

Motivate Draft 10/29/2015

ATTACHMENT A

AGREEMENT TO CONTINUE PILOT BIKE SHARE PROGRAM

by and between

BAY AREA MOTIVATE, LLC

and

METROPOLITAN TRANSPORTATION COMMISSION

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ATTACHMENT A

AGREEMENT TO CONTINUE PILOT BIKE SHARE PROGRAM

THIS AGREEMENT TO CONTINUE THE PILOT BIKE SHARE PROGRAM (this “Continuation Agreement”), has an effective date (the “Effective Date”) that is the same as the effective date of the BAY AREA BIKE SHARE PROGRAM AGREEMENT, to which this Continuation Agreement is attached (the “Program Agreement”), by and between the METROPOLITAN TRANSPORTATION COMMISSION, a California public agency established pursuant California Government Code § 66500 et seq., having an office at 101 Eighth Street, Oakland, California (“MTC”), and BAY AREA MOTIVATE, LLC, a Delaware limited liability company, having any office at 5202 Third Avenue, Brooklyn, New York 11220, as Operator of the Bay Area Bike Share Program (“Operator”).

RECITALS

WHEREAS, Alta Bicycle Share, Inc., an Oregon corporation (“Alta”), and Bay Area Air Quality Management District, a California special district (the “Air District”), entered into a Bike Share Program Agreement having an effective date of February 6, 2013 (the “Pilot Program Agreement”), pursuant to which Operator operated a pilot bike sharing program (the “Pilot Program”) in the cities of San Jose, Palo Alto, Mountain View, Redwood City and San Francisco (each, a “Pilot City” and collectively, the “Pilot Cities”);

WHEREAS, on the date hereof, (a) the Air District and Motivate International, Inc., formerly known as Alta (“Motivate”), terminated the Pilot Program Agreement, and (b) the Air District, MTC, and Operator agreed to the conveyance of all of the Air District’s right, title and interest in and to the tangible and intangible property acquired or developed in connection with the Pilot Program (collectively, the “Pilot Program Property”) from the Air District to MTC and thereafter from MTC to Operator ;

WHEREAS, the Parties have agreed that Operator will continue to operate the Pilot Program in the Pilot Cities using the Pilot Program Property; and

WHEREAS, capitalized terms not otherwise defined when they first appear in this Continuation Agreement are defined in Article XII.

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

ARTICLE I

PURCHASE OF PILOT PROGRAM PROPERTY; SERVICES; TERM

1.1 Purchase of Pilot Program Property. On the Effective Date, Operator shall purchase the Pilot Program Property for the purchase price agreed to among Operator, MTC and the Air District.

1.2 Services. Operator shall, during the Term (as defined in Section 1.3), operate and maintain in the Pilot Cities a bike share system that was originally established under the Pilot Program Agreement (the "System"). Operator shall (a) utilize the Sites being used as of the Effective Date from the Pilot Program as well as the Bicycles, Docks, Technical Platforms, Map Frames, Terminals and other Equipment existing as of the Effective Date from the Pilot Program, and Operator shall not be obligated to purchase any Equipment, new or otherwise, that was not Pilot Program Property; (b) subject to Events of Force Majeure, provide the specific services set forth in this Continuation Agreement; (c) provide all technical expertise and qualified personnel to operate the System safely and competently; and (d) correct defective or non-conforming services. All services shall be performed in compliance with this Continuation Agreement and shall be carried out in strict compliance with all applicable federal, state and local laws and regulations.

1.3 Term. This Continuation Agreement shall commence on the Effective Date and shall end (a) for Mountain View, Palo Alto and Redwood City, on June 30, 2016, and (b) for San Francisco and San Jose, upon installation of 75% of the Phase I Stations located in San Francisco and San Jose. Notwithstanding the foregoing, if MTC terminates the Program Agreement pursuant to the second to last sentence of Section 3.4.1 of the Program Agreement, then this Continuation Agreement shall terminate at the same time the Program Agreement so terminates. The bike share program to be implemented under the Program Agreement is referred to as the "BABS Program."

ARTICLE II **REVENUES; USER FEES; AND OPERATING EXPENSES**

2.1 Revenues. Operator shall be entitled to collect and retain all System Operating Revenues.

2.2 User Fees. From the Effective Date to June 30, 2016, user fees shall be consistent with the fee schedule set forth in Attachment A-2. From and after June 30, 2016, Operator shall have the right to institute the fee schedule set forth in Attachment A-3.

2.3 Operating Expenses.

2.3.1 San Francisco and San Jose. Subject to Section 2.3.3, Operator shall be responsible for paying the expenses of operating and maintaining the System in San Francisco and San Jose.

2.3.2 Mountain View, Palo Alto and Redwood City. Subject to Section 2.3.3, from the Effective Date through December 31, 2015, Operator shall be responsible for paying the expenses of operating and maintaining the System in Mountain View, Palo Alto and Redwood City. From January 1, 2016 to the end of the Term, MTC shall pay to Operator \$100 per Dock per month for Mountain View, Palo Alto and Redwood City to cover Operating Expenses in those cities.

2.3.3 MTC Payment. MTC shall cover 50% of Operator's (and Motivate's) Operating Losses for the period commencing August 29, 2015 and ending on the earlier of the Effective Date and December 31, 2015 (the "Covered Period"). Within 30 days after the end of

the Covered Period, Operator shall send MTC a statement setting forth Operator's (or Motivate's) Operating Losses, if any, for the Covered Period accompanied by reasonable back-up. Notwithstanding the existence of Operator's (or Motivate's) Operating Losses for any particular month, MTC's obligation under this Section 2.3.3. shall apply only to Operator's (and Motivate's) cumulative Operating Losses over the entire Covered Period. MTC shall pay Operator for any such cumulative Operating Losses within 30 days following Operator's submission of its statement for the Covered Period.

2.4 Taxes, Dues, and Fees. Operator shall pay all applicable federal, state, and local taxes assessed against, arising out of, and collected from the service operation, including sales, use, license, and/or privilege taxes. Operator shall at all times maintain records evidencing revenue and the taxes collected as are required to substantiate the correctness of the tax returns filed.

2.5 No Tax Exemption. No provision of this Continuation Agreement shall be construed to provide Operator or any of its subcontractors with an exemption, exclusion, deferral, offset or other relief from any assessment, tax, levy, or penalty which is now or which may be hereafter authorized by law.

2.6 Covenant Against Contingent Fees. Operator warrants that it has not employed or retained any company or person, other than a bona fide employee working for Operator, to solicit or secure this Continuation Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Continuation Agreement. For breach or violation of this warranty, MTC shall have the right to annul this Continuation Agreement without liability, or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

2.7 Liquidated Damages. Subject to Events of Force Majeure, the failure of Operator to achieve the service levels described in Section 3 of Attachment A-1 will result in liquidated damages but only if such failure relates to a service level described in such Section 3 for which there is a corresponding "Key Performance Indicator" in Appendix A of the Program Agreement. Operator will have no liability for a failure to achieve a service level described in such Section 3 for which there is no corresponding "Key Performance Indicator" in Appendix A of the Program Agreement. Liquidated damages will be assessed at half of the rate set forth in Appendix A of the Program Agreement. MTC shall notify Operator on a monthly basis of any such failures and the corresponding liquidated damages, but payment of such liquidated damages shall not be due until the completion of Phase I.

ARTICLE III

EMPLOYEE AND EMPLOYMENT MATTERS

3.1 Project Manager. Each Party shall appoint a project manager to act, except as otherwise specified in this Continuation Agreement, as the primary contact person for purposes of this Continuation Agreement. The provision by Operator of services to operate and maintain the System is subject at all times to inspection and review by MTC Project Manager.

3.2 Fairness Policy. No employee of MTC shall be admitted to any share or part of this Continuation Agreement or to any benefit that may arise therefrom that is not available to the general public.

3.3 Employment Discrimination by Operator Prohibited. During the performance of this Continuation Agreement, Operator agrees as follows:

- A. Operator shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Operator. Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Operator, in all solicitations or advertisements for employees placed by or on behalf of Operator, will state that Operator is an Equal Opportunity Employer.
- C. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 3.3.
- D. Operator will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- E. Operator shall not discriminate against any customer, prospective customer, employee or prospective employee because of race, color, sex, age, religion, or country of origin.

3.4 General Compliance with Laws and Wage Rates. Operator will comply with all federal, state, and local laws and ordinances applicable to the provision of services to operate and maintain the System. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775, to the extent applicable.

3.5 Supervision by Operator. Operator shall at all times require strict discipline and good order among Operator's employees and all subcontractors providing any of the services required hereunder. Operator shall not permit, and shall require all subcontractors not to permit, any employee or other person to provide any service required hereunder unless such employee or other person has demonstrated proficiency in the type of work which such employee or other person is assigned to perform.

3.6 Non-Discrimination. During the performance of this Continuation Agreement, Operator and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical

condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Operator and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Operator and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Continuation Agreement by reference and made a part hereof as if set forth in full. Operator and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

3.7 Subcontractors Restrictions. Operator shall only enter into subcontracts with subcontractors that have clearly demonstrated proficiency in the tasks which are the subject of such subcontracts. Operator is prohibited from hiring or subcontracting with any individuals that participated in the selection of Operator or the development of this Continuation Agreement for a period of 24 months from the date of execution of this Continuation Agreement.

ARTICLE IV **OWNERSHIP AND PROPRIETARY RIGHTS**

4.1 Rights, Authorizations, Licenses, Permits, and Other Permissions. Except as explicitly set forth in Attachment A-1, Operator shall, at its sole cost and expense, obtain all rights, authorizations, licenses, permits, and other permissions, from all federal, state, and local governments, and other entities or persons, necessary for Operator to provide the services required under this Continuation Agreement. MTC's execution of this Continuation Agreement shall neither constitute nor be deemed to be governmental approval of, or consent to, any rights, authorizations, licenses, permits, and permissions required or needed to be obtained by Operator.

4.2 Use of Seals, Logos, Servicemarks, Trademarks, and Copyrighted Material. Operator shall not use, display, or reproduce the seal, logo, servicemark, trademark, or copyrighted material of the Air District, MTC or any Pilot City without the prior express written authorization of the Air District, MTC or any Pilot City, as applicable.

4.3 Third Party Intellectual Property. Operator covenants to save, defend, hold harmless, and indemnify MTC and the Pilot Cities, and all of their officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured, supplied, or used in the performance of this Continuation Agreement, including its use by MTC or any Pilot City.

ARTICLE V **TERMINATION**

5.1 Termination.

- A. Right of MTC to Terminate. MTC shall have the right to terminate this Continuation Agreement if Operator fails to provide the services required hereunder satisfactorily or if Operator breaches any term, condition, or covenants of any of this Continuation Agreement.
- B. Failure or Breach. If Operator fails to provide the services required hereunder satisfactorily or if Operator breaches any term, condition, or covenants of any of this Continuation Agreement, then MTC will give Operator written notice of such failure or breach and 30 days to cure such failure or breach. If Operator fails to cure such failure or breach by the expiration of such 30-day period, then MTC shall have the right to give Operator a written notice of termination, including the date when the termination shall be effective (the “Termination Effective Date”).
- C. Operator’s Contest. If Operator in good faith contests any such failure or breach, then such termination shall be suspended pending the outcome of such contest.
- D. Termination of Program Agreement. If the Program Agreement terminates for any reason prior to completion of Phase I under the Program Agreement, then this Continuation Agreement shall terminate concurrently.

5.2 Stop Work. Unless otherwise directed in writing by MTC, Operator shall stop providing services as of the Termination Effective Date, terminate all vendors and subcontractors effective as of the Termination Effective Date, and settle all outstanding liabilities and claims.

5.3 Compensation. Operator will be entitled to receive compensation as provided in Article II to the Termination Effective Date.

5.4 Sole Remedies. Notwithstanding anything to the contrary herein, other than liquidated damages under Section 2.7, the sole remedy of MTC and the Pilot Cities against Operator for breach of this Continuation Agreement, excluding a breach of Article VIII, or for failure to provide the services satisfactorily, is to terminate this Continuation Agreement in accordance with Article VII. Except for liquidated damages under Section 2.7, in no event shall Operator be liable for damages of any kind for breach of this Continuation Agreement, other than a breach Article VIII, or for failure to provide the services satisfactorily.

ARTICLE VI

DISPUTE RESOLUTION

6.1 In the event of a dispute between the Parties, such dispute shall be addressed and resolved in accordance with the following (the “Dispute Resolution Process”):

6.1.1 The MTC Project Manager assigned to the System and Operator’s General Manager of the System, or their respective delegates, shall meet, within 10 days after receipt by one Party of notification from the other Party of such dispute, to negotiate in good faith in order

to try to resolve such dispute (the date of the first such meeting, or the expiration of such 10-day period if the meeting is not timely held, being the “Initial Meeting Date”). If such persons fail to resolve such dispute within 15 days after the Initial Meeting Date, then the Executive Director of MTC and the President of Bikeshare Holdings shall meet promptly and negotiate in good faith in order to resolve such dispute. If such persons fail to resolve such dispute within 30 business days after the Initial Meeting Date, then such dispute shall be subject to mediation. A meeting may be held in person, by conference call or by video conference. By agreement of the Parties, any of the deadlines set forth in this section may be extended or shortened. The process described in this section shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

6.1.2 Unless the Parties otherwise agree, mediation shall be administered by the American Arbitration Association (the “AAA”) in accordance with its Commercial Rules, or similar service. A request for mediation shall be made in writing, delivered to the other Party and filed with the applicable mediation service. Either Party may submit such request. The Parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in San Francisco. The Parties shall be represented by individuals of their choosing. Agreements reached in mediation shall be binding on the Parties and enforceable in a State or Federal Court of competent jurisdiction sitting in San Francisco County. The mediation process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

6.1.3 The Parties shall comply with any settlement agreement regarding any dispute that is the subject of a settlement agreement or binding written decision.

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

ARTICLE VII **INSURANCE**

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

7.2 Operator shall include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the Agent. To the extent that an Agent does not

procure and maintain such insurance coverage, Operator shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Operator's indemnity obligation under Article VIII as to itself or any of its Agents in the absence of such coverage.

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

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

7.3.2 Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Operator and Operator's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. In addition, the entities listed in Section 7.13 and their respective commissioners, directors, officers, representatives, agents and employees are also to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.

7.3.3 Business Automobile Insurance for all automobiles owned (if any), used or maintained by Operator and Operator's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

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

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

Professional Liability Insurance to an Agent, but the failure of such Agent to maintain such insurance shall not relieve Operator of its obligation to maintain such insurance.

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

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

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

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

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

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

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

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

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

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

7.10 Certificates of Insurance. On the Effective Date, Operator shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

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

7.12 Additional Insureds. The following entities are to be named as Additional Insureds under applicable sections of this Article VII and as Indemnified Parties pursuant to Article VIII of this Continuation Agreement.

7.12.1 Metropolitan Transportation Commission (MTC)

7.12.2 City of Mountain View

7.12.3 City of Palo Alto

7.12.4 City of Redwood City

7.12.5 City of San Francisco

7.12.6 City of San Jose

ARTICLE VIII

INDEMNIFICATION AND LIMITATION OF LIABILITY

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

8.2 Exclusions. Notwithstanding the foregoing, the following shall be excluded from Operator's indemnification and defense obligations contained in the preceding sentence: any

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

8.3 Notice. Upon receipt by any Indemnified Party of actual notice a Claim to which such Indemnified Party is entitled to indemnification in accordance with Section 8.1, such Indemnified Party shall give prompt notice of such Claim to Operator. Operator shall assume and prosecute the defense of such Claim at the sole cost and expense of Operator. Operator may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.

ARTICLE IX

THIRD PARTY BENEFICIARIES

9.1 Third-Party Beneficiaries Under This Continuation Agreement. Except as provided in Sections 7.13, 8.1, 8.2 and 8.3, this Continuation Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the signatories to this Continuation Agreement.

ARTICLE X

MISCELLANEOUS

10.1 Governing Law. This Continuation Agreement shall be governed exclusively by the internal laws of the United States and of the State of California applicable to contracts made, accepted and performed wholly within said State, without regard to application of principles of conflict of laws. Any claim, suit or action arising under or relating to this Continuation Agreement must be brought only in courts located in San Francisco, California. The Parties hereby agree that such courts shall have exclusive personal and subject matter jurisdiction over any such claim, suit or action.

10.2 Survival. All provisions of this Continuation Agreement that by their terms survive the expiration or any termination of this Continuation Agreement, together with all other provisions of this Continuation Agreement that may be reasonably construed as surviving the expiration or any termination of this Continuation Agreement, shall survive the expiration or any termination of this Continuation Agreement.

10.3 Notices. Except as otherwise provided herein, all notices, requests, demands and other communications which are required or may be given under this Continuation Agreement

shall be provided in the manner set forth in this section. Notice to a Party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that Party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five business days after the date of mailing.

If to MTC:

Metropolitan Transportation Commission
Joseph P. Bort MetroCenter,
Oakland, CA 94607-470
Attention: Executive Director
Email: [_____]]
Attention: General Counsel:
Email:[_____]]
Attention: Designated Representative
Email:[_____]]

If to Operator:

Bay Area Motivate, LLC,
5202 Third Avenue
Brooklyn, New York 11220
Attention: Chief Executive Officer:
Email:[_____]]
Attention: General Counsel
Email: [_____]]
Attention: Designated Representative
Email: [_____]]

10.4 Entire Agreement; Amendments and Waivers. This Continuation Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No supplement, modification or waiver of this Continuation Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of the provisions of this Continuation Agreement, or any breach thereof, shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, or shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10.5 Counterparts; Severability. This Continuation Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties may rely upon a facsimile copy or scanned copy of any Party's signature as an original for all purposes. In the event that any one or more of the provisions contained in this Continuation Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Continuation Agreement or any other such instrument and the remaining provisions shall remain in full force and effect. To the extent permitted by applicable law, any such provision will be restricted in applicability or reformed to the minimum extent required for such provision to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

10.6 Construction; Incorporation. The headings of the articles, sections, and paragraphs of this Continuation Agreement are inserted for convenience only and shall not be deemed to constitute part of this Continuation Agreement or to affect the construction hereof. All sections and article references are to this Continuation Agreement, unless otherwise expressly provided. As used in this Continuation Agreement, (a) "hereof", "hereunder", "herein" and words of like import shall be deemed to refer to this Continuation Agreement in its entirety and not just a particular section of this Continuation Agreement, and (b) unless the context otherwise requires, words in the singular number or in the plural number shall each include the singular number or the plural number, words of the masculine gender shall include the feminine and neuter, and, when the sense so indicates, words of the neuter gender shall refer to any gender. The Parties acknowledge and agree that: (i) this Continuation Agreement is the result of negotiations between the Parties and shall not be deemed or construed as having been drafted by any one Party, (ii) each Party and its counsel have reviewed and negotiated the terms and provisions of this Continuation Agreement (including, without limitation, any exhibits and schedules attached hereto) and have contributed to its revision, (iii) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Continuation Agreement, and (iv) the terms and provisions of this Continuation Agreement shall be construed fairly as to both Parties and not in favor of or against either Party, regardless of which Party was generally responsible for the preparation of this Continuation Agreement.

10.7 Relationship of the Parties. Operator is an independent contractor and neither Operator nor its employees shall, under any circumstances, be considered employees, servants, or agents of MTC, nor shall MTC nor its agents or employees be considered employees, servants, or agents of Operator. At no time during the Term or otherwise shall Operator, its employees, or agents, represent to any person or entity that Operator and its employees are acting on behalf of, or as an agent of, MTC or any of its employees. MTC shall not be legally responsible or liable for any negligence, intentional act, or other wrongdoing by or of Operator, its employees, servants, agents, subcontractors, suppliers, or manufacturers of goods or services provided by Operator pursuant to this Continuation Agreement. MTC will not withhold payments to Operator for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Operator. MTC will not provide to Operator any insurance coverage or other benefits, including Workers' Compensation, normally provided by MTC for its employees. This Continuation Agreement does not constitute and shall

not be construed as constituting a partnership or joint venture or grant of a franchise between the Parties.

10.8 Cooperation. The Parties agree to execute such further instruments and to take such further action as may reasonably be necessary or helpful to carry out the intent of this Continuation Agreement.

10.9 Failure or Delay in Performance. Operator shall not be held responsible for failure to perform the duties and responsibilities imposed by this Continuation Agreement if such failure is due to Event of Force Majeure, beyond the control of Operator, that make performance impossible or illegal, unless otherwise specified in this Continuation Agreement; provided that the Operator (in order to not be held responsible for failure to perform) shall have given MTC Project Manager written notification of such failure, event, or occurrence beyond the control of Operator not later than 48 hours after the beginning of such failure, event, or occurrence.

10.10 Representations of Operator. Operator hereby represents and warrants to MTC that:

10.10.1 Operator is a limited liability company, validly existing and in good standing under the laws of the State of Delaware, and it is duly authorized to do business in the State of California; and

10.10.2 Operator has all requisite power and authority to own or lease its properties and assets, to conduct its business as currently conducted and to execute, deliver and perform this Continuation Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.

10.11 Ethics in Public Contracting. This Continuation Agreement incorporates all local, state, and federal law, regulations and rules related to ethics, conflicts of interest, or bribery. Operator certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other officer, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

10.12 Remedies. The remedies available to MTC in various sections of this Continuation Agreement shall be deemed to be in addition to, and not in limitation of, any other remedies MTC has or may have under applicable law or in equity arising out of or relating to this Continuation Agreement.

10.13 Assignment. Operator shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Continuation Agreement, without the prior written consent of MTC, except the preceding clause shall not limit Operator's rights to enter into subcontracts for the provision of services hereunder.

10.14 Prohibition of Expending Local, Agency, State or Federal Funds for Lobbying

- A. Operator certifies to the best of its knowledge and belief that:
- i. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of Operator to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this Continuation agreement; Operator shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. Operator also agrees by signing this Continuation Agreement that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XI **DEFINITIONS**

11.1 Defined Terms. As used herein, the terms below shall have the following meanings. Any of such terms, unless the context otherwise requires, may be used in the singular or plural, depending upon the reference.

"Backend Software and Computer Hardware" shall mean an electronic interface enabling, among other things, Stations, Bicycles, subscriber customer service, cellular service, Customer Keys, the website, and call center to function.

"Bicycle" shall mean a device propelled solely by human power, upon which a person may ride either on or astride a regular seat attached thereto, having two or more wheels in tandem.

“**Crash**” shall mean every reported incident or event involving a subscriber, Bicycle user, Bicycle, and/or Station resulting in personal injury to the subscriber or others, or property damage to the Equipment, or to the property of others.

“**Customer Key**” shall mean a fare card or fob for rental of Bicycles.

“**Dock**” or “**Docking Point**” shall mean a locking mechanism contained on a Station designed to receive a Bicycle for locked storage.

“**Equipment**” shall mean all physical components provided by, or used by, Operator so that the System is available for use by the public, including, without limitation Bicycles, Docks, Technical Platforms, Map Frames, Terminals, cables, Station batteries, maintenance trailer, truck, electric bicycle, Customer Keys, trailer, and Bicycle and Station spare parts.

“**Event of Force Majeure**” shall mean a delay, suspension or interruption due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the Party claiming an Event of Force Majeure, provided in each case that such Party has taken and continues to take all reasonable actions to avoid or mitigate such delay, suspension or interruption and provided that such Party notifies the other Party to this Continuation Agreement in writing of the occurrence of such delay, suspension or interruption within five (5) business days, or if not reasonably practicable, as soon thereafter as reasonably practicable, of the date upon which the Party claiming an Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an “Event of Force Majeure” unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the Party claiming Event of Force Majeure has taken and continues to take all reasonable steps to pursue such decision. In no event will a government entity’s final decision relating to Operator, this Continuation Agreement or the System, whether positive or negative, once made constitute an Event of Force Majeure (the term “final decision” in this sentence shall refer to a decision with respect to which all available appeals have been exhausted or the time period for filing such appeals has expired). The financial incapacity of Operator shall not constitute an Event of Force Majeure.

“**Fleet**” shall mean 100% of the number of Bicycles obtained by Operator from MTC on the Effective Date minus the number of stolen (or otherwise unreturned) and unreparable Bicycles.

“**Functional Bicycle**” shall mean the condition of a Bicycle, consistent with the technical specifications of the Bicycles to be provided under this Continuation Agreement, to be ridden by an ordinary subscriber using such Bicycle under normal conditions. A Functional Bicycle does not refer to comfort, speed, quality of the riding experience, or minor issues with the Bicycle that does not impede the ability to be ridden.

“**Functional Station**” shall mean a Docking Station, consistent with the technical specifications of the Docking Stations under the Pilot Program, to be used by an ordinary

subscriber using such Docking Station under normal conditions. A Functioning Station does not refer to inconvenience or inability of a subscriber to follow directions, provided such directions are provided in a form understandable by an ordinary subscriber. A Functional Station shall have at least one Docking Point containing a Functional Bicycle, at least one empty Docking Point, and all other elements in working condition to be considered a Functional Station.

“**Hacking**” shall mean unauthorized and intentional access to the Computer Hardware for the System and/or Software.

“**Map Frame**” shall mean a two-sided metal informational display unit, including translucent covering and lock.

“**MTC Project Manager**” shall mean an individual appointed by MTC to act as the project officer.

“**Notification**” shall mean all information provided by MTC, a Pilot City or the general public to Operator about a specific defect or problem concerning the System, Equipment or operations of the System by written document, email to Operator’s public information email address for the System, or telephone call to Operator’s call center for the System.

“**Operable Station**” shall mean a Station at which at least 90 percent of all installed Docks are Operable Docks from which an annual member can check out and return a Bicycle.

“**Operating Expenses**” shall mean, with respect to Operator (or Motivate) for any period, the costs expended by Operator (or Motivate) to operate and maintain the System and to provide the specific services set forth in this Continuation Agreement, including, without limitation, personnel costs, software license fees, insurance costs, costs of maintaining service vehicles, costs of leasing and maintaining facilities used for the System.

“**Operating Losses**” shall mean, with respect to Operator (or Motivate) for any period, the amount, if any, by which Operating Expenses for such period exceed System Operating Revenues for such period.

“**Party**” means either MTC or Operator, as the context requires; “**Parties**” means MTC and Operator.

“**Service**” shall mean the use of the Equipment by the public at large after the Effective Date.

“**Site**” shall mean a designated area on publicly or privately owned real property, which area contains one or more of each of the following items made available by Operator for the System: Bicycles, Docks, Terminal, Technical Platforms, and Map Frame.

“**Station**” shall a designated area of docking Bicycles at which Docks, Terminal, Technical Platforms, and Map Frame are located.

“**System Operating Revenues**” shall mean all funds derived from ridership use of the System, including subscription fees and usage fees.

“Technical Platform” shall mean a base component that rests on the ground and supports the Docks, Terminal, and Map Frame.

“Terminal” shall mean a kiosk that provides Bicycle rental instructions, contains payment equipment (i.e. credit card device), and includes all other means necessary for the rental of Bicycles.

“Trip” shall mean the use of a Bicycle from one Station to another Station or back to the initial Station.

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Attachment A-1, Description of Services

1. Description of Services

Operator shall operate the bike-sharing system in the Pilot Cities that was installed and in place at the termination of the Pilot Program Agreement using the same Sites, Bicycles, Docking Stations, Terminals, Docking Points, Technical Platforms, Customer Keys, Back-end Software and Computer Hardware and other Equipment that was used for the Pilot Program. Operator guarantees the following minimum equipment numbers in Mountain View, Palo Alto, and Redwood City:

Mountain View: 7 Stations; 117 Docks; 59 Bicycles

Palo Alto: 5 Stations, 75 Docks, 37 Bicycles;

Redwood City: 7 Stations; 117 Docks; 59 Bicycles;

San Francisco: 35 Stations; 665 Docks; 300 Bicycles;

San Jose: 16 Stations; 264 Docks; 110 Bicycles

Operator's responsibilities include:

- (1) Handle ongoing Equipment maintenance and rebalancing;
- (2) Manage IP issues;
- (3) Manage all ongoing customer service issues associated with the System (unless otherwise instructed); and
- (4) Conduct bicycle safety trainings and encourage the use of bicycle helmets.

2. Subscriber Information/Relations.

2.1 Subscriber and Usage Fees. User fees shall be consistent with Attachment A-2, subject to application of Attachment A-3 as provided in Section 2.2 of this Continuation Agreement.

2.2 Age Requirement for Program Subscribers. Subscriptions shall only be issued to individuals 18 years of age and older.

2.3 Subscriber Privacy. Operator shall, at all times, protect the privacy rights of all subscribers. Operator shall strictly comply with all applicable federal, state, and local laws, ordinances, and regulations concerning the privacy of all subscriber information obtained by Operator in the course of providing services under this Continuation Agreement.

2.4 Subscriber Agreement. Operator shall use the same form of Subscriber Agreement that was used for the Pilot Program with such changes thereto as Operator considers

appropriate. Any material changes to the Pilot Program form shall be subject to the review and approval of MTC. The Subscriber Agreement shall address, at a minimum, the following:

- (1) The rates, fees, and deposits (if any).
- (2) Confidentiality of personal and financial data and information.
- (3) Subscriber's agreement to return the Bicycle in the same condition as it was when rented.
- (4) Subscriber's agreement to immediately report to the call center any Crash, as defined in this Continuation Agreement to include any incident or event resulting in personal injury to the subscriber or others or in property damage to the Equipment or to the property of others and agreement to follow any instructions from the call center regarding reporting a Crash to police.
- (5) Subscriber's agreement to immediately report to the call center a lost or stolen Bicycle or a lost or stolen Customer Key.
- (6) Subscriber's responsibility and liability for any consequences of any kind or nature whatsoever related to a stolen or lost Bicycle or Customer Key.
- (7) Prohibited uses including, without limitation, no more than one person on a Bicycle at one time.
- (8) Subscriber's acknowledgement of and acceptance of responsibility and risk.
- (9) Prohibition against any person other than the subscriber operating any Bicycle rented from Operator and prohibition against transfer of a Customer Key to anyone in any manner whatsoever.
- (10) A representation by each subscriber that s/he is physically able to ride a Bicycle without risk to health, knowledgeable about the operation of a Bicycle, and knowledgeable about the laws pertaining to Bicycles operated within the jurisdictions where the Bicycles are to be used.
- (11) Age limits.
- (12) Subscriber's indemnification of MTC and the Pilot Cities, its elected and appointed officers, officials, employees, and agents.
- (13) Prohibition against use of Bicycle while under the influence of alcohol, drugs, any controlled substance, or any medication that would impair the Bicycle operator's ability to safely operate the Bicycle.
- (14) Instructions regarding proper use of Bicycle luggage carrier as to type of contents, weight, or visual obstruction.
- (15) Prohibition against Bicycle use for any illegal purpose.

2.5 Loss Fees. Operator shall deem a Bicycle as "lost or stolen" if not returned to a Site within 24 hours of being signed out, and charge the subscriber whose account is associated with that sign-out the amount of the "Loss Fee" set forth in Attachment A-2, subject to application of Attachment A-3 as provided in Section 2.2 of this Continuation Agreement, which covers the replacement value of the Bicycle, along with shipping fees and expenses and service charges for placing a new Bicycle into the operational Fleet. Credit accounts will be charged the Loss Fee at the time a loss is determined. Operator shall include all such circumstances in its monthly report to MTC. Notwithstanding the foregoing, Operator shall waive such fees for stolen Bicycles or Bicycles that are damaged in connection with a crime against the rider or in a collision with a motor vehicle, so long as an appropriate police report is filed for the incident.

2.6 Helmets. Operator shall provide information on the System website and in the subscription agreement about the importance of wearing helmets for safety reasons. Operator will make reasonable best efforts to provide users with information that directs them to nearby bike shops and other locations where subscribers may purchase a helmet and shall display on the System website where discounts are available and at Terminals.

2.7 Subscriber Communications. Upon request from MTC, Operator will send biking related information announcements via electronic mail to all subscribers who do not “opt out” of receiving such emails.

3. Operations

3.1 Continuous Operation and Management. The System shall commence operating on the Effective Date and shall remain in operation 24 hours per day, 365 days per year.

3.2 Inspection and Maintenance.

- (1) Operator shall, at all times, follow and strictly comply with the manufacturer’s requirements, warranties, and recommendations for assembly, maintenance, storage and repair of all Equipment. Operation shall not be obligated to purchase any replacement Equipment.
- (2) Operator shall perform a maintenance check for each Bicycle once every two calendar months consisting of the following checks, with deficient elements repaired or replaced as necessary:

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

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

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

Check brake function (front and rear);

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

Check bell for tightness and correct function;

Check handlebar covers for damage and instruction stickers;

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

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

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

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

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

Check LED lights (front and rear) for function;

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

Check pedals and cranks for tightness;

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

Check kickstand for correct function; and

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

- (3) Operator shall clean each Station two times per month-- one time between the first and fifteenth days of the month, and one time between the sixteenth and last days of the month. Station cleaning shall consist of, at a minimum, litter removal and, as needed, power washing of Docks, Terminal Platforms and pavement.
- (4) (a) Except as required by clause (b) below, Operator shall remove conspicuous graffiti within 72 hours after Notification; and(b) Operator shall remove racist and hate graffiti within 4 hours after Notification.
- (5) Operator shall remove conspicuous accumulations of litter from Stations within 24 hours after Notification.
- (6) The System must be operational 100% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), so that, at a minimum, all System users can dock and undock Bicycles at all times, excluding (i) scheduled downtime, and (ii) any period when the Computer Hardware for the System and/or Software is, and remains, damaged through Hacking. System functionality does not apply to hardware malfunctions at individual Stations or to individual Stations that are not Operable Stations.
- (7) Stations, in the aggregate, must be Operable Stations 99% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), excluding (i) during scheduled downtime, and (ii) any period when a Station is not an Operable Station because the Terminal or other Equipment located at the Station has been damaged by third-parties. Calculated by taking the sum of the number of hours that each Station was Operable Station during a month, dividing that sum by the product of the total number of hours in the month and the number of Stations that month. Station Operability does not apply during any period in which the entire System is down.
- (8) The System website must be operational 100% of the time every year (i.e., every hour of every day, 24 hours per day, 7 days per week, measured annually) excluding (i) scheduled downtime, and (ii) any period when the Computer Hardware for the System and/or Software is, and remains, damaged through Hacking.

In any circumstances where Operator is required to perform cleaning services under this Continuation Agreement, Operator shall use the most environmentally friendly cleaning solutions and chemicals available for these purposes.

3.3 Availability of Bicycles. Operator shall ensure that at least 90% of bicycles in the Fleet are operational, on-the-street and available for public use. The number of available bicycles will be recorded once each Day of the month between the hours of 11:00 AM and 3:00 PM.

3.4 Distribution of Bicycles. Operator shall re-distribute Bicycles among Sites and place the Bicycles in operable Docks throughout the day from 6 am to 10 pm during each day of operation. Such distribution shall be critically timed to increase the probability that each Site, at all times, contains a sufficient number of empty Docks for Bicycles to be returned and occupied

Docks containing Bicycles available for subscribers. All Bicycles placed in operational Docks shall be in acceptable operating condition. Operator shall ensure that, during any day, no Site has all empty Docks or all full Docks for more than three hours between the hours of 6 am and 10 pm. If during any month the average usage of a Site is greater than 2.5 Trips per day per Dock or less than 0.75 Trips per day per Dock, then this service level does not apply for such Site for such month.

3.5 Operator's Call Center. Operator shall provide to MTC, all subscribers, and the public at large, a toll-free telephone number for Operator's call center. The call center shall be in continuous operation 24 hours per day, 7 days per week, and 365 days per year. Not less than 80% of telephone calls to Operator's call center each month must be answered by a person within 90 seconds or less. Operator shall conspicuously post a notice on each Station advising the general public that they may direct their complaints and comments to Operator's call center.

Operator shall ensure that the call center can handle calls in English, Spanish, Mandarin and Cantonese, using operators fluent in those languages. The operators at the call center shall be fully competent and knowledgeable to answer questions and provide information concerning, among other things, subscription process, subscription prices, billing, Crashes, comments, complaints, malfunction problems, location of Sites, directions to nearest Site that has Bicycles available for use and/or available Docks for returns, directions to helmet sales location(s), and instructions on how to fit a helmet. The call center manager shall be knowledgeable about all service areas. The call center operators shall keep accurate and complete written records of each such call in a Customer Service Log as hereinafter required, including the primary reason for each call and the status of the call (e.g., "no further action", "requires reimbursement").

3.6 Email Response Time. Not less than 95% of emails to Operator's public information email address must be answered within 1 business day.

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

3.8 System Website. Operator shall create and maintain a System website the content of which shall address, at a minimum, the following:

- (1) Eligibility requirements;
- (2) Subscription information and rate, schedules;
- (3) Payment information and subscription processing;
- (4) Method for subscribers to log in, update required information, and track individual usage data compiled by the system;
- (5) Subscriber Agreement and acceptance of terms;
- (6) Map with the entire regional network of Sites and real-time availability of Bicycles at each Site, both for a standard computer screen and mobile phone;
- (7) Frequently Asked Questions;

- (8) Safety requirements and information (including notification in the event of malfunction or Crash);
- (9) Encouragement of helmet use for subscribers and a listing of nearby locations where users may purchase or lease helmets;
- (10) Merchandise page;
- (11) Permitted links to other Bay Area based bike programs and events;
- (12) A listing of nearby bike rental shops, locations and contract information;
- (13) Safety video (supplied by the Air District or others) addressing safe use of bicycles, helmets, and California Vehicle Code and local laws pertaining to bicycle riders; and
- (14) A webpage that contains links to MTC- approved information (i.e. links to partner websites and notices).

Operator, at all times, shall keep the website information updated, current, and accurate on a regular basis.

3.9 Operator Staffing Levels. Operator, at all times, shall provide sufficient staff to efficiently and promptly provide the services set forth in this Continuation Agreement.

3.10 Personnel and Staffing Requirements. Operator shall deliver to MTC copies of all written personnel policies that, at a minimum, address employee conduct and qualifications.

3.11 Relocation, Resizing, and/or Reconfiguration of Stations.

- (1) By Operator. In the event that Operator wishes to remove, relocate, resize, and/or reconfigure any Station, other than those Stations whose locations are fixed pursuant to the terms of a grant or sponsorship agreement, due to under-utilization or lack of profitability, it must notify MTC in writing, providing sufficient detail and description of the proposed relocation site and reasons therefore, prior to removal. Assuming that MTC does not disapprove the request within ten business days, Operator may remove, relocate, resize, and/or reconfigure the Station consistent with Operator's notice of same to MTC.
- (2) By MTC. MTC shall provide Operator with 48 hours advance notice of any relocation or reconfiguration of Stations to accommodate construction, special events, or other reasons.

3.12 Interruption of Service.

- (1) Intentional Interruption of Service. If, at any time, Operator intends, or is required, to temporarily interrupt all or a portion of the service, for any reason beyond Operator's reasonable control, including, without limitation, weather, safety, or other event or circumstance where continued service would be unsafe, unavailable, impractical, or impossible, then Operator shall contact MTC by telephone and by email at least 24 hours before the interruption of service and specifically describe the reason, proposed duration, Operator's proposed actions to correct the cause of the interruption (if possible), minimize the interruption, and Operator's plans to resume service.

Operator promptly shall notify the subscribers of the cause and expected duration of the proposed interruption of service by posting notice on the website, via email, and Terminals (electronic message).

- (2) Unintentional Interruption of Service. If, at any time, a System malfunction or an event or circumstance occurs where continuous service would be unsafe or unavailable for reasons beyond Operator's reasonable control, and this causes or will cause a temporary interruption of service, then Operator shall immediately contact MTC by telephone and by email and specifically describe the reason, estimated duration, Operator's proposed actions to correct the cause of the interruption (if possible), efforts to minimize the interruption, and Operator's plans to resume service.

Operator promptly shall notify the subscribers of the cause and expected duration of the interruption of service by posting notice on the website, via email, and Terminals (electronic message).

In the case of both Intentional and Unintentional Interruptions of Service, Operator shall be obligated to perform all necessary and appropriate acts to restart the service as soon as possible.

3.13 Safety Training: On at least a quarterly basis, Operator shall provide safety training on proper use of bicycles and applicable rules and regulations of the road to current and/or potential users in each city.

Attachment A-2, Subscriber Related Fees

1. Annual and Monthly Subscription and Usage Fees

- a) Annual Subscription Fee - One-time payment of \$88 Annual and Monthly Subscription Usage Fees:
 - i. No charge for up to 30 minute use of a Bicycle per session,
 - ii. \$4.00 for 31-60 minutes,
 - iii. \$7.00 for each additional 30 minutes

A usage fee will be tracked and charged to credit accounts within one hour (or based on normal credit card operating procedures) of any occurrence of continuous usage exceeding thirty (30) minutes.

- b) Annual Memberships may be purchased at a discounted rate for promotional purposes and may be purchased in bulk at a discounted rate

2. Other Subscription and Usage Fees

- a) Short-term Subscription Fees
 - i. Three day Subscription fee - \$22,
 - ii. One day Subscription fee - \$9
- b) Other Subscription Usage Fee:
 - a. No charge for up to 30 minute use of a Bicycle per session,
 - b. \$4.00 for 31-60 minutes,
 - c. \$7.00 for each additional 30 minutes

A usage fee will be charged to credit accounts at the time any continuous usage exceeding 30 minutes is determined.

- 3. Bicycle Loss Fee - \$1,200.
- 4. Operator reserves the right, in its sole discretion, to increase or decrease the fees under 2(a) and 2(b) above.

Attachment A-3, New Subscriber-Related Fees

1. General. At Operator's election, from and after June 30, 2016, Membership Fees and Initial Ride Periods shall be consistent with Section 2, the Membership Fee for users eligible for the affordability subscription specified in Section 3 shall be as described in said Section 3, the maximum Bicycle usage charge shall be consistent with Section 4 and the fees for damaged, lost, stolen or otherwise unreturned Bicycles shall be consistent with Section 5 initially charged by Operator shall be consistent with this Section. A "Membership Fee" is an amount that entitles the purchaser of the membership (a "member", for the period of such purchased membership) to check out (as defined below) one or more Bicycle(s) at a time, for the length of time described below, provided that the member shall be charged a usage fee associated with the time period the Bicycle is checked out beyond the Initial Ride Period. A Bicycle is "checked out" for the period from the time it is removed from a Dock to the time it is returned to a Dock. A member may check out and return a Bicycle from or to any Dock at any Station in the System, for an unlimited number of times, at any time during the period of the member's membership, with the usage fee applicable to each such checkout and return sequence being calculated separately (so, for example, an annual member may, within the member's membership period, check out a Bicycle and return it within the first 30 minutes after checkout, and then subsequently check out a Bicycle and return that Bicycle with the first 30 minutes after that checkout, without incurring any usage fee for either checkout period).

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

2.1 Operator shall offer an annual membership ("Annual Membership") for a fee (the "Annual Membership Fee") in an amount not to exceed the Annual Membership Fee Cap in effect from time to time. The Annual Membership Fee Cap shall be \$149 for a one-year period. The period of an Annual Membership shall run from the day the annual membership is activated until the first anniversary of the date on which the Annual Membership had been activated (but a membership purchased on February 29 shall expire on March 1 of the following year). At the end of the Term, each member can elect whether to roll his or her Annual Membership into the BABS Program. Such election can be made by contacting the call center. If a member elects not to roll into the BABS Program, then if the Annual Membership Fee has been paid in advance for a full 12 months, the prorated amount for the portion of an Annual Membership period that is beyond the Term shall be reimbursed to or credited to the credit card account of the Annual Member;

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

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

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

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

3. Affordability Option:

3.1 Notwithstanding the permitted rate for an Annual Membership set forth in set forth in Section 2.2.1, Operator shall charge those eligible for an “affordability subscription” no more than \$60 per annum (excluding sales tax) as the Annual Membership Fee, or \$5.00 per month for a 12-month membership.

3.2 Persons who were entitled to affordability memberships under the Pilot Program shall be entitled to affordability memberships for the System. Members of households enrolled in the Utility Lifeline Programs (also known as California Alternative Rates for Energy (CARE)) available in the MTC Area are also eligible for affordability memberships. Within 10 days following the Effective Date, Operator shall propose, for MTC’s review and approval, procedures for verifying enrollment in CARE. In San Francisco, holders of a Muni Low Income (Lifeline) Pass are also eligible for the affordability membership. Upon mutual agreement of the Parties, eligibility may expand to include other categories of persons so long as the eligibility is determined by third parties.

3.3 Members enrolling through the affordability program shall be entitled to the same rights and privileges as all other Annual Membership holders.

3.4 The usage fees for affordability members shall not exceed the rate charged to general annual members.

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

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

6. Fees for damaged, lost or otherwise unreturned Bicycles initially charged shall be (i) \$1,200, if not returned, or (ii) if returned, the sum of all direct costs of the repair, including all labor and parts, as determined by Operator in its reasonable discretion, plus a 10% administrative fee; provided, however, that the fees charged to affordability members for unreturned or damaged Bicycles shall be not more than 33% of the fees set forth in the preceding clauses (i) and (ii). Notwithstanding the foregoing, Operator shall waive such fees for stolen Bicycles or Bicycles that are damaged in connection with a crime against the rider or in a collision with a motor vehicle, so long as an appropriate police report is filed for the incident.

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

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

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

10. Operator shall be permitted to create System pricing discount programs, which may be targeted in connection with marketing and outreach efforts, and in connection with Sponsorship or Advertising programs, to expand or enable System use among different communities or for other lawful purposes.

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

11.1 To adjust the amount of the Annual Membership Fee specified in Section 2 downwards at any time and upwards on each anniversary of the Effective Date by an amount not to exceed the Annual Membership Fee Cap then in effect;

11.2 To adjust in its sole discretion all other fees, time periods and charges specified hereunder other than those fees, time periods and charges specified in Section 2 and Section 3; and

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