



AGENDA REPORT

Meeting Date: August 4, 2015

Item Number: D-11

To: Honorable Mayor & City Council

From: Aaron Kunz, Deputy Director of Transportation
Martha Eros, Transportation Planner

Subject: AGREEMENT WITH CYCLEHOP, LLC FOR THE PURCHASE, OPERATION, MAINTENANCE AND ADMINISTRATION OF THE CITY'S PILOT BICYCLE SHARE PROGRAM;

APPROVE AN APPROPRIATION OF \$162,000 OF MEASURE-R LOCAL RETURN TRANSPORTATION GRANT FUNDS; AND

APPROVAL OF A PURCHASE ORDER FOR FISCAL YEAR 2015-2016 TO CYCLEHOP, LLC IN AN AMOUNT NOT TO EXCEED \$327,000 FROM TRANSPORTATION GRANT FUNDS.

Attachment: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council approve an Agreement with *CycleHop, LLC* (CycleHop) for the purchase, installation, operation, maintenance and administration of the City's pilot bicycle share program for a term of three years (FY2016 through FY2018), with two additional two-year renewal options that may be extended by the City at its discretion.

Included for City Council consideration is approval of a purchase order for an amount not to exceed \$327,000 for the Year-1 implementation. The annual cost for system operations only (excluding future capital purchases) will be approximately \$110,000 for years two through six.

INTRODUCTION

An agreement with CycleHop is required to move forward with program planning and logistics to launch a pilot bikeshare system, including station siting and preparation, developing the Beverly Hills user website and mobile applications, pre and post marketing and public outreach, and project administration.

DISCUSSION

At the April 7, 2015 study session, City Council directed staff to expedite the purchase of bicycle sharing equipment to account for the approximate 6-month lead time needed to manufacture and deliver equipment. Fifty smart bicycles were ordered following approval of the FY2015-2016 budget on June 8, 2015. Delivery is estimated by December 30, 2015. Transportation Planning staff is moving forward with ordering ancillary smart bike equipment, solar kiosks and information panels for ten proposed pilot locations.

The proposed CycleHop agreement mirrors the same operations, user fees and cost recovery model, software licensing, maintenance and administration standards stipulated for the Santa Monica *Breeze* bike share system. Multiple City departments have reviewed the contract language for scope of work, insurance and liability, station hubs/placement, helmet requirements, membership fees and sponsorship criteria.

The independent bikeshare feasibility study commissioned with Fehr & Peers identified 10 citywide "hotspots" for the initial roll-out of a 50 bike system. CycleHop will assist Fehr & Peers to identify specific street blocks and plot station locations and equipment placement. The City of Santa Monica executed an agreement with CycleHop prior to identifying station hubs.

As the industry expert, CycleHop will coordinate with City staff (i.e., Traffic Engineering, Public Works, Risk Management) to provide location specifications for the docking/bike rack equipment in the public right-of-way. The agreement stipulates CycleHop shall install and operate bicycle stations at sites approved by the City.

The City Council has expressed interest in providing or encouraging use of helmets for the bikeshare program. Per California Vehicle Code 21212 (a), "a person under 18 years of age shall not operate a bicycle...unless that person is wearing a properly fitted and fastened bicycle helmet..." The Scope of Work includes provisions for helmets. Beverly Hills and Santa Monica staff and CycleHop are currently investigating helmet dispensing options for bicyclists that require or desire a helmet.

The Cyclehop Agreement requires Cyclehop to maintain insurance against claims for injuries to persons or damages to property that may arise from or in connection with the Agreement. Cyclehop will assume all risks for direct and indirect damage or injury to the property or persons used or employed in connection with the Agreement. Cyclehop will indemnify, hold harmless and defend City from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor or any person employed by Contractor in the performance of this Agreement.

The registration for all new system bike users will include a waiver form requiring the user to accept the risk and responsibility for use of the City's bike share bicycles. The waiver language will be subject to prior written City approval prior to implementation.

FISCAL IMPACT

Staff has identified a combination of transportation grant funds for first year implementation of the pilot bikeshare program.

Approximately \$165,000 of AB-2766 South Coast Air Quality Management District (AQMD) grant funds are programmed in the FY15/16 Capital Improvement Program to

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cover capital only costs. Staff is recommending an appropriation of \$162,000 from the Measure-R Local Return transportation grant funds for program operations and capital equipment. Staff has confirmed the funds are available in Fund 330 Measure-R Local Return.


Don Rhoads
Director of Administrative Services/CFO

Approved By


Susan Healy Keene, AICP
Community Development Director

Approved By

Council will be advised if agreement is not signed by Tuesday, August 4, 2015.

ATTACHMENT - 1

BIKE SHARE PROGRAM AGREEMENT

by and between

CYCLEHOP, LLC

and

THE CITY OF BEVERLY HILLS

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BIKE SHARE PROGRAM AGREEMENT

This BIKE SHARE PROGRAM AGREEMENT ("Agreement") is entered into by and between CYCLEHOP, LLC, a Florida limited liability company qualified to transact interstate business in California ("Contractor"), having a principal place of business at 1701 Purdy Ave, Suite 203, Miami Beach, Florida 33139, and the CITY OF BEVERLY HILLS, a municipal corporation and charter city, having a principal place of business at 455 North Rexford Drive, Beverly Hills, CA 90210 ("the City"). Contractor and City may be referenced in this agreement individually as "Party" and collectively as "Parties." This Agreement shall be effective when both Parties have signed it. The date this Agreement is signed by the last Party to sign it (as indicated by the date associated with that Party's signature) shall be deemed the effective date of this Agreement ("Effective Date").

RECITALS

- A. Bicycle share programs can reduce reliance on motor vehicles and existing public transportation options for travel and for other short trips, thereby reducing congestion and motor vehicle emissions.
- B. The City desires to use its available grant funds to install a bike share system ("System") within the City that can be used by riders of all abilities.
- C. The City desires to hire a vendor to procure the equipment and technology necessary to install and develop the System (the "Launch"), and provide on-going operational support and maintenance of the System.
- D. The City desires to fund the operation of the System through users' fees and sponsorship proceeds that accrue to the City.
- E. On November 11, 2014, the City of Santa Monica City Council awarded a contract to Contractor for bikeshare installation, launch and operations for the City "Breeze" bike share program.
- F. The Santa Monica Bike Share Program agreement requires that the Contractor extend the same Agreement terms and costs to other local government agencies to purchase and operate bike share equipment for the purpose of regional expansion.
- G. The Beverly Hills City Council selected Contractor to install and operate the System, and authorized the execution of this Agreement.
- H. Contractor represents and warrants that it is qualified and competent to perform the Launch, and to operate and maintain the System.
- I. Contractor and City desire to enter into this Agreement to implement the Beverly Hills Bike Share Program in accordance with the provisions of this Agreement, which includes all exhibits referenced in this Agreement (collectively, "the Agreement Documents").

ARTICLE I SCOPE OF WORK AND PERFORMANCE

1.1 The Scope of Work. The purpose of this Agreement is for Contractor to design, build, install, operate, maintain and market the System for use by the public within the City of Beverly Hills. Contractor agrees to provide the equipment, infrastructure, licenses and services necessary to design, build, install, operate, maintain and market the System in accordance with the Agreement Documents, including, without limitation Exhibit "A" to this Agreement (the "Work"). Without limiting the generality of the foregoing, Contractor agrees that the Work includes: (i) procurement of 50 bicycles, components for at least 10 bike share stations with 100 bicycle racks, computer hardware, and licensed software to enable the public use and circulation of the bicycles and station components within the System as contemplated in this Agreement; (ii) installation of the bicycle stations at sites approved by the City, delivery of the bicycles, and provision of all integration services to make the System fully operational; (iii) provision of all ancillary services for the Launch, on-going maintenance of 50 circulating bicycles in the System, and operation of the System, including developing a website to be used by the public, marketing of the System to the public, training on the System to the City Project Manager and other designated City personnel, (iv) operation, support and maintenance of the System; and (v) providing the City with system management information and user subscriber information/relation services.

Contractor shall provide all technical expertise, qualified personnel, equipment, supplies, tools, and materials to safely and competently perform all of the Work. Nothing in this Agreement shall be construed to limit Contractor's responsibility to perform the Work.

1.2 Advertising. City will be responsible for securing naming rights, sponsorships, and station based advertising, if any, any advertising related to the bicycles themselves and all other Equipment (collectively, "Advertising"), and any websites or other digital media or marketing relating to sponsoring the System. City will retain all of the Advertising revenues in their entirety. City shall provide Contractor with any materials for sponsorship to be placed on the bicycles, baskets, and/or helmets, subject to the direction of the City. Contractor shall be responsible for installing such materials as part of the Work.

1.3 Compliance with Laws. The Work shall be carried out in strict compliance with all applicable federal, state and local laws and regulations. Contractor shall also cooperate with the City in the event of any audit and investigation conducted by a state or federal agency to monitor the City's administration of any grant funds used to pay for the Work contemplated in this Agreement.

1.4 Adjustments or Changes in the Work. The City may request adjustments or changes to the Work consisting of additions, deletions, or other revisions ("Adjustment(s)") so long as such Adjustments do not materially reduce or expand the scope or budget of the Work as set forth in the Agreement Documents ("Non-Material Adjustment(s)"). In the event of a Non-Material Adjustment, no claim may be made by Contractor for Adjustments to the amount of compensation due Contractor. In the event of an Adjustment that materially expands the scope of Work ("Material Adjustment(s)"), the City may request such Material Adjustment(s) by submitting a proposed written amendment to this Agreement signed by City and Contractor ("Change Order").

If Contractor believes that any particular Adjustment requested by the City qualifies as a Material Adjustment, then Contractor shall immediately notify the City's designated representative (the "City Project Manager") in writing of this belief. Within ten (10) days after any such request by the City, Contractor shall provide to the City Project Manager a written proposal which sets forth: (i) a complete description of the particular work which Contractor believes qualifies as a Material Adjustment; (ii) the amount of additional compensation claimed for the Material Adjustment; (iii) the basis for such claimed additional compensation; and (iv) supporting documentation for the amount of additional compensation claimed for the Material Adjustment. Contractor will not be compensated for performing any work claimed by

Contractor to be outside the scope of Work unless: (i) a written proposal complying with this Section has been submitted within the time specified above; (ii) a Change Order has been executed by the City and Contractor; and (iii) the City has specifically appropriated sufficient funds to cover the costs of the Change Order. Notwithstanding Contractor's notification to the City concerning work believed to qualify as a Material Adjustment, if the City Project Manager determines, following a good faith review, that the work is within the scope of the Work, or is a Non- Material Adjustment, then Contractor shall comply with such Adjustments. This provision does not waive any of Contractor's rights to dispute such determination and to avail itself of the dispute resolution procedures set forth herein. City and Contractor each understands, acknowledges and agrees that any amounts identified as a "contingency" line item in the Budget (Exhibit "D") shall be owned by the City and that City may, in its sole and absolute discretion, use such contingency to pay for approved Change Orders. Upon expiration of the Term or sooner termination of this Agreement, any unused contingency shall remain the property of the City.

1.5 Schedule. Contractor's performance of the Work shall be in accordance with the Schedule attached hereto as Exhibit "B".

1.6 Time of Essence. Time is of the essence for each deadline set forth in the Schedule attached hereto as Exhibit "B".

1.7 Notification of Delay. Contractor shall immediately notify the City in writing of any delay in completion of the Work. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If the delay affects a material part of the Work, the City may exercise its rights under Section 7.2 of this Agreement.

1.8 Delay. If delay in the performance of the Work is caused by unforeseen events beyond the control of either Party, such delay may entitle the Contractor to a reasonable extension of time, but such delay shall not entitle the Contractor to damages or additional compensation. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Work; inability to obtain materials, equipment or labor; or other specific reasons agreed to between the City and the Contractor; provided, however, that (a) this provision shall not apply to and the Contractor shall not be entitled to an extension of time for a delay caused by the acts or omissions of the Contractor; and that (b) a delay caused by the inability to obtain materials shall not entitle the Contractor to an extension of time unless the Contractor furnishes to the City, in a timely manner, documentary proof, to the City's satisfaction, of the inability to obtain materials or to the extent such inability to obtain materials was the caused by any conduct of the City.

1.9 Standards of Performance. Contractor must perform the Work under this Agreement with the degree of skill, care and diligence normally performed by any provider of services that are similar in scope and magnitude to those required under this Agreement ("Standard of Care"). Any review, approval, and/or acceptance of Work by the City does not relieve Contractor of its obligation to exercise the Standard of Care.

1.10 Failure to Address Service Level Obligations. Contractor shall ensure a minimum standard of service in accordance with the Service Level Agreement attached hereto as Exhibit "C". In the event that Contractor, after having been given notice by the City in writing of a service level failure regarding the System, or component thereof, fails to correct such failure within the correction periods set forth in the Service Level Agreement attached hereto as Exhibit "C", the City may charge Contractor a service penalty, which will be deducted by City from Contractor's Monthly Operations Fee, in addition to any other remedies available under this Agreement, including termination. The amount of the service penalty shall be up to ten (10) percent of the Monthly Operations Fee for each month beyond the cure period the failure continues.

1.11 Correction of Defective Work. Contractor shall be solely responsible for the correction of defective Equipment or Work that does not conform to the requirements set forth in the Agreement Documents.

1.12 Siting of Stations. Contractor shall coordinate with and obtain the approval of the City Project Manager regarding the location and installation of the System bicycle stations. Contractor shall also obtain all discretionary approvals required by the City's Traffic Engineer and/or Public Works Department for the location and installation of System infrastructure in the public right of way, and submit any plans, specifications and/or drawings required by the City to obtain such discretionary approvals.

1.13 City's Approval of Form of Bicycle Rental Agreement. No later than sixty (60) days prior to the Operational Date and in any case prior to use of any System bicycles, Contractor shall draft for the City's review and approval a form of Bicycle Rental Agreement for use of System bicycles. The form of the Bicycle Rental Agreement shall be subject to the approval of the City Attorney and shall contain provisions for use of the System, assumptions of risk by users, prohibited acts, user obligations to promote safe use and preservation of the System, advisory language regarding use of helmets, confidentiality of user personal and financial data and usage information, release of claims against the City for use of the System, disclaimers regarding warranties, and limitations of liability against the City for use of the System.

ARTICLE II FEES AND PAYMENT

2.1 Fees. The City will pay Contractor in accordance with the terms of payment set forth in this Article II for the purchase of Equipment and Contractor's completion of Work as set forth in the Agreement Documents.

(a) **Equipment.** The term "Equipment" means and includes all physical components and ancillary hardware and licensed software necessary to Launch and operate the System. Contractor shall procure the Equipment necessary to Launch the System ("Initial Equipment") as required by Exhibits "A" and "B", and will submit an invoice to the City for the cost of the Initial Equipment ("Initial Equipment Fee"), not to exceed the amount shown in Exhibit "D".

The Contractor shall provide a copy of the invoice for the Initial Equipment Fee to City within five (5) days of the Effective Date of this Agreement. City will make an advance payment to Contractor for 50% of the invoiced Initial Equipment Fee within thirty (30) days from the Contractor's submittal of the Initial Equipment Fee invoice to City. Contractor shall deliver the Initial Equipment in accordance with the Schedule (Exhibit "B") and invoice the City for the 50% balance of the Initial Equipment Fee upon delivery. The City shall provide notification of its disapproval of the invoices for the Initial Equipment to Contractor within fifteen (15) business days of its receipt. The City shall make payment for undisputed portion of the invoices within thirty (30) days of its receipt.

City may in its sole and absolute discretion request the procurement of additional Equipment ("Subsequent Equipment") in accordance with the procedure set forth in Section 1.4, herein. Contractor shall invoice the City for any Subsequent Equipment costs ("Subsequent Equipment Fee") requested by City in accordance with Section 1.4, herein, not to exceed the actual cost of Equipment that is delivered and placed into service for operation of the System. The City shall provide notification of its disapproval of any invoice related to the purchase of Subsequent Equipment to Contractor within fifteen (15) business days of its receipt. The City shall make payment for each undisputed invoice or undisputed portion of any invoice related to the purchase of Subsequent Equipment within thirty (30) days of its receipt.

Within five (5) days from receipt by Contractor of payment of the Initial Equipment Fee or Subsequent Equipment fee by the City, the Contractor shall provide the City with verification that the Contractor has wired the appropriate amount of money to the equipment vendor to pay for the particular Equipment specified on the invoice.

(b) Assurance of Delivery and Performance. Contractor provides, and the City accepts, the following statements and warranties in lieu of a performance bond:

i. Contractor conducted reasonable due diligence into the capabilities of the equipment vendor (as well as equipment vendor's underlying manufacturers, suppliers, and subcontractors) and has confirmed that they are reputable and capable of delivering the Work and Equipment, as defined herein, within the timeframes set forth in Exhibit "B".

ii. Contractor shall include a provision in its Agreement with equipment vendor or any subcontractor that entitles Contractor to recourse directly against equipment vendor or any subcontractor for loss to the City resulting from any breach by the equipment vendor or the subcontractor.

iii. Contractor shall indemnify the City for any loss caused by a failure to, or delay in, performing by SoBi or any subcontractor with whom Contractor has contracted to provide equipment or services outlined in the Scope of Work.

iv. Pursuant to the terms herein, the City shall withhold 10% of monthly Operations Fees (as defined in Section 2.1(e)) pending full delivery of the Equipment and/or Work for that month. Payment of the withheld 10% is due within ten (10) days of delivery of the Equipment and/or Work.

(c) Launch Fee. Contractor shall comply with the launch protocol set forth in Exhibit "E". Prior to the date that the System is available for public use (also referenced herein as "the Operational Date"), as determined pursuant to the launch protocol set forth in Exhibit "E", the City shall pay Contractor a Launch fee to cover eligible and documented expenses incurred during the Launch period. The Launch fee shall be paid in installments, which shall not exceed the amounts shown on the schedule in Exhibit "D", and which shall be based upon the percentage of work that has been completed, within thirty (30) days of receipt of an undisputed invoice. The City shall provide notification of its disapproval of any invoice to Contractor within fifteen (15) business days of its receipt.

(d) Operations Fee. Subsequent to the Operational Date, the City shall pay Contractor monthly operations fees ("Operations Fees") up to the amounts shown on the schedule shown in Exhibit "D" to this Agreement (Budget) to cover eligible and documented expenses incurred.

(e) Rates for Users. User rates for ridership of the System shall be subject to the approval of the City Council on a periodic basis. Contractor shall ensure that the rates approved by the City Council are charged to users of the System.

(f) Deposit of Operational Revenues. Contractor shall act as a fiduciary to the City in its handling of all revenues generated by users of the System and shall ensure that all such revenues be deposited into the City's designated bank account by the end of the business day in which the revenues are paid by the credit card processors selected by Contractor, except for any customary

transactional fees to third parties, that are approved by the City Project Manager, such approval not to be withheld absent good cause, and which are necessary to process credit card payments by users of the System before deposit to the City's bank account ("Fees"). Contractor shall notify City of any such Fees before operation of the System.

Contractor shall also ensure full compliance with Payment Card Industry ("PCI") Data Security Standards, to the extent applicable to the operation of the System, and shall be responsible for the security of the payment cardholder data obtained through operation of the System. Contractor shall provide City with such information as the City may reasonably require regarding Contractor's compliance with PCI requirements, including, at a minimum an annual certificate of compliance by Contractor with the PCI Data Security Standard. In the event of Contractor's non-compliance with the PCI Data Security Standard, Contractor shall promptly perform at Contractor's expense, all curative measures necessary to remedy such non-compliance.

(g) Monthly Reporting. Within fifteen (15) days after the conclusion of each calendar month, Contractor shall submit a written report to the City, with sufficient detail and supporting documentation, showing year to date as of the end of such month ("Reporting Period") all operating costs and operating revenues for the Reporting Period. The report shall include, at a minimum, (i) itemized actual operating costs incurred to operate the System, (ii) the year to date total, by category in the budget, of operating costs incurred, (iii) the total year-to-date operating revenues; (iv) current member account statistics; (v) projected results for net profits or net losses, as the case may be, and (vi) other documents requested by the City Project Manager to monitor use of the System.

(h) Data Collection. Contractor agrees to make available to City any documentation and data necessary to allow the City or any third party designated by the City to create, develop, and sell to anyone, including the City and potential end-users for the purpose of obtaining information relating to the System such as the location of bicycle stations and bicycles.

(i) Annual Inventory. Contractor shall maintain a written inventory of all Nonexpendable Property ("Inventory List") acquired for the System in accordance with this Agreement. "Nonexpendable Property" is defined as property acquired for use in the System having a useful life of at least two (2) years, including, but not limited to: bicycles, kiosks, racks, signs, rebalancing equipment/vehicles, and other Equipment as defined herein. Within sixty (60) calendar days from the close of each operating year during the Term and within sixty (60) calendar days from the expiration or termination of this Agreement, Contractor shall prepare and submit and deliver to the City Project Manager the Inventory List required by this Agreement, the status of the Nonexpendable Property and all related documentation, such as, maintenance and service manuals and warranty information. The City shall have the right to perform a physical inventory of such Nonexpendable Property at all times.

(j) Replacement of Equipment. Subject to Section 1.9, Contractor has a duty to maintain all Equipment purchased under this Agreement and ensure that no less than 50 bicycles, 10 stations, and 100 racks are available for public use within the System at any time, except that in the event of a System Expansion, Contractor shall additionally maintain and ensure that the amount of bicycles purchased to expand the System shall be available for use within the System at any one time. If Contractor determines that any Equipment needs to be replaced and Contractor intends to sell or trade in that Equipment, Contractor shall notify the City prior to replacement. At all times, such transactions shall result in Contractor maintaining the unit amounts of Equipment purchased under this Agreement.

2.2 Invoices. All invoices submitted by Contractor shall include back-up documentation that details all costs and/or expenses incurred, with as much detail as may be reasonably requested by the City and, in any event, sufficient detail to allow Contractor and the City to comply with all Agreement Document financial reporting obligations.

Except as otherwise provided, herein, City will notify Contractor within fifteen (15) days of any disputed charges. The City will pay Contractor within thirty (30) days for any non-disputed amounts.

2.3 System Expansion. The City may seek to purchase additional bicycles to circulate more than 50 bicycles within the System ("System Expansion"). Any expansion requested by the City beyond 50 bicycles circulating in the System at any one time shall be deemed as a Material Adjustment that will trigger an adjustment to the Service Level Agreement attached as Exhibit "C" and the Budget in Exhibit "B".

Contractor agrees to provide all necessary Equipment and ancillary operations at a cost not to exceed the amount shown in Exhibit "D" applied pro rata to the additional equipment and ancillary operations. The maximum monthly Operations Fee shown in Exhibit "C" shall be adjusted on a per-unit basis, consistent pro rata with the payment terms of the Operations Fee. All requests for purchases of additional or replacement Nonexpendable Property, additional System sites, and/or operations shall be submitted to Contractor in a Change Order(s) issued by the City.

2.4 Price Adjustments. The unit prices for Equipment and labor (Operations Fees and Launch Fees) in Exhibit "D" shall remain in effect as set forth in Exhibit "A" during the Term.

2.5 Competitive Pricing. Contractor shall ensure that all material contracts that it executes with any entity, vendor, contractor, subcontractor, corporation, partnership, or individual for the provision of any good provided or service rendered in connection with the System, including, but not limited to, contracts with any sub-contractor, and contracts to purchase, use, lease, or rent real property are competitively priced. All pricing reflected in Exhibit "D" shall be deemed to be competitively priced. In furtherance of this Section 2.5, Contractor shall obtain at least three (3) bids or proposals prior to any procurement of Equipment in excess of \$5,000, unless otherwise established by Contractor to the satisfaction of the City Project Manager that competitive pricing is not likely to result from obtaining multiple bids or proposals or unless there are not three vendors able to provide the particular Equipment that Contractor seeks to procure. This Section shall not apply to Contractor's procurement of Equipment from SoBi.

2.6 Taxes, Dues, and Fees. Except for revenues collected by City, Contractor 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. Contractor shall at all times maintain records evidencing revenue and the taxes collected as would be reasonably required to substantiate the correctness of the tax returns filed.

2.7 No Tax Exemption. No provision of this Agreement shall be construed to provide Contractor 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, except for revenues collected by City.

2.8 Covenant Against Contingent Fees. Contractor warrants that it has not employed or retained any company or person; other than bona fide employees working for Contractor, to solicit or secure this 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 Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability to the City, 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.

2.9 Warranties. Contractor warrants that any Equipment provided to City under this Agreement will not be affected by any Defect for a period of five (5) years from Operational Date as defined. For purposes herein, the term "Defect" means any situation where the Equipment does not operate for its intended purpose.

ARTICLE III AUDIT RIGHTS AND RECORD MAINTENANCE

3.1 Contractor's Affiliates. Insofar as Contractor, or any parent, subsidiary, or subcontractor of Contractor, receives income attributable to the System stations contemplated by this Agreement, all disclosure obligations of, and audit rights with respect to, Contractor under this Article III shall apply and extend to all such affiliates of the Contractor. Contractor shall ensure that all contracts with sub-contractors provide for the disclosure and audit obligations set forth in this Article III.

3.2 Audit Rights. The City and its authorized representatives, including, without limitation, the State of California and the Federal Highway Administration, shall have the right to inspect, copy and audit all books, records, accounts, documents, contracts, sub-contracts, reports, financial statements, service complaint records, performance evaluations, maintenance records, construction records and any other materials or documentation of Contractor and/or any party described in Section 3.1 above, wherever located, which relate in any way to revenue derived from the System or to the terms, performance or subject matter of the Agreement Documents. This shall include, without limitation, the City's right to hire an independent auditor to audit the books, accounts and any other relevant records of Contractor and/or any party described in Section 3.1 above which contain data on revenues derived from use of the System and for purposes of monitoring compliance with Contractor's payment and other obligations under this Agreement. The costs of such independent audit shall be paid by the City. However, Contractor agrees to pay for the cost of the audit and any associated investigation-related expenses in the event that an audit finds that Contractor knowingly engaged in fraudulent conduct or theft, with regard to any amount greater than \$10,000.

Audit rights for authorized representatives of the City, State of California and the Federal Highway Administration shall continue until the end of three (3) years from the date of the later to occur of (i) the final payment to the City of state or federal funds used by City to fund this Agreement, (ii) the expiration of the Term, or (iii) the sooner termination of this Agreement. Contractor shall cooperate with inspections and audits, and the City and its authorized representatives shall make reasonable efforts to conduct such inspections and audits during Contractor's normal business hours.

3.3 Review and Copying. Contractor shall provide the City, within ten (10) days of the City's request, copies of any requested records kept or maintained by Contractor or any party described in Section 3.1 above, whether in their possession, custody or control, or in the possession, custody or control of third parties on behalf of Contractor or any party described in Section 3.1 above, concerning the terms, performance, or subject matter of this Agreement or concerning revenues derived from the use of the System. Alternatively, if the City so requests, Contractor and any party described in Section 3.1 above shall permit or cause to be permitted any duly authorized representative of the City to examine and copy or transcribe any such documents.

3.4 Maintenance of Records. Contractor shall at all times maintain all records generated, existing or coming into the actual or constructive possession of Contractor and/or any party described in Section 3.1 above in connection with this Agreement for the entire Term of this Agreement and thereafter for the later of: (i) the longest period of time required in any of the Agreement Documents; or (ii) a period of seven (7) years following the close of each year of operations.

ARTICLE IV AGREEMENT DOCUMENTS

4.1 Compliance. Each Party agrees to use its good faith efforts to enable the other Party to comply with all terms, conditions, and covenant as required under the Agreement Documents. Neither Party shall, by act or omission, cause the other Party to breach any of the terms, conditions or covenants, or fail to comply with any terms, conditions or covenants to which the other is subject. Each Party will take reasonable steps to allow the other Party to comply with all terms, conditions, and covenants of the Agreement Documents.

4.2 Assistance. Each Party agrees to provide the other Party with such assistance as the other Party may reasonably request in order to facilitate their compliance with the Agreement Documents. Said assistance shall include, without limitation, provision of personnel, documentation, data, and creation of reports as well as responding to requests for information. Each Party will provide, at no additional cost to the other, all readily-available material to upon request.

4.3 Remediation. In the event that, despite the best efforts of the Parties, there is a failure to comply with any term, condition or covenant of any of the Agreement Documents, the Parties shall negotiate in good faith to develop a plan by which such failure can be remediated with the least material impact on either Party.

4.4 Interpretation of Agreement Documents. If there is any conflict between any of the Agreement Documents, the document highest in the order of precedence shall control, except that, in each case, where provisions of more than one Agreement Document address the same subject, the most stringent provisions shall prevail. The order of precedence, from highest to lowest, shall be as follows:

- a) The last Change Order
- b) This Agreement
- c) Exhibits "A" - "G" to this Agreement

4.5 Integration. The Agreement Documents set forth the entire Agreement between the City and Contractor. The City and Contractor agree that no employee, representative, or agent of either Party has made any representation or promise with respect to the Agreement Documents which is not contained therein, and that all terms and conditions with respect to the Agreement Documents are expressly contained therein.

**ARTICLE V
EMPLOYEE AND EMPLOYMENT MATTERS**

5.1 Project Managers. Except as otherwise specified in this Agreement, each Party shall appoint a Project Manager to act as the primary contact person for purposes of performing under the Agreement Documents. The Contractor's Project Manager must have 'bike share or related experience,' and must be approved by the City Project Manager prior to Contractor making an offer of employment. The performance by Contractor of the Work is subject at all times to inspection and review by the City Project Manager. Where specifically stated in this Agreement, Contractor shall obtain from the City Project Manager prior written approval of specified Work. However, it shall be the responsibility of Contractor to manage the details of the execution and performance of the Work under this Agreement.

5.2 General Compliance with Laws and Wage Rates. Contractor will comply with all federal, state, and local laws and ordinances applicable to the Work. This includes compliance with living wage and prevailing wage rates and their payment in accordance with California Labor Code section 1720 et seq.

5.3 Supervision by Contractor. Contractor shall at all times require strict discipline and good order among Contractor's employees and all subcontractors performing any portion of the Work. Contractor shall not permit, and shall require all subcontractors not to permit, any employee or other person to perform any Work, unless the employee or other person has demonstrated proficiency in the type of work which such employee or other person is assigned to perform.

5.4 Subcontractors and Project Staff List. Contractor shall only enter into subcontracts with subcontractors that have clearly demonstrated proficiency to perform the tasks which are the subject of such subcontracts. Within thirty (30) days after the Effective Date, Contractor shall deliver to the City Project Manager a list identifying all initial subcontractors who will provide goods, perform services, and do Work related to the System for Contractor. Such list shall also identify, for each subcontractor, the goods, services, and portion of the Work to be provided or performed as well as all other information, concerning the subcontractor, deemed necessary by the City Project Manager. Promptly prior to changing any subcontractor(s), Contractor shall deliver to the City Project Manager the above described information concerning such new or replacement subcontractor(s). During the Term, the City shall have the right to provide written notice to Contractor of any rejection of any subcontractor without any obligation or liability to the City, such rejection shall be based on a good faith determination by the City that the subcontractor lacks clearly demonstrated proficiency to perform the tasks which are the subject of such subcontract. The City shall, throughout the Term, also have the right of reasonable rejection, by written notice from the City to Contractor, of staff assigned to the Work by Contractor. If the City reasonably rejects staff or subcontractors, then Contractor shall promptly provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of Contractor's staff, and employees of any of its subcontractors, shall be solely the responsibility of Contractor.

For a period of twenty-four (24) months from the date of execution of this Agreement, Contractor is prohibited from hiring or sub-contracting with any individuals that participated in the selection of Contractor or the development of this Agreement.

ARTICLE VI OWNERSHIP AND PROPRIETARY RIGHTS

6.1 Ownership of Records. Contractor agrees that all records generated by, or in possession of, Contractor or its subcontractors as a result of the City's request for, or Contractor's providing, of goods and services under this Agreement are the property of the City, and neither the records nor their contents shall be released to others by Contractor, its subcontractors, or other third parties without the written consent of the City; nor shall their contents be disclosed to any person other than the City Project Manager or his/her designee without the written consent of City. Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any record generated as a result of the existence of this Agreement shall be referred to the City Project Manager or his/her designee for response. At the City's written request, Contractor shall deliver all records to the City Project Manager, including "hard copies" or "electronic copies" of computer records, as may be reasonably requested. Contractor agrees to include the provisions of this Section 6.1 as part of all contracts and Agreements Contractor enters into with subcontractors or other third parties to perform Work pursuant to this Agreement. Upon termination of this Agreement for any reason, or the expiration hereof, Contractor at its sole cost and expense, shall promptly provide to the City, a true and correct copy, on magnetic media or other media as the City shall reasonably request, of the City's records and all subscriber's information held or controlled by Contractor together with all file layouts and other information necessary for the City to obtain and utilize such records and information. No expiration or termination of this Agreement shall have the effect of rescinding, terminating, or otherwise invalidating this Section 6.1.

6.2 Title to Property. The City shall be the owner of, and hold title to, all Equipment provided by Contractor in accordance with this Agreement free and clear of all liens, encumbrances, financing statements, and rights of third persons or entities. All owner rights, warranties, and the like shall be in the name and inure to the benefit of the City.

6.3 Rights, Authorizations, Licenses, Permits, and Other Approvals. Contractor shall, at its sole cost and expense, obtain all rights, authorizations, licenses, permits, and other permissions (collectively "approvals"), from all federal, state, and local governments, and other entities or persons, necessary for Contractor to perform and complete the Work in accordance with this Agreement. The City's execution of this Agreement shall neither constitute nor be deemed to be governmental approval of or consent to any approvals required or needed to be obtained by Contractor. To the extent that such approvals must be obtained from the City, the City shall reasonably cooperate in allowing Contractor to obtain such approvals.

6.4 Hardware and Software. Contractor shall provide City with hardware and a non-exclusive license to operate and use any software necessary to operate the bicycles and System as contemplated by this Agreement. Contractor agrees that the scope of Work includes maintenance, trouble-shooting, testing, technical support, and periodic upgrades of all available software necessary to Launch and operate the System, in accordance with Exhibit "F". Contractor shall notify City in advance of any notice of license termination, and shall be solely liable for procurement of replacement hardware and software, as applicable, if necessary to continue operation of the System during the Term.

6.5 Use of Seals, Logos, Servicemarks, Trademarks, and Copyrighted Material. Contractor shall not use, display, or reproduce the seal, logo, servicemark, trademark, or copyrighted material of the City ("City Marks") without the prior express written authorization, permission, and consent of the City.

6.6 Copyrightable Work. Contractor hereby irrevocably transfers, assigns, sets over, and conveys to the City all right, title, and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Agreement ("Copyright Works"). However, such Copyright Works shall not include the preexisting works of Contractor or Contractor's Equipment providers (including, Social Bicycles ("SoBi")) or any amendments, upgrades, and/or improvements thereto. Contractor further agrees to execute such documents as the City may request to effect such transfer assignment, or conveyance of Copyright Works from Contractor to City. City shall be responsible for any state or federal filings associated with protecting any Copyrightable Works or other intellectual property protections that the City wishes to procure for the City Marks.

Contractor agrees that the rights granted to the City by this Section 6.6 are irrevocable and shall survive termination and/or assignment of this Agreement. Aside from disputes specifically relating to this Section 6.6, and notwithstanding anything else in this Agreement, Contractor's remedy in the event of termination of or dispute over the terms of this Agreement shall not include any right to rescind, terminate, or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this Section 6.6. Similarly, no termination of this Agreement shall have the effect of rescinding, terminating, or otherwise invalidating the rights acquired pursuant to the provisions of this Section 6.6. The Contractor agrees that any contracts with subcontractors or third parties to develop or create input into any copyrightable materials produced in performing Work under this Agreement will include the provisions of this Section 6.6.

6.7 Third Party Intellectual Property. Contractor covenants to save, defend, hold harmless, and indemnify the City, and all of its 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 Agreement, including its use by the City. If Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood, without exception, that the fees to be paid to Contractor hereunder includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the Work.

6.8 Use of the Work. All Work performed under this Agreement, including, without limitation, all copyrightable works created pursuant to this Agreement and all leased, licensed, and/or purchased goods and services shall be for the sole and exclusive use and benefit of the City unless a specific written permission is granted by the City.

ARTICLE VII TERM, TERMINATION, AND SYSTEM TRANSITION

7.1 Term. Subject to the terms and conditions of this Article VII, the term of this Agreement shall run from the Effective Date until the sooner to occur of (i) three (3) years from the Operational Date or (ii) four years from the Effective Date of this Agreement (the "Initial Term"). The Initial Term may thereafter be extended by the City, in its sole discretion, for two (2) two year option periods, (each a "Renewal Term") (the Initial Term together with all Renewal term(s) shall be referenced collectively herein as the "Term"). If no such notice is received by the City, the City may renew this Agreement at the then applicable rates set forth in Exhibit "D".

7.2 Termination for Cause-Including Breach and Default; Cure; Accounting.

(a) Right of the City to Terminate. The City shall have the right to terminate this Agreement if Contractor fails to perform the Work in such a manner that constitutes a breach or default under the terms of the Agreement Documents, subject to the notice and cure provisions, below.

(b) Failure to Perform Satisfactorily. If the City decides to terminate this Agreement for failure of Contractor to perform the Work in such a manner that constitutes a breach or default of this Agreement, then the City will give Contractor written notice and at least thirty (30) days from issuance of the City's notice to cure such breach or default before terminating this Agreement. Contractor will be entitled to receive compensation for all Work that Contractor demonstrates has been satisfactorily performed and accepted by the City prior to the effective date of the termination, unless the work or compensation is not specifically authorized by the Agreement (collectively "Termination Costs"); however, City may off-set any damages incurred by City as a result of Contractor's breach of this Agreement against any monies owed to Contractor for its satisfactory performance of Work.

(c) Stop Work. Unless otherwise directed in writing by the City, Contractor shall: (i) stop Work on the date of receipt of notice of any termination or other date specified in the notice; (ii) place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated; (iii) immediately transfer all documentation and paperwork for terminated Work to the City; and (iv) terminate all vendors and subcontractors and settle all outstanding liabilities and claims.

(d) Termination for the Convenience of the City. The performance of Work pursuant to this Agreement may be terminated by the City, in whole or in part, whenever the City determines in its sole and absolute discretion that such termination is in the City's best interest. Any such termination shall be effected by the delivery to Contractor of a written notice of termination at least thirty (30) days before the date of termination, specifying the extent to which performance of the Work under this Agreement is terminated and the date upon which such termination becomes effective. Contractor will be entitled to receive compensation for (i) all Work satisfactorily performed by Contractor pursuant to the Agreement prior to such termination; (ii) any Equipment requested by City prior to such termination; and (iii) any other reasonable termination costs incurred by Contractor as a direct result of such termination, but in no event shall Contractor be entitled to any anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, Contractor shall: (i) stop all Work on the date of receipt of the notice of termination or other date specified in the notice; (ii) place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated; (iii) immediately transfer all documentation and paperwork for terminated Work to the City; and (iv) terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

(e) Accounting. Within sixty (60) days of the expiration or termination of this Agreement, Contractor shall deliver to the City Project Manager a final accounting of all assets, liabilities, revenues, and expenses. Contractor shall prepare and submit a final invoice (all mutually agreed upon unpaid amounts due to Contractor at the time of expiration or termination of the Agreement) to the City Project Manager for review and acceptance.

(f) Disposition of Equipment in the Event of Termination. In the event that the Agreement is terminated, City may require the Contractor to sell such Nonexpendable Property at the best price obtainable at a public or private sale ("Best Price"), in accordance with established City procedures; and pay the City in an amount equal to the Best Price. Neither Contractor nor its supplier shall be required to purchase the Equipment from City if City terminates the Agreement for any reason; however, Contractor shall use its best efforts as a broker to find a buyer for the Equipment at the price of City's acquisition cost less usual depreciation if City so requests in writing. Contractor further agrees to reimburse the City at the City's full (no depreciation) purchase cost of the Equipment if Contractor terminates or breaches the Agreement before the Operational Date, as defined herein.

7.3 Final Payment. After Contractor has completed all Work and corrections to the satisfaction of the City Project Manager and delivered all required documentation (e.g. inventory lists for Equipment and supplies, Equipment maintenance records, and any other items requested by the City Project Manager), Contractor may submit to the City Project Manager an invoice for final payment. The final invoice shall be accompanied by all documents required in this Agreement and shall reflect the actual amount due to Contractor.

By submitting the final invoice, Contractor agrees its acceptance of final payment releases and forever discharges the City and its officers, employees, servants, and agents from any and all actions, claims, demands, and liability of whatever nature now existing or which may hereafter arise as a result of or in connection with Work performed by Contractor under this Agreement.

7.4 Transition of System. Upon written request by the City, Contractor and the City shall mutually work together to assure the orderly transition of the System if (i) services provided by Contractor are to be provided by City or an alternate provider after termination or expiration of this Agreement or through assignment of this Agreement by City to the alternate provider, or (ii) bike share program administrative and fiscal functions performed by the City under this Agreement are to be performed by another entity or entities after termination or expiration of this Agreement or through assignment of this Agreement to the other entity. Contractor and the City shall ensure to the greatest extent possible that the operation of the System is maintained without interruption.

In furtherance of this Section 7.4, the parties agree that all contracts executed by Contractor with any entity, vendor, contractor, subcontractor, corporation, or partnership, for the provision of any good provided or service rendered in connection with the System, including, but not limited to, contracts with any sub-contractor, and contracts to purchase, use, lease, license, or rent real or intellectual property shall be transferable to the City, or its designee, at the City's sole discretion.

Also in furtherance of this Section 7.4, any Agreement between Contractor and SoBi for the provision of software, as specifically to include the components set forth in Exhibit "F", or other software related services, must provide for the orderly transition and license transfer to the City or a new operator should this Agreement be terminated by either party.

7.5 Assignment. This Agreement may not be assigned by Contractor without the prior written consent of the City, except that Contractor may assign or transfer its rights and obligations under this Agreement to the City or the City's designee in the City's sole discretion, as part of a transition of the services provided by Contractor to the City or to an alternate provider designated by the City. Notwithstanding anything to the contrary herein, Contractor may assign this Agreement

to an operator with the same degree of experience in the bike share business as Contractor, in which Contractor maintains active management duties to administer and implement this Agreement and holds at least a 50% ownership interest. Contractor may not assign, transfer or securitize its right to receive future revenues from the City under this Agreement.

ARTICLE VIII INSURANCE AND ASSUMPTION OF RISK

8.1 Insurance Coverage. Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or subcontractors as described in Exhibit "G" – Insurance Requirements.

8.2 Notice. All policies shall be endorsed to provide that there will be thirty (30) days advance written notice to the City of cancellation, non-renewal or reduction in coverage.

8.3 Assumption of Risk. Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in connection with the Work defined herein, and of all damage or injury to any person or property wherever located, resulting from any negligent action, omission, commission or operation by Contractor in connection with the Work.

No acceptance or approval of any insurance by the City shall be construed as relieving or excusing Contractor from any liability or obligation imposed upon Contractor by the provisions of the Agreement Documents.

Contractor shall be responsible for the Work performed under the Agreement Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work.

Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons employed by the subcontractors as Contractor is for acts and omissions of persons directly employed by Contractor.

8.4 Maintenance of System. Contractor assumes all risks for direct and indirect damage to Equipment due to Defects, loss of use by reason of normal wear and tear, vandalism, damage, theft, or loss by natural causes. Contractor understands, acknowledges and agrees that Contractor's scope of Work includes the continuing maintenance, circulation, and use of bicycles purchased by City during the Term of this Agreement.

ARTICLE IX INDEMNIFICATION AND LIMITATION OF LIABILITY

9.1 Indemnification. Contractor agrees to indemnify, hold harmless and defend City, City Council and each member thereof, and every officer, employee and agent of City, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor or any person employed by Contractor in the performance of this Agreement. This indemnification excludes any gross negligence, recklessness or intentional harm by the City or by any of its officers, boards, commissions, agencies, departments, agents, or employees. **The indemnification obligation under this Section 9.1 shall not be limited by the existence of any insurance policy and shall**

survive the termination of this Agreement. The City agrees to give Contractor written notice of any claim of indemnity under this section. Additionally, City shall have the election to control its own defense or settlement of such Claims. Monies due or to become due to Contractor under this Agreement may be retained by the City as necessary to satisfy any outstanding claim for indemnity which the City may have against Contractor.

ARTICLE X THIRD PARTY BENEFICIARIES

10.1 Third-Party Beneficiaries Under This Agreement. Except as otherwise expressly provided in this Agreement, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the signatories to this Agreement.

10.2 City as Third-Party Beneficiary of Subcontracts. The parties agree that all contracts executed by Contractor and any entity, vendor, contractor, subcontractor, corporation, partnership, or individual for the provision of any Work done in connection with the System, including, but not limited to, contracts with any subcontractor, and contracts to purchase, use, lease, or rent real property shall expressly acknowledge the City's status as a third party beneficiary of the Agreement and shall further expressly acknowledge that the City, as a third party beneficiary, shall have the right to enforce the provisions of the Agreement or to seek remedies available to it, should a party to the Agreement fail to comply with any of the Agreement's terms. Without limiting the generality of the forgoing, all such contracts shall contain the following, or a substantially similar, provision: The parties hereto acknowledge, agree and intend that this Agreement confer benefits and rights to the City. The parties hereto further acknowledge and agree that the City, as a third party beneficiary, shall have the right but not the obligation to enforce the provisions of this Agreement or to seek remedies available to it, should a party to this Agreement fail to comply with any of this Agreement's terms. Except with regard to the City, the parties hereto do not intend this Agreement to confer any benefits or rights on any third party not a signatory hereto.

10.3 Audit Rights. Full audit rights are hereby granted to the City to ensure Contractor's compliance with this Section 10.3, it being understood that the City's review of such contracts will not allow the City to require any modification to such contracts other than the inclusion of the above- mentioned text to such contracts.

10.4 City as Third-Party Beneficiary on Certain Obligations Under Subcontracts. The parties agree that the City may enforce any and all obligations, debts, or contracts between Contractor and any entity, vendor, contractor, subcontractor, corporation, partnership, or individual providing any good(s) or rendering any service(s) in connection with the System by seeking any and all remedies available to it against such entity, should any party to the contracts described herein fail to comply with any of the Agreement's terms.

ARTICLE XI MISCELLANEOUS

11.1 Governing Law. This 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 Agreement must be brought only in state or federal courts located in Los Angeles County, California. The parties hereby agree that

such courts shall have exclusive personal and subject matter jurisdiction over any such claim, suit or action. In performing the Work under this Agreement, Contractor shall comply with applicable federal, state, and local laws, ordinances, and regulations.

11.2 Survival. In addition to any payment obligation hereunder, all provisions of this Agreement that by their terms survive the expiration or any termination of this Agreement, together with all other provisions of this Agreement that may be reasonably construed as surviving the expiration or any termination of this Agreement, shall survive the expiration or any termination of this Agreement.

11.3 Notices. Except as otherwise provided herein, all notices, requests, demands and other communications which are required or may be given under this 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 and first class mail. Valid notice shall be deemed to have been delivered on the receipt by either Party of notice sent via first class mail.

If to Contractor: Josh Squire, CEO
 CycleHop, LLC
 1631 Colorado Avenue
 Santa Monica, CA 90404
 josh@cyclehop.com

If to the City: Aaron Kunz, Deputy Director or Bikeshare Manager
 Community Development Department
 455 North Rexford Drive
 Beverly Hills, CA 90210
 akunz@beverlyhills.org

11.4 Entire Agreement: Amendments and Waivers. This Agreement constitutes the entire Agreement among 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 Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of the provisions of this 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.

11.5 Counterparts: Severability. This 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 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 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.

11.6 Construction; Incorporation. The headings of the articles, sections, and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof. All sections and article references are to this Agreement, unless otherwise expressly provided. As used in this Agreement, (a) "hereof, "hereunder", "herein" and words of like import shall be deemed to refer to this Agreement in its entirety and not just a particular section of this 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 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 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 Agreement, and (iv) the terms and provisions of this Agreement shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

11.7 Relationship of the Parties. Contractor is an independent contractor and neither Contractor nor its employees shall, under any circumstances, be considered employees, servants, or agents of the City, nor shall the City nor its agents or employees be considered employees, servants, or agents of Contractor. At no time during the performance of the Work or otherwise, shall Contractor, its employees, or agents, represent to any person or entity that Contractor and its employees are acting on behalf of, or as an agent of, the City or any of its employees. The City will not withhold payments to Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. The City will not provide to Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the City for its employees. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between the parties.

11.8 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 Agreement.

11.9 Corporate Capacity. Contractor hereby represents and warrants to the City that: (i) it is a limited liability company duly organized, incorporated, validly existing and in good standing under the laws of the State of Florida qualified to transact intrastate business in California; and (ii) it has the requisite corporate power and authority to enter into this Agreement.

11.10 Authority to Transact Business. Contractor shall at all times during the term of this Agreement be authorized to transact business in the State of California.

11.11 Disadvantaged Business Enterprises.

(a) This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. Contractor should ensure that Disadvantaged Business

Enterprises (DBEs) and other small businesses have the opportunity to participate in the performance of the Work.

(b) Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(c) Any retainage kept by Contractor must be paid in full to the earning subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject Contractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to Contractor in the event of a dispute involving late payment or nonpayment by Contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

11.12 Ethics in Public Contracting. This Agreement incorporates all local, state, and federal law, regulations and rules related to ethics, conflicts of interest, or bribery. Contractor 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.

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

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

(a) Contractor 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 Contractor 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 Agreement; 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 Agreement, 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 Agreement; Contractor shall complete and submit Standard Ponn-LLL, "Disclosure Lomi 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, U.S. 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) Contractor also agrees by signing this 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.

11.15 Recitals and Exhibits. The Recitals and Exhibits are incorporated herein by this reference as though fully set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth, below.

EXECUTED the _____ day of _____, 20____, at Beverly Hills, California.

CITY OF BEVERLY HILLS, a municipal corporation

JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills, California

ATTEST:

BYRON POPE
City Clerk

CONTRACTOR: CYCLEHOP, LLC

JOSH SQUIRE
Chief Executive Officer

[Signatures continue]

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
Interim City Manager

SUSAN HEALY KEENE
Director of Community Development

AARON KUNZ
Deputy Director of Transportation

KARL KIRKMAN
Rick Manager

EXHIBIT A SCOPE OF WORK

The Beverly Hills Bike Share system (“System”) will operate under a publicly owned, privately operated model in which the City of Beverly Hills (“City”) owns the system equipment (including stations, bikes, and license of the operating software), while CycleHop LLC (“Contractor”) operates the system, collects revenues for the City (including membership fees and use fees) and receives compensation based on a monthly, per-bicycle fee. The System must be expandable within Beverly Hills and other Westside Council of Governments Cities and capable of regional interoperability with other systems in Los Angeles County.

The System is expected to provide a 24-hour transportation network that complements other transit and transportation options; to increase multi-model travel options in the City of Beverly Hills; to be accessible to Beverly Hills residents, commuters, students, visitors and tourists alike; to encourage bicycle use as an environmentally friendly and congestion-reducing transportation option; to increase regional transit ridership by offering better connections to/from future rail stations and bus stops in Beverly Hills, at a cost that can be fully offset by a combination of available grant funding, user fees, and revenue from sponsorship/advertising.

The Contractor shall design, build, install, operate and maintain and market an integrated Bike Share system ("System") of at least 10 bicycle stations, 100 bicycle racks, and 50 bicycles within a maximum of ten months of the Effective Date. The System shall be capable of being expanded within the City and neighboring jurisdictions. The Contractor shall work with other bike share providers (if any) in LA County to ensure that the System functions effectively as a regional and interoperable bike share service. Contractor shall purchase all equipment necessary to implement the system, oversee all aspects of installation, and shall conduct System operations, maintenance and repair, per Contractor’s proposal of services for the duration of the term of the Agreement. (A copy of the Contractor’s proposal of services is on file with the City Clerk’s Office and the Community Development Department.) The Contractor shall be responsible for all of the following:

A. SYSTEM DEVELOPMENT, PROCUREMENT AND INSTALLATION

The budget for the installation and launch of the Bike Share system shall be in accordance with Exhibit D of this Agreement. The Scope of Work shall include all of the following:

1. System procurement. Procure, assemble and set-up entire system (including installation) to become the property of the City, including, without limitation, initial equipment and spare parts purchasing, software licensing, equipment and software upgrades, warranty repairs and replacement purchases. Provide warranties.
2. Test installation. Provide prototypes and system test. Identify and resolve problems and make improvements.
3. Launch. Plan and execute a timely and effective system launch.
4. Create website. Create branding, marketing and public relations.
5. Maintenance and Office Facility. Identify and set up local maintenance storage and office space, including provision of maintenance equipment and vehicles.

6. Stations. Provide site analysis and secure all permitting for station locations.
7. Helmets. Develop system to encourage and distribute free or discounted helmets.
8. Station Locations. Work with the City, private landowners, and the Beverly Hills Unified School District (“District”) to obtain public and private space commitments and secure all required permits according to the processes identified by the City, District, and/or private landowner. The City will make a good faith effort to work with the Contractor to locate, permit, and provide use of spaces to place 100 racks in at least 10 stations on streets, sidewalks or other public property within the City. The City shall provide an initial list of locations that may be appropriate. Some or all station locations may be restricted by sponsor agreements, grants awards, and/or municipal requirements.
9. Repair of Damages. Promptly repair or replace any sidewalk or other City property that is damaged in the course of System installation.

B. SYSTEM MAINTENANCE AND OPERATION

The System shall be operated consistent with the budget included in Exhibit D of this Agreement. The Scope of Work shall follow the Santa Monica Bike Share Program model and includes all of the following:

1. Reporting. The Contractor shall submit monthly reports of gross revenues, ridership, and expenses, in a format approved by the City, with revenue broken down into categories of income. At the end of each operating year, the Contractor will be required to submit a detailed income, utilization/ridership, and expense statement for the past year's operation.
2. Open Data. The Contractor shall provide open content data that will allow third party developers to provide applications to assist users in finding bicycles, and stations, and comparing travel and usage information consistent with reports from other US systems such as Chicago and Washington DC.
3. Response to Complaints. All System structures shall contain a conspicuously posted telephone number, to the contractor's customer service operations to which the public may direct complaints and comments, and instructions for filing a complaint. All complaints received by the Contractor shall be logged. The Contractor shall cooperate with the City in providing a timely response to any such complaints. The Contractor shall provide a shared database in which the City can communicate complaints from the public and from the City, and in which the Contractor can report the resolution of such complaints.
4. Maintenance and Repair. System maintenance shall include, but is not limited to, inspecting, cleaning and removing graffiti from System structures on a timely basis, removal of debris in and around the System structures, preventive maintenance, inspection and prompt repair or replacement of the system elements including but not limited to terminals, signs, bicycles, concrete or asphalt beneath stations, solar panels, website and software. The Contractor shall comply with specified service standards.
5. System Balancing. Monitor the location of each bicycle and the status of each dock and redistribute bicycles so that there are bicycles and spaces available at each dock at all times.

6. Real-time Communication. Provide a method to track bicycle and dock status and populate interactive map with status of bicycles at stations, station locations with optional address and directions, and transit information;
7. Safety Information. Safety information shall be provided to all customers.
8. Adaptive Website Design. Provide and correctly display web pages on all major web browsers and mobile devices/formats.
9. Branding, Marketing, Sponsor Fulfillment and Public Relations. The Contractor shall oversee the implementation of all branding, marketing and public relations, and work with City to fulfill all obligations of any grants, sponsorships, advertisers and/or donors including placement of corporate messaging as appropriate on bicycles stations or other locations.
10. Performance Outcomes and Service Level Agreements. Contractor shall meet Service Level Agreements ("SLA") consistent with Exhibit E of this Agreement.
11. Customer Service. The Contractor shall provide responsive and customer-friendly services that encourage repeat use, including timely response to complaints.

C. FINANCIAL OPERATIONS

1. The City will follow the same financial model as the Santa Monica Bike Share Program as follows:
2. Registration. Provide and maintain in full operation a web page to register, submit credit card data, and execute a user agreement. After registration, members should be able to immediately access a bicycle at any station. Membership of various durations (such as 30 minutes, hourly, daily, weekly, and/or monthly) shall be available. Rates and durations shall be determined by the City.
3. Walk-Up Utilization. Allow one-time use by walk-up registration at all or designated stations. These stations shall enable walk-up renters to register, submit credit card data, and execute a user agreement.
4. Secure Financial Transactions. Complete secure financial transactions with data input at the web page or terminals. Provide the capability to track whether bicycles are returned during a specified period and accurately assess overtime fees. Financial data must be held securely in a manner that complies with all laws, and only accessed by authorized personnel. The Contractor shall develop a robust security policy. The Contractor must ensure that its security policy is enforced, report any breaches to the City and develop corrective plan to prevent future breaches. The method for protecting financial data, user names, and addresses, must be Payment Card Industry (PCI) compliant and satisfy minimum specifications of the City.
5. Fee Collection. Accurately assess and collect fees for failure to return any bicycle within 24 hours or an established time period and clearly communicate rules to user.
6. Revenue. All revenues, including membership fees, use fees, and revenue from other sources, shall be collected by the Contractor on behalf of the City and returned to the City. The Contractor, as the City's fiduciary with respect to collection and treatment of such revenue, shall be responsible for all revenue from the time it is collected until the time it is deposited to City accounts.

7. Records. The Contractor shall maintain records and make them available to the City on appropriate notice for inspection and auditing.
8. Billing and Compensation. The Contractor shall submit invoices for service, operation, maintenance and repairs based on a monthly, per-bicycle fee. The monthly fee will cover a reasonable number of station relocations per year (up to 5). The Contractor shall submit invoices for compensation for the installation of new stations in additional locations at the price specified in the agreement.
9. Regular Operations Review. The Contractor shall perform ongoing review of ridership, fees structure and development of recommendations that promote use of the system and reduce or eliminate any operating deficit.

D. SYSTEM EXPANSION, INTEROPERABILITY AND REGIONAL COORDINATION

1. The Contractor shall coordinate with Metro and provide access to all bike share systems in Los Angeles County utilizing the Metro TAP card and/or Metro TAP fare medium. This could include capability to use a TAP card as an access card or key fob.
2. The Contractor shall work with the City to expand the System within the City as directed, subject to a written amendment of this Agreement.
3. The Contractor must develop cooperative agreements with other regional bicycle share operators so that users can check out bicycles from any bike share system in Los Angeles County, even though docking mechanisms may be technically incompatible.
4. The Contractor shall facilitate regional cooperation, interoperability with any other regional bicycle share system and regional fare media, and ongoing partnerships with transit and local businesses.

Regional Guarantee

The Contractor shall guarantee the same negotiated price for all Westside cities in the region in order to create opportunities for interoperability and creation of a regional network system.

The Contractor guarantees to offer the following to all regional public entities that choose to implement a bike share system using the equipment included in this Agreement:

- Equipment pricing will be the same for all regional partners and shall remain fixed for two (2) years from Effective Date of the Santa Monica Contract. Following the two (2) year fixed price period, the per unit equipment price may increase from time to time, but not more than five (5) percent per twelve (12) month period;
- Shipping/Transportation costs shall be charged as a pass-through item with no additional mark-up and will be based on shipping market conditions;
- Annual operational cost: The per/bicycle cost of \$2,190, based on provision of an equivalent level of operational standards, staffing and service level guarantees included in this Agreement (Exhibits E and F);
- User Pricing structure: The Contractor shall offer to implement Santa Monica's rate structure for each jurisdiction, although the decision on rates is not binding upon regional partners;

- The same membership card/billing system as Santa Monica for consumer convenience.

Enforcement of Helmet Rules and Minimum Age for System Use

The Contractor shall enforce the restrictions set by the City in regard to minimum age to use a bicycle, minimum age to rent a bicycle, and use of a helmet as required by State or local law. The following shall be enforced. These provisions are subject to modification only with the City's approval and direction.

- A person must be at least 18 years old to register and use the bicycle share system. A parent or guardian may accept responsibility and register a minor over the age of 16 to use bicycle share bicycles.
- A minor over the age of 16 years old may use the bike share system subject to the following stipulations:
 - Parent/Guardian must register and sign for minor
 - Minor must be at least 5 feet tall
 - The State of California helmet law requires all riders under the age of 18 to wear a helmet. Therefore minors must wear a helmet at all times when riding a bike share bicycle. A minor caught riding without a helmet will be subject to police enforcement and membership suspension.

Provision of Helmets

The Contractor shall provide the following services related to availability and encouragement of helmets:

- Monthly and Annual Users
New members may elect during the online sign-up process to purchase a helmet from the bike share operator and a helmet will be shipped to them. Members will also receive a \$10 discount for immediate purchase of a helmet at participating local merchants/vendors.
- Casual Users
Casual Users will have the option to purchase a helmet at designated locations and merchants/vendors. The Contractor shall seek additional partners such as hotels, coffee shops, and visitor centers.
- Encouragement
On a regular basis, and at least every few weeks, the Contractor shall seek to locate and reward a bike share participant who is riding and wearing a helmet. This can be done through matching the bicycle ID number spotted with the rider and sending a gift courtesy of participating sponsors.

Once a year, the Contractor shall implement a "cool looking helmet contest" and provide gifts courtesy of participating sponsors.

Members who choose to participate in a bicycle safety class will receive a free helmet upon completion. Confidential City Cycling classes shall be available monthly through www.SustainableStreets.org.

The Contractor's communications materials and bicycle station equipment will include safe riding tips and remind participants to wear a helmet. The Contractor website and

application (“app”) shall include information about participating shops where helmets are available.

Waiver of Liability

The Contractor’s registration for all new system users shall require agreement to a statement waiving liability and accepting responsibility for use of the City's bike share bicycles. The waiver language is subject to prior written City approval prior to implementation.

Exhibit B
Schedule

Launch Start-up Phase / Month*		1	2	3	4	5	6
Siting Locations							
1.0	Station Types/Sizes Documentation	X					
1.1	Siting Strategy	X					
1.2	Station Siting Criteria and Details	X					
1.3	Develop Siting Package and Process	X	X				
1.4	Submit Station Plans to City		X	X	X		
1.6	Location Preparation				X		
Marketing & Public Outreach							
2.0	General Information Brochure			X			
2.1	Develop Pre-Launch Marketing Campaign	X	X	X			
2.2	Begin Public Outreach			X			
2.3	Brand Development	X	X				
2.4	Develop Bike Station Signage & Maps			X	X	X	
2.5	Business & Community Outreach			X	X	X	X
2.6	Publish Final Location Map						X
2.7	Launch Website, Mobile App, and Social Media						X
2.8	Launch Events						X
Operations (Launch)							
3.0	Hire Core Launch Team		X				
3.1	Lease and Build Out HQ/Maintenance Center		X				
3.2	Setup Payment Kiosk Software				X		
3.3	Setup Back Office Software				X		
3.4	Develop Local Operational Procedures				X	X	X
3.5	Start Demonstration (2 stations, 10 bikes)				X		
3.6	Hire and Train Operational Staff			X	X		
Equipment							
4.0	Order Bike Share Equipment and Parts	X					
4.1	Finalize Bicycle Colors	X					
4.2	Order Tools	X					
4.3	Order Distribution Vehicles	X					
4.4	Order Membership Cards			X			
4.5	Receive and Install Demonstration Stations				X		
4.6	Receive and Assemble Stations						X
4.7	Station Street Installations						X
4.8	Receive and Assemble Bicycles						X
4.9	System Testing						X
4.10	System Launch						X

* Numbers indicate months following the effective date of operations contract.

EXHIBIT C
SERVICE LEVEL OF AGREEMENT

#	Performance Indicator (PI)	Description	Measured Period	Measured Units	Threshold
PI-1	Overall Station system functionality: kiosk	Number of Kiosks in service per day	Point in time, Monthly	% of Stations	90% of stations
	Overall Station system functionality: bicycles	Number of Bicycles in service per day	Point in time, Monthly	% of Bicycles	95% of bicycles
PI-2	Bicycles in service	Percentage of bicycles on street and rideable	Point in time, Monthly	% of Bicycles	95% of Bicycles
PI-3	Bicycle cleanliness	Percentage of bicycles that are clean and graffiti-free	Point in time, Monthly	% of Bicycles	90% of Bicycles
PI-4	Station cleanliness	Percentage of stations that are clean	Point in time, Monthly	% of Stations	90% of stations
PI-5	Graffiti, "scratch-itti," sticker removal from stations and bicycles	Time taken to remove graffiti, "scratch-itti," and stickers, etc. after notification	Point in time, Monthly	Hours	24 hours
PI-6	Bicycle distribution	Bicycle-dock availability: stations with at least one available open dock and at least one available bicycle	Point in time, Monthly	# of available docks and bicycles per station	Maximum of 8 hours total out of balance for all stations daily; maximum of 1 hour total daily for any individual station
PI-7	Customer interaction	Timely response to customer complaints and resolution of issues.	Point in time, Monthly	% of customers satisfied % of complaints addressed timely	85% satisfied customers, 15-minute complaint response, 24-hr complaint resolution
PI-8	Website in service	Percentage of time that the website is in service	Point in time, Monthly	% of total minutes per week	95%
PI-9	Central computer system in service	Percentage of time that the central computer system will be in service	Point in time, Monthly	% of total minutes per week	95%

Service levels will be monitored by a combination of ongoing reporting and point-in-time verification. CycleHop will provide weekly system reports and summaries in the monthly report and the City will conduct spot-checks, monthly, or more often if necessary to ensure that service levels are maintained.

Correction Period: Violations shall be corrected within seven days from date of written notification unless an extended period is granted by City. Extensions due to factors beyond Operator's control will not be unreasonably withheld and will include the following:

1. Bikes out of service as result of vandalism
2. Bikes out of service as a result of disruption in component supply chain
3. Bikes out of service as result of depleted battery due to user error (for example: customer rents bike and leaves it unlocked and static for extended period of time)

**EXHIBIT D
BUDGET**

CAPITAL COSTS FOR 50 BIKES AT 10 LOCATIONS						
#	EQUIPMENT	DESCRIPTION	UNITS	COST PER UNIT	SHIPPING	TOTAL COST
B.1	Bicycles	V3 Smart Bicycle	50	\$1,250	\$6,250	\$84,500
B.7	Upgrade #1: Bicycles	Upgrade from 3 to 8 Gear Hub	50	\$135		
B.8	Upgrade #2: Bicycles	Upgrade to Skirt Guard	50	\$80		
P.1.	Bicycle Parts	Starter Parts Kit	50	\$100		
R.2	Rack	Curved Bicycle Rack	100	\$175	\$6,250	\$58,590
R.3	Rack Base Plate	Rack Base Plate	100	\$125		
S.1	Payment Kiosk	Solar Operated Payment Kiosk	1	\$10,000		
S.5	Large Map Display	Large Info Panel	0	\$2,000		
S.8	Small Map Display	Compact Panel with Full Length Cover	9	\$1,000		
S.11	Kiosk/Display Base Plate	Kiosk/Display Base Plate	10	\$250		
S.12A	Base Plate Connector	Plate-to-Plate Connector	50	\$12		
S.12B	Base Plate End Cap	Station End Cap	20	\$12		
TOTAL EQUIPMENT COST						\$143,090

START-UP COSTS FOR 50 BIKES AT 10 LOCATIONS		
#	ITEM	AMOUNT
STU1	Pre-Launch Staffing	\$15,000
STU2	Bicycle Assembly & Graphics Installation	\$5,000
STU3	Facility Lease & Setup	NA
STU4	Vehicle Down Payment & Customization	NA
STU5	Site Analysis and Permitting for Station Locations (10 locations, \$1,000 each)	\$10,000
STU6	Station Assembly, Transport, Installation, and Setup	\$10,000
STU7	Website	\$10,000
STU8	Office Equipment & Supplies, Membership Cards	\$3,500
STU9	SoBi Implementation Fee	\$15,000
C1	Contingency	\$5,910
TOTAL START-UP COSTS		\$74,410

OPERATING COSTS FOR YEAR-1	
ANNUAL OPERATING COSTS (\$2,190 PER BIKE)	\$109,500

TOTAL EQUIPMENT, START-UP, AND ONE YEAR OPERATING COSTS	\$327,000
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Exhibit E
Bike Share Launch Protocol

Launch Start-up Phase		Description
Siting Locations		
1.0	Station Types/Sizes Documentation	Contractor will submit to City documentation regarding SoBi station types and sizes
1.1	Siting Strategy	Contractor will develop and submit to City for approval location siting strategy
1.2	Station Siting Criteria and Details	Contractor will submit to City siting methodology and checklist form
1.3	Develop Siting Package and Process	Contractor will submit to City siting package including location checklist, photo and drawings
1.4	Submit Locations to City for Initial Review	Contractor will submit to City 100 locations to City for review
1.5	Submit Station Plans to City	Contractor will submit to City detailed drawings of each location including station type and size
1.6	Location Preparation	Contractor will work with City to prepare location for station install per location needs
Marketing & Public Outreach		
2.0	General Information Brochure	Contractor will create and print brochure to inform public about bike share program
2.1	Develop Pre-Launch Marketing Campaign	Contractor will develop a pre-launch marketing campaign and schedule
2.2	Begin Public Outreach	Contractor will execute pre-launch marketing campaign
2.3	Brand Development	City will develop a brand and deliver brand identity and guidelines
2.4	Develop Bike Station Signage & Maps	Contractor will develop signs and maps for each location
2.5	Business & Community Outreach	Contractor will engage with local business and community to promote program and membership sales
2.6	Publish Final Location Map	Contractor will publish bike share system map
2.7	Launch Website, Mobile App, and Social Media	Contractor will design and launch website, app, and social media platforms for bike share program
2.8	Launch Events	Contractor will work with local partners and City to organize a launch party and related events
Operations (Launch)		
3.0	Hire Core Launch Team	Contractor will share Cyclehop regional GM, Marketing, and Admin staff
3.1	Lease and Build Out HQ/Maintenance Center	Contractor will share Cyclehop warehouse
3.2	Set up Payment Kiosk Software	Contractor will design and program kiosk payment screens following City approval
3.3	Set up Back Office Software	Contractor will set up back office software for local program, City to approve pricing plans
3.4	Develop Local Operational Procedures	Contractor will develop local operating procedures for customer service, maintenance, and balancing stations
3.5	Start Demonstration (2 stations, 10 bikes)	Contractor will install and operate 2 stations and test system by year end
3.6	Hire and Train Operational Staff	Contractor will hire and train staff required to operate the bike share program
Equipment		
4.0	Order Bike Share Equipment and Parts	Contractor will order equipment and parts from SoBi and provide proof of order
4.1	Order Tools	Contractor will order the tools necessary to maintain the system
4.1	Order Distribution Vehicles	Contractor will order distribution vehicles to be used to balance stations
5.1	Order Membership Cards	Contractor will order 500 branded membership cards following City design approval
4.2	Receive and Install Demonstration Stations	Contractor will receive and install 2 demo stations
6.1	Receive and Assemble Stations	Contractor will receive and assemble all stations
4.3	Station Street Installations	Contractor will install all stations at permitted locations
7.1	Receive and Assemble Bicycles	Contractor will receive and assemble 100 bicycles
4.4	System Testing	Contractor will test system prior to launch
8.1	System Launch	Contractor will launch the bicycle share system by end of 1st qtr 2016

Critical Path Milestones
City
Contractor
Contract signing by City and Contractor
Equipment Down payment made by City
Monthly invoices paid by City
Bicycle color approved by City
Branding provided by City
Locations approved by City
Equipment, tools, and vehicles ordered
Monthly invoices submitted per contract
Core launch team hired
Maintenance facility leased
Website, app, social media go live
Stations signs and maps printed
Operations staff hired and trained
Demonstration of 6 stations and 30 bicycles implemented
Racks and signs received
Kiosks received
Bicycles received
Locations prepped
Stations installed
Bicycles distributed
System tested

EXHIBIT F SOFTWARE RIGHTS

I. **COMPONENTS.** The Social Bicycles software platform includes the following components and services (the "SoBi Software Platform"):

1. Program Management Platform for the Operator

- a. Bicycle Rental Management System – allows operator to manage, create, and end bicycle rentals made by subscribed users via the web platform and mobile applications.
- b. Subscribed User Management System – allows operator to review subscribed user accounts including checking payment status and billing history, reviewing and changing subscription plans, submitting payments for processing, reviewing rental history, flagging individual subscribed user accounts for misuse (e.g., excessive damage to bicycles, lost bicycles), and other similar functions for managing subscribed user accounts.
- c. Bicycle Sharing Program Administration System – allows operator to oversee the general operation of the bicycle sharing program including examining the real-time location of bicycles, viewing alerts such as battery level and repair status, designating stations and system areas, viewing and analyzing subscribed user data and messaging subscribed users.

2. Rental Platform for the User

- a. Bicycle Rental Management System – allows users to register for the bicycle sharing program, access information on the bicycle sharing system, manage, create, and end bicycle rentals via the web platform and mobile applications, manage account and privacy settings, and review rental history.

3. General Software Services

- a. General Software Services - includes access and updates to the above systems, maintenance of the above systems, and standard data analysis and program reporting.

II. DATA ACCESS.

1. Access by the City - Contractor will provide the City with access to, at a minimum, the following data via the SoBi Software Platform: anonymous user statistics, overall membership numbers, total rides, route information, and overall revenue. If the City desires greater access to the SoBi Software Platform, Contractor will use its best efforts to accommodate the request, provided the requested access does not compromise user privacy or impede the successful operation of the bicycle sharing system.
2. Public Access to Data – Contractor is committed to open data, and will provide on a quarterly basis, anonymous, aggregated data to the public. Contractor shall provide such information in csv files or, where available, data visualizations.

EXHIBIT G
INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Coverage shall be at least as broad as:

(a) **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering GCL on an "occurrence" basis, including products-completed operations and personal and advertising injury, with limits of no less than \$5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(b) **Automobile Liability:** Insurance Services Office Form CA 00 01 covering Code 1 (any auto), or if the Contractor has no owned autos, Code 8 (hired) and Code 9 (non-owned), with limits of no less than \$1,000,000 per accident for bodily injury and property damage.

(c) **Workers' Compensation and Employer's Liability Insurance:** Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

(d) **Crime Coverage:** Comprehensive crime coverage policy with a minimum limit of \$100,000. Coverage to include (i) employee dishonesty (both employees and board members), (ii) monies and securities coverage both inside and outside the premises, and (iii) depositors forgery coverage.

(e) **Bailee's Insurance:** Bailee's insurance coverage with limits of no less than \$1,000,000 per occurrence for damage to City property in the case, custody and control of Contractor.

If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be made available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

(a) **Additional Insured Status (CGL policy):** The City, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts or equipment furnished in connection with such work or operations. The additional insured status can be provided in the form of an endorsement at least as broad as Insurance Services Office Form CG 20 10 11 85.

(b) **Primary Coverage (all policies):** For any claims related to this Agreement, the Contractor's insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

(c) **Notice of Cancellation (all policies):** Each insurance policy required herein shall state that coverage shall not be cancelled except after notice has been given to the City.

(d) **Waiver of Subrogation (all policies):** Contractor hereby grants to the City a waiver of any right of subrogation which any insurer of said Contractor may acquire against the City by virtue of payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received the waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to reduce or eliminate the deductible or retention applicable to the contracted work or provide satisfactory proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

Failure to Maintain Insurance Coverage

If Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The City, at its sole option, may terminate this Agreement and obtain damages from the Contractor resulting from said breach. Alternatively, the City may purchase such coverage (but has no special obligation to do so), and without further notice to the Contractor, the City may deduct from sums due to the Contractor any premium costs advanced by the City for such insurance.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein. All exceptions must be approved in writing by the City's Risk Manager.