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OFFICE OF THE CITY CLERK
OAKLAND

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2020 FEB -4 AM 11: 24


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO FINALIZE AND EXECUTE AN AMENDMENT TO THE BIKE SHARE FRANCHISE AGREEMENT WITH BAY AREA MOTIVATE L.L.C. THAT PROVIDES FOR THE EXPANSION OF THE REGIONAL BIKE SHARE PROGRAM BY INTRODUCING ELECTRIC-ASSIST, SELF-LOCKING BIKES CONSISTENT WITH THE CITY'S BICYCLE SHARING POLICY

WHEREAS, the City of Oakland recognizes the practice of bike sharing as a beneficial mode of transportation that reduces demand for private vehicles, decreases per capita greenhouse-gas emissions, and creates more affordable mobility options for all of Oakland's residents; and

WHEREAS, the City of Oakland approved Resolution No. 85715 C.M.S. that adopted a Bike Sharing Policy and authorized the City Administrator to negotiate and enter into an Intergovernmental Agreement ("Coordination Agreement") with the Metropolitan Transportation Commission ("MTC") and Motivate, L.L.C.; and

WHEREAS, the City of Oakland adopted Ordinance No. 13355 C.M.S. that granted a franchise to Motivate to operate a Bike Share Program in Oakland as more fully described in MTCs' regional Program Agreement and the intergovernmental Coordination Agreement; and

WHEREAS, a franchise agreement for a Bike Share Program between the City of Oakland and Motivate, L.L.C. was executed in July 2016 with a period of ten-years (see Exhibit A) starting July, 2017 and ending July, 2027; and

WHEREAS, the Coordination Agreement, Section 32.3, includes provisions for the introduction of electric-assist bikes, which grants to Motivate, L.L.C. a "Right of First Offer" to provide such a service as an additional element of the larger Bike Share Program; and

WHEREAS, City staff and Motivate, L.L.C. have negotiated in good faith to develop the terms and conditions of an amendment ("Amendment") to Motivate's franchise to operate a bike share program in Oakland that would provide for the introduction and use of electric-assist bikes that are able to both dock into bike share stations as well as lock to bike racks; and

WHEREAS, the Amendment contains several accountability mechanisms to ensure that bikes are deployed in a timely manner, that service is reliable, that bike racks are kept clean and that underserved portions of the City will have bikes; and

WHEREAS, those proposed Amendment has been deemed a substantive addition to the existing Franchise Agreement and therefore require City Council review and authorization; and

WHEREAS, each as a separate and independent basis, these actions are exempt from CEQA pursuant CEQA Guidelines Sections 15303 (new construction or conversion of small structures), 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning), and 15061(b)(3) (no significant effect on the environment); and, therefore be it

RESOLVED: That the City Administrator or Designee is authorized to finalize and implement an amendment to the City's Franchise Agreement with Motivate, L.L.C. for the purpose of authorizing and specifying the regulated introduction, maintenance and use of electric-assist bikes; and be it

FURTHER RESOLVED: That the City Council's action to authorize the City Administrator to amend the Coordination Agreement in order to expand the bike share program is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) (General Rule), and 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning), and 15303 (New Construction of Small Structures), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance; without returning to Council.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

Exhibit A

BIKE SHARE FRANCHISE AGREEMENT

BETWEEN

THE CITY OF OAKLAND

AND

**BAY AREA MOTIVATE, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

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BIKE SHARE FRANCHISE AGREEMENT

This Agreement is made and entered into this 15th day of July, 2016 by and between the City of Oakland, a municipal corporation ("City"), and BAY AREA MOTIVATE, LLC, a Delaware limited liability company ("Grantee").

WHEREAS, the City of Oakland recognizes the practice of bike sharing as a beneficial mode of transportation that reduces demand for private vehicles, decreases per capita greenhouse-gas emissions, and creates more affordable mobility options for all of Oakland's residents; and

WHEREAS, the Energy and Climate Action Plan (Resolution No. 84126 C.M.S) calls for a 36% reduction in greenhouse gas emissions and 20% reduction in vehicle-miles traveled from 2005 levels by 2020; and

WHEREAS, the City of Oakland, through its "Alternative Modes Policy" (Resolution No.73036 C.M.S.) supports transportation alternatives to private, single-occupant vehicles, and

WHEREAS, the Broadway Valdez District Specific Plan and the Coliseum Area Specific Plan calls for bike share as an alternative transportation mode; and

WHEREAS, the City of Oakland applied for Transportation Fund for Clean Air funding and received \$660,616.00 for the Oakland Bike Share Program; and

WHEREAS, the City of Oakland adopted A Bike Sharing Policy (Resolution No. 85715 C.M.S.) which calls for the implementation of a bike sharing program that facilitates the "last mile" of transit trips and non-auto short trips; and

WHEREAS, the City of Oakland approved resolution (No. 85715 C.M.S.) to adopt a Bike Sharing Policy and authorize the city administrator to negotiate and enter into an Intergovernmental Agreement with the Metropolitan Transportation Commission consistent with the Bike Sharing Policy; and

WHEREAS, the City has the authority, pursuant to City Charter Article X, Section 1000 to grant or issue franchises ("Franchise") for the transaction of business, providing of services or for the use of public streets or other public places, and to assess fees or other compensation to be paid therefor and the penalties for violations thereof; and

WHEREAS, pursuant to City Charter Article X, Section 1000, Grantee has applied to City for a Bike Share Franchise ("Franchise"); and

WHEREAS, the regional bike share project manager, Metropolitan Transportation Commission, approved an exclusive contract for expansion with Bay Area Motivate, LLC. ("Motivate"), the largest bike share vendor and operator in the U.S.; and

WHEREAS: This action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines §15303 (New Construction or Conversion of Small Structures), §15061(b)(3) (no significant effect on the environment), and §15183 (projects consistent with a community plan, general plan, or zoning).

WHEREAS, on February 2, 2016, the City Council held a public hearing for the purpose of hearing persons in favor of or in opposition to the granting of such Franchise; and

WHEREAS, the City Council has determined that the grant of such Franchise to Grantee is in the public interest; and

WHEREAS, City and Grantee desire to enter into a Bike Share Franchise Agreement (“Agreement”) in order that Grantee may provide bike share transportation services in the City of Oakland;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and consideration contained herein, City and Grantee hereby agree as hereinafter set forth City and Grantee do hereby agree as follows:

1. GRANT OF FRANCHISE

By Ordinance No. 13355 C.M.S. City granted to Grantee an exclusive Franchise authorizing Grantee to implement a bike share transportation program in the City of Oakland and to use the public streets and rights of way for such purpose. Grantee acknowledges that this Franchise is subject to the terms and conditions specified in the City Charter, the terms and conditions specified in Ordinance No. 13355 C.M.S., the provisions of the Oakland Municipal Code, and the terms and conditions of this Bike Share Franchise Agreement. In addition, Grantee and City acknowledges that this Franchise is subject to the terms and conditions of the Coordination Agreement between Grantee, the Metropolitan Transportation Commission and the Cities of Berkeley, Emeryville, Oakland, San Francisco and San Jose, a copy of which is attached hereto as *Exhibit A*. By this reference, the terms of the Coordination Agreement are incorporated herein to this Bike Share Franchise Agreement. Capitalized terms used in in this Agreement but not defined in this Agreement shall be defined as provided in the Coordination Agreement. To the extent that a conflict arises as to a term in this Franchise Agreement and the Coordination Agreement, the terms of the Coordination Agreement shall prevail.

2. TERM OF FRANCHISE

The term of the Franchise is for a ten (10) year period commencing on the Effective Date of this Agreement and will be subject to Section 13 of this Agreement, and will run in accord and as provided for in Section 2 of the Coordination Agreement.

3. RELATIONSHIP OF GRANTEE TO CITY

- A.** Grantee shall be deemed at all times to be a franchisee and shall be wholly responsible for the manner in which Grantee performs the services required of Grantee by the terms of this Agreement. Grantee shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Grantee.
- B.** Terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Grantee’s services only and not to the means by which such a result is obtained.
- C.** Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement.

4. RIGHT TO AUDIT/REQUIREMENTS

- A.** MTC shall have the right at reasonable times and upon reasonable notice to inspect the installation, operation, and maintenance of the Program and its associated elements.
- B.** Operator shall open and maintain a facility in each of San Francisco, San Jose and East Bay to support Program operations.
- C.** Operator shall comply with the reporting requirements set forth in *Appendix C* of the Program Agreement.
- D.** Throughout the Term, Operator shall maintain complete and accurate books of account and records of the business, ownership and operations of Operator with respect to the Program.
- E.** MTC has the right upon written demand with reasonable notice to Operator under the circumstances, to inspect, examine or audit during normal business hours all documents, records or other information pertaining to Ridership Revenue and Sponsorship Revenue or any other data collected and maintained by Operator to comply with the reporting requirements of *Appendix C* of the Program Agreement. All such documents shall be made available at one of Operator's local offices. All such documents shall be retained by Operator for a minimum of 6 years following the expiration or termination of this Agreement.
- F.** In the event any audit conducted by City or by City's representative discloses that Grantee has made any intentional misrepresentation with respect to the fees or penalties due to City listed in *Appendix A* of the Program Agreement, or discloses that Grantee has underpaid fees or penalties due to City in an amount greater than Ten Thousand Dollars (\$10,000), then in addition to any other remedies available to City, Grantee shall reimburse City for City's costs incurred in the performance of the audit. Such reimbursement shall be paid by Grantee within thirty (30) days of the date City notifies Grantee of the amount of City's costs.

5. INDEMNIFICATION

- A.** Grantee shall defend, indemnify, and save harmless City and its respective commissioners, officers, agencies, departments, agents, and employees (each, an "Indemnified Party"; and collectively, "Indemnified Parties") from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys' fees and other costs of defense) (collectively, with Claims, "Liabilities"), resulting from, or arising out of, the operation of the Bike Share Program and the provision of Services, whether such operation or Services is performed or provided by Grantee or by Grantee's subcontractors or any other person acting for or on behalf of Grantee.
- B.** Notwithstanding the foregoing, the following shall be excluded from Grantee's indemnification and defense obligations contained in the preceding paragraph:
 - 1.** Any Liabilities to the extent resulting from, or arising out of:

(a) the gross negligence or willful misconduct of any Indemnified Party;

(b) Grantee complying with the written directives or written requirements of City, if Grantee has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of any Bike Station in relation to the street or sidewalk on which such Bike Station is located or to which it adjoins, or (B) a City's Street Treatment Requirements; or

(c) The condition of any public property outside of the perimeter of a Bike Station and not otherwise controlled by Grantee.

- C. If any Claim against Grantee includes claims that are covered by clause (c) above or claims contesting City's authority to issue a permit for a Bike Station, then each party shall be responsible for its own defense against such Claims.
- D. Upon receipt by any Indemnified Party of actual notice of a Claim to which such Indemnified Party is entitled to indemnification in accordance with this Section 6, such Indemnified Party shall give prompt notice of such Claim to Grantee. Grantee shall assume and prosecute the defense of such Claim at the sole cost and expense of Grantee. Grantee may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.
- E. Nothing in this Agreement shall constitute a waiver or limitation of any rights which City may have under applicable law. All rights and remedies of City, whether under this Agreement or other applicable law, shall be cumulative.

6. INSURANCE REQUIREMENTS

- A. **Minimum Coverages.** The insurance requirements specified in this section shall cover Grantee's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Grantee authorizes to work under this Agreement (hereinafter referred to as "Agent"). Grantee shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.
- B. Grantee shall include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the Agent. To the extent that an Agent does not procure and maintain such insurance coverage, Grantee shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Grantee's indemnity obligation under Section 6 as to itself or any of its Agents in the absence of such coverage.
- C. In the event Grantee or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Grantee's or its Agent's insurance, as the case may be, be primary without right of contribution from City.
1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee for injury by disease

and \$1,000,000 for injury for each accident, and any and all other coverage of Grantee's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of City. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Grantee is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Grantee and Grantee's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of City. City and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.
 3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by Grantee and Grantee's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
 4. Umbrella Insurance in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
 5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to City and having minimum limits of \$5,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. The policy shall provide coverage for all work performed by Grantee and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Grantee. Grantee may delegate the obligation to maintain Errors and Omissions Professional Liability Insurance to an Agent, but the failure of such Agent to maintain such insurance shall not relieve Grantee of its obligation to maintain such insurance.
 6. Property Insurance. Property Insurance covering Grantee's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of City (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of City.
- D. Acceptable Insurers. All policies will be issued by insurers qualified to do business in California and with a Best's Rating of A-VIII or better.
- E. Self-Insurance. Grantee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to City.

- F. **Deductibles and Retentions.** Grantee shall be responsible for payment of any deductible or retention on Grantee's policies without right of contribution from City. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.
- G. In the event that City is entitled to coverage as an additional insured under any Grantee insurance policy that contains a deductible or self-insured retention, Grantee shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Grantee, subconsultant, subcontractor, or any of their employees, officers or directors, even if Grantee or subconsultant is not a named defendant in the lawsuit.
- H. **Claims Made Coverage.** If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Grantee shall:
 1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
 2. Maintain and provide evidence of similar insurance for at least three (3) years following the expiration or termination of this Agreement, including the requirement of adding all additional insureds; and
 3. If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the commencement of any work hereunder, Operator shall purchase "extended reporting" coverage for a minimum of three (3) years after the expiration or termination of this Agreement.
- I. **Failure to Maintain Insurance.** All insurance specified above shall remain in force until the expiration or termination of this Agreement. Grantee must notify City if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.
- J. **Certificates of Insurance.** Prior to commencement of any work hereunder, Grantee shall deliver to City Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.
- K. **Disclaimer.** The foregoing requirements as to the types and limits of insurance coverage to be maintained by Grantee are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Grantee.

7. CONTRIBUTIONS

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations. The Campaign Reform Act prohibits Grantees that are doing business or seeking to do business with City from making campaign contributions to Oakland candidates between commencement of negotiations and either one hundred eighty (180) days after completion of, or termination of, contract negotiations. Grantee has signed and dated an Acknowledgment of Campaign Contribution Limits *Schedule O* attached hereto and incorporated herein as *Exhibit E*.

8. **EQUAL BENEFITS**

- A. This Contract is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. Entities which enter into a “contract” with the City for an amount of Twenty-Five Thousand Dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the City; and Entities which enter into a “property contract” pursuant to Section 2.23.020(D) with the City in an amount of Twenty-Five Thousand Dollars (\$25,000.00) or more for the exclusive use or occupancy (1) of real property owned or controlled by the City or (2) of real property owned by others for the City’s use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.
- B. The Ordinance shall only apply to those portions of GRANTEE’s operations that occur (1) within the CITY; (2) on real property outside Oakland if the property is owned by CITY or if CITY has a right to occupy the property, and if GRANTEE’s presence at that location is connected to a contract with CITY; and (3) elsewhere in the United States where work related to a CITY contract is being performed. The requirements of this Article shall not apply to subcontracts or subcontractors of any contract or contractor. The Equal Benefits Ordinance requires among other things, submission of *Schedule N-1*, the Equal Benefits-Declaration of Nondiscrimination, incorporated herein.

9. **LIVING WAGES**

- A. Minimum Wage Ordinance. Oakland employers are subject to Oakland’s Minimum Wage Law, whereby Oakland employees must be paid the current Minimum Wage rate. Employers must notify employees of the annually adjusted rates by each December 15th and prominently display notices at the job site. The law requires paid sick leave for employees and payment of service charges collected for their services.

10. **EQUIPMENT/SITING**

Any and all equipment necessary for a bike share program shall be provided for as described in the Coordination Agreement. Siting of Bike Stations will be in accord with the criteria set forth in *Exhibit C* to this Agreement and subject to Section 19 of the Coordination Agreement.

11. **COMPLIANCE WITH LAW**

Grantee shall perform implement and manage a bike share program in accordance with applicable federal, state, and local law, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement.

12. **PERMITS AND LICENSES**

Grantee shall obtain and maintain, at Grantee’s sole cost and expense, all permits and licenses applicable to Grantee’s operations under this Franchise, which are required of Grantee by any governmental agency.

13. TERMINATION OF FRANCHISE

- A. If at any time City believes Grantee may not be adequately performing its obligations under this Agreement, City may request from Grantee written assurances of performance and a written plan to correct observed deficiencies in Grantee's performance if written notice of the same is provided by City. Failure to provide written assurances constitutes a separate ground to declare a default under this Agreement.
- B. Grantee shall be in default of this Agreement and City may, in addition to any other legal or equitable remedies available to City, terminate the Grantee's right to perform under the Franchise:
 - 1. Should Grantee make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, filing any answer admitting or not contesting the material allegations of a petition filed against Grantee in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Grantee or of all or any substantial part of the properties of Grantee, or if Grantee, its directors or shareholders, take action to dissolve or liquidate Grantee; or
 - 2. Should Grantee commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from City to Grantee demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Grantee to avail itself of this time period in excess of 10 calendar days, Grantee must provide City within the 10 day period a written plan acceptable to City to cure said breach, and then diligently commence and continue such cure according to the written plan); or
 - 3. Should Grantee violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Franchise and does not cure such violation within ten (10) days of the date of the notice from City to Grantee demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Grantee to avail itself of this time period in excess of 10 calendar days, Grantee must provide City within the 10 day period a written plan to cure said violation acceptable to City, and then diligently commence and continue performance of such cure according to the written plan.); or

14. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

In providing the services specified in this Agreement, Grantee shall comply with all applicable requirements of the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973 and all other applicable federal, state and local requirements relating to persons with disabilities, including any rules or regulations promulgated thereunder. Such compliance shall extend to the location and design of equipment as well as the program's website and any mobile application for the program.

15. NON- DISCRIMINATION

In order to minimize the probability of a claim being filed against the City, in the performance of this Agreement, Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

16. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

Grantee has obtained a City business license as required by O.M.C. Chapter 5.02, and its license number is written below; or, Grantee is exempt from the provisions of O.M.C. Chapter 5.02 and has written below the specific O.M.C. section under which it is exempt. Grantee shall pay all state and federal income taxes and any other taxes due. Grantee certifies under penalty of perjury that the taxpayer identification number written below is correct.

17. RECEIPT OF NOTICES

A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Agreement and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Agreement, all notices to City shall be addressed as follows:

City Administrator
City of Oakland
One Frank Ogawa Plaza
Oakland, CA 94612

Copy to: City Attorney
City of Oakland
One Frank Ogawa Plaza
Oakland, CA 94612

For purposes of this Agreement, all notices to Grantee shall be addressed as follows:

Bay Area Motivate, LLC
5202 Third Avenue
Brooklyn, New York 11220
Attention: Jay Walder, President and CEO
Email: jaywalder@motivateco.com
Attention: Justine Lee, Vice President and General Counsel
Email: justinelee@motivateco.com

Bay Area Motivate, LLC
2200 Jerrold Avenue, Unit J
San Francisco, California 94124
Attention: Emily Stapleton, General Manager and Designated Representative
Email: emilystapleton@motivateco.com

18. GOVERNING LAW/VENUE

This Agreement shall be deemed executed in the County of Alameda and governed by California law. Venue for any dispute arising under this Agreement shall be in the County of Alameda.

19. CONFIDENTIALITY

- A. Confidentiality Obligations:** Confidential Information shall mean all proprietary or confidential information disclosed or made available by the other Party pursuant to this Agreement that is identified as confidential or proprietary at the time of disclosure or is of a nature that should reasonably be considered to be confidential, and includes but is not limited to the terms and conditions of this Agreement, and all business, technical and other information (including without limitation, all human resources and payroll data, product, services, financial, marketing, engineering, research and development information, product specifications, technical data, data sheets, software, inventions, processes, training manuals, know-how and any other information or material), disclosed from time to time by the disclosing Party to the receiving Party, directly or indirectly in any manner whatsoever (including without limitation, in writing, orally, electronically, or by inspection); provided, however, that Confidential Information shall not include the Content that is to be published on the website(s) of either Party.
- B.** Each Party agrees to keep confidential and not disclose to any third party and to use only for purposes of performing or as otherwise permitted under this Agreement, any Confidential Information. The receiving Party shall protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. Each Party agrees not to disclose the Confidential Information to any of its representatives except those who are required to have the Confidential Information in connection with this Agreement and then only if such representative is either subject to a written confidentiality agreement or otherwise subject to fiduciary obligations of confidentiality that cover the confidential treatment of the Confidential Information.
- C. Exceptions:** The obligations of this Section 19 shall not apply if receiving Party can prove by appropriate documentation, where appropriate, that such Confidential Information
- (i) was known to the receiving Party as shown by the receiving Party's files at the time of disclosure thereof;
 - (ii) was already in the public domain at the time of the disclosure thereof;
 - (iii) entered the public domain through no action of the receiving Party subsequent to the time of the disclosure thereof;
 - (iv) is or was independently developed by the Contractor without access to or use of the Confidential Information; or
 - (v) is required by law or government order to be disclosed by the receiving Party, provided that the receiving Party shall notify the disclosing Party in writing of such required disclosure as soon as reasonably possible prior to such disclosure, and use its commercially reasonable efforts at its expense to cause such disclosed Confidential Information to be treated by such governmental authority as trade secrets and as confidential.
- D.** Grantee acknowledges and agrees that City is a public entity subject to the provisions of the California Public Records Act (the "CPRA") Cal. Gov. C. 6250 *et seq.* Except as otherwise required by the CPRA and by law, including the Charter of the City of Oakland and the Oakland Municipal Code, City will not disclose trade secrets or proprietary

financial information received from Grantee. Any such trade secrets or proprietary financial information which Grantee believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

E. Duty to Defend:

Upon a request for records regarding this Agreement, City will immediately notify Grantee and specify a time when the records will be made available for inspection. If the Grantee, in a timely manner, identifies any proprietary, trade secret, or confidential commercial or financial information which Grantee determines is not subject to public disclosure, the Grantee will be required to fully defend (including all attorney's fees and costs), in all forums, the City's refusal to produce such information; otherwise, City will make such information available to the extent required by law. To the maximum extent permitted by law, Grantee shall release and hold harmless City from any and all claims, attorneys' fees, damages, judgments, liabilities, administrative fines or penalties imposed as a result of City's refusal to disclose records regarding this Agreement.

20. AMENDMENTS

The terms and conditions of this Agreement shall not be altered or otherwise modified except by a written amendment to this Agreement executed by City and Grantee.

21. ENTIRE CONTRACT

- A.** The terms and conditions of this Agreement, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Grantee. No other contract, statement, or promise relating to the subject matter of this Agreement shall be valid or binding except by a written amendment to this Agreement.
- B.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the Coordination Agreement, the terms and conditions of the Coordination Agreement shall control.

22. SEVERABILITY

If any part of this Agreement or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

23. WAIVER

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this Agreement or a waiver of any other default of Grantee.

24. ASSIGNMENT

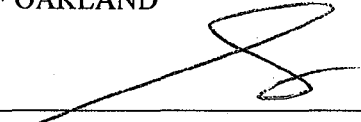
Grantee may not assign this Agreement without the prior written consent of the City, except that Grantee may assign its right to any money due or to become due hereunder and Grantee may assign this Agreement to the same extent that Grantee can assign the Coordination Agreement. If a Recognized Lender or its designee succeeds to Grantee interest under the Coordination Agreement in accordance with the terms thereof, such Recognized Lender or its designee shall automatically succeed to Grantee's interest under this Agreement.

25. SECTION HEADINGS

The sections and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

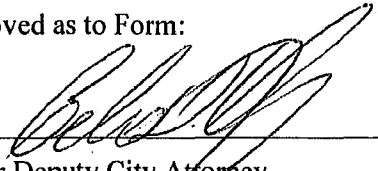
WITNESS THE EXECUTION OF this agreement ON THE DATE WRITTEN BELOW EACH SIGNATURE:

CITY OF OAKLAND

By: 

City Administrator

Approved as to Form:



Senior Deputy City Attorney

GRANTEE

Grantee Representative Name (printed or typed)

By: 

Signature

Justin Ginsburgh, VP of Business Development
Printed name and title of signatory, if different from Grantee Representative name

Ordinance No. 13355

Oakland Business Tax Certificate No. 28061056