

EXHIBIT A

**Agreement between the Cities of Oakland, Berkeley and Emeryville and
Bay Area Motivate, LLC**

Agreement between the Cities of Oakland, Berkeley and Emeryville and Bay Area Motivate, LLC

This Agreement is made as of _____, in the State of California, by and between Bay Area Motivate, LLC (Contractor) and the Cities of Oakland, Berkeley, and Emeryville, municipal corporations (Cities).

Recitals

A. The Cities and Contractor wish to enter into an Agreement for Docked Electric-Assist Bicycles in the East Bay as part of the Bay Area Bike Share Program (Program), which is a regional bikeshare program between five Participating Cities, the Metropolitan Transportation Commission, and Contractor, pursuant to Section 32.3 of the Coordination Agreement dated December 31, 2015 between the Cities and Contractor.

B. Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement. Where any word or phrase defined below, or a pronoun in place of the word or phrase, is used in any part of this Agreement, it shall have the meaning set forth below:

1.1 “**Agreement**” or “**Contract**” means this contract document, including all attached appendices, any future amendments, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “**Bay Wheels app**” means the mobile application through which users can rent Bicycles which are part of the Program.

1.3 “**Bicycle**” means a vehicle with pedals and with two wheels held in a frame and aligned one behind the other and steered with a steering wheel. “Bicycle” shall not include motorized vehicles, including scooters or mopeds. Electric-assisted bicycles are Bicycles and do not constitute motorized vehicles.”

1.4 “**Cities**” or “**the Cities**” means the City of Oakland, City of Berkeley, and City of Emeryville, each a municipal corporation.

1.5 “**Confidential Information**” means confidential information of the Cities including, but not limited to, personally-identifiable information (PII), protected health information (PHI), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of

such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical

Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164).

1.6 “**Contractor**” means Bay Area Motivate, LLC, 185 Berry Street, San Francisco, CA 94107.

1.7 “**Coordination Agreement**” means the Agreement executed between the Metropolitan Transportation Commission, Bay Area Motivate, LLC, and the Cities of Berkeley, Emeryville, Oakland, San Francisco, and Oakland for the Bay Area Bike Share Program dated December 31, 2015.

1.8 “**Day**” (whether or not capitalized) means a calendar day, unless otherwise designated.

1.9 “**Deliverables**” means Contractor’s work product resulting from the Services provided by Contractor to Cities during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.10 “**Docked Electric-Assist Bicycle**” means a Bicycle with a battery-powered “assist” motor that engages when the user pedals and includes the capability to be docked at bikeshare stations.

1.11 “**Effective Date**” means the date upon which both Parties have signed this Agreement.

1.12 “**Event of Force Majeure**” means a delay, suspension or interruption due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the Party claiming an Event of Force Majeure, provided in each case that such Party has taken and continues to take all reasonable actions to avoid or mitigate such delay, suspension or interruption and provided that such Party notifies the other Party to this Agreement in writing of the occurrence of such delay, suspension or interruption within 5 business days, or if not reasonably practicable, as soon thereafter as reasonably practicable, of the date upon which the Party claiming an Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an “Event of Force Majeure” unless such delay is beyond the normal period in which such entity generally

acts with respect to the type of decision being sought and only if the Party claiming Event of Force Majeure has taken and continues to take all reasonable steps to pursue such decision. The financial incapacity of Contractor shall not constitute an Event of Force Majeure.

1.13 “**In-Service**” means available to a customer for rental or actively in use by a customer.

1.14 “**KPI**” means the key performance indicators set forth in Appendix A and of this Agreement.

1.15 “**Lyft app**” means the mobile application through which users can access services provided by the Lyft platform.

1.16 “**Party**” and “**Parties**” mean the Cities and Contractor either collectively or individually.

1.17 “**Services**” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.18 “**Trip Intent**” means each time a customer indicates demand for a Bicycle (either a Docked Electric-Assist Bicycle or otherwise) by opening either the Bay Wheels or Lyft app when located within the Service Area, and when any of the following requirements are met by the customer: (a) clicks on an individual station or Bicycle, (b) spends 5 seconds or more in the “Bikes & Scooters” section of the Bay Wheels or Lyft app, or (c) takes a trip less than 15 seconds after opening either the Bay Wheels or Lyft app. This definition is subject to modification based on changes to Bay Wheels or Lyft app experiences, subject to approval by the Cities.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date and expire four years after the Effective Date, unless earlier terminated as otherwise provided herein.

Article 3 Financial Matters

3.1 Workers Compensation. Pursuant to the requirements of section 1860 of the California Labor Code, Contractor will be required to secure the payment of workers’ compensation to their employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following: “I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

3.2 Independent Contractor. The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Services as an independent contractor and not as the agent or employee of the Cities. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services; hiring of contractors, agents or employees to complete the Services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

3.4 Business Tax Certificate. Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code. Contractor shall obtain a City of Berkeley business license or an exemption as required by B.M.C. Ch. 9.04.

3.5 Compliance Monitoring. Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of any applicable prevailing wage requirements by the Cities.

3.6 Remedies. Should Contractor, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Contract, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as applicable, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in California Labor Code Section 1775.

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services stated in Appendix A (Scope of Services). Officers and employees of the Cities are not authorized to request, and the Cities are not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement).

4.2 Cities Right to Change. The Cities reserve the right to request changes in the Services to be performed under this Contract by amending, altering, adding to, or deducting from the Scope of Work. All such changes to the Services shall be agreed to by the Parties and set forth in writing and executed by the Contractor and the Cities. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

4.3 Qualified Personnel. Contractor shall use only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors)

to perform the Services. Contractor will comply with Cities' reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at the Cities' request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.5 Assignment. The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by the Cities by written instrument executed and approved as required under applicable local law. The Cities' approval of any such Assignment is subject to the Contractor demonstrating to Cities' reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City; and (c) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify the Cities about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

Article 5 Insurance and Indemnity

5.1 Minimum Coverages. The insurance requirements specified in this section shall cover Contractor'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 Contractor authorizes to work under this Agreement (hereinafter referred to as "Agents"). Contractor 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.

5.2 Contractor 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, Contractor shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Contractor's indemnity obligation under Section 5.2 as to itself or any of its Agents in the absence of such coverage.

5.3 In the event Contractor 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 Contractor's or its Agent's insurance, as the case may be, be primary without right of contribution from the City.

(a) 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 Contractor's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of the City. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Contractor is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

(b) Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Contractor and Contractor'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 the City. The City and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. In addition, the Metropolitan Transportation Commission (MTC), City of Berkeley, City of Oakland, City of Emeryville, and City of San Jose and their respective commissioners, directors, officers, representatives, agents and employees are also to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Contractor's operations.

(c) Business Automobile Insurance for all automobiles owned (if any), used or maintained by Contractor and Contractor'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.

(d) 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.

(e) Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to the City and having minimum limits of \$10,000,000 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 Contractor and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Contractor. Contractor 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 Contractor of its obligation to maintain such insurance.

(f) **Property Insurance.** Property Insurance covering Contractor'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 the 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 the City.

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

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

5.6 Deductibles and Retentions. Contractor shall be responsible for payment of any deductible or retention on Contractor's policies without right of contribution from the Cities. 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.

5.7 In the event that the Cities are entitled to coverage as an additional insured under any Contractor insurance policy that contains a deductible or self-insured retention, Contractor 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 Contractor, subconsultant, subcontractor, or any of their employees, officers or directors, even if Contractor or subconsultant is not a named defendant in the lawsuit.

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

(a) 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;

(b) 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

(c) 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, Contractor shall purchase "extended reporting" coverage for a minimum of three (3) years after the expiration or termination of this Agreement.

5.9 Failure to Maintain Insurance. All insurance specified above shall

remain in force until the expiration or termination of this Agreement. Contractor must notify the Cities 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.

5.10 Certificates of Insurance. Prior to commencement of any work hereunder, Contractor shall deliver to the Cities 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.

5.11 Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant hereto, including, but not limited to, liability assumed pursuant to Section 5.2.

5.12 Additional Insureds. The following entities are to be named as Additional Insureds under applicable sections of this Section and as Indemnified Parties: MTC, City of Berkeley, City of Oakland, City of Emeryville, City and County of San Francisco, and City of San Jose.

5.13 Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, to Contractor's performance of the Services, including the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Contract.

Article 6 Liability of the Parties

6.1 Liability of City. NOTWITHSTANDING ANY OTHER PROVISION OF THIS

AGREEMENT, IN NO EVENT SHALL THE CITIES BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. The Cities shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for Incidental and Consequential Damages. Notwithstanding any other provision of this Agreement, Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions; however, Contractor's liability for such damages shall be limited to no more than \$500,000. Contractor's limit of liability set forth herein shall not apply to incidental and consequential damages resulting from:

6.3.1 Contractor's gross negligence, reckless conduct or willfully wrongful acts or omissions, fraud or illegal or unlawful acts;

6.3.2 Statutory fines, expenses, or damages caused by Contractor's violation of federal, state and/or local laws; in particular, those included in this Agreement and regarding privacy;

6.3.3 Any data breach resulting from Contractor's negligence;

6.3.4 Contractor's obligations under this Agreement to indemnify and defend the City pursuant to the general indemnification clause and for intellectual property infringement; and

6.3.5 Claims or damages that are covered by the insurance required by this Agreement.

Article 7 Default, Termination and Exclusivity

7.1. Default. Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

7.2. Termination.

A. Each City shall have the right to terminate this Contract for cause by providing written notice thereof at least five (5) calendar days in advance of the termination date. Each City shall have the right to terminate this Contract without cause by providing written notice thereof at least sixty (60) calendar days in advance of the termination date.

B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.

C. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the City.

D. The rights and remedies of the Cities and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

7.3 No Personal Liability.

No members, officials or employees of the Cities shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the Cities or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract.

7.4 Non-Exclusivity.

The Cities reserve right to employ other contractors in connection with the Services covered under this Contract, and the Contractor expressly agrees that the “Grant of Exclusive Rights” provisions in Section 32.0 of the Coordination Agreement does not apply to this Agreement for Docked Electric-Assist Bicycles since the Cities have already fulfilled the Right of First Offer requirement set forth in Section 32.3 of the Coordination Agreement.

Article 8 General Provisions

8.1 Notices to the Parties. Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City of Oakland: 

To City of Berkeley:

To City of Emeryville:

To Contractor: Bay Area Motivate, LLC, Attn: Legal Department,
185 Berry Street, Suite 5000
San Francisco, CA 94107
Email: LBS-legal@lyft.com

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

8.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

8.3 Modification of this Agreement. Any amendments to the Scope of Work shall be in writing and executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in a written amendment duly executed on behalf of the Cities and the Contractor.

8.4 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

8.5 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

8.6 Entire Agreement. This contract sets forth the entire Agreement between the parties and supersedes all other oral or written provisions. All appendices to this Agreement are incorporated by reference as though fully set forth. This Agreement may be modified only as provided in Section 8.3 (Modification of this Agreement).

8.7 Compliance with Laws. Contractor shall keep itself fully informed of the Cities' Charter, codes, ordinances and duly adopted rules and regulations of the Cities and of all state, and federal laws in any manner affecting the performance of this Agreement and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

8.8 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

8.9 Form of Guaranty. Upon the execution of this Agreement, the Contractor will deliver to the Cities a guaranty executed by Lyft in the form attached hereto as Appendix C and incorporated by reference into this Agreement.

9.0 Nondisclosure of Private, Proprietary or Confidential Information.

9.1 Confidential Information. In the performance of Services, Contractor may have access to Cities' proprietary or Confidential Information, the disclosure of which to third parties may damage the Cities. If Cities disclose proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

9.2 Payment Card Industry (PCI) Requirements. Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

9.2.1 Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

9.2.2 Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third-party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

9.2.3 For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council PIN Transaction Security (PTS) program.

9.2.4 For items 13.2.1 to 13.2.3 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

9.2.5 Contractor shall be responsible for furnishing Cities with an updated PCI compliance certificate 30 Days prior to its expiration.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

BAY AREA MOTIVATE, LLC

By: _____
Name:
Title:

CITY OF BERKELEY

By: _____
Name:
Title:

APPROVED AS TO FORM:

By: _____
Name:
Title:

CITY OF EMERYVILLE

By: _____
Name:
Title:

APPROVED AS TO FORM:

By: _____
Name:
Title:

CITY OF OAKLAND

By: _____
Name:
Title:

APPROVED AS TO FORM:

By: _____
Name:
Title:

DRAFT

APPENDIX A - SCOPE OF SERVICES

1. Compliance with Applicable Laws

Contractor shall comply with all applicable terms and conditions as set forth in Appendix A and Appendix B, as well as all applicable federal, state, and local laws, including but not limited to, applicable provisions of the Berkeley Municipal Code, Emeryville Municipal Code, Oakland Municipal Code, the California Vehicle Code, and local wage requirements.

2. Bicycles to Be Provided by Contractor

The 786 next-generation Docked Electric-Assist Bicycles to be provided under this Agreement are separate from the Bicycles the Contractor is required to provide pursuant to the 2015 Bay Area Bikeshare Program's Coordination and Program Agreements.

3. In-Service Docked Electric-Assist Bicycle Fleet Size and Dock Station Schedule

Contractor shall provide, deploy and maintain the fleet of 786 next-generation "Cosmo" Docked-Only Electric-Assist Bicycles for use in the Cities as follows: 221 in the City of Berkeley, 55 in the City of Emeryville, and 510 in the City of Oakland by January 1, 2024.

Unless otherwise agreed between Contractor and the Cities, Contractor shall also purchase, deploy and operate additional infill dock Stations for use by this program expansion as follows: 9 in the City of Berkeley, 2 in the City of Emeryville, and 19 in the City of Oakland. The station siting guidelines and metrics set forth in the Coordination Agreement shall apply.

4. Application or App

Contractor shall make all Docked Electric-Assist Bicycles available for customer rental through the Bay Wheels application (app) or an equivalent app by January 1, 2024. The primary purpose and function of the Bay Wheels app, or any equivalent app, shall be to allow customers to access bikeshare service. Bikeshare customers shall not be required to use the Lyft app to register for a bikeshare account or to access any Docked Electric-Assist Bicycle.

5. Data Sharing and Reporting Requirements

Contractor shall comply with the following data sharing requirements:

- A. Contractor shall update existing data reporting to include Docked Electric-Assist Bicycles provided, deployed and maintained under this Agreement.

- B. Docked Electric-Assist Bicycles data reporting shall be incorporated into all data that Contractor is already contractually required to report to the City and other entities (e.g., collision data, bikes and trips to existing DOMO and Looker reports, or equivalent, etc.) under the Bay Area Bike Share Program Agreement.

6. Membership and Usage Fee Pricing

Membership and usage fee pricing shall be the same as set forth in the Regional Funding Agreement entered into between the Metropolitan Transportation Commission and Lyft Bikes and Scooters, LLC which is incorporated by reference and as may be amended from time to time. The Regional Funding Agreement dated XXXX XX, XXXX is attached as Appendix D.

7. Key Performance Indicators (KPIs)

- A. Contractor shall comply with the following rebalancing KPIs and associated data reporting requirements to address operational specifics for Docked Electric-Assist Bicycles. When calculating these new rebalancing KPIs, both Docked Electric-Assist Bicycles provided and deployed under the Agreement and the 786 Docked-Only Electric-Assist Bicycles provided and deployed under the Program will be counted as contributing to coverage. The rebalancing KPIs set forth in this Agreement do not modify any of the existing Bay Area Bike Share Program KPIs.
 - i. Service Area Coverage: The total area covered by a 400-meter radius around each available Bicycle in the service area shall not drop below 75% of the Total Service Area for 75% of the time during Peak Hours
 - ii. Customer Coverage: At least 85% of Trip Intents must have at least two available Bicycles within 400 meters during Peak Hours.
- B. All of the KPIs listed in this Section shall apply to the Docked Electric-Assist Bicycle fleet as of April 28, 2024.
- C. The Cities and Contractor agree to negotiate additional amendments to KPI up to 180 days after the effective date of this Agreement which shall go into effect upon mutual written agreement between the parties.

8. System Reliability Requirements.

The In-Service Hybrid Electric-Assist Bicycle fleet shall not drop below 80% of the applicable fleet size as set forth in Appendix A for 15 out of any 30 consecutive days (calculated on a rolling basis). Fleet size (measured as the sum of the number of bikes being rented and the number of bikes available for rental) will be measured at 4 a.m. Pacific Time

each day. These service reliability requirements go into effect on April 30, 2024, and will remain in effect for the remainder of the term.

APPENDIX B - ADDITIONAL FEES AND CHARGES

The Contractor shall pay to the City the following fees and charges:

1. **Agreement Development and Negotiation:** Contractor shall pay the time and materials of Cities and City Attorneys' Office staff in negotiating the Agreement up to a maximum of \$60,000.

APPENDIX C - FORM OF GUARANTY

APPENDIX D - REGIONAL FUNDING AGREEMENT