

Attachment B

Initial Terms For Electric Bikes Program in Oakland – 1/29/2020

Recital

This Hybrid Electric Bike Share Program Agreement is entered into pursuant to the Bay Area Bike Share Program Coordination Agreement Section 32.3 Right of First Offer. The Hybrid Electric Bikes Program described herein is the result of a good-faith negotiation of the terms and conditions for operation of shared electric-assist bicycles (“E-bikes”) in Oakland.

Parties

The parties to this Agreement are Bay Area Motivate, LLC (“Motivate” or “Operator”) and the City of Oakland (“City”).

Term

The term of the Agreement reached under this Offer shall extend 4 years. At the end of 4 years, the term of the Agreement may be extended, upon mutual written agreement of the parties, for a minimum term of one additional year and a maximum term coinciding with the termination of the City’s Franchise Agreement for bikeshare with Motivate.

Terms and Condition

The terms and conditions from the Oakland Department of Transportation (“OakDOT”) Dockless Bikes Supplemental Regulations attached hereto as Exhibit A (“Regulations”) apply to E-bikes deployed under this Agreement.

Scope

The Agreement will apply to all E-Bikes that are deployed pursuant to this Agreement. It will not cover bicycles deployed pursuant to the Coordination Agreement (“Coordination Agreement”) entered into as of December 31, 2015 by the City, Motivate, the Metropolitan Transportation Commission (“MTC”) and the cities of Berkeley, Emeryville, San Francisco and San Jose, or the Program Agreement (“Program Agreement”) entered into as of December 31, 2015 by and between Motivate and MTC, or any bicycles that are propelled only through manual pedaling without electric assistance.

Definitions

1. “E-Bike”: a bicycle with pedals powered by electric-propulsion assistance.
2. “Hybrid Bike” or “Hybrid E-Bike”: A bicycle or E-Bike, as applicable, capable of docking into a Bike Share Station or locking to itself, a city rack or other permanent structure.
3. “Service Area”: This is the area in the City of Oakland throughout which Hybrid E-Bikes are to be made available to the public. The Service Area includes all of the area of Oakland within the City of Oakland jurisdiction that is west of California State Route 13 or Interstate 580, whichever is further east, and may be changed upon mutual agreement of the two parties.
4. “Peak Hours”: 6:00 AM to 10:00 PM seven days per week.
5. “Rebalancing Node”: A location designated for receiving hybrid, “lock-to” bikes as part of rebalancing activities.

All other terms are as defined in Section 1.0 of the Coordination Agreement.

A) Terms from Program or Coordination Agreement to be extended to Hybrid E-bikes

1) Pricing

Membership and usage fee pricing will be covered by Section 9 of the Program Agreement, not by this agreement. However, Motivate may include pricing for additional Hybrid E-bike user fees upon 3-days advance notice to The City and The City has 15 days to object. If the City objects, the pricing for additional Hybrid E-bike user fees shall not go into effect. If the City does not object within 14 days, the pricing for additional Hybrid E-bike user fees shall go into effect 30 days after notification to the City. In any proposal for additional user fees, Motivate must include alternative pricing for communities of concern which is also subject to the City's agreement. The parties agree to work in good faith to make reasonable adjustments to pricing that take into account the costs of operating Hybrid E-bikes and the mutual goal of a sustainable, socially equitable Hybrid E-bike program.

2) Revenue Sharing

Revenue from E-bike trips originating in Oakland shall be included in ridership revenue for the purposes of calculating revenue sharing payments to the City.

3) Security Fund

Claims related to Hybrid E-bikes shall be covered by the Security Fund in accordance with Section 15 of the Program Agreement.

4) Advertising

The advertising provisions of Section 7 of the Program Agreement and Section 29 of the Coordination Agreement apply to this Agreement.

5) Insurance and Indemnification

The insurance requirements and indemnification provisions of Sections 13 and 36 of the Coordination Agreement shall apply to this Agreement.

B) Data

Subject to the requirements of applicable privacy laws, the Agreement shall require Motivate to:

- 1)** Provide real-time data in compliance with the most up-to-date version of the Mobility Data Specification or "MDS" standard, except for the Agency API (MDS is a project of the Open Mobility Foundation, for details and description, see <https://github.com/openmobilityfoundation/mobility-data-specification>). Upon request by the City, Motivate and the City agree to work in good faith towards modifying this data specification to advance mutual goals while protecting user privacy and;
- 2)** Provide a functioning data-sharing end point to the City or a designated third party data aggregator, subject to the City of Oakland's "Surveillance Impact Report" and "Surveillance Use Policy" for Data Sharing Agreements with Dockless Mobility Service Providers (as described in Resolution No. 87862 C.M.S.) and section B) 4) of this Agreement; and
- 3)** Update existing data reporting to include Hybrid E-Bikes deployed under this Agreement; and
 - Hybrid E-Bikes covered under the terms of this Agreement will be incorporated into all data that Motivate is already contractually required to report on.
- 4)** Provide real time MDS data to a designated third party software provider or research institution ("Mobility Management Software Provider") for the purpose of data aggregation, obfuscation and analysis, subject to such provider's entering into a data processing agreement with

Motivate containing customary terms to Motivate’s reasonable satisfaction. In the event that the City contracts with a Mobility Management Software Provider, Motivate agrees to negotiate in good faith with such Mobility Management Software Provider with the goal of reaching a data processing agreement within 30 days. If, after 60 days, no such agreement has been reached, and Motivate has not negotiated in good faith during that time, then the City may initiate the Dispute Resolution Process in accordance with Section 34 of the Coordination Agreement.

C) Bike Racks and Rebalancing Nodes

1. Fees: Motivate shall pay The City a fee of \$75.00 per each Hybrid E-Bike (\$93,750.00 for 1,250 bikes). Payment of this fee may be made in installments in accordance with the phasing plan described in Section E.
2. Rebalancing Nodes: Operator shall work with City staff to designate 10 Rebalancing Nodes in Fruitvale and East Oakland within 120 days of signing this Agreement. At least 65% of Rebalancing Nodes must be located in Communities of Concern, as defined by the Metropolitan Transportation Commission. To qualify as a Rebalancing Node, a bike parking area must meet the following requirements:
 - a. Contain a sufficient number of installed bike racks to support parking for at least 18 total bikes (public or shared) within a 100 foot radius. By mutual agreement of The City and Motivate, a rebalancing node may include bike parking areas without bike racks present in order to test self-locking technology. Bike parking areas without bike racks present must include paint or other street markings clearly demarcating a bike parking area.
 - b. A loading zone or safe location for vehicle loading must be present within 100 feet of the identified bike racks and not conflict with any bus stop.
 - c. The Rebalancing Node’s GPS geofence shall be sufficiently large to capture 99% of properly parked bikes located at the node and be entirely located within the existing service area.

Operator will deploy its own resources to sweep and remove litter around designated corrals and bike racks within designated Rebalancing Nodes that meet all qualifications set forth above. Sweeping and litter removal will occur at least two times per month, consistent with existing station procedures. Operator will also notify The City if bike racks have been vandalized or are otherwise damaged or inaccessible.

After 120 days in operation, Rebalancing Nodes will be included as “stations” for the purposes of “Station cleaning and Inspection,” “Litter Removal,” and “Rebalancing” KPI reporting and subject to liquidated damages, as described in KPI #1, #3, and #12, respectively, in Appendix A of the Program Agreement.

D) Mobile App

Bicycle availability, pass purchase, trip initiation, and trip history shall be available through the Bay Wheels (or equivalent) mobile app upon deployment of Hybrid E-Bikes, and the primary function of the Bay Wheels mobile app shall be to service bikeshare. Bikeshare users shall not be required to use the Lyft app to register for an account or access any system function.

E) Fleet size and Service Area

The Agreement shall require Motivate to provide 1,250 Hybrid E-Bikes in Oakland. The in-service (i.e. available for hire or in rental) e-bike fleet size shall expand according to the following schedule:

- Benchmark 1: May 31, 2020- 50% (625) Hybrid E-Bikes in Motivate’s Oakland based fleet
- Benchmark 2: End of Q2 2020- 100% (1,250) Hybrid E-Bikes in Motivate’s Oakland based fleet

Operator is permitted to expand the Service Area in accordance with the following phasing plan:

| City | Current Service Area (square miles) | Service Area Expansion (square miles) | Benchmark 1: 50% (May 31, 2020) | Benchmark 2: 100% total (June 30, 2020) |
|---------|-------------------------------------|---------------------------------------|---------------------------------|---|
| Oakland | 9 | 44 | 28 | 44 |

The 1,250 Hybrid E-Bikes will be provided in addition to any bikes required to be provided under the separate Coordination and Program Agreements. Motivate shall provide an in-service fleet of 2,100 total bikes in Oakland pursuant to this Agreement and the Coordination/Program Agreements. Motivate may add additional Hybrid E-Bikes, to increase fleet size on a specific schedule subject to mutual agreement with The City and any necessary City approvals.

The parties acknowledge that the fleet size deployment benchmarks shall constitute material terms of this Agreement.

F) Key Performance Indicators. The Agreement shall provide new rebalancing Key Performance Indicators (“KPIs”) with established Liquidated Damages (“LD”) and associated data reporting requirements to address operational specifics for Hybrid E-Bikes. When calculating these new rebalancing KPIs, bikes deployed under the Program Agreement will also be counted as contributing to coverage. These new rebalancing KPIs do not modify any of the Program Agreement KPIs.

- **Customer Coverage:** At least 85% of Trips Intents must have at least 2 available bikes within 400 meters during Peak Hours.
 - Liquidated Damages: \$250 for each 1% under 85% of Trip Intents for which Customer Coverage aren’t met, measured monthly. For example, if Customer Coverage is only met for 60% of Trips Intents, the LD amount will be \$6,250.
- **Equitable Coverage:** To ensure equitable distribution and provide service in areas with large unmet transit needs, the neighborhoods of Fruitvale/San Antonio and East Oakland shall have minimum service thresholds. By the end of May, 2020, at least 10% of the bike fleet shall be located in East Oakland and 10% in Fruitvale/ San Antonio, as measured by the average number bikes available within those geographies at 4 am.
 - Fruitvale/ San Antonio is defined as the area bounded by 14th Avenue to the North, State Route 13 to the east, High Street to the South and the Oakland Estuary to the West.
 - East Oakland is defined as the area bounded by High Street to the north, the 580 Freeway to the east, the Oakland border to the south and the Oakland Estuary/ San Leandro Bay to the west.

- Liquidated Damages: \$250 for each 1% under 10% of Bikes which should be located in each priority community, measured monthly. For example, if only 9% of bikes are in East Oakland, and 8% are in Fruitvale/ San Antonio during a given month the LD amount will be \$750.

Trip intent is defined as: (1) each time a customer indicates demand for a bike by opening either the Bay Wheels or Lyft app, (2) is located within the Service Area, and (3) meets any of the following requirements: (a) clicks on an individual station or bike, (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 City.

All of the KPIs listed in Appendix A to the Program Agreement and associated LDs apply to the Hybrid E-Bike fleet, but will not go into effect for Hybrid E-Bikes until 90 days after the effective date of the Agreement. The new rebalancing KPIs and corresponding LDs will not go into effect until 90 days after the effective date of the Agreement. The City and Motivate agree to negotiate additional amendments to KPI targets and LD amounts up to 180 days after the effective date of the Agreement which shall go into effect upon mutual written agreement between the parties.

G) System Redundancy:

1) Redundancy Requirements: Motivate shall demonstrate sufficient redundancy in the system to withstand a technological or mechanical failure or safety issue without significant service disruption including:

- within 6 months after execution of the Agreement, no more than 85% of the e-bikes in the fleet shall be of the same e-bike make and model. At least 15% of the e-bike program provided by Motivate shall have an alternative e-bike design (e.g. make, model, specific components, etc.)
- (a) Within one year after execution of the Agreement, no more than 70% of the e-bikes in the fleet shall be of the same e-bike make and model. At least 30% of the e-bike program fleet provided by Motivate shall have an alternative e-bike design.
- (b) Motivate shall provide The City with a plan within 15 days to address mechanical or technological problems that affect availability of e-bikes on the street in the event the current system or model is unable to perform as set forth under this Agreement, which shall include bi-weekly updates to The City on the status of resolving any mechanical or technological problems.

2) Service reliability requirements:

The Hybrid E-Bike program fleet shall not drop below 70% of the applicable minimum fleet size as set forth in the Fleet Size Schedule (as provided in this Agreement) for 15 out of 30 consecutive days (calculated on a rolling basis). Fleet size (measured as the cumulative number of bikes in rental and bikes available for rental) will be measured at 4 a.m. Pacific Time each day. The service reliability requirements will go into effect 30 days from the beginning of the applicable quarter.

H) Liquidated Damages/ Default:

1) Cap on LDs/Ability to Obtain Redress through a Second Operator

Liquidated damages (LDs) for KPIs for Equitable Coverage and Customer Coverage will be as set forth in the KPIs section above. Liquidated damages for Hybrid E-Bikes that are subject to this Agreement have a limitation of 8% of Oakland's portion of regional Ridership Revenues as defined below.

"Ridership Revenues", as defined in section 8.1.2 of the Program Agreement and for purposes of this Agreement only, are calculated to include all revenues collected for all types of bikes includes e-bikes, Hybrid E-Bikes and classic pedal bikes. For the purposes of assessing Liquidated Damages, Oakland's portion of Ridership Revenues for the calendar year 2020 will be calculated monthly by multiplying the Ridership Revenues collected beginning on January 1, 2020 by the ratio 366 bears to the number of days from January 1 to the measurement date. Starting on January 1, 2021, Oakland's portion of Ridership Revenues will be measured quarterly over the 12 months immediately preceding any given date of measurement. Oakland Portion of Ridership Revenues will be defined by the percentage of total Bay Wheels trips beginning in Oakland during the 12 months immediately preceding such calculation.

In the event that, Beginning on April 1, 2020 and for the term of this Agreement, (1)(a) Motivate's total liquidated damages for KPIs for Equitable Coverage and Customer Coverage over the period of any two consecutive months exceeds 8% of Oakland's portion of Ridership Revenues (as defined above), and (1)(b) Motivate fails to cure such failure(s) within the two monthly reporting periods following written notice by The City of such failure(s) or (2)(a) Motivate fails to meet either the Redundancy Requirements or Service Reliability Requirements set forth above, and (2)(b) Motivate fails to cure such failures within the two monthly reporting periods following written notice by The City of such failure(s), then Motivate agrees that The City has the right to immediately solicit and enter into an agreement or permit with no more than one additional e-bike operator to provide stationless e-bike service for no longer than the duration of this agreement.

The e-bike fleet for any such additional operator shall be a maximum of 350 e-bikes. However, if the difference between the number of Hybrid E-Bikes Motivate is required to provide and the number of Hybrid E-bikes actually in service exceeds 350 e-bikes (calculated based on the average deployment during the applicable cure period), then the additional operator's e-bike fleet may consist of 350 e-bikes plus 50 percent of the difference between the number of e-bikes Motivate is required to provide and the number of e-bikes actually in service.

Additional language only if Lyft rejects 350 second Operator fleet size

In the event that a second operator is permitted and Motivate's total liquidated damages for KPIs for Equitable Coverage and Customer Coverage over the period of any additional two consecutive months exceeds 8% of Oakland's portion of Ridership Revenues (as defined above), and Motivate fails to cure such failures within the two monthly reporting periods following written notice by The City of such failure(s), then the additional operator's fleet size may be increased to 500 e-bikes plus 50 percent of the difference between the number of e-bikes Motivate is required to provide and the number of e-bikes actually in service.

Motivate shall provide all data necessary for calculating KPIs, LDs, and Oakland's portion of Ridership revenues to The City on a monthly basis no later than the 25th day of the subsequent

month (for example, all data for the month of April 2020 must be provided by May 25, 2020); except that for all financial information, the data shall reflect all relevant facts as they existed with respect to the calendar month that immediately precedes the immediately preceding calendar month (e.g., the June report would reflect the financial data for April)..

Subject to the foregoing limitation in fleet size, the terms and conditions associated with any such agreement or permit will be based on OakDOT's Dockless Bikeshare Supplementary Regulations (attached and incorporated herein). If, at the end of such second Operator's permit term, Motivate has achieved three consecutive two-month periods of KPI performance below the liquidated damages cap, then the City will consider such performance by Motivate in determining whether to extend the second Operator's permit and/or adjust the second operator's permitted fleet size (subject to the above limitations) subject to The City's absolute sole discretion. Motivate agrees to this as an alternative remedy, notwithstanding any contractual right by Motivate to exclusivity under either the Program or Coordination Agreements or the default provisions provided by this Agreement.

2) Default Provisions

Each of the following shall constitute an immediate event of default (Event of Default) under this Agreement:

(a)(1) Motivate fails to meet any of the service reliability requirements as set forth in the System Redundancy Section, and fails to cure such failure within 180 days of written notice of such failure; or

(2) Motivate's liquidated damages for KPIs for Service Area Coverage and Customer Coverage exceed 10% of Oakland's portion of regional Ridership Revenues (as that term is used herein) for the quarter starting on April 1, 2020 or any quarter thereafter, and Motivate fails to cure such failure within 180 days of written notice of such failure; or

(3) Motivate fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement, including any material obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within 45 days after written notice thereof from The City to Motivate, or in the case of any term, covenant or condition which cannot reasonably be cured within such 45 day period, such longer period not to exceed 120 days after The City's written notice as is necessary to effect a cure of the failure to perform, so long as Motivate diligently attempts to effect a cure throughout such period.

(b) On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement, to seek specific performance of all or any part of this Agreement, and/or solicit, if necessary, and enter into an agreement or permit with another operator to provide stationless e-bike service in Oakland. City shall have the right to offset from any amounts due to Motivate under this Agreement or any other Agreement between City and Motivate: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Motivate pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

(c) All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

(d) No-waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

Notwithstanding anything to the contrary herein, the agreement shall include the following sections from the Program Agreement: Motivate's right to reduce the fleet size for emergencies or upgrades, Section 18.3 regarding Motivate's right to contest any finding by the City of an Event of Default and Events of Force Majeure.

Exhibit A

Hybrid Bike Share Supplemental Regulations

Definitions:

1. Hybrid Bike: A bike capable of docking into a station and locking to itself, a city rack or other permanent structure. Dockless bikes that do not lock to docking stations shall be considered hybrid bikes for the purpose of these regulations.
2. Rebalancing Node: A location designated for receiving hybrid, “lock-to” bikes as part of rebalancing activities.

A. Operator Responsibilities

- (1) For legitimate reports of improper or unsafe parking submitted through a City’s 311 system (including website or mobile app) or public call-center system, Operator must:
 - (a) Address complaints within 3 hours during business hours (Monday-Friday, 9am-6pm) and within 12 hours during non-business hours and on weekends;
 - (b) Notify the City via email, and notify the person who made the complaint, when a complaint has been addressed and is considered closed; and
 - (c) Close the complaint using the 311 platform, and upload a photograph to the 311 website as evidence that the complaint was addressed.
- (2) Operator may be charged an Improper Parking Fee if any of Operator’s Hybrid Bikes are found to be improperly parked, and not removed within the time period specified in Section (A) (1) (a).
- (3) Operators shall provide a plan to prevent Hybrid Bikes from being misplaced in bodies of water. In addition, Operators shall provide for approval their Standard Operating Procedures (SOPs) for retrieval of Bikes from bodies of water.

B. Vehicle Specifications

- (1) Customers using Hybrid or Dockless Bikes must be provided with an easily accessible, user-friendly method, within the Operator’s mobile application, to notify Operator of any safety or maintenance issue with the Bike. In addition, a phone number for reporting safety or maintenance issues must be conspicuously printed on every Bike. Bikes reported as damaged or inoperable must be taken out of service immediately and remain out of service until repaired.
- (2) Operators shall explain how damaged vehicles are repaired or recycled, and what efforts will be made to reduce landfill waste. All batteries and other potentially toxic materials must be disposed of or recycled, per state law, at an appropriate recycling facility.

C. Parking

- (1)** Operators shall submit for approval a set of typical plans or drawings showing where their Hybrid Bikes are intended to be parked within the public right of way under several example roadway and land use types.
- (2)** Operators shall not deploy or rebalance their Hybrid Bikes in a way that violates the terms of their encroachment permit, impedes the regular flow of travel in the public way, or in any way impedes the clearance on sidewalks needed for Americans with Disabilities Act (ADA) compliance. Operators shall only deploy or rebalance their Hybrid Bikes in the landscape/furniture zone of the sidewalk, preferably within a bicycle rack, an on-street bike corral, or in another area specifically designated for bicycle parking. Improperly parked Bikes are subject to fines.
- (3)** Operators shall inform Customers on how to properly park a Hybrid Bike. Operators shall report to the City, on a quarterly basis, the effectiveness of efforts to enforce proper parking within their mobile application.
- (4)** Hybrid Bikes shall be upright when parked.
- (5)** Hybrid Bikes shall not be parked in the landscape/furniture zone adjacent to or within:
 - (a)** Disabled parking zone, or any other accessible route that would otherwise create a barrier to accessibility;
 - (b)** Curb ramps;
 - (c)** Red curb zones;
 - (d)** Loading zones;
 - (e)** Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
 - (f)** Locked to street furniture that requires pedestrian access (for example - benches, parking pay stations, bus shelters, transit information signs, etc.);
 - (g)** Entryways; or Driveways.
- (6)** Any Hybrid Bike that is parked in one location for more than 7 consecutive days without moving may be removed and taken to a City facility for storage at the expense of the Operator.
- (7)** Operators shall institute geo-fencing around designated bike parking areas and implement in-app technology to require their use in high-density areas.
- (8)** Operators shall be responsible for removing Hybrid Bikes that have a dead battery or are damaged from the public right-of-way.
- (9)** Operators shall implement "No Parking" zones in all areas the City has prohibited Bike parking within 72 hours of being notified by the City of the parking restriction.

(10) If Operator deploys Hybrid Bikes with locking mechanisms that attach to fixed objects:

- (a) Hybrid Bikes may not be parked in any way that obstructs curb ramps or the pedestrian path of travel.
- (b) Hybrid Bikes may not be attached to bus stop signs, trees, fire hydrants, or private property.
- (c) Hybrid Bikes locked to bike racks shall be positioned parallel to inverted U or circle bike rack or perpendicular to a wave style rack.
- (d) No more than one Hybrid Bike shall be locked to an inverted bike rack, except within a Rebalancing Node
- (e) Hybrid Bikes locked in a way that violates this section are subject to fines and impoundment.

D. Service Area

- (1)** Permission to operate the Bike Share System outside the public right of way of the City shall require approval from the appropriate department, agency, or property owner(s).
- (2)** Operator shall have a means of communicating with the User when a Hybrid Bike has been parked in a non-permitted area. The communication to the User shall be sent electronically at the end of the ride.

E. Community Engagement

- (1) Operators must provide a plan for community engagement, including a list of planned presentations, activities and events with community based organizations, Business Improvement Districts, and other key stakeholders in the service area.