CITY OF OAKLAND

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March 11, 2016

To: Strategic Growth Council
Re: Enforceable Funding Commitment for Bike Share Station, AHSC Application

AHSC Project: 7th and Campbell
BART Station: West Oakland
New AC Transit route that defines Project Area boundaries: L22

Dear Ms. Joe:

The City of Oakland, working with the Metropolitan Transportation Commission (MTC) is opening a Bike Share system throughout the City of Oakland in 2016-2017. MTC has contracted with Motivate (Bay Area Motivate L.L.C.) to install and operate the system, with the condition that 70 bike share stations will be located in the City. To increase the impact of the Bike Share Network, and ensure that affordable housing residents have easy access to bike share stations, and can fully utilize subsidized bike share memberships, we have partnered with Oakland and the World Enterprises, Inc. to add one additional bike share station near their AHSC affordable Housing Development (AHD) site at 7th Street and Campbell Street. We do not have the budget to cover the cost of this new station and appreciate the opportunity that this AHSC program creates for enhanced Active Transportation in this community.

The current level of investment the City, MTC and Motivate have committed for installation of bike share stations in this project area is **$921,649.57**, as demonstrated in the below chart. A copy of the Coordination Agreement is attached hereto as *Attachment A*, between MTC, the City Of Oakland, and Motivate (see Section 17.1.3).

			blue (35)	cost per station (includes $4k install fee)	# of bikes	red (23)	cost per station	*# of bikes*	orange (19)	cost per station	*# of bikes*	yellow (14)	cost per station	*# of bikes*	City of Oakland - MTC - Motivate Total Committed investment in area
AHSC Project	**Nearest BART Station**	**AC Transit route that defines project area**	35	$ 101,734.91	*18*	23	$ 74,224.17	*12*	19	$ 65,053.91	*10*	15	$ 55,883.68	*8*	
7th & campbell	West Oakland	L22	0	$ -	*0*	1	$ 74,224.17	*12*	1	$ 65,053.91	*10*	14	$ 782,371.49	*112*	$ 921,649.57

Michael J. Neary,
Assistant Director, Oakland Public Works
City of Oakland

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 December 31, 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 Section 15.1. Any notice, demand or request shall be deemed given on the date of receipt or rejection by the intended recipient.

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.gove

To THE CITY OF BERKELEY:

Transportation Division Manager
City of Berkeley
Department of Public Works

2180 Milvia Street
Berkeley, CA 94704
Email: transportation@cityofberkeley.info

To THE CITY OF EMERYVILLE:

Director of Public Works
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Email: [_____]

To THE CITY OF OAKLAND:

Carlos Hernandez
City of Oakland
250 Frank Ogawa Plaza
Suite 4344
Oakland, CA 94612
Email: chernandez@oaklandnet.com

To SFMTA:

Heath Maddox
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
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
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: 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

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 FEES

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

By:_____
Name: Steve Heminger
Title: Executive Director

BAY AREA MOTIVATE, LLC

By: _____
Name: Jay Walder
Title: President and Chief Executive Officer

WITNESS THE EXECUTION OF this agreement ON THE DATE WRITTEN BELOW EACH SIGNATURE:

CITY OF BERKELEY

By: For Dee Williams McCray
INTERIM City Manager

DATE: 12/18/15

Countersigned by:

Deputy CITY AUDITOR

DATE:

Approved as to Form:

Michael Wow

Deputy City Attorney

DATE: 12/16/15

Attest:

Rose Thomsen

Dep City CLERK

DATE: 12/21/15

CITY OF OAKLAND

By: _____

City Administrator

Approved as to Form:

_____

Senior Deputy City Attorney

CITY OF EMERYVILLE

Carolyn Lehr

Carolyn Lehr
City Manager

Approved as to Form:

By: Michael Guina

Michael A. Guina
City Attorney

CITY & County of San Francisco

San Francisco Municipal Transportation Agency

Edward D. Reiskin
Director of Transportation

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
John I. Kennedy
Deputy City Attorney

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS

Resolution No: 15-163

Adopted: NOVEMBER 17, 2015

Attest: R. Boomer
Roberta Boomer, Secretary
SFMTA Board of Directors

Board of Supervisors
Resolution No: 503-15

Adopted: December 8, 2015

Attest: Peggy Nevin
Clerk of the Board
for Angela Calvillo

"CITY"

APPROVED AS TO FORM:

JON CALEGARI
Deputy City Attorney

CITY OF SAN JOSE, a municipal corporation

By_____
Name: Julie Edmonds-Mares
Title: Deputy City Manager

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		

March 11, 2016

2200 Jerrold Ave
San Francisco, CA 94124

To: Strategic Growth Council – Affordable Housing and Sustainable Community Grant
Re: Enforceable Funding Commitment for Bike Share

Dear Grant Committee:

Motivate (Bay Area Motivate, LLC), through an agreement with the Metropolitan Transportation Commission (MTC) and the City of Oakland, will be deploying and operating a bike share system in the City of Oakland. Motivate has committed to deploying at least 850 bicycles and a minimum of 70 stations in the City of Oakland at no cost to the City.

The City also has the ability to invest in additional stations in the service area at an installed cost of $65,000 for each 10-bike, 19-dock station.

Please feel free to reach out to me with any questions about the program.

Best,

Emily J Stapleton

Emily Stapleton
General Manager, Bay Area Bike Share