

PROGRAM AGREEMENT

This program agreement ("Agreement"), dated as of _____ ("Effective Date") is by and between the Sonoma County Transportation Authority (hereinafter "SCTA"), and Gotcha Mobility, LLC, a Delaware limited liability company (hereinafter "Contractor"). Both Contractor and SCTA are sometimes hereinafter referred to individually as a "Party" and, collectively, as the "Parties".

RECITALS

WHEREAS, Contractor is in the business of constructing and providing shared mobility products ("**Assets**") and services for municipalities, colleges, and universities throughout the United States, and has developed a proprietary shared mobility platform with access to related proprietary software, ongoing maintenance services, and expansion assistance (the "**Business**"); and

WHEREAS, Contractor represents that it is a duly qualified bike share operator, experienced in the operations of bike share systems, including rental, repair, marketing, customer service, and related services; and

WHEREAS, the Transportation Authority of Marin (hereinafter "TAM") and SCTA have a cooperative agreement to share responsibilities and benefits of the Bike Share Capital grant awarded jointly to SCTA and TAM; and

WHEREAS, in the judgment of the SCTA and TAM, it is necessary and desirable to employ the services of Contractor for providing all aspects of bike sharing operations through the Sonoma and Marin Bike Share Pilot Program.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Scope of Services.

1.1 Contractor's Specified Services. Contractor shall perform the services described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), and within the times or by the dates provided for in Exhibit A and pursuant to Article 7, Prosecution of

Work. In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.

1.2 Cooperation With SCTA and TAM. Contractor shall cooperate with SCTA and TAM, and their respective staff, in the performance of all work hereunder.

1.3 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. SCTA has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by SCTA shall not operate as a waiver or release. If SCTA determines that any of Contractor's work is not in accordance with such level of competency and standard of care, SCTA shall notify Contractor of the discrepancy in the level of work. The Parties shall then work together to determine how to resolve the matters in a timely manner. .

1.4 Assigned Personnel.

- a. Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time SCTA, desires the removal of any person or persons assigned by Contractor to perform work hereunder, SCTA shall notify Contractor of the reasons behind such request. Contractor will evaluate the concerns in good faith and make a determination on the removal of such person.
- b. In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.

2. Payment.

For all services and incidental costs required to fulfill the Scope of Work hereunder, Contractor shall be paid a lump sum in accordance with Exhibit B, attached hereto and incorporated herein by this reference, regardless of the number of hours or length of time necessary for Contractor to complete the services. If additional items are added to the Scope of Work or this Agreement the Parties will

work together to amend the Agreement and address any additional costs associated with such amendment.

Upon completion of the work, Contractor shall submit its bill[s] for payment in a form approved by County's Auditor and the SCTA receiving the services. The bill[s] shall identify the services completed and the amount charged. Unless otherwise noted in this Agreement, payments shall be made within thirty (30) days from receipt of an invoice in a form approved by the SCTA for services performed.

Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the SCTA shall withhold seven percent of the income paid to Contractor for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Contractor does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Contractor does not qualify, SCTA requires that a completed and signed Form 587 be provided by the Contractor in order for payments to be made. If Contractor is qualified, then the SCTA requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the Contractor agrees to promptly notify the SCTA of any changes in the facts. Forms should be sent to the SCTA pursuant to Article 12. To reduce the amount withheld, Contractor has the option to provide SCTA with either a full or partial waiver from the State of California.

3. Term of Agreement. This agreement shall commence on the Effective Date and shall terminate Sixty (60) months from that date (the "Term") unless terminated earlier in accordance with the provisions of Article 4 below. The term of the agreement includes a minimum operating period of thirty-six (36) months, which may then be renewed on an annual basis within the Term of the agreement.

4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, either Party shall have the right, in its sole discretion, to terminate this Agreement by giving 90 days written notice to the other Party.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should either Party fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, the other Party may terminate this Agreement after giving sixty (60) days written notice of such termination, stating the reason for termination and allowing sixty (60) days from the date of such notice to cure the issue (“Cure Period”). If the breaching Party has not resolved the issues stated in the notice to cure during the Cure Period, the other Party may immediately terminate this Agreement.

4.3 Change in Funding. Contractor understands and agrees that SCTA shall have the right to suspend this Agreement upon written notice to Contractor in the event that (1) any state or federal agency or other funder reduces, withholds or terminates funding which the SCTA anticipated using to pay Contractor for services provided under this Agreement or (2) SCTA has exhausted all funds legally available for payments due under this Agreement. Contractor and SCTA will work together in good faith to pursue all other funding options.

4.4 Delivery of Work Product and Final Payment Upon Termination. In the event of termination, Contractor, within 14 days following the date of termination, shall deliver to SCTA all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Contractor or Contractor’s subcontractors, consultants, and other agents in connection with this Agreement and shall submit to SCTA an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.5 Payment Upon Termination. Upon termination of this Agreement by SCTA, Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Contractor bear to the total services otherwise required to be performed for such total payment and all expenses allowed under this Agreement that are directly attributed to its performance under this Agreement.

4.6 Authority to Terminate. The Board of SCTA has the authority to terminate this Agreement on behalf of the SCTA. In addition, the Executive Director of SCTA, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the SCTA.

5. Indemnification. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including SCTA and TAM, and to defend, indemnify, hold harmless, and release SCTA, TAM, MTC, all Participating Agencies that are parties to the Coordination Agreement for the Marin-Sonoma Bike Share Program, and partner properties (including their respective elected officials, officers, agents, and employees) from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, that arise out of, pertain to, or relate to Contractor's or its agents', employees', contractors', or subcontractors' negligent performance under this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against SCTA, TAM, MTC, Participating Agencies, or partner properties based upon a claim relating to such Contractor's or its agents', employees', contractors', or subcontractors' negligent performance under this Agreement. Contractor's obligations under this Section apply whether or not there is concurrent or contributory negligence on SCTA's, TAM's, MTC's, Participating Agencies', or partner properties' part, but to the extent required by law, excluding liability due to SCTA's, TAM's, MTC's, Participating Agencies', or partner properties' conduct. This indemnification obligation is not limited in any way by the any limitation on the amount or type of damage or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

Limitation of Liability; Assumption of Risk; Disclaimer. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, MORAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, OR FOR ANY LOSS OF USE, LOSS OF PRODUCTION, LOSS OF REVENUE OR PROFITS, COST OF CAPITAL, LOSS OF GOODWILL, LOSS OF OPPORTUNITY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER THEORY AT LAW OR IN EQUITY, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF IT ESSENTIAL PURPOSES, AND EACH PARTY EXPRESSLY RELEASES THE OTHER PARTIES FROM ANY SUCH LIABILITY. THE FOREGOING LIMITATION ON LIABILITY DOES NOT APPLY TO ANY DAMAGES FOR WHICH CONTRACTOR'S INSURANCE PROVIDES COVERAGE.

THE PARTIES FURTHER AGREE THAT THE LIABILITY FOR CONSULTANT UNDER THIS AGREEMENT BASED ON A CLAIM OF BREACH OF CONTRACT SHALL NOT EXCEED THE TOTAL CONTRACT AMOUNT. THE PARTIES FURTHER AGREE THAT THE LIABILITY FOR CONSULTANT UNDER THIS AGREEMENT BASED ON A CLAIM IN EQUITY, NEGLIGENCE, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY),

OR OTHERWISE FOR ALL EVENTS, ACTS OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED THE COVERABLE LIMITS REQUIRED UNDER THIS AGREEMENT.

GOTCHA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES (INCLUDING, FOR CLARIFICATION, THE DELIVERABLES AND THE SERVICES), INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

6. Insurance. With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit E, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work. The execution of this Agreement shall constitute Contractor's authority to proceed immediately with the performance of this Agreement as specified in the Scope of Work. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Contractor's performance of this Agreement shall be extended by a number of days equal to the number of days Contractor has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes which do not change the scope of work or significantly lengthen time schedules may be executed by the Executive Director of SCTA in a form approved by Counsel. The Board of Directors of SCTA must authorize all other extra or changed work. The parties expressly recognize that SCTA personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Contractor to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Contractor shall be entitled to no compensation whatsoever for the performance of such work. Contractor further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the SCTA.

9. Representations of Contractor.

9.1 Standard of Care. SCTA has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by SCTA shall not operate as a waiver or release.

9.2 Status of Contractor. The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of SCTA and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SCTA provides its employees. In the event SCTA exercises its right to terminate this Agreement pursuant to Article 4, above, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If Contractor becomes debarred, Contractor has the obligation to inform the SCTA.

9.4 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold SCTA harmless from any liability which it may incur to the United States or to the State of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case SCTA is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish SCTA with proof of payment of taxes on these earnings.

9.5 Representation, Warranty and Responsibility as to Data Security. Contractor shall preserve, and shall ensure that its sub-contractors or vendors preserve, the confidentiality, integrity, and availability of data with administrative, technical and physical measures that conform to generally recognized industry standards and best practices that the selected firm then applies to its own processing environment. Contractor shall adhere to the data privacy and security requirements are described in **Exhibit C.**

9.6 Accounting Records Maintenance. Contractor shall keep and maintain full and complete accounting records concerning the payments made under this Agreement by SCTA and shall make such records available to SCTA for inspection at any reasonable time. Contractor shall maintain such records for a period of four (4) years following completion of work hereunder.

9.7 Conflict of Interest. Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, as applicable, Contractor shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with SCTA disclosing Contractor's or such other person's financial interests.

9.8 Statutory Compliance. Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

9.9 Nondiscrimination. Without limiting any other provision hereunder, Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the SCTA's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.10 AIDS Discrimination. Contractor agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.11 Ownership and Disclosure of Work Product. While Contractor recognizes that some documents generated in connection with this work may be governed by the California Public Records Act, SCTA recognizes Contractor's assertion that certain reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Agreement will be the property of Contractor. Contractor shall provide SCTA with copies of reports, original drawings, graphics, plans, studies, and other documents in connection with this Agreement, and a perpetual royalty free license to use these work products for the purposes of this Agreement. Contractor will mark any proprietary documents as such, and, in the event of a Public Records Act request seeking documents marked as proprietary. SCTA shall promptly notify Contractor of such Public Records Act request, and Contractor and SCTA will work together to attempt to agree on whether or not the document is exempt from disclosure. In the event the Parties are unable to agree, SCTA shall provide time to Contractor to file an intervening lawsuit seeking to prevent disclosure of such documents Contractor claims are exempt from disclosure under the Public Records Act before providing the disputed documents to requestor.

9.12 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Contractor.

10. Content Online Accessibility. SCTA follows the County policy that requires all documents that may be published to the Contractor's web site meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.

10.1 Standards. All consultants responsible for preparing content intended for use or publication on a SCTA-managed or SCTA-funded web site must comply with applicable Federal accessibility standards established by 36 C.F.R. Section 1194, pursuant to Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)), and the County's Web Site Accessibility Policy located at <http://webstandards.sonoma-county.org>.

10.2 Alternate Format: When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Contractor shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Contractor agrees to cooperate with SCTA staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s), e.g. embedding the document with alt-tags that describe complex data/tables.

10.3 Noncompliant Materials; Obligation to Cure. Remediation of any materials that do not comply with County's Web Site Accessibility Policy shall be the responsibility of Contractor. If SCTA, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any SCTA-managed or SCTA-funded web site does not comply with County Accessibility Standards, SCTA will promptly inform Contractor in writing. Upon such notice, Contractor shall, without charge to SCTA, repair or replace the non-compliant materials within such period of time as specified by SCTA in writing. If the required repair or replacement is not completed within the time specified, SCTA shall have the right to do any or all of the following, without prejudice to SCTA's right to pursue any and all other remedies at law or in equity:

- a. Cancel any delivery or task order;
- b. Terminate this Agreement pursuant to the provisions of Article 4;
- c. In the case of custom EIT developed by Contractor for SCTA, SCTA may have any necessary changes or repairs performed by itself or by another contractor. In such event, contractor shall be liable for all expenses incurred by SCTA in connection with such changes or repairs; and/or

10.4 SCTA's Rights Reserved. Notwithstanding the foregoing, SCTA may accept deliverables that are not strictly compliant with County Accessibility Standards if SCTA, in its sole and absolute discretion, determines that acceptance of such products or services is in SCTA's best interest.

10.5 Contractor's Application. Contract represents and warrants that it is technically infeasible to meet the Accessibility Standards required above on Contractor's application required under this Agreement. Therefore, the above Accessibility Standards are not applicable to Contractor's application. However, if during the term of this Agreement it becomes technically feasible to meet the Accessibility Standards described above on Contractor's application, Contractor shall comply with the provisions of this Section 10 for its application.

11. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits SCTA's right to terminate this Agreement pursuant to Article 4.

12. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented. Notwithstanding the foregoing, Gotcha may assign this Agreement and its rights and obligations hereunder to a successor entity, in whole or in part, upon written notice to SCTA. Nothing herein shall be construed to prevent Gotcha from delegating its duties hereunder to its Affiliates, provided that Gotcha in any event shall remain responsible for its obligations hereunder irrespective of any such delegation.

13. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: SCTA: Suzanne Smith, Executive Director
Sonoma County Transportation Authority
411 King Street
Santa Rosa, CA 95404

TO: GOTCHA: Sean Flood, CEO
Gotcha Mobility, LLC
15303 Ventura Boulevard
Sherman Oaks, CA

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

14. Other Asset Share Business. During the Term, SCTA shall not: (i) engage or participate, directly or indirectly, in any business that is in competition with the Contractor; (ii) enter into any agreement with any other party for services similar to the Scope of Work, without first entering into good faith negotiations with Contractor with respect to such opportunity; and (iii) otherwise permit advertising or promotional activity anywhere on the Premises where such advertising would compete with the interests of Contractor. SCTA represents and warrants that, as of the Effective Date, it is not party to any such agreement contemplated in this Section 14, other than this Agreement.

15. Miscellaneous Provisions.

15.1 No Waiver of Breach. The waiver by SCTA of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

15.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and SCTA acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and SCTA acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

15.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

15.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

15.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

15.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

15.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

15.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

15.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

GOTCHA: _____

By: _____

Name: _____

Title: _____

Date: _____

SCTA: SONOMA COUNTY TRANSPORTATION
AUTHORITY

CERTIFICATES OF INSURANCE ON
FILE WITH AND APPROVED AS TO
SUBSTANCE FOR SCTA:

By: _____
Executive Director

Date: _____

APPROVED AS TO FORM FOR SCTA:

By: _____
County Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK

A. System Development, Procurement, Installation, and Launch

1. Organizational Development Contractor will design and set up or already have in place and describe a business organization that is capable of completing all tasks in this scope of work. This will include office and warehouse setup, staffing, administrative and office systems, risk management, legal compliance (including preparation of all waivers, legal disclaimers, etc.), accounting and reporting systems, policy manuals, user rules and regulations, payroll, HR systems and other activities and systems as needed.
 - i. Hire Local Staff: Contractor will employ full-time local staff to oversee and manage all in-market operations, including launch and ongoing management of the system. FTE positions may include, but are not limited to, the following positions:
 1. Community Manager(s) (minimum of 1 FTE) Community Manager will be the main liaison for partners and key stakeholders. This role includes data reporting, regularly scheduled check-ins and real-time updates on the operations of the system. The Community Manager will have a strong focus on working within the local community to educate and promote the shared mobility service in creative, innovative ways. They will attend local events, meetings and serve as Contractor's local spokesperson for the program.
 2. Operations Manager (minimum of 1 FTE) will manage an experienced team of mechanics and operations team.
 3. Mechanics and Operations Team will perform routine activities such as rebalancing, repairing, charging and safety checking bikes seven (7) days per week, including holidays.
 - ii. Maintenance and Office Facility: Contractor will identify, secure, and set up, or already have in place, a space and office systems for local operations, maintenance, repair, equipment storage and distribution.
 - iii. Physical Sign-up Locations: Contractor will work with community partners establish physical sign-up with input from SCTA/TAM, which will provide locations for users who are eligible for low-moderate income (LMI) access and do not have the ability to pay with a credit card. Contractor should make an effort to work with community-based organizations to establish physical sign-up locations. Physical locations to support those without access to a smartphone will be set up in each county based on need. Interested riders shall be able to visit the facilities during normal business hours to sign up and

pay to utilize the system. Contractor will work with local bicycle rental shops as necessary to make a good faith effort to accommodate requests for adaptive bike rentals upon request.

2. Finalize Parking Hub Locations and Service Areas Contractor will conduct site analysis and permitting, including:
 - i. Recommend system size and distribution, with a minimum of 300 e-bikes throughout Marin and Sonoma counties, measured in geographic service area, number of bikes, number of bikes per square mile, average distance between parking areas, and service area in square miles in disadvantaged communities, which identifies the public agencies with jurisdiction over of the public rights-of way where bike infrastructure will be sited. Contractor shall utilize a demand analysis performed by Contractor and/or Contractor's consultant as a basis to determine Service Areas and distribution of Bicycles. In addition to a demand analysis, the following planning criteria shall be considered.
 1. Development of the Pilot Program service area and site plan shall take into consideration locations that will most effectively support connections to transit and other shared mobility options within Priority Development Areas.
 2. All Parking Spaces shall be located within the jurisdictional boundaries of Participating Agencies, unless otherwise agreed to in writing by Operator, Property Owner, and Technical Advisory Committee. Contractor will ensure that at least 20 percent of the service area, parking spaces, and/or hubs are in communities identified as within a ¼-mile of a Community of Concern (COC), Community Air Risk Evaluation (CARE) Program Area; or in communities with a developed community based transportation plan for low income or disadvantaged communities.
 3. Operator shall locate roughly half of the initial 300 bicycles in Marin County jurisdictions and roughly half in Sonoma County jurisdictions.
 4. Operator shall locate Hubs, for the duration of the Pilot Period, within, but not limited to, each of the following jurisdictions: Santa Rosa, Rohnert Park, Cotati, Petaluma, Novato, San Rafael, and Larkspur.
 5. Operator shall utilize a combination of program goals, Participating Agency's Site location recommendations, public input, and Operator's demand analysis to determine Site locations. Site locations will be prioritized based on demand (i.e., the anticipated usage of Bicycles located at such Site).

6. All Hub sites on public property owned or controlled by a Participating Agency shall be subject to the approval of such Participating Agency based on the initially agreed upon process.
7. Operator shall survey the Program Area using the Siting Criteria to identify viable Hub, Rack, and Virtual Hub locations.
8. If in accordance with the Siting Criteria, Operator selects a Site that is rejected by a Participating Agency, then Operator will propose 1 alternative Site within 1,000 feet of the rejected Site. If such Participating Agency rejects the 1 alternative Site, then such Participating Agency will propose a viable alternative Site within 1,000 feet of the initial rejected Site.
9. If Participating Agency and Operator are not able to identify suitable Sites, Operator has the right to enter into an agreement with the owner of a private property, on terms mutually acceptable to Operator and such owner, to locate a Hub on such owner's property, provided that the Sites meet the goals of the overall program.
10. A Hub must:
 - a. Be accessible to the public 24 hours per day, 365 days per year, except in cases of special events or temporary construction; and, by mutual agreement of a Participating Agency and Operator, Parking Spaces may be located in areas with less than 24 hour per day, 365 days per year access;
 - b. Be located on sidewalks, streets, parks, other Participating Agency-owned property, other public property owned by public agencies or other public entities other than each Participating Agency, or private property; and
 - c. Have a parking space to bicycle ratio of at least 1.5 parking spaces to 1 bicycle, unless modifications to this formula are approved by SCTA/TAM.

Contractor and SCTA/TAM shall have the ability to add other Asset types beyond just e-bikes upon mutual agreement.

- ii. Propose refined parking hub locations and service areas in consultation with SCTA/TAM staff, followed by a meeting with the Steering Committee.
- iii. Include a public planning process that engages diverse populations and a variety of stakeholders, including city planning and public works staff, employers, and transit operators. Consider web-based crowdsourcing or similar method of gathering input on public demand for bike share locations through the following methods: public meetings/forums, surveys at events, web-based crowdsourcing and decaling potential locations (i.e. sidewalks).
- iv. Schedule, coordinate logistics for, and staff any necessary meetings with stakeholders to finalize service areas and/or station locations including but

not limited to affected property owners, community members, major employers, and transit operators.

- v. Conduct site-level feasibility analysis of proposed station locations and bicycle parking, and receive approval from the SCTA, TAM, and participating agencies. Determine location specific locking infrastructure using Contractor bicycle racks and/or virtual hubs, based on agreement with partner agencies. Stations should be designed to be flexibly deployed in a variety of surfaces and configurations, without interfering with sidewalks, traffic, or other street operations.
- vi. Develop necessary final design plans for all system stations. Contractor will work with partner agencies and private landowners to obtain public and private space commitments and secure all required agreements and/or permits from each participating agency. Contractor will facilitate contacts with relevant partner agencies to locate, permit, and obtain use of any spaces for stations in the public right-of-way, with support from SCTA and TAM.

Contractor will work with partner agencies and private landowners, if necessary, to get public and private space commitments and secure all required permits according to the processes identified by the property owner, which shall include new physical lock-to infrastructure such as bike racks unless otherwise authorized by the participating cities, TAM and SCTA, or more if needed to meet demand.

B. Procurement, Installation

- 1. Equipment Procurement Contractor will procure (manufacture and/or purchase) and set-up entire hardware and software for front and back of house ongoing operations including, but not limited to, all on street system components and supplies and equipment for office management, maintenance and distribution. Equipment purchase should include but may not be limited to initial equipment and spare parts, charging infrastructure and equipment, any new bike parking facilities, information technology equipment and software applications, licensing, upgrade assurances, and necessary warranties. Bicycle and station equipment will remain the property of Contractor, with the exception of any existing standard bike racks contributing to a portion of bike share parking ratio which will remain property of the cities or partner properties.
 - i. Electric Assist Bicycles Contractor will provide a minimum of 300 Class 1 electric assist bicycles. Contractor will ensure bicycles are consistently charged to ensure maximum bike availability. The maximum motor assisted speed of the electric assist bicycles should not exceed 20 miles per hour. Partner agencies may provide Contractor with areas which need to be geofenced. Bicycles should be designed to accommodate, to the best extent feasible, people of all shapes and sizes. Bicycles should meet or exceed International Organization for Standardization (ISO) 4210: Safety

Requirements for City and Trekking Bicycle safety standards. Bicycles must have always-on front and back lights that are visible from a distance of at least 300 feet under normal atmospheric conditions at night. Front and rear lights must stay illuminated for at least 90 seconds after the bike has stopped. Each bicycle must have a unique identification number that is visible on each bicycle. Each bicycle must have Radio Frequency Identification Card (RFID) recognition capabilities.

Bike parking infrastructure Contractor should design bike parking infrastructure to be flexibly deployed in a variety of surfaces and configurations, without interfering with sidewalks, traffic, or other street operations. Contractor will be required to work with the partner agencies and property owners to install bike racks and/or bike corrals throughout the system area sufficient to ensure user convenience and to ensure mis-parked bicycles do not create a public nuisance or hazard. Contractor will provide new physical infrastructure for bikes to lock to unless virtual hubs are appropriate for individual locations are agreed upon by Contractor and participating agencies.

- ii. Additional equipment Contractor shall provide additional equipment including signage to accompany parking spaces at key parking hubs, temporary signage for special events, spare parts, charging infrastructure and equipment, kiosks, information technology equipment and software applications.
2. Program Website and Smart-phone Applications Contractor will design, maintain, and host a program webpage that provides information about and promotes the program and initially directs the user to the mobile app and includes information on locations to sign up without a smartphone. Contractor will ensure web pages display correctly on all major web browsers and mobile devices/formats. Contractor will also develop or provide a program smart phone app for iOS and Android formats that provides all the same information and functionality as the program website. Website and apps will include a clearly written Frequently Asked Questions (FAQs) section and will be available in multiple languages to ensure widespread accessibility to Marin and Sonoma communities. Contractor will consider integration of other shared mobility services in its trip planning app and/or a new or already established trip planning app. Inclusion of data privacy conditions outlined in **Exhibit C** are required on the site.

Contractor shall create and maintain a website the content of which shall address, at a minimum, the following:

- a. Eligibility requirements;
- b. Subscription information and rate, schedules;
- c. Payment information and subscription processing when technology is available;
- d. Subscriber agreement and acceptance of terms;

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- e. Map with the entire network of Sites and real-time availability of Bicycles at each Site, both for mobile phone and standard computer screen when technology is available;
 - f. Frequently Asked Questions;
 - g. Safety requirements and information (including notification in the event of malfunction or Crash);
 - h. Encouragement of helmet use for subscribers and a listing of nearby locations where users may obtain helmets; and
 - i. Safety videos addressing safe use of bicycles, helmets, and California Vehicle Code and local laws pertaining to bicycle riders.
3. System Installation Contractor will install or otherwise deploy equipment in compliance with all relevant regulations, permit and contract requirements. Contractor shall, at its own expense promptly repair or replace any sidewalk or other City property that is damaged in the course of system installation.
 - a. During installation of a hubs, Contractor shall undertake appropriate efforts, in conformance with all applicable rules and regulations, to insure safety and to prevent accidents at its work sites, including, if necessary, the placing and maintenance of proper guards, fences, barricades, security personnel and bollards at the curb and suitable and sufficient lighting.
 - b. All traffic control, warning, and guidance devices employed by the Contractor during Hub installation must conform to the California Manual on Uniform Traffic Control Devices (MUTCD). Contractor is further responsible for complying with all applicable city, state, and federal codes, rules and regulations.
4. System Testing Contractor will field test all integrated components of entire system (hardware and software) prior to launch to SCTA and TAM's satisfaction. Identify and resolve problems and make any necessary system improvements before launch.
5. RFID Cards Contractor must provide alternative payment options to ensure bike share is accessible. Contractor will ensure that all bicycles have RFID recognition capabilities and are compatible with the use of the [Clipper® card](#) as a membership identifier (Clipper is a standard MIFARE DESFire EV1 contactless smartcard: <https://www.mifare.net/en/products/chip-card-ics/mifare-desfire/mifare-desfire-ev1/>. The Clipper® card is compliant to all 4 levels of ISO/IEC 14443A and uses optional ISO/IEC 7816-4 commands.) Use of Clipper® cards as a membership identifier provides access to those who do not have a bank account, credit/debit card, or smartphone. Users will be able to set up accounts with cash and obtain RFID cards at established physical sign-up locations.
6. Pre-Launch Marketing and Public Relations Contractor will create and execute a campaign to build local enthusiasm and interest in bike sharing ridership, membership and try to secure any potential sponsorships by the time of the launch,

sponsors can be secured after launch as needed. Outreach efforts will include traditional and social media and other public relations techniques and will also include specific strategies to reach diverse populations. Outreach efforts will also include staffing in the first month of launch to recruit users within the system area and demonstrate registration, rental, proper parking, and safe riding for groups of new users. Contractor will also develop messaging to ensure that users know how to safely and properly use the system upon launch.

C. System Operations and Maintenance

1. Real-time System Information Contractor will provide a system to track bicycles and station occupancy status. Contractor will populate an interactive map with location and real-time status of bicycles throughout service area along with optional address and directions, and transit information.
2. Data Contractor shall make available 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. Contractor shall make real-time data available in General Bikeshare Feed Specification (GBFS) and/or Mobility Data Specification (MDS) format. The Contractor shall also provide monthly anonymized data on user origins and destinations, trip length, trip time, and demographic information (age, sex, zip code). The Contractor shall work with SCTA and TAM to conduct user surveys on a semi-annual basis. All reporting, data storage and publication shall comply with Data Privacy Conditions set forth in **Exhibit C**.
3. Reporting Contractor shall develop and maintain a “dashboard” that is available solely to SCTA and TAM 24-hours a day, 7 days a week, with near real time data to track near real-time data. The dashboard must include the following:
 - i. Total bicycle trips
 - ii. Average number of daily riders
 - iii. Pick-up and drop-off heat maps
 - iv. Trip route heat maps
 - v. Location of parked bikes

Contractor shall provide monthly reports, by the 25th day of each month, to SCTA/TAM, with system data, bicycle trips and usage for the previous month. Reports shall provide cumulative calendar year-to-date totals for each category (as may be applicable). These reports will include but not be limited to:

1. Total number of bikes in service
2. Trip totals by day, week, and month

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3. Total number of trips by hour of day, for each day of the week, as a monthly average
4. Total number of unique riders, segregated by frequency of trips
5. Total number of reduced fare/low income riders and trips
6. Customer service responsiveness – average response time and number of complaints with more than 24-hour response time
7. Rebalancing – hub with bicycles available to rent and spaces available for return, number of bikes retrieved outside of service area
8. Recorded Bicycle Fleet Level for each day as recorded between the hours of 11:00 AM and 3:00 PM
9. Maintenance – in service availability of assets and frequency of inspections, number of bicycles checked and repaired per month when report is available
10. Webpage and telephone hotline time online
11. Average trip length and duration
12. Total miles ridden
13. Summary of bike maintenance activities
14. Summary of theft/vandalism and resolution
15. Helmet incentives
16. Number of reported collisions, and primary collision factor, if available.
17. Top five pick and drop off locations
18. Pick-up and drop-off heat maps
19. Trip route heat maps
20. Trip Duration (seconds)
21. Start Station ID & Name
22. Start Station Latitude
23. Start Station Longitude
24. End Station ID & Name
25. End Station Latitude
26. End Station Longitude
27. Bike ID
28. User Type (Subscriber or Customer – “Subscriber” = Member or “Customer” = Casual)
29. Number of Memberships by Type – Full Member of Discount/Low-Income Member

30. Member Uses Clipper Card Y/N
31. Sponsorship Status Report to include Sponsorships Secured with Sponsors listed along with commitments received, prospective sponsors identified, and total sponsorship revenues received to date.
32. Report on all KPIs

Contractor shall provide on an annual basis a report presenting program data that will be available to the public and interested stakeholders. Contractor will be available to present the annual reports to SCTA, TAM, and their respective Boards and/or Advisory Committees on a quarterly basis.

4. Regular Operations Review: Contractor will review and provide on a quarterly basis reports, maps, and data pertaining to membership, ridership, fee structure, and trips and routes. Contractor will also share data related to user complaints with SCTA/TAM. Based on the data, Contractor is expected to develop recommendations that promote increased use of the system, promote closer coordination with Bike Share System partners (e.g. transit operators, major employers), and reduce or eliminate any operating deficits. Contractor will meet with SCTA/TAM or other partner agencies or stakeholders quarterly to discuss program modifications. Included in the scope of the Regular Operations Review will be a review of Scope Of Work (D)(4) "Pricing and Memberships" arrangements, to make any and all mutually agreeable, appropriate adjustments to Pricing and Membership terms.
5. Fee Schedule for De-Installations, Reinstallations, and Adjustments to Hubs: Contractor shall maintain a fee schedule for any fees charged to participating agencies for de-installations, reinstallations, adjustments, and temporary relocations at the request of the participating agency. The fee for Hub de-installation shall cover the cost of relocating the Hub on a temporary basis and the cost of reinstalling the Hub. Contractor shall provide the fee schedule to Participating Agencies within five business days of any update. Contractor may not charge fees for Hub deactivations, Hub de-installations, or Hub adjustments related to public works, public safety emergencies, or relocation of a Hub at the election of the Contractor.
6. Key Performance Indicators and Retention Payments: At monthly, and annual intervals, Contractor shall submit reports that track Key Performance Indicators (KPIs) listed in **Exhibit D**. If Contractor fails to comply with the KPIs, SCTA reserves the right to withhold retainer payments if the key performance indicators are not met. SCTA reserves the right to withhold retainer payments for failure of Contractor to comply with the KPIs by notice (a "KPI Failure Notice") given to Contractor (i) not more frequently than once per month, and (ii) not later than 120 days after the occurrence of the related failure. Each KPI Failure Notice shall provide specific and detailed information about the failure to comply and the corrective action required by the Contractor. Contractor will have 30 days after receiving the KPI Failure Notice to submit a monthly report demonstrating corrective action for the KPI failure. If

Contractor fails to demonstrate improvement in the failed KPIs, SCTA may withhold up to one-twelfth of the annual retainer payment outlined in **Exhibit B** for each month the Contractor fails to make significant improvements in meeting the KPIs after receiving a KPI Failure Notice. All KPIs outlined in **Exhibit D** may be reviewed and reassessed with SCTA/TAM approval on an annual basis.

7. Key Performance Indicators and Performance Payments Reductions: At monthly, and annual intervals, Contractor shall submit reports that track Key Performance Indicators (KPIs) listed in **Exhibit D**. If Contractor fails to meet the KPIs, SCTA reserves the right to withhold a portion of annual performance payments, based on the accumulative amounts listed for each KPI failure in **Exhibit D**. Each annual performance payment shall provide specific and detailed information about the KPI failures and amounts withheld from performance payments. Reductions from performance payments are capped at the annual amounts outlined in **Exhibit B**. All KPIs outlined in **Exhibit D** may be reviewed and reassessed with SCTA/TAM approval on an annual basis.
8. Customer Service Contractor will provide responsive and customer-friendly services that encourage repeat use, including timely response to complaints. Contractor will be required to submit for SCTA/TAM approval a system for creating and managing excellent customer service standards and procedures, including a process for SCTA, TAM, and Partner Agencies to forward complaints received by local agencies to Contractor. At a minimum, system users should be able to report system comments and complaints to Contractor using a telephone hotline, a system website with a comment form or email address, and via program smart-phone apps. All system equipment shall contain a conspicuously posted telephone number and instructions for filing a complaint. Contractor will provide a timely response to any customer inquiries or complaints, according to agreed upon Key Performance Indicators (KPIs) listed in **Exhibit D**.
7. Call Center Contractor shall provide to SCTA/TAM, all subscribers, and the public at large, a telephone number for Contractor's call center. The call center shall be in continuous operation 24 hours per day, 7 days per week, and 365 days per year. Contractor shall conspicuously post a notice on each bike and online advising the general public that they may direct their questions, complaints, and comments to the Contractor's call center. Contractor shall ensure that the call center can handle calls in English and Spanish using operators fluent in those languages. The operators at the call center shall be fully competent and knowledgeable to answer questions and provide information concerning, among other things, subscription process, subscription prices, billing, crashes, comments, complaints, malfunction problems, location of Stations, direction to the nearest Station that has Bicycles available for use and/or available parking for returns,. The call center manager shall be knowledgeable about all the service areas. The call center operators shall keep accurate and complete written records of each such call in a Customer Service Log as hereinafter

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required, including the primary reason for each call and the status of the call (e.g., “no further action”, “requires reimbursement”).

8. E-mail Response Time Not less than 95% of emails to Contractor’s public information email address must be responded to within 1 business day.
9. Maintenance and Repair Contractor will be required to submit a plan for developing and implementing a regular inspection, maintenance and repair schedule that keeps the system and the bicycles in continuous compliance with all local regulations, partner contracts (e.g. property owner agreements, sponsor agreements, etc.) and warranty requirements. System maintenance shall include preventive maintenance, inspection and prompt repair or replacement of all system hardware and software elements including but not limited to terminals, signs, bicycles, bicycle components, concrete or asphalt beneath stations if mutually agreed upon by Parties. It will also include inspecting, cleaning and removing graffiti from system structures on a timely basis, as well as removal of debris in and around the system structures.
10. System Balancing Contractor will monitor the location of each bicycle and, if applicable, the status of each parking location. Contractor will continuously and predictably redistribute bicycles so that the system provides users with consistent availability of bikes throughout the service area and consistent availability of spaces in which to park a bicycle at the end of a trip. Contractor shall respond to and relocate, retrieve, or remove any misparked bicycles according to agreed upon Key Performance Indicators (KPIs) listed in **Exhibit D**.

Consistent redistribution will occur based on usage patterns to ensure equally balanced hubs. If severe imbalances cause considerable outages during the first six months of operations, technical criteria for distribution shall be reviewed and KPIs for rebalancing shall be reconsidered. After each twelve months of operations, Contractor will review patterns in demand and usage with SCTA and TAM and consider whether technical criteria for distribution is optimized for the system.

11. Helmets & Safety Contractor will develop a safety program that includes outreach about safe and legal riding practices and that promotes the use of helmets. These efforts should be coordinated with local and countywide bicycle safety education efforts and should utilize a range of media capable of reaching different audiences. Contractor will utilize in-app notifications to promote local traffic laws, proper parking, kickstand, and helmet use. Contractor shall provide free and/or discounted high-quality helmets to members.
12. Outreach and Public Relations Contractor will oversee all system outreach, public relations, and membership sales. Contractor will conduct ongoing promotion and outreach after system launch to raise awareness about the system and ensure users are provided with information on how to safely and conveniently enroll in and use the system. Promotion and outreach should utilize a range of media and methods,

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including working with community-based organizations as applicable, in order to effectively and appropriately reach a diverse spectrum of Marin and Sonoma County residents, employees, and visitors. Contractor will consider opportunities for coordinated marketing activities with other shared mobility services.

Contractor will develop a communication protocol with SCTA and TAM to coordinate, plan, and execute a high profile, timely, smooth and effective System Launch.

Contractor will develop a customized marketing plan to build local awareness and enthusiasm, while driving ridership, memberships and educating locals and visitors about accessing a multi-model micro-transit system. Contractor's in-house marketing team will support the launch of the system and coordinate with the in-market team, including the Community Manager and mobility ambassadors to conduct ongoing marketing to maintain excitement, education, and strong utilization of the program. Contractor's marketing approach will be hyper-local utilizing in-market events, partnerships, and mobility ambassadors. Contractor will be able to provide new users with promotional credits using unique codes through its app, which will be tracked back to specific marketing efforts. Contractor will continuously monitor success of different channels to ensure marketing efforts are successful.

Contractor will plan and execute one system Launch Event in each county to attract new users and leverage media outlets to publicize the new system and promote membership. Contractor will offer free helmet giveaways, invite local organizations to participate, and invite local media to share the news with the surrounding community. Contractor will have brand ambassadors available during Launch Events to help users sign up for the program and answer any questions about safe bicycle use.

13. Branding and Marketing Contractor will oversee all system branding and marketing. Contractor shall outline how the Contractor will secure funding through advertisement or corporate sponsorship to offset the cost of bike share operations. All branding, marketing, and any sponsorship and advertising shall comply with local ordinances. Any advertisement or sponsorship agreements will be between the Contractor and the sponsor or advertiser. Any change to the title name of the program must be mutually agreed upon between Contractor, SCTA, and TAM. Advertisers must be approved by SCTA and TAM.
 - a. General Restrictions on Advertising and Sponsorship applicable to the service area:
 - i. Contractor shall not install, or permit to be installed, on any Equipment, any tobacco advertising, alcohol advertising, firearms advertising or other Prohibited Advertising. Advertising on any Equipment, including electronic media, shall be consistent with guidelines adopted by each Participating Agency for outdoor advertising as set forth in this Agreement. Operator shall not place any Advertising or Sponsorship acknowledgment matter

that is indecent, in obvious bad taste, or demonstrates a lack of respect for public morals or conduct.

- ii. Contractor shall comply with all applicable laws, rules and regulations in force as of the Effective Date and which may hereafter be adopted, to the extent not grandfathered under the law, with respect to Advertising and Sponsorship.
- b. Content-related restrictions on Advertising includes:
 - i. False, misleading, deceptive or relates to an illegal activity;
 - ii. Advocacy of violence or crime;
 - iii. Infringement of copyright, service mark, title or slogan;
 - iv. Defamatory or likely to hold up to scorn or ridicule a person or group of persons;
 - v. Unauthorized Endorsement;
 - vi. Obscene (i.e., patently offensive sexual material lacking literary, social, artistic and/or political value, that appeals to the prurient interest of a person of average sensibilities) or pornographic;
 - vii. Promotes alcohol, tobacco or cannabis products or services;
 - viii. Religious;
 - ix. Political.

D. Business and Financial Operations

1. Registration Contractor will provide and maintain in full operation a form within the smart-phone apps that enable users to register, submit credit card data, and execute a user agreement. Users who do not have a smart phone or credit/debit card will be able to visit a physical location for in-person enrollment. The physical location will allow users to obtain program information, execute a user agreement, obtain an RFID card, and pay cash, check, or credit/debit card to reload the RFID card.

After registration, members should be able to immediately access a bike (i.e. walk-up utilization). Membership of various durations (such as 30 minutes, hourly, daily, weekly, monthly and/or annual) shall be available. The system must use Clipper® (the Bay Area's electronic transit fare payment system) as a membership identifier (i.e. mechanism to check out or unlock bicycles).

2. Secure Financial Transactions and Data Privacy Complete secure financial transactions with data input at the web page, through station kiosks/terminals, or by smart-phone. Financial data must be held securely in a manner that complies with all laws and is only accessible to authorized personnel. Contractor shall develop a robust security policy. The Contractor must ensure that its security policy is enforced, report

any breaches to SCTA/TAM, and develop a 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 Data Privacy Conditions in **Exhibit C**. Any sharing of user data with third parties or access to camera, photos, files, contacts, location services, or other data as part of smart phone “app” should be clearly and explicitly disclosed to users as part of user agreement, with clear opt-in or opt-out abilities.

3. Fee Collection Contractor will track whether bicycles are returned during a specified period and accurately assess overtime fees. Clearly communicate rules regarding duration of usage of bicycles and fees to users. Contractor will track whether bicycles are returned to designated hubs and will provide incentives for returning bicycles to designated and/or preferred hubs. Contractor will clearly communicate rules regarding service and parking areas, and incentives and fees to users. All fees collected shall be reported to TAM and SCTA.
4. Pricing and Memberships Contractor will work with SCTA, TAM and partner agencies to provide a pricing plan that is clear and easy for users to understand. Contractor will consider opportunities to integrate fare or membership programs with other mobility services. The pricing and membership structure must include, at a minimum, the following options:
 - Pay as you go
 - Monthly membership
 - Student Membership
 - Bulk membership purchase discounts:

Initial pricing and membership structure must be mutually agreed upon by Contractor, SCTA, and TAM. Contractor will provide a 90 day notice in writing to SCTA/TAM prior to requesting any membership or pricing changes for approval by SCTA/TAM.

5. Low Income Membership Contractor will provide an unlimited number of qualifying low-income users a one-time \$5 annual membership and \$5/month in the second year. The membership will allow the users to access the bike share system 24/7 and free ride time of 60 minutes per day. Rides longer than 60 minutes can be assessed additional fees up to \$3.00 for each additional 15 minutes or potential account suspension. To qualify for the low income membership, users must be 18 or older and qualify for CalFresh, or PG&E Care utility discount. Contractor must commit to the low income membership pricing structure for three years.
6. Revenue All revenues, including membership fees, use fees, and revenue from other sources, will be collected by Contractor. Contractor agrees to reinvest net revenues in the system to cover ongoing system operations and expansion.

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7. Records Contractor must maintain all business-related, accounting and customer service-related records and make them available to SCTA/TAM upon appropriate notice for inspection and auditing. Records should be provided in an electronic format such as excel.

8. Risk Management Contractor will purchase, manage, and maintain all necessary insurance policies needed to protect all people and property related to the program. Contractor will carry a level of insurance coverage equal to or greater than the SCTA (see **Exhibit E**). Contractor shall indemnify, hold harmless, and defend the SCTA, TAM, each participating agency, and each partner properties (including their respective elected officials, officers, agents and employees) from and against any and all claims, litigation, demands, damages, liabilities, costs, and expenses, including court costs, attorney's fees, experts fees and other costs and fees of litigation or other dispute resolution proceedings ("Claims") resulting or arising from Contractor's performance, or failure to perform, except Claims arising out of the SCTA's or TAM's sole negligence or willful conduct. Contractor shall indemnify, defend and hold harmless MTC and its board members, officers, agents, and employees from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), caused by any negligent or otherwise wrongful act or omission of Contractor, its officers, agents, or employees. TAM, SCTA, and all participating agencies will be named as additional insureds on the Contractor's certificate of insurance.

EXHIBIT B

Fee Schedule

Billing and Compensation Contractor shall submit invoices to SCTA based on an agreed upon schedule. SCTA will provide reimbursement to Contractor for up to \$826,000 total in Metropolitan Transportation Commission (MTC) Capital Bike Share Program funds. SCTA will reimburse Contractor \$230,000 upon completion of Tasks 1 - 4. Upon completion of Task 5, SCTA will reimburse Contractor \$387,000. Following SCTA/TAM's annual review, for the first three years of program operation, Contractor may be eligible to receive up to one third of the 10 percent performance payment for Task 6. SCTA and TAM reserve the right to deduct from the annual performance payments for failures to meet KPIs. Deductions from performance payments would follow the schedule of reductions for each KPI failure as described in **Exhibit A**.

Should SCTA, TAM, and Contractor agree to implement optional Task 7, upon completion of Task 7, SCTA will reimburse Contractor an additional one-time payment of up to \$165,990. Compensation for Task 7 will be in accordance with a scope and cost schedule mutually agreed upon by SCTA, TAM and Contractor.

Payment schedule	One-time	Annual Performance Maximum (Task 6)	Total Performance Maximum 10% (Task 6)	Maximum Total
Tasks 1-4	\$230,000			\$230,000
Task 5	\$387,000	\$14,333	\$43,000	\$430,000
Task 7 optional	\$165,990			\$165,990
Maximum Total	\$782,990	\$14,333	\$43,000	\$825,990

No additional compensation will be provided for renewals to this agreement after the initial three (3) year pilot period. Contractor agrees to reinvest net revenues in the system to cover ongoing system operations and expansion.

Tasks 1-7 and associated deliverables are further described are:

Task 1: Program Development

Contractor shall develop a bike sharing system for a minimum of 300 e-bicycles in a service area which includes, at minimum, SMART station areas in Santa Rosa, Rohnert Park, Cotati, Petaluma, Novato, San Rafael, and Larkspur. To help promote safety, equity and bike interoperability in the Bay Area, Contractor must ensure the bike share system includes the following:

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1. 20% of the service area will be within a ¼ mile of a Community of Concern (COC), Community Air Risk Evaluation (CARE) Program Area, or in communities with a developed community-based transportation plan for low income or disadvantaged communities;
2. Use of Clipper as a membership identifier;
3. Bicycle safety standards which meet or exceed International Organization for Standardization (ISO) 4210: Safety Requirements for City and Trekking Bicycles;
4. Quarterly trip and membership data sharing with SCTA and TAM for MTC; and
5. Annual Program data and analysis related to mode shift, safety, public health and equity.

Task 1A: Contractor shall work with the Technical Advisory Committee (TAC) on a regular basis and prepare for and attend monthly meetings either in-person or by phone to ensure good local coordination and connectivity and help resolve technical issues. Contractor shall attend a project initiation meeting with the TAC in person, which SCTA/TAM will schedule within 45 days following execution of this agreement.

Task 1B: Contractor shall work with each participating agency to permit bike share system operations and execution of right-of-way approvals for bike parking. Up to twelve (12) presentations (one to each governing city/town board/council) may be required for program approvals and permitting, as directed by staff, during the stages of the approval and permitting process.

Task 2: Parking Spaces and Service Area Plan

Contractor will provide both a preliminary service area and parking map that the SCTA/TAM and CONTRACTOR will release for public comment, and a publicly vetted final recommended service area and parking map. The formula for assigning bikes throughout the service area shall be shared and approved by TAM and SCTA.

Task 2A: Contractor shall conduct site visits, phone calls, and in-person meetings with participating agencies as needed to confirm service area and parking siting. Submit initial system map with detailed service area and parking spaces. Map should include service area rationale and methodology, actual physical parking locations, owner of property, and parking impact. Recommended parking hubs must comply with underlying zoning, and the Americans with Disabilities Act. Parking hub locations must be in proposed service areas and should emphasize maximizing ridership across all demographics while minimizing operating costs and the loss of on-street parking revenue. Proposed parking hub locations should reflect key destinations, transit hubs, neighborhoods, and activity centers. Any parking hub location proposed for private property must receive written approval from property owner.

Task 2B: Present initial service area and parking hub map for public comment. Present map at SCTA and TAM Board meetings, coordinate with SCTA/TAM staff to present map at up to 20 technical, community, neighborhood, and business organization meetings. These meetings will be a mix of in-person and virtual which will be determined by Gotcha. Create an online crowdsourcing map to collect public input on proposed general parking hub locations. Public should be able to vote on proposed parking locations by liking, disliking, suggesting new

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parking hub locations, and liking or disliking newly suggested parking hub locations. The crowdsourcing map should be open and available for input in Marin and Sonoma County at public meetings such as TAM and SCTA Bike and Pedestrian Advisory Committee meetings.

Task 2C: Submit recommended system map that incorporates feedback from SCTA/TAM, partner agencies, public meetings, and online crowdsourcing map.

Task 2D: Incorporate final changes of partner agencies (Final parking locations subject to approval by each respective participating agency's authorized agent.

Task 2E: Obtain rights and permissions for all parking hubs sited on each participating agency's property, for both placement of parking spaces, right of Contractor to conduct work on property and for public access to the site, 24 hours a day, and 365 days a year to use the bike share system, including publicly and privately owned sites. Submit these written agreements to SCTA/TAM.

Task 2F: Develop Site Plans for all final parking hub locations, providing necessary information for partner agencies to designate locations within the public right of way. Contractor shall ensure that Site Plans comply with all applicable state, federal, and local laws, including but not limited to the Americans with Disabilities Act.

Task 3: Outreach and Marketing Plan

Contractor will create and execute a campaign, in collaboration with SCTA/TAM, partner agencies, and local partners, to build local enthusiasm and interest in bike sharing ridership, membership, and sponsorship.

Task 3A: Develop outreach and marketing plan based on research into potential customer markets, methods to increase ridership, secure corporate memberships, partner with organizations throughout the community, and align with SCTA/TAM transportation plans and goals. Outreach and marketing plan shall include an initial contact list, which will be developed collaboratively with participating agency staff. The contact list shall be an inclusive and diverse representation of all interested parties, including advocacy groups; community groups; civic groups; neighborhood associations; business and planning professionals; environmental groups; elected officials; and government agencies. Contractor shall maintain the contact list and use it for outreach and online surveying to gather comments regarding preliminary maps for service area and bike locations. Contractor shall make any updated versions of the contact list available to SCTA, TAM and participating agency staff.

Task 3B: Identify key messages for different customer target areas.

Task 3C: Identify social media strategies.

Task 3D: Identify strategies to engage low-income users and traditionally under-represented groups. Environmental justice needs will be addressed by ensuring that low income and

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underrepresented community members are engaged in the process conducting outreach for planning, system development and ongoing throughout the project.

Task 3E: Develop collateral in multiple languages, including letterhead, system brochures, and a video on how to use the bike share system.

Task 3F: Develop registration packet.

Task 4: Plan Approval

Contractor will develop and share plans including branding concepts, and safety encouragement to the technical advisory committee.

Task 4A: Submit draft brand concept.

Task 4B: Incorporate SCTA/TAM comments on brand concept and resubmit.

Task 4C: Submit draft image, including color scheme, logo images, and messages not already identified in brand concept.

Task 4D: Submit plans for City review and approval. At a minimum this plan will include recommended branding concept and the preferred and alternative options for promoting and facilitation helmet use and availability and safe bicycling behavior.

Task 4E: Incorporate SCTA/TAM recommendations and changes into approved Plan.

Task 5: Acquire and Launch System

Contractor will purchase and coordinate all System equipment; ensure that all equipment complies with all applicable state, federal, and local laws, including but not limited to the Americans with Disabilities Act; store and check equipment; and hire local employees and contractors; install and execute System launch.

Task 5A: Upon mutual agreement between SCTA/TAM and Contractor on the quantities of bicycles and stations, Contractor will acquire System capital equipment, including but not limited to a minimum of 300 e-bicycles, spare parts, software licensing and warranties.

Task 5B: Receive and perform detailed inspections of all capital equipment to ensure that equipment is free of any defects. Submit detailed inspection report for all Capital Equipment.

Task 5C: Submit a plan for developing and implementing a regular inspection, maintenance and repair schedule that keeps the system and the bicycles in continuous compliance with all local regulations, partner contracts (e.g. property owner agreements, sponsor agreements, etc.) and warranty requirements.

Task 5E: Conduct job recruitment and hiring process.

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Task 5F: Submit draft webpage to SCTA/TAM.

Task 5H: Conduct pre-launch marketing activities, including but not limited to web site launch, media promotions, membership pre-sales, a ribbon cutting launch event, and appearance at up to seven (7) marketing events.

Task 5I: Obtain any necessary permits to perform installation.

Task 5J: Install 100% of Stations. The bike share system must be fully operational.

Task 5K: Host launch festivities and ribbon cutting ceremonies.

Task 5L: Establish physical sign-up locations in each service area accessible by the public to obtain bike share program information, execute a user agreement, add funds to their account using check, credit/debit card, or cash, and obtain RFID cards. Efforts should be made to co-locate physical sign-up locations with or near existing Clipper® retail locations.

Task 6: Operate Service (ongoing from System launch)

The period of performance for these services shall include an initial term encompassing system development activities and a minimum of 36 months of system operations, with options for annual renewal through the term of the Program Agreement, to be exercised at SCTA and TAM's sole discretion. Contractor will submit plans for sponsorship acquisition and provide monthly progress reports on sponsorship acquisition. Contractor will follow Reporting Requirements set forth in this scope and in compliance with **Exhibit A, Sections C.3 and C.4.**

Task 7: Optional Additional Equipment

Contractor has the option to include 50 bicycles and 75 parking spaces in addition to the minimum bicycles and parking spaces set forth in Task 5.A.

EXHIBIT C

DATA PRIVACY CONDITIONS

SPECIAL CONDITIONS RELATING TO PERSONALLY IDENTIFIABLE INFORMATION

Contractor will have access to personally identifiable information (“PII”) in connection with the performance of the Program Agreement. PII is any information that is collected or maintained by Contractor that identifies or describes a person or can be directly linked to a specific individual. Examples of PII include name, address, phone or fax number, signature, credit card information, bank account number, or travel pattern data. The following special conditions related to the confidentiality and use of PII apply to this Program Agreement:

1. Right to Audit

Contractor shall permit SCTA / TAM and its authorized representatives to audit and inspect: (i) Contractor’s facilities where PII is stored or maintained; (ii) any computerized systems used to share, disseminate or otherwise exchange PII; and (iii) Contractor’s security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures. The audit and inspection rights hereunder shall be for the purpose of verifying Contractor’s compliance with this Program Agreement, and all applicable laws.

2. General Confidentiality of Data

All PII made available to or independently obtained by Contractor in connection with this Program Agreement shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to SCTA / TAM. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Program Agreement.

Contractor agrees to properly secure and maintain any computer systems (hardware and software applications) that it will use in the performance of this Program Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII that may be used, transmitted, or stored on such systems in the performance of this Program Agreement.

Contractor is prohibited from storing PII on portable media including, but not limited to, laptops, thumbdrives, disks and so forth.

Notwithstanding anything to the contrary in Article 14. Records, of this Program Agreement, Contractor agrees to retain PII for no longer than 30 days. At the conclusion of this retention period, Contractor agrees to use Department of Defense (“DoD”) approved methods to permanently remove PII from any files. Discarded PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips (“Storage Media”). Contractor agrees to destroy hard-copy documents containing PII by means of a cross-cut shredding machine. Contractor also agrees to use DoD approved methods to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this Program Agreement, Contractor shall submit a certification to the

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SCTA / TAM Project Manager as follows: “All PII whether in electronic or hard-copy format, has been destroyed in accordance with the requirements contained in Section 2. General Confidentiality of Data of this Attachment D, Special Conditions Relating to Personally Identifiable Information.” These requirements shall survive termination or expiration of this Program Agreement.

3. Compliance with Statutes and Regulations

Contractor agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 et.seq.) and in the California Streets and Highways Code Section 31490. In addition, Contractor warrants and certifies that in the performance of this Program Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and SCTA / TAM relating to the handling and confidentiality of PII, including the terms and conditions contained in this Attachment D, Special Conditions Relating to Personally Identifiable Information and agrees to indemnify SCTA / TAM against any loss, cost, damage or liability by reason of Contractor’s violation of this provision.

4. Subconsultants

SCTA / TAM approval in writing is required prior to any disclosure by Contractor of PII to a subconsultant or prior to any work being done by a subconsultant that entails receipt of PII. Once approved, Contractor agrees to require such subconsultant to sign an agreement in substantially identical terms as this attachment, binding the subconsultant to comply with its provisions.

5. Contractor Guarantees

Contractor shall not, except as authorized or required by its duties by law, reveal or divulge to any person or entity any PII which becomes known to it during the term of this Program Agreement.

Contractor shall keep all PII entrusted to it completely secret and shall not use or attempt to use any such information in any manner which may injure or cause loss, either directly or indirectly, to SCTA / TAM.

Contractor shall comply, and shall cause its employees, representatives, agents and subcontractors to comply, with such directions as SCTA / TAM may make to promote the safeguarding or confidentiality of all its resources.

If requested by SCTA / TAM, Contractor shall sign an information security and confidentiality agreement provided by SCTA / TAM and attest that its employees, representatives, agents, and subcontractors involved in the performance of this Program Agreement shall be bound by terms of a confidentiality agreement with Contractor substantially the same in its terms.

6. Notice of Security Breach

Contractor shall immediately notify SCTA / TAM when it discovers that there may have been a breach in security which has or may have resulted in compromise to PII. For purposes of this section, immediately is defined as within two hours of discovery. The SCTA / TAM contact for such notification shall be the Authorized Representative designated in the Program Agreement.

EXHIBIT D

KEY PERFORMANCE MEASURES

KEY PERFORMANCE INDICATORS

This **Exhibit D** sets forth the Key Performance Indicators along with their definitions and measurement tools.

KPI #	Title	Definition	Measurement Tool(s)¹	Performance Payment Reductions
1	Parking Spaces Cleaning and Inspection	Parking Spaces cleaning for each must occur 2 times per Month -- one time between the first and fifteenth days of the month, and one time between the sixteenth and last days of the month. Litter removal shall occur as needed during rebalancing.	Operator records/ databases	\$5 for each Station that is not cleaned according to schedule.

¹ Sources of information used to assess compliance with these service levels may include, but are not limited to, those listed in the "Measurement Tool(s)" column.

KPI #	Title	Definition	Measurement Tool(s) ¹	Performance Payment Reductions
2	Graffiti Removal	(a) Except as required by clause (b) below, Contractor shall remove conspicuous graffiti within 72 after Notification. (b) Contractor shall remove racist or hate graffiti within 4 hours after Notification.	Operator records/databases	(a) \$5 for each 24-hour period (or part thereof) beyond 72 hours. (b) \$5 for each 4-hour period (or part thereof) beyond 24 hours.
3	Bicycle Maintenance	Every active Bicycle in the Program Fleet shall receive a Bicycle Maintenance check at least once every other month.	Operator records/databases	\$10 for each active Bicycle that is not subject to a Bicycle Maintenance in a month period.
4	Parking Space Deactivation and De-Installation	As directed by SCTA, TAM, or a Participating Agency, Contractor must perform: (a) Parking Space Deactivation(s); (b) Parking Space De-Installation(s); (c) Parking Space Re-Installation(s); (d) Parking Space Adjustment(s). (i) Contractor will deactivate a Parking Space within 10 business days after a request from a Participating Agency, except in instances where	Electronic communications	(i) \$50 for each day of delay (or part thereof) beyond 10 business day for Deactivation. (ii) \$50 for each day of delay (or part thereof) beyond 10

KPI #	Title	Definition	Measurement Tool(s) ¹	Performance Payment Reductions
		<p>the continued presence/activity of the station has been determined to pose a threat to public safety.</p> <p>(ii) Contractor will complete a De-Installation of a Parking Space within 10 business days after a request from a Participating Agency, except in instances where the continued presence/activity of the station has been determined to pose a threat to public safety.</p> <p>(iii) Deactivated Parking Spaces must be reactivated within 10 business days of direction from a Participating Agency. De-Installed or Adjusted Parking Spaces must be reinstalled or readjusted to their original configurations within 10 business days of direction from the City.</p> <p>Notwithstanding the foregoing, the KPIs for De-Installation and reinstallations are limited to 4 in any 10 business day period.</p>		<p>business days for De-Installation.</p> <p>(iii) \$25 for each day of delay (or part thereof) beyond 10 business days for reactivation; \$25 for each day of delay (or part thereof) beyond 10 business days for reinstallation or Readjustment.</p>
5	Program Functionality	The Program must be operational 90% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), so	Software System	If in any month the bike share Program is operational less

KPI #	Title	Definition	Measurement Tool(s) ¹	Performance Payment Reductions
		that, at a minimum, all Program users can lock and unlock Bicycles at all times, excluding (i) scheduled downtime, (ii) any period when the Computer Hardware for the Program and/or Software is, and remains, damaged through hacking, and (iii) weather events.		than 99% of the time, then \$1 for every hour (or part thereof) that the bike share Program is not operational.
6	Station Operability	Parking Spaces, in the aggregate, must be Operable 99% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), excluding (i) during scheduled downtime, and (ii) any period when a parking space is not Operable, because the Capital Equipment located at the space has been damaged by third-parties. Calculated by taking the sum of the number of hours that each parking space was an operable space during a month, dividing that sum by the product of the total number of hours in the month and the number of parking spaces that month. Station Operability does not apply during any period in which the entire bike share system is down.	Operator records/ databases	If in any month the Stations are not Operable Stations 99% of the time, then \$1 for every hour that Stations are not Operable Stations below the 99% threshold.

KPI #	Title	Definition	Measurement Tool(s)¹	Performance Payment Reductions
7	Website Operations	The bike share Program webpage must be operational 99% of the time every year (i.e., every hour of every day, 24 hours per day, 7 days per week, measured annually), excluding (i) scheduled downtime, and (ii) any period when the Backend Software and Computer Hardware is, and remains, damaged through Hacking.	Operator records/ databases	If in any year the website is not operational 99% of the time, then \$5 for every hour each year that website is not operational.
8	Telephone Answering Time	Not less than 80% of telephone calls to Contractor's call center each month must be answered by a person within 180 seconds or less.	Operator records/ databases	\$5 for every percentage point below 80% that telephone calls are not answered in 180 seconds or less in any month.
9	E-mail Response Time	Not less than 95% of emails to Contractor's public information e-mail address must be answered within 1 business day.	Operator records/ databases	\$5 for every percentage point below 95% that emails are not answered within 1 business day or less in any month.

KPI #	Title	Definition	Measurement Tool(s) ¹	Performance Payment Reductions
10	Bicycle Availability	<p>The Bicycle Availability requirement is met if the monthly average Bicycle Fleet Level, recorded once each Day of the month between the hours of 6:00 AM and 9:00 PM, is not less than 70% of the Program Fleet.</p> <p>Damages are calculated as the sum of Bicycles under the threshold for each Day that the recorded Bicycle Fleet Level is less than the required Bicycle Fleet Level.</p>	Software System	\$1 for each Bicycle that is under the 70% threshold each month.
11	Rebalancing	<p>No station Cluster shall be completely empty of available bikes for use or completely lacking of empty parking spaces for more than 120 consecutive minutes during Peak Hours (i.e., 6:00 AM to 9:00 PM).</p> <p>The Rebalancing KPI set forth above is an interim KPI. During the first 12 months of operations, the Rebalancing KPI may be assessed and reformulated, and a new Rebalancing KPI may be fully implemented immediately following the review of the first 12 months of operations data with approval from SCTA/TAM.</p>	Software System	\$1.00 for each hour

EXHIBIT E

Insurance Requirements

Contractor shall maintain and require all of its subcontractors and other agents to maintain the insurance listed below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Contractor shall not commence Work, nor allow its employees, subcontractors or anyone to commence Work until the required insurance has been submitted and approved by County. Any requirement for Contractor to maintain insurance after completion of the Work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. County's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or County's failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers Compensation and Employers Liability Insurance

- a.** Required if Contractor has employees as defined by the Labor Code of the State of California.
- b.** Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c.** Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d.** The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County.
- e.** Required Evidence of Insurance:
 - i.** Subrogation waiver endorsement; and
 - ii.** Certificate of Insurance.

If Contractor currently has no employees as defined by the Labor Code of the State of California, Contractor agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

2. General Liability Insurance

- a.** Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b.** Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The General

Aggregate shall apply separately to each Project. The required limits may be satisfied by a combination of General Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Contractor.

- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Contractor is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving the County.
- d. [insert exact name of additional insured] shall be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of the Contractor in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County.
- h. The policy shall cover inter-insured suits between the additional insureds and Contractor and include a "separation of insureds" or "severability" clause which treats each insured separately.
- i. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
 - ii. Certificate of Insurance.

3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be satisfied by a combination of Automobile Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

4. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

5. Documentation

- a. The Certificate of Insurance must include the following reference: [insert contract number or project name].
- b. Contractor shall submit all required Evidence of Insurance prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with County as specified in Sections 1 – 3 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: [insert exact name and address].
- d. Contractor shall submit required Evidence of Insurance for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Contractor shall provide immediate written notice if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, Contractor shall provide certified copies of required insurance policies within thirty (30) days.

6. Policy Obligations

Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

7. Material Breach

f Contractor fails to maintain insurance which is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Contractor, County may deduct from sums due to Contractor any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.