction, or (y) in connection with a matter that is directly or indirectly connected with this Agreement or the Program. The matters referred to above as being listed in clauses (a) through (e) are the following:

(a) A criminal offense that is incident to obtaining or attempting to obtain or to performing a public or private contract;

(b) Fraud, embezzlement, theft, bribery, forgery, falsification, destruction of records, or receiving stolen property;

(c) A criminal violation of any state or federal antitrust law;

(d) Violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract; or

(e) Conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above.

18.1.10 If Operator or any of its officers, directors, partners, managers, 5 percent or greater owners, principals, or other employees or persons substantially involved in its activities (a) are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract, or (b) intentionally makes or causes to be made any false, deceptive, or fraudulent material statement in any bid, proposal, or application for government work, and the individual responsible for such act, omission or material misstatement, if an employee, has not been terminated by Operator, or if not an employee, the relationship therewith has not been terminated, within 30 days after such judgment is entered into in the case of clause (a) above or after a judgment is entered into that any such material statement was intentionally false, deceptive or fraudulent in the case of clause (b).

18.2 If a Default occurs, then, subject to Sections 3.5 and 18.3, MTC shall, at MTC's option, have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. MTC's remedies include, but are not limited to:

18.2.1 Cause a withdrawal from the Security Fund, pursuant to Section 15, subject to any right of Operator to contest such withdrawal pursuant to the Dispute Resolution Process;

18.2.2 Seek actual, direct damages only from Operator for such Default (and notwithstanding anything to the contrary herein, in no event shall MTC be entitled to special, consequential or punitive damages under this Agreement);

18.2.3 Seek to restrain by injunction the continuation of such Default;

18.2.4 Purchase the Equipment at its then fair market value, subject to the rights of the Recognized Lender not to permit the sale of the Equipment to MTC;

18.2.5 Pursue any other remedy permitted by law or in equity or in this Agreement; or

18.2.6 Terminate this Agreement, subject to the rights of the Recognized Lender.

18.3 Nothing in this Agreement precludes Operator from contesting the existence of such Default or the breach, failure or other occurrence underlying a Default in accordance with this Section 18.3 and the Dispute Resolution Process. If Operator seeks to contest any of the foregoing, Operator must notify MTC prior to the expiration of the applicable cure period set forth in Section 18.1. Following such notice, the dispute shall be addressed and resolved in accordance with the Dispute Resolution Process. Pending final resolution of such dispute, Operator may continue operating the Program in accordance with the terms of this Agreement, and any exercise by MTC of its remedies hereunder shall be stayed until final resolution of such dispute in accordance with the Dispute Resolution Process. In addition, if such final resolution is against Operator, then MTC shall have the right to terminate this Agreement only if such Default is not cured within the period otherwise provided in the definition of Default to remedy such default, provided that for this purpose the applicable remedy period shall commence upon the final resolution of such dispute.

18.4 Subject to the rights of the Recognized Lender (if any and if applicable), upon termination of this Agreement on account of a Default by Operator, reduction of Initial Term under Section 2.3, or expiration of the Term, Operator shall comply with the following close-out procedures:

18.4.1 Turning over to MTC or its designees copies of all books, records, documents and materials specifically relating to this Agreement and reasonably requested by MTC;

18.4.2 Submitting to MTC, within 120 days, a final statement and report relating to this Agreement that has been reviewed by a certified public accountant or a licensed public accountant;

18.4.3 Providing reasonable assistance to MTC during the transition; and

18.4.4 Continuing to operate the Program in accordance with the terms of this Agreement and to effect an efficient and orderly transition of responsibility with respect to the operation of the Program until the earlier of (i) 180 days after such termination and (ii) the selection of a replacement operator for the Program and such replacement operator commencing operation of the Program; provided, however, that Operator shall have the right to cease operating prior thereto if Operator experiences an operating shortfall during the transition period and MTC fails to compensate Operator for such shortfall.

18.5 Subject to the rights of the Recognized Lender (if any and if applicable), upon termination of this Agreement on account of a Default by Operator, reduction of the Initial Term under Section 2.3, or expiration of the Term, MTC shall have the option to:

18.5.1 require Operator to remove all Equipment at its sole cost and expense;

18.5.2 require Operator to assign to MTC (or a third-party operator designated by MTC) the Program Property and Operator's rights under the Escrow Agreement, subject to satisfaction of the Program Property Assignment Conditions; or

18.5.3 take over operation of the Program, and in connection therewith assign to MTC the Program Property and Operator's rights under the Escrow Agreement, subject to satisfaction of the Program Property Assignment Conditions.

18.6 Not less than 6 months prior to the expiration of the Term, MTC shall elect either (a) to purchase (or have a designee purchase) the Program Property at the expiration of the Term or (b) to require Operator to remove the Equipment upon expiration of the Term. If MTC elects clause (a), then Operator and MTC shall negotiate a purchase price for the Program Property based on the fair market value of the Program Property as an installed system, and at the expiration of the Term, Operator shall assign to MTC (or its designee) the Program Property and Operator's rights under the Escrow Agreement, subject to satisfaction of the Program Property Assignment Conditions. If MTC elects clause (b), then within 90 days of the expiration of the Term, Operator shall remove all Equipment.

18.7 In the event of a breach of this Agreement by any Party or by any Participating City, the other Party or parties shall act in good faith and exercise commercially reasonable efforts to mitigate any damages or losses that result from such breach. Notwithstanding the foregoing, nothing contained in this Section shall limit in any respect the rights of MTC and the Participating Cities to indemnification pursuant to Section 16.

18.8 No Party shall be liable (including, but not limited to, for payment of liquidated damages) for failure to perform any of its obligations, covenants, or conditions contained in this Agreement, to the extent such failure is caused by the occurrence of an Event of Force Majeure, and such Party's obligation to perform shall be extended for a reasonable period of time, commensurate with the nature of the event causing the delay, and no breach or default shall exist or liquidated damages be payable with respect to such extended period.

SECTION 19

RIGHTS OF RECOGNIZED LENDER

19.1 Operator shall have the right to collaterally assign its rights under this Agreement to the Recognized Lender as collateral for the Recognized Loan. Operator or the Recognized Lender shall notify MTC of the existence of the Recognized Loan and the collateral assignment of this Agreement and shall notify MTC of the name and address of the Recognized Lender. In no event shall there be more than one Recognized Lender at any one time.

19.2 MTC shall give the Recognized Lender, at the address of such Recognized Lender and in the manner set forth in Section 25.2 a copy of each notice of default at the same time as it gives notice of default to Operator. A notice of default to Operator shall not be effective unless a copy thereof is concurrently given to the Recognized Lender.

19.3 The Recognized Lender shall, in the case of any Default by Operator under Section 18.1.1, have a period of 10 days more than is given Operator, to remedy such Default prior to MTC terminating this Agreement on account of such Default, and in the case of a Default by Operator under Section 18.1.2 or 18.1.5, shall have a period of 10 days more than is given Operator to remedy such Default prior to MTC terminating this Agreement on account of such Default, provided that if such Default is not one that can be cured with the payment of money and if the Recognized Lender needs to exercise its remedies and obtain access to its collateral prior to being able to effectuate the cure of any such default, such additional 10-day period shall, so long as the Recognized Lender is diligently and continuously pursuing such cure and has provided written notice to MTC of its intent to cure such Default, be extended for such additional time as is necessary for the Recognized Lender to obtain such access and commence and effectuate such cure.

19.4 If this Agreement terminates on account of a Default, then Operator shall give any Recognized Lender prompt notice thereof. Within 60 days following receipt of such notice, the Recognized Lender may elect to require MTC to enter into a new agreement with a replacement operator designated by the Recognized Lender for the remaining Term of this Agreement, considered as if the Term had not ended on account of such Default and on substantially the same terms as contained in this Agreement (the "Replacement Agreement"). Within 120 days of such notice, the Recognized Lender shall identify a replacement operator and credible business plan for such replacement operator to proactively and comprehensively address Operator's deficiencies. Such replacement operator and business plan shall be subject to the approval of MTC, which approval shall not be unreasonably withheld or delayed. If MTC approves such replacement operator and business plan, then MTC and such replacement operator shall enter into the Replacement Agreement. If MTC and the Recognized Lender are unable to agree on the replacement operator or the business plan within 150 days following such notice, or if the Recognized Lender does not elect to require MTC to enter into a Replacement Agreement within 60 days following receipt of such notice, then MTC shall have the right to exercise its other remedies under Section 18.5 without regard to the rights of the Recognized Lender.

19.5 If pursuant to Section 2.3, MTC exercises its right to reduce the Initial Term by 5 years, then MTC shall give the Recognized Lender notice thereof. Within 60 days following receipt of such notice, the Recognized Lender may elect to require MTC to enter into a new agreement with a replacement operator designated by the Recognized Lender commencing on the expiration of the Term as reduced pursuant to Section 2.3 for the remaining Term of this Agreement, considered as if the Term had not been reduced pursuant to Section 2.3 and on substantially the same terms as contained in this Agreement. Within 120 days of such notice, the Recognized Lender shall identify a replacement operator and credible business plan for such replacement operator to proactively and comprehensively address Operator's deficiencies. Such replacement operator and business plan shall be subject to the approval of MTC, which approval shall not be unreasonably withheld or delayed. If MTC approves such replacement operator and business plan, then MTC and such replacement operator shall enter into such replacement agreement. If MTC and the Recognized Lender are unable to agree on the replacement operator or the business plan within 150 days following such notice, or if the Recognized Lender does not elect to require

MTC to enter into a replacement agreement within 60 days following receipt of such notice, then the Recognized Lender shall have no further rights arising on account of the reduced Term.

19.6 MTC and Operator shall not amend or modify any provision of this Agreement if the effect thereof is to reduce the Term, reduce Operator's rights or increase Operator's obligations in any material respect, or weaken any of the Recognized Lender's express rights under this Agreement, including the Recognized Lender's rights under this Section 19, in each case without the prior written consent of the Recognized Lender. MTC shall not accept a surrender of this Agreement by Operator, nor shall MTC and Operator agree to a termination of this Agreement, without the prior written consent of the Recognized Lender.

19.7 If Operator defaults on the Recognized Loan and as a result thereof the Recognized Lender has a right under the applicable loan documents to foreclose on its Program-related collateral, then without the consent of MTC or any Participating City, the Recognized Lender (or a subsidiary thereof) and/or a third party may succeed to the interest of Operator under this Agreement, so long as (a) the party succeeding to the interest of Operator under this Agreement, or a third party manager designated by such successor, has the experience and expertise to operate a large-scale bikeshare program, (b) such successor succeeds to Operator's interest in the Bicycles, other Equipment and other collateral, (c) such successor has substantially the same legal right to obtain replacement Bicycles and other Equipment, to utilize the Bicycle patents and other Equipment patents, and to utilize the required Software that Operator has as of the Effective Date; and (d) agrees to comply with all terms of this Agreement.

19.8 The terms and provisions of this Section 19 and the rights of the Recognized Lender hereunder shall survive a termination of this Agreement pursuant to a Default or the expiration of this Agreement pursuant to Section 2.3.

SECTION 20

EMPLOYMENT

20.1 Operator will pay wages to all of its employees that equal or exceed the living wage in effect as of the date of this agreement under State law or applicable local law.

20.2 Operator shall use reasonable efforts, at its own cost and expense, to conduct outreach for employment purposes to residents of the Participating Cities for the opportunities to be created by the construction, installation, operation, management, administration, marketing and maintenance of the Program. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate Participating City agencies responsible for encouraging employment of Participating City residents. Operator shall ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, Operator. For San Francisco-based entry level job openings with Operator, Operator shall post such openings through San Francisco's First Source Hiring Program and offer the City of San Francisco the first opportunity to refer qualified candidates to Operator for such openings.

20.3 Operator shall not refuse to hire, train, or employ, bar or discharge from employment or discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, but not limited to, any promotion, upgrading, demotion, downgrading, transfer, layoff, or termination, on the basis of race, creed, color, national origin, sex, age,

handicap, marital status, affectional preference or sexual orientation, in accordance with applicable law. Operator agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the Term.

20.4 Operator shall select, train and employ such number of employees as is necessary or appropriate for Operator to satisfy its responsibilities hereunder. Operator shall be the sole authority to hire, terminate and discipline any and all personnel employed by Operator.

SECTION 21

INSPECTION AND AUDIT RIGHTS

21.1 MTC shall have the right at reasonable times and upon reasonable notice to inspect the installation, operation, and maintenance of the Program and its associated elements.

21.2 Operator shall open and maintain a facility in each of San Francisco, San Jose and East Bay to support Program operations.

21.3 Operator shall comply with the reporting requirements set forth in Appendix C.

21.4 Throughout the Term, Operator shall maintain complete and accurate books of account and records of the business, ownership and operations of Operator with respect to the Program.

21.5 MTC has the right upon written demand with reasonable notice to Operator under the circumstances, to inspect, examine or audit during normal business hours all documents, records or other information pertaining to Ridership Revenue and Sponsorship Revenue or any other data collected and maintained by Operator to comply with the reporting requirements of Appendix C. All such documents shall be made available at one of Operator's local offices. All such documents shall be retained by Operator for a minimum of 6 years following the expiration or termination of this Agreement.

SECTION 22
RESTRICTION AGAINST ASSIGNMENT

22.1 Operator shall not sell, assign or otherwise transfer all or any portion of its interest in this Agreement without the prior written consent of MTC, except as otherwise provided in Sections 19.1 and 19.7. Operator shall notify MTC of any proposed sale, assignment or transfer of this Agreement, in writing, at least 60 days prior to the proposed effective date of such sale, assignment or transfer. In the event that any such sale, assignment or transfer of this Agreement is approved by MTC, the purchaser, assignee or transferee shall agree to be bound by all the covenants of this Agreement required of Operator to the extent arising from and after the effective date of such sale, assignment or transfer. Any purported sale, assignment or transfer without MTC's approval as required above shall be void and of no force or effect. Nothing in the foregoing shall limit (a) the right of Bikeshare Holdings to sell, assign or otherwise transfer interests in Operator, (b) the right of direct or indirect owners of equity interests in Bikeshare Holdings to sell, assign or otherwise transfer such interests, (c) the right of Bikeshare Holdings to sell, assign or transfer all or substantially all of its assets, including its interest in this Agreement, so long as Operator or, in the case of clause (c), its successor, has the experience and expertise to operate a large-scale bikeshare program and has substantially the same legal right to obtain replacement Bicycles and other Equipment, to utilize the Bicycle patents and other Equipment patents, and to utilize the required

Software that Operator has as of the Effective Date. In addition, nothing in the foregoing shall prohibit a merger, reorganization, recapitalization, consolidation or similar transaction involving Bikeshare Holdings or any direct or indirect holder of equity interests in Bikeshare Holdings, so long as the conditions set forth in the preceding sentence are satisfied.

SECTION 23
DISPUTE RESOLUTION PROCESS

23.1 In the event of a dispute between the Parties, including, without limitation, a dispute regarding liquidation damages pursuant to Section 2.6.3, a dispute regarding the Security Fund, a dispute regarding a breach of this Agreement or regarding the occurrence or continued existence of a Default, such dispute shall be addressed and resolved in accordance with the following (the "Dispute Resolution Process"):

23.1.1 MTC's Program Manager assigned to the Program and Operator's General Manager of the Program, or their respective delegates, shall meet, within 10 days after receipt by one Party of notification from the other Party of such dispute, to negotiate in good faith in order to try to resolve such dispute (the date of the first such meeting, or the expiration of such 10-day period if the meeting is not timely held, being the "Initial Meeting Date"). A KPI Contest Notice shall constitute appropriate notification for a dispute regarding a right to liquidated damages under Section 2.6.3, and a rejection of a KPI Change Request shall constitute appropriate notification for a dispute under Section 2.6.2(a). If such persons fail to resolve such dispute within 15 days after the Initial Meeting Date, then the Executive Director of MTC and the President of Bikeshare Holdings shall meet promptly and negotiate in good faith in order to resolve such dispute. If such persons fail to resolve such dispute within 30 business days after the Initial Meeting Date, then such dispute shall be subject to mediation under Section 23.1.2. As used in this Section 23.2.1, a meeting may be held in person, by conference call or by video conference. By agreement of the Parties, any of the deadlines set forth in this Section 23.1.1 may be extended or shortened. The process described in this Section 23.1.1 shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

23.1.2 Unless the Parties otherwise agree, mediation shall be administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Rules, or similar service. A request for mediation shall be made in writing, delivered to the other Party and filed with the applicable mediation service. Either Party may submit such request. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in San Francisco. The Parties shall be represented by individuals of their choosing. Agreements reached in mediation shall be binding on the Parties and enforceable in a State or Federal Court of competent jurisdiction sitting in San Francisco County. The mediation process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

23.1.3 For the avoidance of doubt, the Parties shall comply with any settlement agreement regarding any dispute that is the subject of a settlement agreement.

23.1.4 As used in this Agreement, "final resolution" of a dispute or a dispute being "finally resolved" means that (a) the Parties have entered into a settlement agreement to resolve such dispute, or (b) if either Party has initiated a judicial proceeding to contest such dispute, that a final-non-appealable order of a court of competent jurisdiction has been issued for such dispute.

SECTION 24
REPRESENTATIONS AND WARRANTIES OF OPERATOR

24.1 In addition to the representations, warranties, and covenants of Operator set forth elsewhere herein, Operator represents and warrants to MTC and the Participating Cities as of the Effective Date:

24.1.1 Operator is a limited liability company, validly existing and in good standing under the laws of the State of Delaware, and it is duly authorized to do business in the State of California;

24.1.2 The sole owner of Operator is Bikeshare Holdings; and

24.1.3 Operator has all requisite power and authority to own or lease its properties and assets, to conduct its business as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.

24.1.4 The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of Operator.

24.1.5 This Agreement has been duly executed and delivered by Operator and constitute the valid and binding obligations of Operator, and are enforceable in accordance with their respective terms, subject to equitable legal principles and the laws governing creditors' rights. Operator has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of Operator to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

24.1.6 Neither the execution and delivery of this Agreement by Operator nor the performance of its obligations contemplated hereby will:

(a) Conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (i) any governing document of Operator or to Operator's knowledge, any agreement among the owners of Operator, or (ii) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which Operator is a party or by which it (or any of its properties or assets) is subject or bound;

(b) Result in the creation of, or give any party the right to create, any material lien, charge, encumbrance, or security interest upon the property and assets of Operator; or

(c) Terminate, breach or cause a default under any provision or term of any contract, arrangement, agreement, license or commitment to which Operator is a party.

24.1.7 Warranty of Services. In the performance of its services, Operator represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of those with special expertise in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

24.1.8 Neither Operator nor any of its officers, directors or senior management has committed or been convicted (where such conviction is a final, non-appealable judgment or the time to appeal such judgment has passed) of any criminal offense, including, but not limited to, bribery or fraud, arising out of or in connection with (a) this Agreement, (b) the award of this Agreement, or (c) any act to be taken pursuant to this Agreement by MTC or its officers, employees or agents, or (d) the business activities and services to be undertaken or provided pursuant to this Agreement. Operator shall promptly terminate its relationship with any office, director or senior management of Operator who is convicted (where such conviction is a final, non-appealable judgment or the time to appeal such judgment has passed) of any criminal offense, including, but not limited to, bribery or fraud, arising out of or in connection with: (i) this Agreement, (ii) the award of this Agreement, (iii) any act to be taken pursuant to this Agreement by MTC or its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by Operator pursuant to this Agreement.

24.2 All representations and warranties contained in this Agreement shall survive the Term.

SECTION 25
MISCELLANEOUS

25.1 Operator, MTC and the Participating Cites acknowledge and agree that the nature of the Program requires extensive and ongoing long-term coordination among the Parties and the Participating Cities. Accordingly, no later than 10 business days after the Effective Date, Operator, MTC and, in accordance with the Coordination Agreement, each Participating City, shall designate an employee as its designated representative (the "Designated Representative") to be the principal contact of such party in its dealings with the other parties in connection with the implementation of the Program. Any party may change its Designated Representative in its sole discretion so long as notice of such change is given to the other parties.

25.2 All notices, demands or requests under this Agreement shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, by electronic mail (email), by overnight mail, or by personal delivery, in each case to the address listed below, or to such other location or person as any party may designate in writing from time to time. Any notice, demand or

request under this Agreement intended for the Participating Cities shall be sent to MTC. Any notice, demand or request shall be deemed given on the date of receipt or rejection by the intended recipient.

If to MTC:

Metropolitan Transportation Commission
Joseph P. Bort MetroCenter,
Oakland, CA 94607-470
Attention: Executive Director
Email: [_____]
Attention: General Counsel:
Email:[_____]
Attention: Designated Representative
Email:[_____]

If to Operator:

Bay Area Motivate, LLC,
5202 Third Avenue
Brooklyn, New York 11220
Attention: Chief Executive Officer:
Telephone: [_____]
Email:[_____]
Attention: General Counsel
Telephone: [_____]
Email: [_____]
Attention: Designated Representative
Telephone: [_____]
Email: [_____]

Notwithstanding the foregoing, any notice required to be given to Operator pursuant to Section 18 for which a cure period is 10 business days or less or any other notice that requires action to be taken within 10 business days or less must be given by email, personal delivery or overnight mail service.

25.3 If Operator receives either a notice of default or a notice of noncompliance from a Sponsor, a lender or a material supplier, it shall notify MTC and supply a copy of the notice of noncompliance within 5 days of receipt.

25.4 Upon request by Operator, MTC shall execute, acknowledge and deliver to Operator (or directly to a designated third party) an estoppel certificate in a form reasonably acceptable to the Parties. MTC shall sign, acknowledge, and return such estoppel certificate within 15 days after request, even if Operator is in default. Any estoppel certificate shall bind MTC to the extent set forth therein.

25.5 This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. The Recognized Lender shall be a third party beneficiary of Section 19.

25.6 No failure on the part of MTC or Operator to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of any party under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by a party at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by such party at any other time. In order for any waiver of any party to be effective, it must be in a writing signed by such party. The failure of MTC to take any action regarding a default by Operator shall not be deemed or construed to constitute a waiver of, or otherwise affect, the right of MTC to take any action permitted by this Agreement at any other time regarding such default.

25.7 The clauses and provisions of this Agreement are intended to be severable. If any clause or provision is declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect, but only so long as the essential terms underlying this Agreement are not undermined. If, however, the essential terms underlying this Agreement are undermined as a result of any clause or provision being declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, and such declaration is not stayed within 30 days by a court pending resolution of a legal challenge thereto or an appeal thereof, the adversely affected party shall notify the other parties in writing of such declaration of invalidity and the effect of such declaration of invalidity and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such declaration of invalidity. If the parties cannot come to an agreement modifying this Agreement within 120 days (which 120 day period shall be tolled during any stay contemplated above) of such notice, then this Agreement shall terminate with such consequences as would ensue if it terminated pursuant to Section 18, except Operator shall not be liable for any damages.

25.8 If any applicable federal, state, or local law or any regulation or order is passed or issued, or any existing applicable federal, state, or local law or regulation or order is changed (or any judicial interpretation thereof is developed or changed) in any way which undermines the essential terms underlying this Agreement, the adversely affected party shall notify the other parties in writing of such change and the effect of such change and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such change, subject to any necessary approvals of MTC and the Participating Cities.

25.9 The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby," "herein," "hereof," "hereinafter," "hereunder" and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; and, the terms "shall," "must," and "will" are mandatory, not merely directive. The term "day" means a calendar day, unless otherwise stated herein to be a "business day." The term year means any period of 365 days, unless otherwise stated herein to be a "calendar year." All references to any gender shall be deemed to include both the male and the female, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires. References

in this Agreement to Sections, Appendices and Exhibits are to Sections, Appendices and Exhibits of this Agreement.

25.10 Operator shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of MTC or any Participating City.

25.11 This Agreement shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of California, irrespective of conflict of laws principles, as applicable to contracts entered into and to be performed entirely within the State of California.

25.12 Subject to the requirement that disputes be addressed in accordance with the Dispute Resolution Process, each hereby irrevocably submits to the jurisdiction of any State or federal court sitting in San Francisco County, California, over any suit, action or proceeding arising out of or relating to this Agreement. Each party hereby irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to such venue as being an inconvenient forum.

25.13 Should any party employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding. The "prevailing party" means the party in whose favor a judgment, decree, or final order is rendered.

25.14 No provision of this Agreement nor any Appendix or Exhibit shall be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the Parties and approved as required by applicable law.

25.15 This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

25.16 Time is of the essence with respect to the obligations of the parties under this Agreement and with respect to the deadlines for submitting notices, including, without limitation, a KPI Failure Notice, a KPI Contest Notice or any notice under Section 15.3 or 18.1.

25.17 If Operator publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, then MTC shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use the publication, or, in the event that only a portion of the publication deals with an aspect of performance under this Agreement, such portion of the publication.

IN WITNESS WHEREOF, MTC and Operator have executed this Agreement as of the Effective Date.

METROPOLITAN TRANSPORTATION COMMISSION

By:_____
Name:
Title:

BAY AREA MOTIVATE, LLC

By: _____
Name
Title

Appendix A

Key Performance Indicators and Liquidated Damages

This Appendix A sets forth the Key Performance Indicators and the liquidated damages assessed against Operator for failing to comply with the Key Performance Indicators. Key Performance Indicators are subject to extension for Events of Force Majeure. Liquidated damages are subject to the annual limitation of 4% of Ridership Revenues.

KPI #	Title	Definition	Measurement Tool(s)[1]	Liquidated Damages
1	**Station Cleaning and Inspection**	Station Cleaning for each Station must occur 2 times per month-- one time between the first and fifteenth days of the month, and one time between the sixteenth and last days of the month. Litter removal needs to occur for on street Stations at least once per week. Additional litter removal to occur on an as-needed basis.	Operator records/ databases	$75 for each Station that is not cleaned according to schedule.
2	**Graffiti Removal**	(a) Except as required by clause (b) below, Operator shall remove conspicuous graffiti within 72 hours after Notification. (b) Operator shall remove racist and hate graffiti within 4 hours after Notification.	Operator records/databases	(a) $50 for each 24-hour period (or part thereof) beyond 72 hours. (b) $50 for each 4-hour period (or part thereof) beyond 4 hours.
3	**Litter Removal**	Operator shall remove conspicuous accumulations of litter from Stations within 24 hours after Notification.	Operator records/databases	$50 for each 4-hour period (or part thereof) beyond 24 hours.
4	**Bicycle Maintenance**	Every Bicycle in the Bicycle Fleet shall receive a Bicycle Maintenance check at least once every two calendar months.	Operator records/ databases	$25 for each Bicycle that is not subject to a Bicycle Maintenance in any 2-calendar month period.

[1] Sources of information used to assess compliance with these service levels may include, but are not limited to, those listed in the "Measurement Tool(s)" column.

KPI #	Title	Definition	Measurement Tool(s)[1]	Liquidated Damages
5	**Station Deactivation and De-Installation**	As directed by MTC or a Participating City, Operator must perform: (i) Station Deactivation(s); (ii) Station De-Installation(s); (iii) Station Re-Installation(s); (iv) Station Adjustment(s). (i) Operator will Deactivate a Station within 24 hours after a request from a Participating City, except in instances where the continued presence/activity of the station has been determined to pose a threat to public safety. (ii) Operator will complete a De-Installation of a Station within 72 hours after a request from a Participating City, except in instances where the continued presence/activity of the station has been determined to pose a threat to public safety. (iii, iv) Deactivated Stations must be reactivated within 24 hours of direction from a Participating City. De-Installed or Adjusted Stations must be reinstalled or Readjusted to their original configurations within 72 hours of direction from a Participating City. Notwithstanding the foregoing, the KPIs for De-Installation and reinstallations are limited to 20 in any 72-hour period. The time permitted for larger scale De-Installation and reinstallation will be subject to agreement between Operator and MTC.	Electronic communications	(i) $75 for each hour of delay (or part thereof) beyond 24 hours for Deactivation. (ii) $75 for each hour of delay (or part thereof) beyond 72 hours for De-Installation. (iii, iv) $50 for each hour of delay (or part thereof) beyond 24 hours for reactivation; $50 for each hour of delay (or part thereof) beyond 72 hours for reinstallation or Readjustment.

KPI #	Title	Definition	Measurement Tool(s)[1]	Liquidated Damages
6	**Program Functionality**	The Program must be operational 100% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), so that, at a minimum, all Program users can dock and undock Bicycles at all times, excluding (i) scheduled downtime, and (ii) any period when the Computer Hardware for the Program and/or Software is, and remains, damaged through Hacking. Program Functionality does not apply to hardware malfunctions at individual Stations or to individual Stations that are not Operable Stations.	Software System	If in any month the Program is operational less than 100% of the time, then $300 for every hour (or part thereof) that the Program is not operational.
7	**Station Operability**	Stations, in the aggregate, must be Operable Stations 99% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), excluding (i) during scheduled downtime, and (ii) any period when a Station is not an Operable Station because the Kiosk or other Equipment located at the Station has been damaged by third-parties. Calculated by taking the sum of the number of hours that each Station was an Operable Station during a month, dividing that sum by the product of the total number of hours in the month and the number of Stations that month. Station Operability does not apply during any period in which the entire Program system is down.	Operator records/ databases	If in any month the Stations are not Operable Stations 99% of the time, then $100 for every hour that Stations are not Operable Stations below the 99% threshold.

KPI #	Title	Definition	Measurement Tool(s)[1]	Liquidated Damages
8	**Website Operations**	The Program website must be operational 100% of the time every year (i.e., every hour of every day, 24 hours per day, 7 days per week, measured annually) excluding (i) scheduled downtime, and (ii) any period when the Computer Hardware for the Program and/or Software is, and remains, damaged through Hacking.	Operator records/ databases	If in any year the website is not operational 100% of the time, then $50 for every hour each year that the website is not operational.
9	**Telephone Answering Time**	Not less than 80% of telephone calls to Operator's call center each month must be answered by a person within 90 seconds or less.	Operator records/ databases	$100 for every percentage point below 80% that telephone calls are not answered in 90 seconds or less in any month.
10	**Email Response Time**	Not less than 95% of emails to Operator's public information email address must be answered within 1 business day.	Operator records/ databases	$100 for every percentage point below 95% that emails are not answered within 1 business day or less in any month.
11	**Bicycle Availability**	This Bicycle Availability requirement is met if the monthly average Bicycle Fleet Level, recorded once each Day of the month between the hours of 11:00 AM and 3:00 PM, is not less than 90% of the Program Fleet. Damages are calculated as the sum of Bicycles under the threshold for each Day that the recorded Bicycle Fleet Level is less than the required Bicycle Fleet Level.	Software System	$15 for each Bicycle that is under the 90% threshold each month.

KPI #	Title	Definition	Measurement Tool(s)[1]	Liquidated Damages
12	**Rebalancing**	No station Cluster shall be completely empty of available bikes for use or completely lacking of empty, operable docks for more than 10 consecutive minutes during Peak Hours (i.e., 6:00 am to 10:00 pm). The Rebalancing KPI set forth above is an interim KPI. During the Assessment Period (as defined in Section 2.6.2(b) of the Agreement), the Rebalancing KPI will be assessed and reformulated, and a new Rebalancing KPI will be fully implemented immediately following the Assessment Period.	Software System/ Operator records/ databases	$1.00 for each minute that a Cluster Outage occurs beyond 10 consecutive minutes during Peak Hours. Liquidated Damages do not apply to the Stations installed as part of a Phase for the first 6 months after the completion of such Phase.

Appendix B

Cost of Equipment

PILOT CITIES:

- Cost to upgrade AD Equipment: $12.50 per Dock per month, subject to PPI Adjustment.

- Cost to purchase new Equipment: As set forth in the New Equipment Price Schedule below. The prices set forth in such schedule are subject to PPI Adjustment.

- Cost to install new Equipment (including site planning and drawings): $4,000 per Station, subject to CPI Adjustment

- Cost to operate and maintain the Equipment: $100 per Dock per month, subject to CPI Adjustment, and subject to the following reductions:

  (i) Cost to operate and maintain will be reduced to $75 per Dock per month, subject to CPI Adjustment, during any 12-month period in which there is an average of 1 Trip per Bicycle per day for the entire Bicycle Fleet in such Pilot City (subject to Bicycle Availability)

  (ii) Cost to operate and maintain will be reduced to $50 per Dock per month, subject to CPI Adjustment, during any 12-month period in which there is an average of 1.5 Trips per Bicycle per day for the entire Bicycle Fleet in such Pilot City (subject to Bicycle Availability)

  (iii) Cost is reduced to $0 per dock, adjusted by CPI, if an average of 3 rides per bike per day citywide occurs for a 12 month period

OTHER ELIGIBLE CITIES:

- Cost to purchase new Equipment: As set forth in the New Equipment Price Schedule below. The prices set forth in such schedule are subject to PPI Adjustment.

- Cost to install new Equipment (including site planning and drawings): $4,000 per Station, subject to CPI Adjustment

- Cost to operate and maintain the Equipment: $130 per Dock per month, subject to CPI Adjustment, and subject to the following reductions:

  (i) Cost to operate and maintain will be reduced to $97.50 per Dock per month, subject to CPI Adjustment, during any 12-month period in which there is an average of 1 Trip per Bicycle per day for the entire Bicycle Fleet in such Eligible City (subject to Bicycle Availability)

(ii) Cost to operate and maintain will be reduced to $65 per Dock per month, subject to CPI Adjustment, during any 12-month period in which there is an average of 1.5 Trips per Bicycle per day for the entire Bicycle Fleet in such Eligible City (subject to Bicycle Availability)

(iii) Cost to operate and maintain will be reduced to $0 per Dock per month, subject to CPI Adjustment, during any 12-month period in which there is an average of 3.0 Trips per Bicycle per day for the entire Bicycle Fleet in such Eligible City (subject to Bicycle Availability)

- If Operator contracts with a private property owner to locate a publicly-accessible Station on private property in the Eligible City, then the cost to operate and maintain the Equipment will be a matter for agreement between Operator and the private property owner.

New Equipment Price Schedule

Station Size (No. of Bicycles)	No. of Docks	Cost (Excluding Sales Tax)
8	15	$ 47,166.98
10	19	$ 55,503.56
12	23	$ 63,840.15
14	27	$ 72,176.74
16	31	$ 80,513.33
18	35	$ 88,849.92
20	39	$ 97,186.51

Appendix C

Reporting Requirements

MTC shall have real-time, read-only access to data as specified in the Functional Specifications.

Operator shall deliver a monthly report, by the 25th day of each month, to MTC, with all of the data described below, and in a form that is acceptable to, and approved by, MTC for the Program. Except for financial information, the data shall reflect all relevant facts as they existed with respect to the immediately preceding calendar month (e.g., the June report would reflect the non-financial data for May), and the reports shall provide cumulative calendar year-to-date totals for each category (as may be applicable). For all financial information, the data shall reflect all relevant facts as they existed with respect to the calendar month that immediately precedes the immediately preceding calendar month (e.g., the June report would reflect the financial data for April), and the reports shall provide cumulative calendar year-to-date totals for each category (as may be applicable). No more frequently than once every six months, Operator may request a meeting with MTC to assess the effectiveness of these Reporting Requirements; upon mutual agreement, the Reporting Requirements below may be adjusted.

1) Membership:

- YTD membership counts at the end of the reporting month, by membership type and Participating City;
- Number of new members by type and Participating City, who signed up during the reporting month, by day and month; and
- Number of cancellations and expirations of registered members, by type and Participating City, during the reporting month.

2) Ridership:

- "Trip" shall mean the use of a Bicycle from one Station to another Station or back to the initial Station;
- Trips per Day, per Participating City and member type, for the entire Program; and
- Total Trips per month, and YTD per Station, Participating City, and member type, for the entire Program.

3) Environmental Impact:

- Total and average calories burned per Day/month, by Participating City for the entire Program, based on calculation using total and average Trip durations; and
- Carbon offset per month, by Participating City and for the entire Program, based on calculation using total hours of usage.

4) Rebalancing Operations:

- Number of Bicycles rebalanced per Day;
- Bicycles on the street per Day per Participating City;
- List of full and empty instances (Station, start time, end time, and date) in excess of 10 consecutive minutes between 6:00 AM and 10:00 PM;
- Count of full and empty instances per Station and Participating City by Day and month in excess of 10 consecutive minutes between 6:00 AM and 10:00 PM;
- Breakdown of full and empty instances by duration in excess of 10 consecutive minutes between 6:00 AM and 10:00 PM;
- List of full and empty instances (Station, start time, end time, and date) between 6:00 AM and 10:00 PM at "priority" Stations (to the extent "priority" Stations have been established);
- Count of full and empty instances per Station and Participating City by Day and month between 6:00 AM and 10:00 PM at "priority" Stations (to the extent "priority" Stations have been established);
- Breakdown of full and empty instances by duration between 6:00 AM and 10:00 PM at "priority" stations (to the extent "priority" stations have been established); and
- Percentage of time Stations are normal, full, or empty.

5) Station Maintenance Operations:

- List of Stations cleaned and dates of each cleaning;
- Number of active Stations;
- List of all Station malfunctions (Station, start and end date and time, and event); and
- Percentage of time Stations were available to provide rentals for monthly and annual members by Station and for the entire Program.

6) Bicycle Maintenance Operations:

- Count of Bicycles checked per month;
- Count of Bicycles repaired per month;
- List of Bicycles by unique ID number not checked per month.

7) Incident Reporting:

- List of all incidents (crash, vandalism, theft, and police action) with dates and summary of outcomes.

8) Customer Service Reporting:

- Number of calls and emails, with total and broken down by classification;
- Average time to answer call;
- Average time of call;
- Number of refunds and amount given per month; and
- Upon call center software availability, number of calls of different types of issues, and average length of call.

9) Customer Outreach:

- Web site analytics.

10) Financial Summary:

- Fees assessed to bike share users due to lost or damaged bicycles;
- Revenue generated from subscriptions, by subscription type;
- Revenue generated from usage fees, by subscription type; and
- Revenue generated from other sources, including Advertising and Sponsorships.

11) Compliance with KPIs:

- Recorded Bicycle Fleet Level for each day as recorded between the hours of 11:00 AM and 3:00 PM.

Appendix D

Functional Specifications

Functional Specification

Software

- **Billing**
  - **Product requirements**
    - Annual and casual billing
    - Usage charges billing
    - Discounts
    - Refunds
    - Administrative and stolen bike charges
    - Automatic renewal of accounts
    - Opt-in/Opt-out ability for automatic renewal
    - Allow Annual Members to use Clipper Card to access Bicycles in lieu of key fob[2]
  - **Automatic emails to customers**
    - Ability to edit text in emails to customers
    - **Automatic emails in the following instances:**
      - Upon successful renewal
      - Upon signup
      - Upon failed monthly payment
      - Upon successful monthly payment
      - Upon credit card change
      - Upon credit card expiration
      - Upon account renewal needed (manual billing)
      - Upon upcoming automatic account renewal (automatic billing)
      - Upon successfully account renewal
      - Upon failed account renewal
      - Upon successful bike return (user configurable)
      - Upon missing bike (user and system configurable)
      - Upon incurrence of overage fees
      - Upon system shut down
- **PCI Compliance**
  - PCI Compliance of Bike Share Operator and System
- **Remote functionality**
  - Ability to shut down system (prevent bikes from being rented)
  - Ability to lock down bikes (with visual indicator)
  - Ability to shut down stations
  - Ability to reboot remotely (when connected)
- **Operational Dashboards (The following dashboards should be available at a minimum)**

[2]To be achieved by the later of 20 months after the Effective Date and completion of Phase IV.

Subscriptions

Number of casual users by subscription type

Number of members by subscription type

Customer rental activity

Number of open rentals and duration of rental

Number of trips and rentals completed by casual and registered members

Real-Time Dashboards

Station status (total, working, out of order, locked, disconnected)

Station occupancy (current and recent history of station bike/dock occupancy)

Docking point status (total, locked, error, empty, bike docked)

Bike status (docked, in rental, defective, other)

Private data feed

MTC to have access to analytical/reporting databases provided by bikeshare system.

Public data feed

All public data feeds should cover the following at a minimum:

Station Name

Station ID

Station Status (locked/unlocked)

Latitude

Longitude

# of total docking points

# of available docking points

# of inoperable docks (w/ and w/o bikes)

# of available bikes

Last communication time with server

Excludes test/warehouse station

Product support and redundancy

Features for product support include

System redundancy

Real-time database backups

Development and QA will be done separate from the production environment

Software escrow

A third-party software escrow with the latest major software release must be maintained at all times

Hardware

Docking mechanism

Subscriber can unlock a bike (e.g., via a valid key or card)

Locking mechanism that opens within configurable number of seconds

Locking mechanism that closes immediately with moderate docking force

Defaults to unlocked/open when bike is not present

Functional user lock-down capability ("wrench button") with permanent visual

	indicator
	Visual and audible indication of successful, failed, or in-progress transaction
Bike	
	Step through design
	Hold someone up to 240 pounds
	Can lock and unlock securely
	Bell
	Front and rear flashing lights when bike is moving; stay illuminated for 60 seconds after bike stops
	Reflective sidewalls on tires
	Within range, an infinitely adjustable seat height with ergonomic lever/tension adjustment and high-contrast height markings
	Carrier not susceptible to trash accumulation
	Wheels greater than or equal to 26" in diameter
	Fenders for front and rear wheels
	Front and rear hand brakes
	Multiple speed drivetrain
	Scratch- and graffiti-resistant frame finish
	Reflectors on pedals, spokes, and front and rear of bike
	Rubber tread on pedals
	Room for safety messaging on handlebar and front cockpit
	Tamper-resistant hardware (including hidden cables and custom wrench fittings)
	Chain guard
Kiosk station	
	Short-term user can unlock one or multiple bikes (e.g., via valid ride code or key).
	Casual users can use single credit card to rent up to 4 bikes
	Hibernation stage
	Vandal resistant, replaceable screens
	Nearby station functionality
	Multiple languages

ATTACHMENT A

AGREEMENT TO CONTINUE PILOT BIKE SHARE PROGRAM

by and between

BAY AREA MOTIVATE, LLC

and

METROPOLITAN TRANSPORTATION COMMISSION

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ATTACHMENT A

AGREEMENT TO CONTINUE PILOT BIKE SHARE PROGRAM

THIS AGREEMENT TO CONTINUE THE PILOT BIKE SHARE PROGRAM (this "Continuation Agreement"), has an effective date (the "Effective Date") that is the same as the effective date of the BAY AREA BIKE SHARE PROGRAM AGREEMENT, to which this Continuation Agreement is attached (the "Program Agreement"), by and between the METROPOLITAN TRANSPORTATION COMMISSION, a California public agency established pursuant California Government Code § 66500 et seq., having an office at 101 Eighth Street, Oakland, California ("MTC"), and BAY AREA MOTIVATE, LLC, a Delaware limited liability company, having any office at 5202 Third Avenue, Brooklyn, New York 11220, as Operator of the Bay Area Bike Share Program ("Operator").

RECITALS

WHEREAS, Alta Bicycle Share, Inc., an Oregon corporation ("Alta"), and Bay Area Air Quality Management District, a California special district (the "Air District"), entered into a Bike Share Program Agreement having an effective date of February 6, 2013 (the "Pilot Program Agreement"), pursuant to which Operator operated a pilot bike sharing program (the "Pilot Program") in the cities of San Jose, Palo Alto, Mountain View, Redwood City and San Francisco (each, a "Pilot City" and collectively, the "Pilot Cities");

WHEREAS, on the date hereof, (a) the Air District and Motivate International, Inc., formerly known as Alta ("Motivate"), terminated the Pilot Program Agreement, (b) the Air District and MTC agreed to the conveyance of all of the Air District's right, title and interest in and to the tangible and intangible property acquired or developed in connection with the Pilot Program from the Air District to MTC, and (c) MTC and Operator agreed to the conveyance of all of MTC's right, title and interest in and to the tangible property acquired or developed in connection with the Pilot Program (the "Pilot Program Property") from MTC to Operator ;

WHEREAS, the Parties have agreed that Operator will continue to operate the Pilot Program in the Pilot Cities using the Pilot Program Property; and

WHEREAS, capitalized terms not otherwise defined when they first appear in this Continuation Agreement are defined in Article XI.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Continuation Agreement, and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

ARTICLE I
PURCHASE OF PILOT PROGRAM PROPERTY; SERVICES; TERM

1.1 Purchase of Pilot Program Property. On the Effective Date, Operator shall purchase the Pilot Program Property for the purchase price agreed to among Operator, MTC and

the Air District, and Operator shall remit payment of the purchase price to MTC not later than the 15th day after the Effective Date.

1.2 Services. Operator shall, during the Term (as defined in Section 1.3), operate and maintain in the Pilot Cities a bike share system that was originally established under the Pilot Program Agreement (the "System"). Operator shall (a) utilize the Sites being used as of the Effective Date from the Pilot Program as well as the Bicycles, Docks, Technical Platforms, Map Frames, Terminals and other Equipment existing as of the Effective Date from the Pilot Program, and Operator shall not be obligated to purchase any Equipment, new or otherwise, that was not Pilot Program Property; (b) subject to Events of Force Majeure, provide the specific services set forth in this Continuation Agreement; (c) provide all technical expertise and qualified personnel to operate the System safely and competently; and (d) correct defective or non-conforming services. All services shall be performed in compliance with this Continuation Agreement and shall be carried out in strict compliance with all applicable federal, state and local laws and regulations.

1.3 Term. This Continuation Agreement shall commence on the Effective Date and shall end (a) for Mountain View, Palo Alto and Redwood City, on June 30, 2016, and (b) for San Francisco and San Jose, upon installation of 75% of the Phase I Stations located in San Francisco and San Jose. Notwithstanding the foregoing, if MTC terminates the Program Agreement pursuant to the second to last sentence of Section 3.4.1 of the Program Agreement, then this Continuation Agreement shall terminate at the same time the Program Agreement terminates, and Sections 5.1D, 5.5 and 5.6 shall apply. The bike share program to be implemented under the Program Agreement is referred to as the "BABS Program."

ARTICLE II
REVENUES; USER FEES; AND OPERATING EXPENSES

2.1 Revenues. Operator shall be entitled to collect and retain all System Operating Revenues.

2.2 User Fees. From the Effective Date to June 30, 2016, user fees shall be consistent with the fee schedule set forth in Attachment A-2. After June 30, 2016, Operator shall have the right to institute the fee schedule set forth in Attachment A-3.

2.3 Operating Expenses.

2.3.1 San Francisco and San Jose. Subject to Section 2.3.3, Operator shall be responsible for paying the expenses of operating and maintaining the System in San Francisco and San Jose.

2.3.2 Mountain View, Palo Alto and Redwood City. Subject to Section 2.3.3, from the Effective Date through December 31, 2015, Operator shall be responsible for paying the expenses of operating and maintaining the System in Mountain View, Palo Alto and Redwood City. From January 1, 2016 to the end of the Term, MTC shall pay to Operator $100 per Dock per month for Mountain View, Palo Alto and Redwood City to cover Operating Expenses in those cities.

2.3.3 MTC Payment. Subject to the last sentence of this paragraph, MTC shall cover 50% of Operator's (and Motivate's) Operating Losses for the period commencing August 29, 2015 and ending on the earlier of the Effective Date and December 31, 2015 (the "Covered Period"). Within 30 days after the end of the Covered Period, Operator shall send MTC a statement setting forth Operator's (or Motivate's) Operating Losses, if any, for the Covered Period accompanied by reasonable back-up. Notwithstanding the existence of Operator's (or Motivate's) Operating Losses for any particular month, MTC's obligation under this Section 2.3.3. shall apply only to Operator's (and Motivate's) cumulative Operating Losses over the entire Covered Period. MTC shall pay Operator for any such cumulative Operating Losses within 30 days following Operator's submission of its statement for the Covered Period. MTC's payment obligation under this paragraph is capped at $100,000.

2.4 Taxes, Dues, and Fees. Operator shall pay all applicable federal, state, and local taxes assessed against, arising out of, and collected from the service operation, including sales, use, license, and/or privilege taxes. Operator shall at all times maintain records evidencing revenue and the taxes collected as are required to substantiate the correctness of the tax returns filed.

2.5 No Tax Exemption. No provision of this Continuation Agreement shall be construed to provide Operator or any of its subcontractors with an exemption, exclusion, deferral, offset or other relief from any assessment, tax, levy, or penalty which is now or which may be hereafter authorized by law.

2.6 Covenant Against Contingent Fees. Operator warrants that it has not employed or retained any company or person, other than a bona fide employee working for Operator, to solicit or secure this Continuation Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Continuation Agreement. For breach or violation of this warranty, MTC shall have the right to annul this Continuation Agreement without liability, or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

2.7 Liquidated Damages. Subject to Events of Force Majeure, the failure of Operator to achieve the service levels described in Section 3 of Attachment A-1 will result in liquidated damages but only if such failure relates to a service level described in such Section 3 for which there is a corresponding "Key Performance Indicator" in Appendix A of the Program Agreement. Operator will have no liability for a failure to achieve a service level described in such Section 3 for which there is no corresponding "Key Performance Indicator" in Appendix A of the Program Agreement. Liquidated damages will be assessed at half of the rate set forth in Appendix A of the Program Agreement. MTC shall notify Operator on a monthly basis of any such failures and the corresponding liquidated damages, but payment of such liquidated damages shall not be due until the completion of Phase I.

ARTICLE III
EMPLOYEE AND EMPLOYMENT MATTERS

3.1 Project Manager. Each Party shall appoint a project manager to act, except as otherwise specified in this Continuation Agreement, as the primary contact person for purposes of this Continuation Agreement. The provision by Operator of services to operate and maintain the System is subject at all times to inspection and review by MTC Project Manager.

3.2 Fairness Policy. No employee of MTC shall be admitted to any share or part of this Continuation Agreement or to any benefit that may arise therefrom that is not available to the general public.

3.3 Employment Discrimination by Operator Prohibited. During the performance of this Continuation Agreement, Operator agrees as follows:

A. Operator shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Operator. Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Operator, in all solicitations or advertisements for employees placed by or on behalf of Operator, will state that Operator is an Equal Opportunity Employer.

C. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 3.3.

D. Operator will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

E. Operator shall not discriminate against any customer, prospective customer, employee or prospective employee because of race, color, sex, age, religion, or country of origin.

3.4 General Compliance with Laws and Wage Rates. Operator will comply with all federal, state, and local laws and ordinances applicable to the provision of services to operate and maintain the System. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775, to the extent applicable.

3.5 Supervision by Operator. Operator shall at all times require strict discipline and good order among Operator's employees and all subcontractors providing any of the services required hereunder. Operator shall not permit, and shall require all subcontractors not to permit,

any employee or other person to provide any service required hereunder unless such employee or other person has demonstrated proficiency in the type of work which such employee or other person is assigned to perform.

3.6 Non-Discrimination. During the performance of this Continuation Agreement, Operator and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Operator and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Operator and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Continuation Agreement by reference and made a part hereof as if set forth in full. Operator and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

3.7 Subcontractors Restrictions. Operator shall only enter into subcontracts with subcontractors that have clearly demonstrated proficiency in the tasks which are the subject of such subcontracts. Operator is prohibited from hiring or subcontracting with any individuals that participated in the selection of Operator or the development of this Continuation Agreement for a period of 24 months from the date of execution of this Continuation Agreement.

ARTICLE IV
OWNERSHIP AND PROPRIETARY RIGHTS

4.1 Rights, Authorizations, Licenses, Permits, and Other Permissions. Except as explicitly set forth in Attachment A-1, Operator shall, at its sole cost and expense, obtain all rights, authorizations, licenses, permits, and other permissions, from all federal, state, and local governments, and other entities or persons, necessary for Operator to provide the services required under this Continuation Agreement. MTC's execution of this Continuation Agreement shall neither constitute nor be deemed to be governmental approval of, or consent to, any rights, authorizations, licenses, permits, and permissions required or needed to be obtained by Operator.

4.2 Use of Seals, Logos, Servicemarks, Trademarks, and Copyrighted Material. Operator shall not use, display, or reproduce the seal, logo, servicemark, trademark, or copyrighted material of the Air District, MTC or any Pilot City without the prior express written authorization of the Air District, MTC or any Pilot City, as applicable.

4.3 Third Party Intellectual Property. Operator covenants to save, defend, hold harmless, and indemnify MTC and the Pilot Cities, and all of their officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or

unpatented invention, process, or article manufactured, supplied, or used in the performance of this Continuation Agreement, including its use by MTC or any Pilot City.

ARTICLE V
TERMINATION

5.1 Termination.

A. Right of MTC to Terminate. MTC shall have the right to terminate this Continuation Agreement if Operator fails to provide the services required hereunder satisfactorily or if Operator breaches any term, condition, or covenants of any of this Continuation Agreement.

B. Failure or Breach. If Operator fails to provide the services required hereunder satisfactorily or if Operator breaches any term, condition, or covenants of any of this Continuation Agreement, then MTC will give Operator written notice of such failure or breach and 30 days to cure such failure or breach. If Operator fails to cure such failure or breach by the expiration of such 30-day period, then MTC shall have the right to give Operator a written notice of termination, including the date when the termination shall be effective (the "Termination Effective Date").

C. Operator's Contest. If Operator in good faith contests any such failure or breach, then such termination shall be suspended pending the outcome of such contest.

D. Termination of Program Agreement. If the Program Agreement terminates for any reason prior to completion of Phase I under the Program Agreement, then this Continuation Agreement shall terminate concurrently, and Sections 5.5 and 5.6 shall apply.

5.2 Stop Work. Unless otherwise directed in writing by MTC, Operator shall stop providing services as of the Termination Effective Date, terminate all vendors and subcontractors effective as of the Termination Effective Date, and settle all outstanding liabilities and claims.

5.3 Compensation. Operator will be entitled to receive compensation as provided in Article II to the Termination Effective Date.

5.4 Sole Remedies. Notwithstanding anything to the contrary herein, other than liquidated damages under Section 2.7, the sole remedy of MTC and the Pilot Cities against Operator for breach of this Continuation Agreement, excluding a breach of Article VIII, or for failure to provide the services satisfactorily, is to terminate this Continuation Agreement in accordance with Article VII. Except for liquidated damages under Section 2.7, in no event shall Operator be liable for damages of any kind for breach of this Continuation Agreement, other than a breach Article VIII, or for failure to provide the services satisfactorily.

5.5 Transition. Upon termination of this Continuation Agreement pursuant to Section 5.1D, Operator shall comply with the following close-out procedures:

5.5.1 Turning over to MTC or its designees copies of all books, records, documents and materials specifically relating to this Continuation Agreement and reasonably requested by MTC;

5.5.2 Submitting to MTC, within 120 days, a final statement and report relating to this Continuation Agreement that has been reviewed by a certified public accountant or a licensed public accountant;

5.5.3 Providing reasonable assistance to MTC during the transition; and

5.5.4 Continuing to operate the System in accordance with the terms of this Continuation Agreement and to effect an efficient and orderly transition of responsibility with respect to the operation of the System until the earlier of (i) 180 days after such termination and (ii) the selection of a replacement operator for the System and such replacement operator commencing operation of the System (such earlier date being the "Transition Termination Date"); provided, however, that MTC shall cover 100% of Operator's Operating Losses for the period commencing upon termination of this Continuation Agreement and ending on the Transition Termination Date (such period being the "Transition Period"), subject to an aggregate cap for the Transition Period equal to the product of (X) the number of months of the Transition Period, (Y) $20 for each Dock, and (Z) the number of Docks. Within 30 days after the end of each month during the Transition Period, Operator shall send MTC a statement setting forth Operator's Operating Losses, if any, for the preceding month accompanied by reasonable back-up. MTC shall pay Operator for any such monthly Operating Losses within 30 days following Operator's submission of its statement for such month, subject to a cap calculated on a monthly basis equal to $20 for each Dock. Within 60 days following the end of the Transition Period, the Parties shall reconcile Operator's cumulative Operating Losses for the entire Transition Period with Operator's monthly, non-cumulative Operating Losses for the entire Transition Period, and shall also reconcile the aforementioned aggregate cap applied to the cumulative Operating Losses for the entire Transition Period with the aforementioned monthly cap applied to the monthly Operating Losses for the entire Transition Period. If the payment for Operating Losses received by Operator from MTC on a monthly basis exceeds the payment for Operating Losses to which Operator is entitled from MTC on an aggregate basis, then Operator shall reimburse MTC for the difference between the two calculations within 30 days following such calculation; and if the payment for Operating Losses received by Operator from MTC on a monthly basis is less than the payment for Operating Losses to which Operator is entitled from MTC on an aggregate basis, then MTC shall pay Operator the difference between the two calculations within 30 days following such calculation.

5.6 Disposition of the Equipment. Upon termination of this Continuation Agreement pursuant to Section 5.1D, MTC shall have the option to:

5.6.1 require Operator to remove all Equipment at its sole cost and expense;

5.6.2 subject to satisfaction of the Equipment Assignment Conditions, require Operator to assign to MTC (or a third-party operator designated by MTC) the Equipment, in which event Operator shall reasonably cooperate with MTC (or such designee) to obtain the legal right to use the Backend Software and Computer Hardware either through an assignment of

Operator's license with the vendor thereof to MTC (or such designee) or by MTC (or such designee) entering a license agreement for Backend Software and Computer Hardware with such vendor; or

5.6.3 subject to satisfaction of the Equipment Assignment Conditions, take over operation of the System, and in connection therewith require Operator to assign to MTC the Equipment, in which event Operator shall reasonably cooperate with MTC to obtain the legal right to use the Backend Software and Computer Hardware either through an assignment of Operator's license with the vendor thereof to MTC or by MTC entering a license agreement for Backend Software and Computer Hardware with such vendor.

ARTICLE VI
DISPUTE RESOLUTION

6.1 In the event of a dispute between the Parties, such dispute shall be addressed and resolved in accordance with the following (the "Dispute Resolution Process"):

6.1.1 The MTC Project Manager assigned to the System and Operator's General Manager of the System, or their respective delegates, shall meet, within 10 days after receipt by one Party of notification from the other Party of such dispute, to negotiate in good faith in order to try to resolve such dispute (the date of the first such meeting, or the expiration of such 10-day period if the meeting is not timely held, being the "Initial Meeting Date"). If such persons fail to resolve such dispute within 15 days after the Initial Meeting Date, then the Executive Director of MTC and the President of Bikeshare Holdings shall meet promptly and negotiate in good faith in order to resolve such dispute. If such persons fail to resolve such dispute within 30 business days after the Initial Meeting Date, then such dispute shall be subject to mediation. A meeting may be held in person, by conference call or by video conference. By agreement of the Parties, any of the deadlines set forth in this section may be extended or shortened. The process described in this section shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

6.1.2 Unless the Parties otherwise agree, mediation shall be administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Rules, or similar service. A request for mediation shall be made in writing, delivered to the other Party and filed with the applicable mediation service. Either Party may submit such request. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in San Francisco. The Parties shall be represented by individuals of their choosing. Agreements reached in mediation shall be binding on the Parties and enforceable in a State or Federal Court of competent jurisdiction sitting in San Francisco County. The mediation process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

6.1.3 The Parties shall comply with any settlement agreement regarding any dispute that is the subject of a settlement agreement.

6.1.4 If mediation fails to resolve a dispute, then the exclusive forum for resolving such dispute shall be any State or federal court sitting in San Francisco County, California.

6.1.5 As used in this Continuation Agreement, "final resolution" of a dispute or a dispute being "finally resolved" means that (a) the Parties have entered into a settlement agreement to resolve such dispute, or (b) if either Party has initiated a judicial proceeding to contest such dispute, that a final-non-appealable order of a court of competent jurisdiction has been issued for such dispute.

ARTICLE VII
INSURANCE

7.1 Minimum Coverages. The insurance requirements specified in this section shall cover Operator's own liability and the liability arising out of work or services performed under this Continuation Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Operator authorizes to work under this Continuation Agreement (hereinafter referred to as "Agents"). Operator shall, at its own expense, obtain and maintain in effect at all times during the life of this Continuation Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Continuation Agreement.

7.2 Operator shall include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the Agent. To the extent that an Agent does not procure and maintain such insurance coverage, Operator shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Operator's indemnity obligation under Article VIII as to itself or any of its Agents in the absence of such coverage.

7.3 In the event Operator or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Operator's or its Agent's insurance, as the case may be, be primary without right of contribution from MTC.

7.3.1 Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than $1,000,000 per employee for injury by disease and $1,000,000 for injury for each accident, and any and all other coverage of Operator's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Operator is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

7.3.2 Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Operator and Operator's officers, agents, and employees and with limits of liability which shall not be less than $1,000,000 combined single

limit per occurrence with a general aggregate liability of not less than $2,000,000, and Personal & Advertising Injury liability with a limit of not less than $1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. In addition, the entities listed in Section 7.13 and their respective commissioners, directors, officers, representatives, agents and employees are also to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.

7.3.3 Business Automobile Insurance for all automobiles owned (if any), used or maintained by Operator and Operator's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than $1,000,000 combined single limit per accident.

7.3.4 Umbrella Insurance in the amount of $4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

7.3.5 Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of $5,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. The policy shall provide coverage for all work performed by Operator and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Operator. Operator may delegate the obligation to maintain Errors and Omissions Professional Liability Insurance to an Agent, but the failure of such Agent to maintain such insurance shall not relieve Operator of its obligation to maintain such insurance.

7.3.6 Property Insurance. Property Insurance covering Operator's own business personal property and equipment to be used in performance of this Continuation Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

7.4 Acceptable Insurers. All policies will be issued by insurers qualified to do business in California and with a Best's Rating of A-VIII or better.

7.5 Self-Insurance. Operator's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

7.6 Deductibles and Retentions. Operator shall be responsible for payment of any deductible or retention on Operator's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the

deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

7.7 In the event that MTC is entitled to coverage as an additional insured under any Operator insurance policy that contains a deductible or self-insured retention, Operator shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Operator, subconsultant, subcontractor, or any of their employees, officers or directors, even if Operator or subconsultant is not a named defendant in the lawsuit.

7.8 Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Operator shall:

7.8.1 Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Continuation Agreement or the beginning of any work under this Continuation Agreement;

7.8.2 Maintain and provide evidence of similar insurance for at least three (3) years following the expiration or termination of this Continuation Agreement, including the requirement of adding all additional insureds; and

7.8.3 If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date to Effective Date, Operator shall purchase "extended reporting" coverage for a minimum of three (3) years after the expiration or termination of this Continuation Agreement.

7.9 Failure to Maintain Insurance. All insurance specified above shall remain in force until the expiration or termination of this Continuation Agreement. Operator must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Continuation Agreement.

7.10 Certificates of Insurance. On the Effective Date, Operator shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

7.11 Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Operator are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Operator pursuant hereto, including, but not limited to, liability assumed pursuant to Article VIII.

7.12 Additional Insureds. The following entities are to be named as Additional Insureds under applicable sections of this Article VII and as Indemnified Parties pursuant to Article VIII of this Continuation Agreement.

7.12.1 Metropolitan Transportation Commission (MTC)

7.12.2 City of Mountain View

7.12.3 City of Palo Alto

7.12.4 City of Redwood City

7.12.5 City of San Francisco

7.12.6 City of San Jose

ARTICLE VIII
INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1 Indemnification. Operator shall defend, indemnify and save harmless MTC, the Pilot Cities, and their respective commissioners, officers, agencies, departments, agents, and employees (collectively, "Indemnified Parties") from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys' fees and other costs of defense) (collectively, with Claims, "Liabilities"), resulting from, or arising out of, the operation of the System and the provision of services, including the condition of the Bicycles or other Equipment, whether such operation or services is performed or provided by Operator or by Operator's subcontractors or any other person acting for or on behalf of Operator.

8.2 Exclusions. Notwithstanding the foregoing, the following shall be excluded from Operator's indemnification and defense obligations contained in the preceding sentence: any Liabilities to the extent resulting from, or arising out of, (i) the gross negligence or willful misconduct of any Indemnified Party, (ii) Operator complying with the written directives or written requirements of a Pilot City, if the Operator has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of any Station in relation to the street or sidewalk on which such Station is located or to which it adjoins or (B) a Pilot City's Street Treatment Requirements, or (iii) the condition of any public property outside of the perimeter of a Station and not otherwise controlled by Operator. The exclusion in clause (iii) does not include the condition of the Bicycles or other Equipment. In addition, if any Claim against Operator includes claims that are covered by clause (iii) of the preceding sentence or claims contesting a Pilot City's authority to issue a permit for a Station, then each Party shall be responsible for its own defense against such claims.

8.3 Notice. Upon receipt by any Indemnified Party of actual notice a Claim to which such Indemnified Party is entitled to indemnification in accordance with Section 8.1, such Indemnified Party shall give prompt notice of such Claim to Operator. Operator shall assume and prosecute the defense of such Claim at the sole cost and expense of Operator. Operator may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.

ARTICLE IX
THIRD PARTY BENEFICIARIES

9.1 Third-Party Beneficiaries Under This Continuation Agreement. Except as provided in Sections 7.13, 8.1, 8.2 and 8.3, this Continuation Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the signatories to this Continuation Agreement.

ARTICLE X
MISCELLANEOUS

10.1 Governing Law. This Continuation Agreement shall be governed exclusively by the internal laws of the United States and of the State of California applicable to contracts made, accepted and performed wholly within said State, without regard to application of principles of conflict of laws. Any claim, suit or action arising under or relating to this Continuation Agreement must be brought only in courts located in San Francisco, California. The Parties hereby agree that such courts shall have exclusive personal and subject matter jurisdiction over any such claim, suit or action.

10.2 Survival. All provisions of this Continuation Agreement that by their terms survive the expiration or any termination of this Continuation Agreement, together with all other provisions of this Continuation Agreement that may be reasonably construed as surviving the expiration or any termination of this Continuation Agreement, shall survive the expiration or any termination of this Continuation Agreement.

10.3 Notices. Except as otherwise provided herein, all notices, requests, demands and other communications which are required or may be given under this Continuation Agreement shall be provided in the manner set forth in this section. Notice to a Party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that Party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five business days after the date of mailing.

If to MTC:

Metropolitan Transportation Commission
Joseph P. Bort MetroCenter,
Oakland, CA 94607-470
Attention: Executive Director
Email: SHeminger@mtc.ca.gov

Attention: General Counsel:
Email: AWeil@mtc.ca.gov
Attention: Designated Representative
Email: KMulder@mtc.ca.gov

If to Operator:

Bay Area Motivate, LLC
5202 Third Avenue
Brooklyn, New York 11220
Attention: Jay Walder, President and CEO
Email: jaywalder@motivateco.com
Attention: Justine Lee, Vice President and General Counsel
Email: justinelee@motivateco.com

Bay Area Motivate, LLC
2200 Jerrold Avenue, Unit J
San Francisco, California 94124
Attention: Emily Stapleton, General Manager and Designated Representative
Email: emilystapleton@motivateco.com

10.4 Entire Agreement; Amendments and Waivers. This Continuation Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No supplement, modification or waiver of this Continuation Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of the provisions of this Continuation Agreement, or any breach thereof, shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, or shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10.5 Counterparts; Severability. This Continuation Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties may rely upon a facsimile copy or scanned copy of any Party's signature as an original for all purposes. In the event that any one or more of the provisions contained in this Continuation Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Continuation Agreement or any other such instrument and the remaining provisions shall remain in full force and effect. To the extent permitted by applicable law, any such provision will be restricted in applicability or reformed to the minimum extent required for such provision to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

10.6 Construction; Incorporation. The headings of the articles, sections, and paragraphs of this Continuation Agreement are inserted for convenience only and shall not be deemed to constitute part of this Continuation Agreement or to affect the construction hereof.

All sections and article references are to this Continuation Agreement, unless otherwise expressly provided. As used in this Continuation Agreement, (a) "hereof", "hereunder", "herein" and words of like import shall be deemed to refer to this Continuation Agreement in its entirety and not just a particular section of this Continuation Agreement, and (b) unless the context otherwise requires, words in the singular number or in the plural number shall each include the singular number or the plural number, words of the masculine gender shall include the feminine and neuter, and, when the sense so indicates, words of the neuter gender shall refer to any gender. The Parties acknowledge and agree that: (i) this Continuation Agreement is the result of negotiations between the Parties and shall not be deemed or construed as having been drafted by any one Party, (ii) each Party and its counsel have reviewed and negotiated the terms and provisions of this Continuation Agreement (including, without limitation, any exhibits and schedules attached hereto) and have contributed to its revision, (iii) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Continuation Agreement, and (iv) the terms and provisions of this Continuation Agreement shall be construed fairly as to both Parties and not in favor of or against either Party, regardless of which Party was generally responsible for the preparation of this Continuation Agreement.

10.7 Relationship of the Parties. Operator is an independent contractor and neither Operator nor its employees shall, under any circumstances, be considered employees, servants, or agents of MTC, nor shall MTC nor its agents or employees be considered employees, servants, or agents of Operator. At no time during the Term or otherwise shall Operator, its employees, or agents, represent to any person or entity that Operator and its employees are acting on behalf of, or as an agent of, MTC or any of its employees. MTC shall not be legally responsible or liable for any negligence, intentional act, or other wrongdoing by or of Operator, its employees, servants, agents, subcontractors, suppliers, or manufacturers of goods or services provided by Operator pursuant to this Continuation Agreement. MTC will not withhold payments to Operator for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Operator. MTC will not provide to Operator any insurance coverage or other benefits, including Workers' Compensation, normally provided by MTC for its employees. This Continuation Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between the Parties.

10.8 Cooperation. The Parties agree to execute such further instruments and to take such further action as may reasonably be necessary or helpful to carry out the intent of this Continuation Agreement.

10.9 Failure or Delay in Performance. Operator shall not be held responsible for failure to perform the duties and responsibilities imposed by this Continuation Agreement if such failure is due to Event of Force Majeure, beyond the control of Operator, that make performance impossible or illegal, unless otherwise specified in this Continuation Agreement; provided that the Operator (in order to not be held responsible for failure to perform) shall have given MTC Project Manager written notification of such failure, event, or occurrence beyond the control of Operator not later than 48 hours after the beginning of such failure, event, or occurrence.

10.10 Representations of Operator. Operator hereby represents and warrants to MTC that:

10.10.1Operator is a limited liability company, validly existing and in good standing under the laws of the State of Delaware, and it is duly authorized to do business in the State of California; and

10.10.2Operator has all requisite power and authority to own or lease its properties and assets, to conduct its business as currently conducted and to execute, deliver and perform this Continuation Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.

10.11 Ethics in Public Contracting. This Continuation Agreement incorporates all local, state, and federal law, regulations and rules related to ethics, conflicts of interest, or bribery. Operator certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other officer, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

10.12 Remedies. The remedies available to MTC in various sections of this Continuation Agreement shall be deemed to be in addition to, and not in limitation of, any other remedies MTC has or may have under applicable law or in equity arising out of or relating to this Continuation Agreement.

10.13 Assignment. Operator shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Continuation Agreement, without the prior written consent of MTC, except the preceding clause shall not limit Operator's rights to enter into subcontracts for the provision of services hereunder.

10.14 Prohibition of Expending Local, Agency, State or Federal Funds for Lobbying

A. Operator certifies to the best of its knowledge and belief that:

i. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of Operator to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

ii. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this Continuation agreement; Operator shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

C. Operator also agrees by signing this Continuation Agreement that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed $100,000, and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XI
DEFINITIONS

11.1 Defined Terms. As used herein, the terms below shall have the following meanings. Any of such terms, unless the context otherwise requires, may be used in the singular or plural, depending upon the reference.

"**Backend Software and Computer Hardware**" shall mean an electronic interface enabling, among other things, Stations, Bicycles, subscriber customer service, cellular service, Customer Keys, the website, and call center to function.

"**Bicycle**" shall mean a device propelled solely by human power, upon which a person may ride either on or astride a regular seat attached thereto, having two or more wheels in tandem.

"**Crash**" shall mean every reported incident or event involving a subscriber, Bicycle user, Bicycle, and/or Station resulting in personal injury to the subscriber or others, or property damage to the Equipment, or to the property of others.

"**Customer Key**" shall mean a fare card or fob for rental of Bicycles.

"**Dock**" or "**Docking Point**" shall mean a locking mechanism contained on a Station designed to receive a Bicycle for locked storage.

"**Equipment**" shall mean all physical components provided by, or used by, Operator so that the System is available for use by the public, including, without limitation Bicycles, Docks, Technical Platforms, Map Frames, Terminals, cables, Station batteries, maintenance trailer, truck, electric bicycle, Customer Keys, trailer, and Bicycle and Station spare parts.

"**Equipment Assignment Conditions**" shall mean the following: (a) Operator and the purchaser of the Equipment have agreed on the purchase price for the Equipment, which shall be based on the fair market value of the Equipment as an installed system at the time of the purchase, and (b) such purchaser has paid Operator the agreed upon purchase price for the Equipment.

"**Event of Force Majeure**" shall mean a delay, suspension or interruption due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the Party claiming an Event of Force Majeure, provided in each case that such Party has taken and continues to take all reasonable actions to avoid or mitigate such delay, suspension or interruption and provided that such Party notifies the other Party to this Continuation Agreement in writing of the occurrence of such delay, suspension or interruption within five (5) business days, or if not reasonably practicable, as soon thereafter as reasonably practicable, of the date upon which the Party claiming an Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an "Event of Force Majeure" unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the Party claiming Event of Force Majeure has taken and continues to take all reasonable steps to pursue such decision. In no event will a government entity's final decision relating to Operator, this Continuation Agreement or the System, whether positive or negative, once made constitute an Event of Force Majeure (the term "final decision" in this sentence shall refer to a decision with respect to which all available appeals have been exhausted or the time period for filing such appeals has expired). The financial incapacity of Operator shall not constitute an Event of Force Majeure.

"**Fleet**" shall mean 100% of the number of Bicycles obtained by Operator from MTC on the Effective Date minus the number of stolen (or otherwise unreturned) and unrepairable Bicycles.

"**Functional Bicycle**" shall mean the condition of a Bicycle, consistent with the technical specifications of the Bicycles to be provided under this Continuation Agreement, to be ridden by an ordinary subscriber using such Bicycle under normal conditions. A Functional Bicycle does not refer to comfort, speed, quality of the riding experience, or minor issues with the Bicycle that does not impede the ability to be ridden.

"**Functional Station**" shall mean a Docking Station, consistent with the technical specifications of the Docking Stations under the Pilot Program, to be used by an ordinary subscriber using such Docking Station under normal conditions. A Functioning Station does not refer to inconvenience or inability of a subscriber to follow directions, provided such directions are provided in a form understandable by an ordinary subscriber. A Functional Station shall have at least one Docking Point containing a Functional Bicycle, at least one empty Docking Point, and all other elements in working condition to be considered a Functional Station.

"**Hacking**" shall mean unauthorized and intentional access to the Computer Hardware for the System and/or Software.

"**Map Frame**" shall mean a two-sided metal informational display unit, including translucent covering and lock.

"**MTC Project Manager**" shall mean an individual appointed by MTC to act as the project officer.

"**Notification**" shall mean all information provided by MTC, a Pilot City or the general public to Operator about a specific defect or problem concerning the System, Equipment or operations of the System by written document, email to Operator's public information email address for the System, or telephone call to Operator's call center for the System.

"**Operable Station**" shall mean a Station at which at least 90 percent of all installed Docks are Operable Docks from which an annual member can check out and return a Bicycle.

"**Operating Expenses**" shall mean, with respect to Operator (or Motivate) for any period, the costs expended by Operator (or Motivate) to operate and maintain the System and to provide the specific services set forth in this Continuation Agreement, including, without limitation, personnel costs, software license fees, insurance costs, costs of maintaining service vehicles, costs of leasing and maintaining facilities used for the System.

"**Operating Losses**" shall mean, with respect to Operator (or Motivate) for any period, the amount, if any, by which Operating Expenses for such period exceed System Operating Revenues for such period.

"**Party**" means either MTC or Operator, as the context requires; "**Parties**" means MTC and Operator.

"**Service**" shall mean the use of the Equipment by the public at large after the Effective Date.

"**Site**" shall mean a designated area on publicly or privately owned real property, which area contains one or more of each of the following items made available by Operator for the System: Bicycles, Docks, Terminal, Technical Platforms, and Map Frame.

"**Station**" shall a designated area of docking Bicycles at which Docks, Terminal, Technical Platforms, and Map Frame are located.

"**System Operating Revenues**" shall mean all funds derived from ridership use of the System, including subscription fees and usage fees.

"**Technical Platform**" shall mean a base component that rests on the ground and supports the Docks, Terminal, and Map Frame.

"**Terminal**" shall mean a kiosk that provides Bicycle rental instructions, contains payment equipment (i.e. credit card device), and includes all other means necessary for the rental of Bicycles.

"**Trip**" shall mean the use of a Bicycle from one Station to another Station or back to the initial Station.

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Attachment A-1, Description of Services

1. Description of Services

Operator shall operate the bike-sharing system in the Pilot Cities that was installed and in place at the termination of the Pilot Program Agreement using the same Sites, Bicycles, Docking Stations, Terminals, Docking Points, Technical Platforms, Customer Keys, Back-end Software and Computer Hardware and other Equipment that was used for the Pilot Program. Operator guarantees the following minimum equipment numbers in Mountain View, Palo Alto, and Redwood City:

Mountain View: 7 Stations; 117 Docks; 59 Bicycles

Palo Alto: 5 Stations, 75 Docks, 37 Bicycles;

Redwood City: 7 Stations; 117 Docks; 59 Bicycles;

San Francisco: 35 Stations; 665 Docks; 300 Bicycles;

San Jose: 16 Stations; 264 Docks; 110 Bicycles

Operator's responsibilities include:

(1) Handle ongoing Equipment maintenance and rebalancing;

(2) Manage intellectual property issues related to a program sponsor such as brands and trademarks;

(3) Manage all ongoing customer service issues associated with the System (unless otherwise instructed); and

(4) Conduct bicycle safety trainings and encourage the use of bicycle helmets.

2. Subscriber Information/Relations.

2.1 Subscriber and Usage Fees. User fees shall be consistent with Attachment A-2, subject to application of Attachment A-3 as provided in Section 2.2 of this Continuation Agreement.

2.2 Age Requirement for Program Subscribers. Subscriptions shall only be issued to individuals 18 years of age and older.

2.3 Subscriber Privacy. Operator shall, at all times, protect the privacy rights of all subscribers. Operator shall strictly comply with all applicable federal, state, and local laws,

ordinances, and regulations concerning the privacy of all subscriber information obtained by Operator in the course of providing services under this Continuation Agreement.

2.4 Subscriber Agreement. Operator shall use the same form of Subscriber Agreement that was used for the Pilot Program with such changes thereto as Operator considers appropriate. Any material changes to the Pilot Program form shall be subject to the review and approval of MTC. The Subscriber Agreement shall address, at a minimum, the following:

(1) The rates, fees, and deposits (if any).
(2) Confidentiality of personal and financial data and information.
(3) Subscriber's agreement to return the Bicycle in the same condition as it was when rented.
(4) Subscriber's agreement to immediately report to the call center any Crash, as defined in this Continuation Agreement to include any incident or event resulting in personal injury to the subscriber or others or in property damage to the Equipment or to the property of others and agreement to follow any instructions from the call center regarding reporting a Crash to police.
(5) Subscriber's agreement to immediately report to the call center a lost or stolen Bicycle or a lost or stolen Customer Key.
(6) Subscriber's responsibility and liability for any consequences of any kind or nature whatsoever related to a stolen or lost Bicycle or Customer Key.
(7) Prohibited uses including, without limitation, no more than one person on a Bicycle at one time.
(8) Subscriber's acknowledgement of and acceptance of responsibility and risk.
(9) Prohibition against any person other than the subscriber operating any Bicycle rented from Operator and prohibition against transfer of a Customer Key to anyone in any manner whatsoever.
(10) A representation by each subscriber that s/he is physically able to ride a Bicycle without risk to health, knowledgeable about the operation of a Bicycle, and knowledgeable about the laws pertaining to Bicycles operated within the jurisdictions where the Bicycles are to be used.
(11) Age limits.
(12) Subscriber's indemnification of MTC and the Pilot Cities, its elected and appointed officers, officials, employees, and agents.
(13) Prohibition against use of Bicycle while under the influence of alcohol, drugs, any controlled substance, or any medication that would impair the Bicycle operator's ability to safely operate the Bicycle.
(14) Instructions regarding proper use of Bicycle luggage carrier as to type of contents, weight, or visual obstruction.
(15) Prohibition against Bicycle use for any illegal purpose.

2.5 Loss Fees. Operator shall deem a Bicycle as "lost or stolen" if not returned to a Site within 24 hours of being signed out, and charge the subscriber whose account is associated with that sign-out the amount of the "Loss Fee" set forth in Attachment A-2, subject to application of Attachment A-3 as provided in Section 2.2 of this Continuation Agreement, which covers the replacement value of the Bicycle, along with shipping fees and expenses and service charges for placing a new Bicycle into the operational Fleet. Credit accounts will be charged the Loss Fee at the time a loss is determined. Operator shall include all such circumstances in its

monthly report to MTC. Notwithstanding the foregoing, Operator shall waive such fees for stolen Bicycles or Bicycles that are damaged in connection with a crime against the rider or in a collision with a motor vehicle, so long as an appropriate police report is filed for the incident.

2.6 Helmets. Operator shall provide information on the System website and in the subscription agreement about the importance of wearing helmets for safety reasons. Operator will make reasonable best efforts to provide users with information that directs them to nearby bike shops and other locations where subscribers may purchase a helmet and shall display on the System website where discounts are available and at Terminals.

2.7 Subscriber Communications. Upon request from MTC, Operator will send biking related information announcements via electronic mail to all subscribers who do not "opt out' of receiving such emails.

3. Operations

3.1 Continuous Operation and Management. The System shall commence operating on the Effective Date and shall remain in operation 24 hours per day, 365 days per year.

3.2 Inspection and Maintenance.

(1) Operator shall, at all times, follow and strictly comply with the manufacturer's requirements, warranties, and recommendations for assembly, maintenance, storage and repair of all Equipment. Operator shall not be obligated to purchase any replacement Equipment.
(2) Operator shall perform a maintenance check for each Bicycle once every two calendar months consisting of the following checks, with deficient elements repaired or replaced as necessary:

Check tire pressure, and add air as may be needed, to recommended Pounds per Square Inch measurement;
Check tightness of handlebars, headset bearings, and full handlebar range of motion (left to right);
Check tightness of seat, seat post quick-release, and see that seat post moves freely in full range of motion (up and down);
Check brake function (front and rear);
Check grips for wear and brake levers for tightness and damage;
Check bell for tightness and correct function;
Check handlebar covers for damage and instruction stickers;
Check front basket for tightness and damage, and check bungee cord for wear;
Check for correct gears and shifter function through all 5 gears;
Check fenders (front and rear) for damage, and clean outside of fenders;
Check tires (front and rear) for damage or wear;
Check wheels (front and rear) for trueness, broken or bent spokes and hub or axle tightness;
Check LED lights (front and rear) for function;

Check reflectors on wheels, seat and basket, to ensure they are present, clean, and undamaged;
Check pedals and cranks for tightness;
Lubricate and clean chain and check chain tensioner for correct function;
Check kickstand for correct function; and
Take brief test ride to ensure overall correct function of Bicycle.

(3) Operator shall clean each Station two times per month-- one time between the first and fifteenth days of the month, and one time between the sixteenth and last days of the month. Station cleaning shall consist of, at a minimum, litter removal and, as needed, power washing of Docks, Terminal Platforms and pavement.

(4) (a) Except as required by clause (b) below, Operator shall remove conspicuous graffiti within 72 hours after Notification; and(b) Operator shall remove racist and hate graffiti within 4 hours after Notification.

(5) Operator shall remove conspicuous accumulations of litter from Stations within 24 hours after Notification.

(6) The System must be operational 100% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), so that, at a minimum, all System users can dock and undock Bicycles at all times, excluding (i) scheduled downtime, and (ii) any period when the Computer Hardware for the System and/or Software is, and remains, damaged through Hacking. System functionality does not apply to hardware malfunctions at individual Stations or to individual Stations that are not Operable Stations.

(7) Stations, in the aggregate, must be Operable Stations 99% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), excluding (i) during scheduled downtime, and (ii) any period when a Station is not an Operable Station because the Terminal or other Equipment located at the Station has been damaged by third-parties. Calculated by taking the sum of the number of hours that each Station was Operable Station during a month, dividing that sum by the product of the total number of hours in the month and the number of Stations that month. Station Operability does not apply during any period in which the entire System is down.

(8) The System website must be operational 100% of the time every year (i.e., every hour of every day, 24 hours per day, 7 days per week, measured annually) excluding (i) scheduled downtime, and (ii) any period when the Computer Hardware for the System and/or Software is, and remains, damaged through Hacking.

In any circumstances where Operator is required to perform cleaning services under this Continuation Agreement, Operator shall use the most environmentally friendly cleaning solutions and chemicals available for these purposes.

3.3 Availability of Bicycles. Operator shall ensure that at least 90% of bicycles in the Fleet are operational, on-the-street and available for public use. The number of available bicycles will be recorded once each Day of the month between the hours of 11:00 AM and 3:00 PM.

3.4 Distribution of Bicycles. Operator shall re-distribute Bicycles among Sites and place the Bicycles in operable Docks throughout the day from 6 am to 10 pm during each day of operation. Such distribution shall be critically timed to increase the probability that each Site, at all times, contains a sufficient number of empty Docks for Bicycles to be returned and occupied Docks containing Bicycles available for subscribers. All Bicycles placed in operational Docks shall be in acceptable operating condition. Operator shall ensure that, during any day, no Site has all empty Docks or all full Docks for more than three hours between the hours of 6 am and 10 pm. If during any month the average usage of a Site is greater than 2.5 Trips per day per Dock or less than 0.75 Trips per day per Dock, then this service level does not apply for such Site for such month.

3.5 Operator's Call Center. Operator shall provide to MTC, all subscribers, and the public at large, a toll-free telephone number for Operator's call center. The call center shall be in continuous operation 24 hours per day, 7 days per week, and 365 days per year. Not less than 80% of telephone calls to Operator's call center each month must be answered by a person within 90 seconds or less. Operator shall conspicuously post a notice on each Station advising the general public that they may direct their complaints and comments to Operator's call center.

Operator shall ensure that the call center can handle calls in English, Spanish, Mandarin and Cantonese, using operators fluent in those languages. The operators at the call center shall be fully competent and knowledgeable to answer questions and provide information concerning, among other things, subscription process, subscription prices, billing, Crashes, comments, complaints, malfunction problems, location of Sites, directions to nearest Site that has Bicycles available for use and/or available Docks for returns, directions to helmet sales location(s), and instructions on how to fit a helmet. The call center manager shall be knowledgeable about all service areas. The call center operators shall keep accurate and complete written records of each such call in a Customer Service Log as hereinafter required, including the primary reason for each call and the status of the call (e.g., "no further action", "requires reimbursement").

3.6 Email Response Time. Not less than 95% of emails to Operator's public information email address must be answered within 1 business day.

3.7 Comments and Complaints. Operator shall establish and maintain during the Term prompt and efficient procedures for handling complaints from the public for which Operator receives a Notification. Such procedures shall be consistent with all applicable laws, rules and regulations and the provisions of this Section. Such procedures shall be set forth in writing and copies thereof shall be maintained at Operator's office and shall be available to the public and the Pilot Cities upon request.

3.8 System Website. Operator shall create and maintain a System website the content of which shall address, at a minimum, the following:

(1) Eligibility requirements;
(2) Subscription information and rate, schedules;
(3) Payment information and subscription processing;
(4) Method for subscribers to log in, update required information, and track individual usage data compiled by the system;

(5) Subscriber Agreement and acceptance of terms;
(6) Map with the entire regional network of Sites and real-time availability of Bicycles at each Site, both for a standard computer screen and mobile phone;
(7) Frequently Asked Questions;
(8) Safety requirements and information (including notification in the event of malfunction or Crash);
(9) Encouragement of helmet use for subscribers and a listing of nearby locations where users may purchase or lease helmets;
(10) Merchandise page;
(11) Permitted links to other Bay Area based bike programs and events;
(12) A listing of nearby bike rental shops, locations and contract information;
(13) Safety video (supplied by the Air District or others) addressing safe use of bicycles, helmets, and California Vehicle Code and local laws pertaining to bicycle riders; and
(14) A webpage that contains links to MTC- approved information (i.e. links to partner websites and notices).

Operator, at all times, shall keep the website information updated, current, and accurate on a regular basis.

3.9 Operator Staffing Levels. Operator, at all times, shall provide sufficient staff to efficiently and promptly provide the services set forth in this Continuation Agreement.

3.10 Personnel and Staffing Requirements. Operator shall deliver to MTC copies of all written personnel policies that, at a minimum, address employee conduct and qualifications.

3.11 Relocation, Resizing, and/or Reconfiguration of Stations.

(1) By Operator. In the event that Operator wishes to remove, relocate, resize, and/or reconfigure any Station, other than those Stations whose locations are fixed pursuant to the terms of a grant or sponsorship agreement, due to under-utilization or lack of profitability, it must notify MTC in writing, providing sufficient detail and description of the proposed relocation site and reasons therefore, prior to removal. Assuming that MTC does not disapprove the request within ten business days, Operator may remove, relocate, resize, and/or reconfigure the Station consistent with Operator's notice of same to MTC and subject to local review and permitting requirements.
(2) By MTC. MTC shall provide Operator with 48 hours advance notice of any relocation or reconfiguration of Stations to accommodate construction, special events, or other reasons. The fee payable by MTC (or the applicable Pilot City) to Operator for any such relocation or reconfiguration shall be determined in accordance with Attachment A-4.

3.12 Interruption of Service.

(1) Intentional Interruption of Service. If, at any time, Operator intends, or is required, to temporarily interrupt all or a portion of the service, for any reason beyond Operator's reasonable control, including, without limitation, weather, safety, or other event or circumstance where continued service

would be unsafe, unavailable, impractical, or impossible , then Operator shall contact MTC by telephone and by email at least 24 hours before the interruption of service and specifically describe the reason, proposed duration, Operator's proposed actions to correct the cause of the interruption (if possible), minimize the interruption, and Operator's plans to resume service.

Operator promptly shall notify the subscribers of the cause and expected duration of the proposed interruption of service by posting notice on the website, via email, and Terminals (electronic message).

(2) Unintentional Interruption of Service. If, at any time, a System malfunction or an event or circumstance occurs where continuous service would be unsafe or unavailable for reasons beyond Operator's reasonable control, and this causes or will cause a temporary interruption of service, then Operator shall immediately contact MTC by telephone and by email and specifically describe the reason, estimated duration, Operator's proposed actions to correct the cause of the interruption (if possible), efforts to minimize the interruption, and Operator's plans to resume service.

Operator promptly shall notify the subscribers of the cause and expected duration of the interruption of service by posting notice on the website, via email, and Terminals (electronic message).

In the case of both Intentional and Unintentional Interruptions of Service, Operator shall be obligated to perform all necessary and appropriate acts to restart the service as soon as possible.

3.13 Safety Training: On at least a quarterly basis, Operator shall provide safety training on proper use of bicycles and applicable rules and regulations of the road to current and/or potential users in each city.

Attachment A-2, Subscriber Related Fees

1. Annual and Monthly Subscription and Usage Fees

a) Annual Subscription Fee - One-time payment of $88

b) Annual and Monthly Subscription Usage Fees:

i. No charge for up to 30 minute use of a Bicycle per session,

ii. $4.00 for 31-60 minutes,

iii. $7.00 for each additional 30 minutes

A usage fee will be tracked and charged to credit accounts within one hour (or based on normal credit card operating procedures) of any occurrence of continuous usage exceeding thirty (30) minutes.

c) Annual Memberships may be purchased at a discounted rate for promotional purposes and may be purchased in bulk at a discounted rate

2. Other Subscription and Usage Fees

a) Short-term Subscription Fees

i. Three day Subscription fee - $22,

ii. One day Subscription fee - $9

b) Other Subscription Usage Fee:

a. No charge for up to 30 minute use of a Bicycle per session,

b. $4.00 for 31-60 minutes,

c. $7.00 for each additional 30 minutes

A usage fee will be charged to credit accounts at the time any continuous usage exceeding 30 minutes is determined.

3. Bicycle Loss Fee - $1,200.

4. Operator reserves the right, in its sole discretion, to increase or decrease the fees under 2(a) and 2(b) above.

Attachment A-3, New Subscriber-Related Fees

1. General. At Operator's election, after June 30, 2016, Membership Fees and Initial Ride Periods shall be consistent with Section 2, the Membership Fee for users eligible for the affordability subscription specified in Section 3 shall be as described in said Section 3, the maximum Bicycle usage charge shall be consistent with Section 4 and the fees for damaged, lost, stolen or otherwise unreturned Bicycles shall be consistent with Section 5 initially charged by Operator shall be consistent with this Section. A "Membership Fee" is an amount that entitles the purchaser of the membership (a "member", for the period of such purchased membership) to check out (as defined below) one or more Bicycle(s) at a time, for the length of time described below, provided that the member shall be charged a usage fee associated with the time period the Bicycle is checked out beyond the Initial Ride Period. A Bicycle is "checked out" for the period from the time it is removed from a Dock to the time it is returned to a Dock. A member may check out and return a Bicycle from or to any Dock at any Station in the System, for an unlimited number of times, at any time during the period of the member's membership, with the usage fee applicable to each such checkout and return sequence being calculated separately (so, for example, an annual member may, within the member's membership period, check out a Bicycle and return it within the first 30 minutes after checkout, and then subsequently check out a Bicycle and return that Bicycle with the first 30 minutes after that checkout, without incurring any usage fee for either checkout period).

2. Membership Fees, New Ridership Programs/Arrangements, and Initial Ride Periods:

2.1 Operator shall offer an annual membership ("Annual Membership") for a fee (the "Annual Membership Fee") in an amount not to exceed the Annual Membership Fee Cap in effect from time to time. The Annual Membership Fee Cap shall be $149 for a one-year period. The period of an Annual Membership shall run from the day the annual membership is activated until the first anniversary of the date on which the Annual Membership had been activated (but a membership purchased on February 29 shall expire on March 1 of the following year). At the end of the Term, each member can elect whether to roll his or her Annual Membership into the BABS Program. Such election can be made by contacting the call center. If a member elects not to roll into the BABS Program, then if the Annual Membership Fee has been paid in advance for a full 12 months, the prorated amount for the portion of an Annual Membership period that is beyond the Term shall be reimbursed to or credited to the credit card account of the Annual Member;

2.2 Annual Memberships may be paid in 12 equal monthly instalments at a price not greater than 120% of the Annual Membership Fee;

2.3 All memberships will include a free period of usage (the "Initial Ride Period"), which is the length of time at the beginning of each individual Trip to which additional usage fees will not be applied. For Annual Memberships and Affordability Memberships, the Initial Ride Period is 30 Minutes. Usage fees will be applied to all Trips that exceed the Initial Ride Period; and

2.4 For monthly, weekly and daily memberships, and for usage of the System by non-members, Operator will determine the applicable fees, usage fees, and periods of use for members beyond the Initial Ride Period in its sole discretion.

2.5 Nothing in the foregoing shall limit the right of Operator to offer premium memberships featuring an Initial Rider Period longer than 30 minutes for an Annual Membership Fee greater than $149.

3. Affordability Option:

3.1 Notwithstanding the permitted rate for an Annual Membership set forth in set forth in Section 2.2.1, Operator shall charge those eligible for an "affordability subscription" no more than $60 per annum (excluding sales tax) as the Annual Membership Fee, or $5.00 per month for a 12-month membership.

3.2 Persons who were entitled to affordability memberships under the Pilot Program shall be entitled to affordability memberships for the System. Members of households enrolled in the Utility Lifeline Programs (also known as California Alternative Rates for Energy (CARE)) available in the MTC Area are also eligible for affordability memberships. Within 10 days following the Effective Date, Operator shall propose, for MTC's review and approval, procedures for verifying enrollment in CARE. In San Francisco, those who meet Muni Lifeline income requirements as determined by the City of San Francisco's Human Services Agency are also eligible for the affordability membership. Upon mutual agreement of the Parties, eligibility may expand to include other categories of persons so long as the eligibility is determined by third parties.

3.3 Members enrolling through the affordability program shall be entitled to the same rights and privileges as all other Annual Membership holders.

3.4 The usage fees for affordability members shall not exceed the rate charged to general annual members.

4. The checkout period for the purposes of calculating usage fees shall always commence with the time a Bicycle is actually removed from a Dock, and it shall not be based on the time of insertion of a payment or identification card.

5. The maximum Bicycle usage charge initially charged with respect to any member shall be $100 per 24 hour period, not including charges for damaged, lost, stolen or otherwise unreturned Bicycles.

6. Fees for damaged, lost or otherwise unreturned Bicycles initially charged shall be (i) $1,200, if not returned, or (ii) if returned, the sum of all direct costs of the repair, including all labor and parts, as determined by Operator in its reasonable discretion, plus a 10% administrative fee; provided, however, that the fees charged to affordability members for unreturned or damaged Bicycles shall be not more than 33% of the fees set forth in the preceding clauses (i) and (ii). Notwithstanding the foregoing, Operator shall waive such fees for stolen Bicycles or Bicycles that are damaged in connection with a crime against the rider or in a collision with a motor vehicle, so long as an appropriate police report is filed for the incident.

7. Operator shall at all times post on all Stations and on Operator's website a complete and up-to-date fee description that sets forth each and every current membership and usage fee offered by Operator, the methods of purchasing memberships and paying fees, available discounts on such fees, the applicability and terms of such discounts and, to the extent applicable, how to apply for or qualify for such discounts, and fees associated with damaged, lost, stolen or otherwise unreturned Bicycles. Operator shall furnish written copies of such material to the public upon request.

8. Operator shall accept credit card and debit card payments online and at all Stations but in the case of debit cards only those that have a Visa or Mastercard logo on them. Operator may employ such other methods of payment as it may determine.

9. All required state sales and use taxes with respect to membership and usage fees shall be collected and paid by Operator, as required by applicable law.

10. Operator shall be permitted to create System pricing discount programs, which may be targeted in connection with marketing and outreach efforts, and in connection with Sponsorship or Advertising programs, to expand or enable System use among different communities or for other lawful purposes.

11. At any time and from time to time, Operator shall have the right:

11.1 To adjust the amount of the Annual Membership Fee specified in Section 2 downwards at any time and upwards on each anniversary of the Effective Date by an amount not to exceed the Annual Membership Fee Cap then in effect;

11. 2 To adjust in its sole discretion all other fees, time periods and charges specified hereunder other than those fees, time periods and charges specified in Section 2 and Section 3; and

11.3 To adjust upward the duration of the Initial Ride Period.

ATTACHMENT A-4 FEE SCHEDULE FOR STATION DEACTIVATION, DE-INSTALLATION AND ADJUSTMENT

As stated in Section 3.11(2) of Attachment A-1 of this Continuation Agreement, the following is the fee schedule for Station Deactivation, De-Installation, and Adjustments (each as defined below). (Capitalized terms used but not otherwise defined herein shall be defined as provided below.))

Section 1: For Public Works, Other Special Events and Public Safety Emergencies there is no charge to the Pilot City. In addition, for each Pilot City, there is no charge for the first 2 Discretionary Requests by the Pilot City.

Section 2: For (a) Private property owners or contractors doing private construction on public or private property, (b) event producers or organizers of For Profit and Political Special Events, and (c) Discretionary Requests by a Pilot City after the first 2 Discretionary Requests by the Pilot City, the following fee schedule applies:

1. Deactivation: Station is deactivated but not removed; Bicycles are removed and cannot be returned by customers:

   $500/Station + $10/Dock/day of Deactivation. (Each of the foregoing amounts is subject to CPI Adjustment.)

2. De-installation and Reinstallation: Station is completely removed from the location and returned to same location:

   $1,000/Station + $20/Dock + $10/Dock/day of Deactivation. (Each of the foregoing amounts is subject to CPI Adjustment.)

3. Adjustment: Property owners and utilities may seek permanent or temporary changes to a Station's size or configuration, and changes to Street Treatments and Street Markings as necessitated by such, without changes to the Station location:

   $1,000/Station + $20/Dock that is adjusted. (Each of the foregoing amounts is subject to CPI Adjustment.)

4. Temporary Relocation Followed by Reinstallation: Property owners and utilities who need to De-install or Deactivate a Station for a period greater than 15 business days must pay for the temporary relocation of the Station during the event or construction, which allows for continuous operation of the Station, and must also pay for the reinstallation of the Station at the original location after completion of the event or construction:

$5,000/Station + $40/Dock. (Each of the foregoing amounts is subject to CPI Adjustment.)
Defined Terms:

"Adjustment" shall mean permanent or temporary changes to a Station's size or configuration, and changes to Street Treatments and Street Markings as necessitated by such, without changes to the Station location.

"CPI" shall mean the Consumer Price Index for the Consolidated Metropolitan Statistical Area covering San Francisco-Oakland-San Jose, as measured by the Consumer Price Index for All Urban Consumers, as published from time to time by the Bureau of Labor Statistics, U.S. Department of Labor.

"CPI Adjustment" shall mean, with respect to a specific cost, that such cost is subject to annual adjustment each January 1 based on changes in the CPI from the Effective Date to the date of adjustment.

"Deactivation" shall mean, at a minimum, shut-down of Terminal (or display of messaging on a Terminal screen indicating that Station is out of service) removal of all Bicycles present, installation of physical barriers on all Docks that prevent docking of Bicycles, and designation of the Station as "Out of Service" on the System website, app, and all other real-time data sources. A Deactivation event is not over until the Station has been reactivated.

"De-Installation" shall mean, at a minimum, (i) the temporary or permanent full removal of the Station and its associated Street Treatments, and, (ii) the designation of the Station as "Out of Service" on, or removal of the Station from, the System website, app, and all other real-time data sources.

"Discretionary Request" shall mean any De-Installation and/or Re-Installation or Station Adjustment requested by the Pilot City that is not related to Public Works, Other Special Events, or Public Safety Emergencies.

"For Profit and Political Special Events" shall mean temporary events permitted by the Pilot City that (i) have entry fees for participation (e.g., road races, cycling tours); or (ii) have the purpose of selling products (e.g., street fairs, food festivals, holiday fairs, film festivals, film shoots); or (iii) have a title sponsor; or (iv) are political events.

"Other Special Events" shall mean temporary events permitted by the Pilot City other than For Profit and Political Special Events (e.g., heritage or cultural parades).

"Public Safety Emergency" shall mean an instance when (i) Equipment is damaged or in an unsafe state so as to cause an immediate danger to the public; or (ii) circumstances or situations

immediately surrounding Equipment create an imminent danger to the public; or (iii) the area around a Station becomes unsafe or is required by police department or other emergency responders of a Pilot City in order to respond to a natural disaster or avoid a calamity.

"Public Works" shall mean all instances where a Pilot City (including a utility owned by a Pilot City) or its contractors (including any private contractors hired by a Pilot City) are undertaking construction, maintenance, repairs or other public improvements.

"Street Marking(s)" shall mean thermoplastic paint markings and/or striping on the pavement for the express purpose of demarcating a Station.

"Street Treatments" shall mean the three-dimensional objects used to demarcate the Station, and protect it from adjacent parking and moving traffic. Such objects may include, but are not limited to, delineators and wheel stops.

NOTICE AND DIGEST

ORDINANCE GRANTING A FRANCHISE TO BAY AREA MOTIVATE, L.L.C. TO OPERATE A BIKE SHARE PROGRAM, AND AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE TO NEGOTIATE AND EXECUTE A FRANCHISE AGREEMENT AND CERTIFING CEQA EXEMPTION FINDINGS

An Ordinance has been prepared that will grant a Franchise to Bay Area Motivate, L.L.C. to operate a Bike Share Program and authorize the City Administrator or designee to negotiate and execute a franchise agreement with Bay Area Motivate, L.L.C. The Ordinance allows for implementation of the City's bike sharing policy. The adopted bike sharing policy recognizes that bike sharing provides numerous transportation and environmental benefits, and identifies specific means by which the City Of Oakland will support the growth of bike sharing services.