

FIRST AMENDMENT TO THE BAY AREA BIKE SHARE PROGRAM AGREEMENT

This First Amendment to the Bay Area Bike Share Program Agreement (this “Amendment”) is entered into as of November 21, 2016 between the Metropolitan Transportation Commission, a regional transportation planning agency established pursuant to California Government Code § 66500 et seq., having an office at 375 Beale Street, Suite 800, San Francisco, CA 94105 (“MTC”) and Bay Area Motivate, LLC (“Operator”).

RECITALS:

WHEREAS, MTC and Operator are parties to the Bay Area Bike Share Program Agreement, dated as of December 31, 2015 (as further amended, restated or otherwise modified from time to time, the “Program Agreement”). Capitalized terms used but not defined herein shall have the meanings given to them in the Program Agreement;

WHEREAS, MTC and Operator desire to modify and amend the Program Agreement in certain respects, including to extend the number of years in a reduced Initial Term; extend the dates by which Operator must place a purchase order with respect to, commence, and complete the installation of, Phase I Stations; decrease the maximum amount Operator may charge for the first year of an “affordability subscription”; and add provisions relating to reciprocity with contiguous smart bike share systems and low income and minority community engagement.

NOW THEREFORE, in consideration of the premises and the agreements herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Where text is revised, added text is indicated in italics, deleted text is indicated in strikethrough format.

1. Section 2.3 of the Program Agreement is hereby revised as follows:

2.3 Reduction of Initial Term. If Operator does not complete 75% of Phase I, Phase II, Phase III, or Phase IV by the Agreed Phase I Completion Date, the Agreed Phase II Completion Date, the Agreed Phase III Completion Date, the Agreed Phase IV Completion Date, respectively, or 100% of Phase V by the Agreed Phase V Completion Date, then MTC shall have the right, by notice to Operator given with 60 days of the respective missed Completion Date, to reduce the Initial Term by ~~5~~3 years, subject to the rights of the Recognized Lender set forth in Section 19.5. In addition, if on the ~~4th~~*6th* anniversary of the earlier of (a) the date that Phase I is completed, and (b) the Agreed Phase I Completion Date, a Default exists under Section 18.1.5, then MTC shall have the right, by notice to Operator given with 60 days of such ~~4th~~*6th* anniversary, to reduce the Initial Term by ~~5~~3 years, subject to the rights of the Recognized Lender set forth in

Section 19.5. Any amounts due pursuant to Section 8.2 shall be due within 120 days after expiration of the Term as reduced pursuant to this Section 2.3.

2. Section 3.4.1 is hereby revised as follows:

3.4.1 Phase I. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing 25% of the total Bicycles for San Jose, East Bay and San Francisco (the “Phase I Stations”) by the date that is 5 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the “Agreed Phase I Site Permit Submission Date”). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is ~~5 months~~ 7 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase I Stations and shall complete such installation for all such Sites by the date that is ~~5 months~~ 7 months after the issuance by the Participating Cities of Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the “Agreed Phase I Completion Date”; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being “Phase I”). Any AD Equipment that is acquired by Operator will count toward the Bicycles and related Equipment required for Phase I. Based on the schedule set forth in this paragraph, the objective of the Parties is for Operator to complete Phase I by the date that is 10 months after the Effective Date (such date being the “Scheduled Phase I Completion Date”). Notwithstanding anything to the contrary contained in this Agreement, if Operator fails to submit to the Participating Cities complete applications for Site Permits for 75% of the Phase I Stations by the date that is 30 days after the Agreed Phase I Site Permit Submission Date, or if Operator fails to place a purchase order, taking into account AD Equipment to be used by Operator, for 75% of the Phase I Bicycles and 75% of the Phase I Stations, by the date that is ~~30 days~~ 60 days after the issuance by the Participating Cities of Site Permits for 75% of the Phase I Stations, *or consistently fails to timely submit to the Participating Cities revisions to rejected applications for Site Permits for 75% of the Phase I Stations*, then as the sole remedy of MTC and the Participating Cities under this Agreement for such failures, MTC shall have the right to terminate this Agreement upon 10 days’ notice to Operator without any further right of Operator or any Recognized Lender to remedy such failure. Operator shall provide evidence of such purchase order reasonably promptly following a request by MTC.

3. Section 3.7 is hereby added as follows:

3.7 *Operator shall submit to the Participating Cities revisions to any rejected application for Site Permits for Stations for any Phase within 60 days of notice of such rejection, such date being subject to extension by Events of Force Majeure or by Participating City Delay.*

4. Section 4.2.2 is hereby revised as follows:

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

5. Section 9.1 is hereby revised as follows:

9.1 Operator agrees that the amount and terms of the fees it charges users of the Program shall be consistent with the provisions of this Section. *The Membership Fees set forth in Sections 9.2.1, 9.2.2 and 9.3.1 shall be offered to users of all bicycles operated by Operator in the Bay Area.* Membership Fees and Initial Ride Periods shall be consistent with Section 9.2, the Annual Membership Fee for users eligible for the affordability subscription specified in Section 9.3.1 shall be as described in said Section 9.3.1, the maximum Bicycle usage charge shall be consistent with Section 9.5 and the fees for damaged, lost, stolen or otherwise unreturned Bicycles shall be consistent with Section 9.6 initially charged by Operator shall be consistent with this Section. A “Membership Fee” is an amount that entitles the purchaser of the membership (a “member”, for the period of such purchased membership) to check out (as defined below) one or more Bicycle(s) at a time, for the length of time described below, provided that the member shall be charged a usage fee associated with the time period the Bicycle is checked out beyond the Initial Ride Period. A Bicycle is “checked out” for the period from the time it is removed from a Dock to the time it is returned to a Dock. A member may check out and return a Bicycle from or to any Dock at any Station in the Program, for an unlimited number of times, at any time during the period of the member’s membership, with the usage fee applicable to each such checkout and return sequence being calculated separately (so, for example, a Regular Annual

Member may, within the member's membership period, check out a Bicycle and return it within the first 30 minutes after checkout, and then subsequently check out a Bicycle and return that Bicycle within the first 30 minutes after that checkout, without incurring any usage fee for either checkout period).

6. Section 9.3.1 is hereby revised as follows:

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

7. Section 9.8.1 is hereby added as follows:

9.8.1 In partnership with the Participating Cities, Operator shall provide a cash payment option for households without an active bank account.

8. Section 11 is hereby replaced in its entirety with the following:

SECTION 11

CONTIGUOUS "SMART BIKE" BIKE SHARING SYSTEMS

11.1 In the event that Operator agrees to operate any "smart bike" bike sharing system in the MTC region within a 10 mile radius of an existing Operator bike share operation, Operator shall offer reciprocal membership privileges with the Program provided that: (i) the municipality offering such "smart bike" bike share system will be charged no more than \$195 per bike per month; (ii) annual membership fees in such system will be consistent with the Annual Membership Fee offered in the Program pursuant to Section 9.2 hereof, provided however that Operator may charge demand-driven pricing and other add-ons (including for example out-of-hub fees, out-of-network fees and rush hour availability at CalTrain stations); and (iii) the affordability subscription shall be consistent with the terms of Section 9.3.1, as amended.

9. Section 12 is hereby replaced in its entirety with the following:

SECTION 12

LOW INCOME AND MINORITY COMMUNITY ENGAGEMENT

- 12.1 Operator agrees to contribute \$140,000 to create a community engagement program that will fund community-based organizations to educate their communities about planning for and using the Program.*

10. Section 25.2 is revised in part as follows.

If to MTC:

Metropolitan Transportation Commission
~~Joseph P. Bort Metro Center, Bay Area Metro Center~~
375 Beale Street, Suite 800
~~Oakland, CA 94607-470~~ San Francisco, CA 94105-
Attention: Executive Director
Email: SHeminger@mtc.ca.gov
Attention: General Counsel:
Email: AWeil@mtc.ca.gov
Attention: Designated Representative
Email: ~~KMulder@mtc.ca.gov~~ djohnson@mtc.ca.gov

11. The remaining terms of the Program Agreement shall remain in full force and effect.
12. Governing Law. This Amendment shall be governed in all respects by the internal laws of the State of California without regard to conflicts of law principles.
13. Severability. In the event that any provision of this Amendment becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Amendment shall continue in full force and effect without said provision, provided that no such severability shall be effective if it materially changes the economic benefit of this Amendment to any party hereto.
14. Counterparts. This Amendment may be executed in counterparts, each of which shall be declared an original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, MTC and the Operator have caused this First Amendment to the Bay Area Bike Share Program Agreement to be duly executed and delivered as of the day and year referenced above.

METROPOLITAN TRANSPORTATION
COMMISSION

By: _____

Name: Steve Heminger

Title: Executive Director

BAY AREA MOTIVATE, LLC

By: _____

Name: Jay Walder

Title: President and Chief Executive Officer