

EXHIBIT A – SERVICES CONTRACT**CONTRACT NO.** _____

for

Bikeshare System in the City of Portland

This Contract, made and entered into this _____ day of _____, 2012, by and between Alta Bicycle Share, Inc. a Portland, OR Corporation, hereinafter called CONTRACTOR, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City. This Contract may refer to the City and CONTRACTOR individually a "Party" or jointly as the "Parties."

WITNESSETH:

ARTICLE I. The Parties hereto mutually covenant and agree to and with each other as follows:

1. SCOPE OF WORK: The CONTRACTOR agrees to perform the services described in the Contract Documents (alternatively, the "Work"). The primary purpose of the Work is for the CONTRACTOR to design, acquire, install, implement, and manage a bike-sharing Service of 75 stations and 750 bikes to the public at large (the "Project") at locations approved by the City. The City is providing funding for this Project through a Surface Transportation Program grant from the Oregon Department of Transportation ("Grant Funds"). The Grant Funds are in a fixed amount, and City shall have no liability for expenditure of any funds by CONTRACTOR beyond the maximum amounts identified in this Agreement. The Grant funds will be provided to the CONTRACTOR on a reimbursable basis. It shall be the CONTRACTOR's responsibility to provide the specific services set forth in the Scope of Work attached hereto as Attachment A. Nothing in the Contract Documents shall be construed to limit the CONTRACTOR's responsibility to manage the details and execution of its Work, it being understood that the City is relying on CONTRACTOR's experience with designing, conducting, managing and operating similar projects in other cities. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor, and other services necessary for the completion of the project described herein.

The CONTRACTOR agrees to purchase all equipment in quantities mutually agreed upon between CONTRACTOR and City, and described in the CONTRACT DOCUMENTS as "Capital Equipment." Capital Equipment and Launch Costs shall be priced at the unit costs shown in Exhibits B and C. Grant and/or sponsorship funds shall pay for such costs. Reimbursement of the CONTRACTOR using federal funds will require a 10.27% match to be paid through sponsorship funds.

2. EFFECTIVE DATE AND DURATION: The initial term of this Contract shall not exceed five years and the term shall begin on the date of the execution of the contract by City and CONTRACTOR. The Parties may agree, by mutual consent, to extend this Contract for an additional 5 year period, taken individually or in multiple years. At least thirty (30) days prior to the expiration of the initial term, or extension, the Parties shall commence discussions if they desire to extend the Contract. The CONTRACTOR shall provide a written extension Proposal within fifteen (15) calendar days following the City's request for such a Proposal. However, nothing binds or requires either Party to extend this Contract.

3. CONSIDERATION: The City agrees to reimburse CONTRACTOR a sum not to exceed \$1,820,000 after the completion of Tasks 1 – Task 4 as described and in Attachment A. Interim payments shall be made to the CONTRACTOR according to the schedule identified in Attachment A.

4. **INVOICING:** The City of Portland is a tax-exempt governmental agency. Prices shall not include federal, state, local, or other taxes designated now or hereafter, unless the City is responsible therefore. The CONTRACTOR shall submit billings in a timely fashion. Invoicing and all payments to CONTRACTOR must meet the Task and Completion Payment Schedule outlined in the Scope of Work, in Attachment A. Invoices shall be sent to:

City of Portland
Portland Bureau of Transportation
1120 SW 5th Avenue, Suite 800
Attn: Steve Hoyt-McBeth
Portland, OR 97204

CONTRACTOR is at all times solely responsible for billing accuracy and timeliness; CONTRACTOR shall provide invoices for the goods and services to the City in PDF form, delivered electronically. Invoices will not be processed for payment until receipt of a properly completed invoice and until all invoice items are received and satisfactory performance of CONTRACTOR has been attained. Invoice payment terms including any offered prompt payment discounts shall start on the date of the invoice.

5. **INVOICE PAYMENT:** Invoices will be submitted for payment based on the Task Completion and Payment Schedule outlined in the Scope of Work. Invoices shall identify the goods and services, the unit price, quantity, extended price, order number and invoice total. Billing details may be agreed upon between the Parties. Invoicing for goods and services shall at all times be in arrears. Invoices for payment shall be provided to the City within ninety (90) days of successful delivery of the billed goods and services. City will pay invoices within 30 days of receipt

Revised invoices or billing adjustments shall apply only to goods and services that can be verified by the City. Requests for such adjustments shall be submitted in writing to the City within six (6) months of acceptance of the goods and services, shall reference the original invoice in which the error was made, and contain the level of detail defined in billing detail above. Billing adjustments shall not be submitted to the City in any form other than a paper document. The City shall pay undisputed portions of disputed or incorrect invoices where the City can easily identify the undisputed portion. Failure by the City to pay any portion of or the entire invoiced amount based on CONTRACTOR billing errors, goods and services that fail to comply with this Contract, or disputed charges shall not constitute default under this Contract. Payment of an amount less than the total amount due on all unpaid invoices shall be any particular amount or item, which is subject to any claim of error or dispute between the Parties, without prior written City approval.

ARTICLE II. Work under this contract shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer or the Auditor.

6. **INSURANCE – PROOF OF COVERAGE:** The insurance requirements are as follows.

Commercial General Liability Insurance – Public Liability and Property Damage

The CONTRACTOR shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 in aggregate that protects the CONTRACTOR and the City and the State of Oregon and their officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from the CONTRACTOR's work under this Contract

The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the City and State of Oregon and their officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the

insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the Contract, the CONTRACTOR shall provide a new policy with the same terms. The CONTRACTOR agrees to maintain continuous, uninterrupted coverage for the duration of the Contract.

Automobile Liability

Automobile liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the CONTRACTOR. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the CONTRACTOR.

Workers' Compensation

Prior to the performance of any work under a Contract awarded by the City, the CONTRACTOR shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the CONTRACTOR shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the Contract.

Certificate of Insurance

As evidence of the required insurance coverage, CONTRACTOR shall furnish acceptable insurance certificates to the City with the return of the signed Contract. The certificates shall specify the City of Portland and State of Oregon as additional insureds and shall include a 30-day notice of cancellation clause.

Notwithstanding the naming of additional insured, said policy will protect each insured in the same manner as though a separate policy has been issued to each; but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts.

Warehouse Legal / Bailee's Legal Liability

CONTRACTOR shall maintain Property Insurance providing coverage to property/equipment procured, owned or provided that is in the Contractor's care, custody, control. Coverage shall cover the City and State of Oregon's interest in such property (if any) and provide coverage for perils of direct physical damage on an "all risks" basis, including but not limited to fire, theft, vandalism, flood and earthquake perils. Minimum limits to be \$1,000,000 subject to the full replacement value of such property. Minimum limits to be \$1,000,000 subject to full replacement value of such property.

Such property coverage shall extend to cover materials, equipment, labor, and profit during installation. Coverage shall include following terms/conditions:

- A. Shall be written for 100% of the replacement cost values.
- B. Deductible maximum \$10,000 per occurrence.
- C. Name the City of Portland and State of Oregon as an Additional Insureds as respects their interests.
- D. Waiver of Subrogation in favor of the City of Portland.

ARTICLE III. In consideration of the premises, and in accordance with the provisions for acceptance and payment for work set forth in these Standard Terms and Conditions and Special Terms and Conditions, the City and CONTRACTOR hereby agrees as follows:

STANDARD TERMS AND CONDITIONS

7. **INDEPENDENT CONTRACTOR STATUS:** The CONTRACTOR is engaged as an independent CONTRACTOR and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. The CONTRACTOR, its subCONTRACTORS, and their employees are not employees of the City and are not eligible for any benefits through the City including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.
8. **NO THIRD PARTY BENEFICIARIES:** CONTRACTOR and City are the only Parties to this Contract and are the only Parties entitled to enforce its terms. Nothing in this Contract gives, assigns or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.
9. **SUCCESSORS IN INTEREST:** The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and approved assigns.
10. **SURVIVAL:** The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.
11. **COMPLIANCE WITH APPLICABLE LAW:** In connection with its activities under this Contract, CONTRACTOR shall comply with all applicable federal, state and local laws and regulations. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this Contract. The following additional conditions apply to this solicitation and any resultant purchase order or contract: Attachments A through C and Appendix A as attached hereto.

The CONTRACTOR must be in compliance with the laws regarding conducting business in the City of Portland before an award may be made and shall be responsible for the following:

Certification as an EEO Affirmative Action Employer: The CONTRACTOR is certified as an Equal Employment Opportunity Employer as prescribed by Chapter 3.100 of the Code of the City of Portland through November 15, 2014. The certification will be maintained throughout the duration of the Contract.

Non-Discrimination in Employee Benefits (Equal Benefits): The CONTRACTOR has complied by providing the Equal Benefits Compliance Worksheet/Declaration Form indicating: Full Compliance, Option B.

Business License: The CONTRACTOR license # 733837 is in compliance with the City of Portland Business License requirements as prescribed by Chapter 7.02 of the Code of the City of Portland and will be maintained throughout the duration of this Contract.

Wage Rates: State of Oregon, Bureau of Labor and Industries (BOLI) wage rates are required for all work on contracts that total \$50,000 and above.

The City has determined this Contract is not subject to Prevailing Wage Rates.

12. **GOVERNING LAW / VENUE:** The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of laws provisions. Any action or suits involving any question arising under this Contract shall be brought in the appropriate court in Multnomah County, Oregon. By executing this Contract the CONTRACTOR agrees to personal jurisdiction of the Oregon courts.

13. NONDISCRIMINATION: CONTRACTOR agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. CONTRACTOR also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS Chapter 659.425, and all regulations and administrative rules established pursuant to those laws.

14. INDEMNITY: CONTRACTOR shall hold harmless, defend, and indemnify the City of Portland and the State of Oregon, their officers, employees, and agents, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, resulting from or arising out of the activities of CONTRACTOR or its officers, employees, subCONTRACTORS, or agents including intentional acts, or of its subCONTRACTORS, agents or employees under this Contract. CONTRACTOR is not responsible for any damages caused by the actions of the City, its officers, employees and agents.

15. ASSIGNMENT OF ANTI-TRUST RIGHTS: By entering into a contract, the CONTRACTOR, for consideration paid to the CONTRACTOR under the Contract, does irrevocably assign to the City of Portland any claim for relief or cause of action which the CONTRACTOR now has or which may accrue to the CONTRACTOR in the future, including, at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the CONTRACTOR by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the CONTRACTOR's obligation under this Contract.

In the event the CONTRACTOR hires subCONTRACTORS to perform any of the CONTRACTOR's duties under the Contract, the CONTRACTOR shall require the subCONTRACTOR to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subCONTRACTOR by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any goods or services provided to the subCONTRACTOR by any person, in whole or in part, for the purpose of carrying out the subCONTRACTOR's obligations as agreed to by the CONTRACTOR in pursuance of the completion of the Contract.

In connection with this assignment, it is an express obligation of the CONTRACTOR that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Portland. It is an express obligation of the CONTRACTOR to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

- A. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to the CONTRACTOR, it shall promptly pay over to the City of Portland its proportionate share thereof, if any, assigned to the state hereunder.

16. SEVERABILITY: In the event that a court, government agency, or regulatory agency with proper jurisdiction determines that this Contract, or any provision of this Contract, is unlawful, this Contract, or that provision of the Contract to the extent it is unlawful, shall terminate. If a provision of this Contract is terminated but the Parties can legally, commercially, and practicably continue without the terminated provision, the remainder of this Contract shall continue in effect.

17. FUNDING: In the event the City, during the adoption of the City's annual budget, reduces, changes, eliminates, or otherwise modifies the funding for any of the projects identified herein, the

CONTRACTOR agrees to abide by any such decision including revision, suspension, or termination of services.

18. ASSIGNMENT AND SUBCONTRACTING: This Contract or any interest therein shall not be assigned or subcontracted to any other person or entity without the prior written consent of the City of Portland. In the event of transfer without prior written consent, the purported transfer is void and the CONTRACTOR remains liable for performance of the Contract. Notwithstanding City approval of a subcontractor, the CONTRACTOR shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the CONTRACTOR hereunder. The CONTRACTOR agrees that if subcontractors are employed in the performance of this Contract, the CONTRACTOR and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

19. LIENS: CONTRACTOR shall not permit any claim to be filed or prosecuted against the City or any lien against the property purchased in connection with this Contract and agrees to assume responsibility should such lien or claim be filed.

20. SUSTAINABLE PROCUREMENT: Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, the CONTRACTOR is encouraged to incorporate these Principles into their scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, recyclable in local recycling programs, is made from recycled materials, and/or is collected by the vendor for reuse/recycling.

21. FORCE MAJEURE: Neither City nor CONTRACTOR shall be held responsible for performance if its performance is prevented by unforeseeable acts or events beyond the Party's reasonable control including, but not limited to: acts of God; fire, flood, earthquakes or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities; or any other circumstances that are not within its reasonable control.

22. AMENDMENTS: All changes to this Contract, including changes to the scope of work and Contract amount, must be made by written amendment and approved by the Chief Procurement Officer to be valid. The City's Chief Procurement Officer is authorized to execute amendments to this Contract in accordance with City Code 5.33.040.A.6 provided such amendments are in writing, signed by both Parties, and approved by the City Attorney's Office. CONTRACTOR understands that City employees have no actual or apparent authority to enter into amendments, except as may be specifically granted by the City Council to the Chief Procurement Officer, or to waive the approval of the City Attorney's office.

23. NON-WAIVER: No waiver, consent, modification, or change of terms of this Contract shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purposes given. The failure of the City to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

24. COORDINATION WITH OTHER CONTRACTORS AND OTHER SERVICES: The

CONTRACTOR shall cooperate fully with other CONTRACTORS and City employees providing systems or support to the City during installation, operation, or maintenance of the goods and services. This includes planning for and integration of the goods and services provided under this Contract with those provided by others. Further, CONTRACTOR shall make every reasonable effort to cooperate with City to minimize and/or prevent any degradation of the other computer and telecommunications systems, equipment, or services of the City by the installation, operation, or maintenance of the goods and services. CONTRACTOR's failure to cooperate with the City and other CONTRACTORS may be grounds for termination as provided herein.

25. ACCESS TO RECORDS: CONTRACTOR, and its subCONTRACTORS, shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, CONTRACTOR shall maintain all other records pertinent to the Contract and the project and shall do so in such a manner as to clearly document CONTRACTOR's performance. The City, ODOT, the Oregon Secretary of State's Office (OSS), FHWA and the Comptroller General of the United States and their duly authorized representatives shall have access (CGUS), and CONTRACTOR shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of CONTRACTOR that are pertinent to the Contract to perform examinations and audits and make excerpts and transcripts. CONTRACTOR shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Any cost data submitted by CONTRACTOR pursuant to this Contract may be shared with ODOT, FHWA, OSS and CGU, as necessary, for audit purposes. Copies of applicable records shall be made available upon request.

26. AUDITS: The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by ACCESS TO RECORDS. Audits shall be conducted in accordance with generally accepted auditing standards.

If an audit discloses that payments to the CONTRACTOR were in excess of the amount to which the CONTRACTOR was entitled, including the calculation of the Operations Fees, Operation Costs or of Profit Sharing, then the CONTRACTOR shall repay the amount of the excess to the City. The costs of such audit shall be borne by the City unless such audit reveals an under reporting of profits by Alta in excess of Fifty Thousand (\$50,000) dollars with respect to any individual fiscal year, or in excess of an aggregate of One Hundred Thousand (\$100,000) for multiple fiscal years, in which case CONTRACTOR shall pay all reasonable costs, expenses and fees related to the audit. In either event, any underpayment (together with interest thereon at the rate of twelve percent (12% per annum) shall be remitted by CONTRACTOR to the City (together with the costs of audit, if applicable) within 30 days of the date of the audit report. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies as provided under EARLY TERMINATION OF CONTRACT and REMEDIES. In addition, the CONTRACTOR agrees to abide by the standards of the Office of the Comptroller set forth in May, 2002 Office of Justice Programs (OJP) Financial Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by the CONTRACTOR for a minimum of six (6) years for purposes of State of Oregon or the OJP Financial Guide from the Office of the Controller and apprise itself of all rules and regulations set forth.

27. EMPLOYEES NOT TO BENEFIT: No City employee or elected official of the City shall be admitted to any share or part of this Contract or to any benefit that may arise there from; but, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

SPECIAL TERMS AND CONDITIONS

28. CITY FURNISHED PROPERTY: No materials, labor or facilities will be furnished by the City unless otherwise provided for within this Contract.

29. ADDITIONAL PURCHASES: The City reserves the right to purchase additional materials beyond the quantities stated in the bid documents at prices then offered by the equipment provider. Such additional purchases are not guaranteed and will be made at the City's sole discretion. CONTRACTOR agrees to extend identical equipment prices under the same terms and conditions to all regional public agencies. Each participating agency will execute its own Contract with the CONTRACTOR for its requirements.

Following any initial purchase(s) by the City of Portland, additional quantities of the materials listed herein may be purchased to replace or supplement existing supplies and will be funded by various general funding sources of the various agencies.

30. RIGHT TO CHANGE: The City reserves the right to order changes to the goods, materials, equipment and services outlined herein. The City and the CONTRACTOR shall determine a fair and equitable cost and if required, additional time for such changes. All such changes shall be ordered in writing and agreed to by the Parties.

31. NOTICE: Except as otherwise stated in this Contract, any notice or demand to be given under this Contract shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

CONTRACTOR:

Alta Bicycle Share
711 SE Grand Avenue
Portland, OR 97214

CITY:

City of Portland
Bureau of Transportation
1120 SW 5th Avenue, Suite 800
Portland, OR 97204

Attn: Mia Birk

Steve Hoyt-McBeth

If either Party changes its address or if a Party's representative changes, the other Party shall be advised of such a change in writing, in accordance with this section.

32. EARLY TERMINATION OF CONTRACT: The City and the CONTRACTOR, by mutual written agreement, may terminate the Contract at any time. The City, on thirty (30) days written notice to the CONTRACTOR, may terminate this Contract for any reason deemed appropriate in its sole discretion. Either the City or the CONTRACTOR may terminate this Contract in the event of a material breach of the Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice of the breach and the Party's intent to terminate. If the Party has not entirely cured the breach within thirty (30) days of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

33. SUSPENSION OF THE WORK The City may at any time give notice in writing, by electronic mail, or by facsimile to the CONTRACTOR to suspend this Contract. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. In no event shall the CONTRACTOR be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

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- 34. PAYMENT ON EARLY TERMINATION** In the event of termination under EARLY TERMINATION OF CONTRACT hereof, the City shall pay the CONTRACTOR for goods and services in accordance with the Contract prior to the termination date and delivered to City provided that such goods and services conform to Contract specifications and are of use to the City. In the event of termination under EARLY TERMINATION OF CONTRACT hereof, by the City due to a breach by the CONTRACTOR, then the City shall pay the CONTRACTOR for goods delivered and services performed in accordance with the Contract prior to the termination date subject to set off of excess costs, as provided for in Remedies. In the event of early termination all of the CONTRACTOR's work product shall become and remain property of the City. Under no circumstances shall the City be subject to early termination penalties for recurring charges for goods or services that the City cancels during the term of this Contract.
- 35. REMEDIES:** In the event of termination under EARLY TERMINATION OF CONTRACT by the City due to a breach by the CONTRACTOR, then the City may procure services outstanding from another CONTRACTOR. The CONTRACTOR shall be liable for additional re-procurement costs incurred by the City. The City also shall be entitled to any other equitable and legal remedies that are available. Except as expressly contained in this Contract, the remedies for a breach of this Contract shall not be exclusive, or construed as a limitation on any other equitable and legal remedies that are available or may become available.
- 36. PERMITS AND LICENSES:** The CONTRACTOR shall be required to have or obtain, at their expense, any and all permits and licenses required by the City and/or County, state and Federal (except FCC radio licenses) for stations on private property pertaining to the materials and services to be provided.
- 37. INTELLECTUAL PROPERTY:** The City requires the following regarding copyrighting and patent pending on work products pertaining to this Contract:
- a. Copyright: All work products of the CONTRACTOR which result from this Contract are the exclusive property of the City. If this Contract results in a copyright, the City of Portland reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for governmental purposes, the work or the copyright to any work developed under this Contract and any rights of copyright to which the CONTRACTOR or its sub-vendor, purchases ownership with grant support. At termination of contract, all necessary software and firmware licenses shall be made available to the City with applicable fees.
 - b. Patent: If this Contract results in the production of patentable items, patent rights, processes, or inventions, the CONTRACTOR or any of its sub-vendors shall immediately notify the City. The City will provide the CONTRACTOR with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.
- 38. SPECIFICATIONS:** This Contract authorizes the CONTRACTOR to provide and the City to procure those goods, materials, equipment and services, and establishes the terms and conditions for the City to obtain said goods, materials, equipment and services from the CONTRACTOR. Goods, materials, equipment and services to be provided under this Contract are described in the Attachments hereto. The CONTRACTOR shall provide to the City those goods, materials, equipment and services described in the attachments in accordance with the prices shown herein. After execution of this contract, City shall enter into a no-cost lease with the CONTRACTOR for use of the Capital Equipment secured on the City's behalf. Payment shall be made only in accordance with the payment schedule identified herein.
- 39. WARRANTY:** The CONTRACTOR shall guarantee its products to be free from defects in materials and workmanship, given normal use and care, over the period of the manufacturer warranty which will be five (5) years. The CONTRACTOR shall agree to repair and/or immediately replace

without charge (including freight inbound and outbound) to City Users any product or part thereof, which proves to be defective or fails within the warranty period as specified

The CONTRACTOR represents and warrants that (i) CONTRACTOR shall perform all Services set forth herein in a good and workmanlike manner, in conformance with the Specifications and requirements of the Contract, and in accordance with the highest applicable professional and/or industry standards; (ii) CONTRACTOR warrants that each of CONTRACTOR's employees assigned to perform Services has the proper skill, training, and background to be able to perform Services in a competent, timely, and professional manner and that all Services shall be so performed; and (iii) CONTRACTOR shall, at all times during the term of the Contract, maintain and keep current all licenses and certifications required to perform the work set forth in the Contract.

CONTRACTOR represents and warrants that it is in compliance with, and for the duration of the Contract shall remain in compliance with, the standards and requirements of ORS 279.835 (4).

40. PROPRIETARY AND CONFIDENTIAL INFORMATION: The Oregon Public Records Law, ORS 192.410 et seq. strictly governs the City's treatment of requests for public records pertinent to this Contract.

CONTRACTOR agrees to hold in confidence any and all information of the City's it receives while performing any of the contemplated function of the Contract and shall not disclose any such information to third parties.

41. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS: The CONTRACTOR shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representatives of the City, except with prior specific written authorization from the City.

CONTRACTOR shall not issue any news release or public announcement pertaining to this Contract or the project without prior written approval of the City, which may be withheld in the City's sole discretion. A minimum of three (3) business days notice is required for a response to a request for such approval. If approval is not issued within the three (3) business day period, the request shall be deemed denied.

42. INTERGOVERNMENTAL CO-OPERATIVE PURCHASING: The CONTRACTOR having submitted a Proposal agrees to extend identical prices and services under the same terms and conditions to all public agencies. Quantities stated in this bid reflect the City of Portland usage only.

A public agency wishing to purchase items will execute its own contract with the awarded CONTRACTOR for its requirements. The CONTRACTOR shall provide quarterly usage reporting of the City of Portland and that of other public agencies. The CONTRACTOR, by written notification, may decline to extend the prices and terms of this Contract to any and/or all other public agencies.

43. UNIFORM COMMERCIAL CODE: The provisions of this Contract are not to be construed as exclusive remedies or as a limitation upon rights or remedies that may be or may become available under ORS Chapter 71-83 (Uniform Commercial Code).

44. CLEAN AIR AND CLEAN WATER ACT: Consultant shall perform all services and provide all deliverables required under the Contract in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

45. BUY AMERICA: The CONTRACTOR shall limit the quantity of foreign materials incorporated into the Project as follows. Section 635.410 of Title 23, Code of Federal Regulations, and the Intermodal Surface Transportation Efficiency Act require that all iron or steel manufacturing processes, including without limitation the casting of ingots, for iron or steel materials permanently incorporated into the Project

shall occur in the United States, unless the cost of foreign-origin iron or steel materials does not exceed one-tenth of one percent (0.1%) of the Contract amount or \$2,500, whichever is greater. The CONTRACTOR shall not incorporate foreign-origin iron or steel materials in excess of this amount into the Project. All foreign-origin iron or steel materials incorporated in the Project in excess of the amount indicated above shall be removed and replaced with domestic iron or steel materials at the CONTRACTOR's expense. For purposes of this specification, the cost of foreign-origin iron or steel materials shall be the value of the iron or steel products as of the date they are delivered to the Project site.

Manufacturing processes include without limitation the application of coatings to finished iron or steel products or components. Coatings include epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the steel or iron product or component.

The CONTRACTOR shall provide the City with manufacturers' certificates verifying the origin before incorporating any iron or steel products into the Project. Unless a manufacturer's certificate has been provided to the City, the materials shall be considered of foreign origin. The CONTRACTOR shall retain manufacturers' certificates verifying the origin of all domestic iron or steel Materials for three years after the date of final payment for the Project, and shall furnish copies to the City upon request.

46. NON-DISCRIMINATION: During the performance of this Contract, the CONTRACTOR for itself, its assignees and successors in interest agrees as follows:

- a. **Compliance with Regulations:** CONTRACTOR shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- b. **Nondiscrimination:** CONTRACTOR, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subCONTRACTORS, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subCONTRACTOR or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. **Information and Reports:** CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, Oregon Department of Transportation (ODOT), the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to City, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this Contract, City shall impose such Contract sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:

- (a) Withholding of payments to CONTRACTOR under the Contract until CONTRACTOR complies, and/or
- (b) Cancellation, termination or suspension of the Contract, in whole or in part.

f. Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as City, ODOT, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subCONTRACTOR or supplier as a result of such direction, CONTRACTOR may request City, ODOT, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

47. DISADVANTAGED BUSINESS ENTERPRISE PROVISIONS: CONTRACTOR shall comply with applicable provisions and reporting requirements included in Attachment B - Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions.

48. FALSE CLAIMS

- a. CONTRACTOR understands and acknowledges it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Contract, CONTRACTOR certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Contract or the Project for which the Services are being performed, including but not limited to CONTRACTOR's Proposal and any invoices, reports, or other deliverables.
- b. CONTRACTOR shall immediately disclose (in writing) to City whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, the CONTRACTOR has credible evidence that a principal, employee, agent, or subCONTRACTOR of the CONTRACTOR has committed—
 - (A) A violation of the Oregon False Claims Act; or
 - (B) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. The CONTRACTOR must include subsections (a) and (b) of this section in each subcontract the CONTRACTOR may award in connection with the performance of the Contract. In doing so, the CONTRACTOR may not modify the terms of those subsections, except to identify the subCONTRACTORS or sub grantee that will be subject to those provisions.

49. TAX LAW CERTIFICATION: Any individual signing on behalf of CONTRACTOR hereby certifies under penalty of perjury that:

a. CONTRACTOR has provided its correct TIN to City; (b) CONTRACTOR is not subject to backup withholding because (i) CONTRACTOR is exempt from backup withholding, (ii) CONTRACTOR has not been notified by the IRS that CONTRACTOR is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Consultant that CONTRACTOR is no longer subject to backup withholding; and (c) s/he is authorized to act on behalf of CONTRACTOR, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of her/his knowledge, CONTRACTOR is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321, and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620.

50. ENTIRE CONTRACT: This Contract and its Attachments represent the entire Contract between the Parties. This Contract is a final, complete exclusive statement of the terms thereof, and

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supersedes and terminates any prior Contract, understanding, or representation between the Parties with respect thereto, whether written or oral.

ARTICLE IV. This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement. It is understood and agreed by the Parties hereto that:

1. Any reference in this Contract to the scope of work or specifications is intended as a convenience to the Parties in administration of the Contract. Therefore, in the absence of an express statement to the contrary herein, any restatement or partial restatement in this Contract of any provision of the scope of work or specifications is not intended, nor shall be construed to change, alter, modify, amend, or delete the requirements of the scope of work or specifications.
2. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and State of Oregon shall be followed with respect to this Contract.
3. The CONTRACTOR certifies that no officer, agent or employee of the City who has a pecuniary interest in this Agreement has participated in preparation of the Proposal or resulting Agreement, that the Proposal was made in good faith without fraud, collusion, or connection of any kind with any other Offeror of the same Proposals, and that the Offeror is competing solely in its own behalf without connection with, or obligation to any undisclosed person or firm.
4. The City and CONTRACTOR may conduct this transaction, including any Contract amendments, by electronic means, including the use of electronic signatures.

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IN WITNESS WHEREOF, CONTRACTOR and City have caused this Contract to be executed by their duly authorized representative(s), all on the day and year first above written.

XXXXX

by _____

Approved as to form:

City Attorney

Name, Title and Date

Address: 711 SE Grand Avenue
Portland, OR 97214

Telephone No: 503-230-9862

Fax No: 503-230-9864

CITY OF PORTLAND

by _____
Chief Procurement Officer Date

INITIALS: XXXXX

DATE: XXXXX

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ATTACHMENT A

1. SCOPE OF WORK

1a. Scope of Work Summary

CONTRACTOR will design, build, install, operate, maintain, and market a publicly available dense network of 75 stations and 750 bicycles that will make bike sharing a convenient option for the vast majority of trips within the Central City. The CONTRACTOR agrees to perform the services described in the Contract Documents (alternatively, the "Work"). The primary purpose of the Work is for the CONTRACTOR to design, acquire, install, implement, and manage a bike-sharing Service to the public at large (the "Project") at locations approved by the City. The City is providing funding for this Project through Surface Transportation Program grant funds ("Grant Funds"). The Grant Funds are in a fixed amount, and City shall have no liability for expenditure of any funds by CONTRACTOR beyond the maximum amounts identified in this Agreement. The grant funds will be distributed on a reimbursement basis only and will require the CONTRACTOR to meet all applicable federal requirements. It shall be the CONTRACTOR's responsibility to provide the specific services set forth. Nothing in the Contract Documents shall be construed to limit the CONTRACTOR's responsibility to manage the details and execution of its Work, it being understood that the City is relying on CONTRACTOR's experience with designing, conducting, managing and operating similar projects in other cities. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor, and other services necessary for the completion of the project described herein.

The Goals of a bike share system in Portland are:

1. Implement a bike share system to provide a low cost trip option for most trips within the Central City.
2. Provide an immediate increase in the number of bike trips and support Portland's goal of making the bicycle the preferred mode for trips under three miles, with 500,000 bike share trips in the first 12 months of service.
3. Bring new people to bicycling by reducing financial barriers to transportation and a complementary to transit service for underserved populations.
4. Provide a low cost transportation option for all trips under three miles in Portland's Central City.
5. Strengthen the Portland economy by:
 - a. Creating jobs for Portlanders who are low-income and traditionally underserved with at least 50% of CONTRACTOR paid staff hours represented by women, people of color, low income people, veterans and formerly incarcerated people.
 - b. Building the economic strength of Portland's athletic and outdoor industry cluster as identified in the *Portland Economic Development Strategy*.
 - c. Increasing Portlanders' disposable income by reducing transportation costs.
6. Increase the capacity of transit by creating improved last mile connections within Portland.
7. Increase participation of the private sector in promoting bicycling and active transportation.
8. Increase the visibility of bicycling and strengthen Portlanders' perception of bicycling as a form of transportation.
9. Reduce single occupancy trips to reduce congestion, improve air quality and achieve the carbon-reduction goals in *Portland's Climate Action Plan*.
10. Improve the health of Portlanders by increasing access to active transportation.
11. Provide a transportation choice complementary to transit service for underserved populations.
12. Financial viability such that combined system revenues from memberships, user fees, and sponsorship in excess of CONTRACTOR costs for the Project.

City will provide reimbursement to CONTRACTOR for up to \$1.8 million in federal funds for acquisition of sponsor(s), creation of a marketing plan, development of a station plan and service area (including participation at one large public meeting, coordinated meetings with PBOT staff for all Neighborhood Coalitions and other meetings and up to 16 public meetings), and purchase of System. Reimbursement will be contingent on meeting the conditions for approval of federal funds. In addition to the federal funds,

the City is open to pursuing a number of funding opportunities including grants and public/private partnerships. The City of Portland and CONTRACTOR will undertake research to determine the best approach to ensuring user safety, including helmet usage. This will include exploration of: a technological solution with helmets, bikes or stations; a social campaign to encourage helmet availability and usage; or a combination of these.

Major Tasks are:

Task 1: System Funding and Revenue Sharing Memorandum of Agreement

Task 2: Station Plan and Service Area Memorandum of Agreement

Task 3: Marketing Plan Memorandum of Agreement

Task 4: Acquire and Launch System

Task 5: Operate System

1b. Definitions

1. **DEFINITIONS**. The following words and phrases, when used in this Agreement, shall have the meanings described below, except where the context clearly indicates a different meaning:

Backend Software and Computer Hardware – an electronic interface enabling, among other things, Stations, Bicycles, subscriber customer service, cellular service, Customer Keys, CONTRACTOR's website, and call center to function;

Bicycle – a device propelled solely by human power, upon which a person may ride either on or astride a regular seat attached thereto, having two or more wheels in tandem, as further described in Appendix B, and as such device is required by the CONTRACTOR to perform the Work;

Crash - every incident or event involving a subscriber, Bicycle user, and/or Bicycle, resulting in personal injury to the subscriber or others, or property damage to the Bicycle or to the property of others;

Customer Key - a fare card for rental of Bicycles;

Dock – a locking mechanism contained on a Station designed to receive a Bicycle for locked storage;

Effective Date – the date on which this Agreement is executed by all parties;

Capital Equipment – Bikes, Stations and all physical components that make up the bike-share system.

Equipment Maintenance Record – detailed records of all maintenance performed on all Capital Equipment;

Fleet - one hundred percent (100%) of the number of Bicycles purchased through this Contract minus the number of stolen and unrepairable Bicycles, discovered within the area of service, that have not been replaced;

Fully Operational – one hundred percent (100%) of the Stations functional and available for use for bike-sharing Service as determined by the Project Officer;

Fully Operational Date - the date, six months and 2 weeks from the issuance of the Purchase Order by the CONTRACTOR when one hundred percent (100%) of the Stations, for which all required permits have been issued, are installed and operational;

Informational Panel - the printed material displayed inside of the Map Frame;

Map Frame - a two-sided metal informational display unit, including translucent covering and lock;

Operational Date – the date, 6 months from the issuance of the Purchase Order by the CONTRACTOR, or when the CONTRACTOR shall ensure that seventy percent (75%) of the Stations, for which all required permits have been issued, are installed and ready to be operational; whichever is shortest.

Net Profit/Loss – The sum of System Revenues, Sponsorship Revenues, Grants and Any additional secured Funding minus System Costs.,.

Operations Fee – the amount due to the CONTRACTOR for system operations, billed monthly.

Project Officer – City staff/employee or the person or persons designated by the City to oversee the Project.

Sponsorship – Funds donated by third parties to be used toward the acquisition, launch, marketing, and operation of the System. Sponsors may be provided recognition through a number of different venues depending on the amount of sponsorship. The following types of third parties shall not be eligible to participate in the sponsorship program: any business or organization that restricts membership or access based upon any category protected under the City's civil rights ordinance or state or federal law and/or any business or organization that is not legally open to, or may not legally sell its products or provide its services to citizens of all ages.

System Costs – All expenses required to purchase and operate the system in accordance with the terms of the Attachment A.

System Revenues - Funds derived for the System, including subscription fees and usage fees (less credit card fees and taxes) and funds raised through sponsorship efforts.

Service - the use of the Capital Equipment by the public at large after the Operational Date;

Site Plan - an illustration which shows the proposed location of a bike-sharing Station, with distances and dimensions from the nearest property line, all relevant public or private easements, and at least two fixed objects. The Site Plan shall depict the locations of all above and below ground structures, utilities, infrastructure, and appurtenances in the immediate vicinity;

Station - a designated area on publicly or privately owned real property, which area contains one or more of the following items made available by the CONTRACTOR to perform the Work: Bicycles, Docks, Terminal, Technical Platforms, Helmet rental device and Map Frame;

Station Protective Devices - all pavement markings/paint, islands, and/or protective bollards, at or adjacent to Station locations;

Supplies – computers, software, Terminal paper, office furniture, and office supplies;

System – the equipment, CONTRACTOR's website, and Backend Software and Computer Hardware;

Technical Platform - a base component which rests on the ground and supports the Docks, Terminal, and Map Frame;

Terminal - a kiosk which provides Bicycle rental instructions, contains payment equipment (i.e. credit card device), and includes all other means necessary for the rental of Bicycles and helmets (if found to be in Preferred plan).

1c. Task Completion and Payment Schedule

City will reimburse CONTRACTOR based on completion of the tasks listed below. Task 2 will assume a 75 Station, 750 bike system.

Task #	Task Description	Payment
1	System Funding, Financing and Revenue Sharing Agreement [insert payable sub tasks]	\$50,000
2	Station Plan and Service Area	\$50,000
3	Marketing Plan	
4	City Council review and approval of Preferred and Alternative plans	
5	Acquire and Launch System	\$1,700,000
6	Operate System	System and Sponsorship Revenues

1d. Task Detail

Task 1: System Funding, Financing and Revenue Sharing Agreement. Completion of Task 1 goes beyond the completion of business plan to the signing of a Memorandum of Agreement (MOA) with the City on revenue projections and the actual securing of sponsorship and other private and public funds needed to acquire, install and operate a 75 station, 750 bike System for five years of operation.

- Task 1A: Negotiate Operations, and Revenue Collection plan that complies with all applicable laws and regulations, including Federal grant rules, Oregon Revised Statutes, City Code and Payment Card Industry Security Standards and provides for the successful operation of System. This may include changes to the early termination clauses to ensure that the System can secure sponsors and financing and to ensure financial and operational viability. This task shall be completed before other work begins.
- Task 1B: Assist City with research into technological and encouragement solutions for increased safety and helmet usage.
- Task 1C: Submit plan for sponsorship acquisition [Payment of \$5,000]
- Task 1D: Submit media valuation report [Payment of \$5,000]
- Task 1E: Submit monthly progress reports on sponsorship acquisition
- Task 1F: Submit System Financing Report with 100% of funds secured to acquire, install and operate a 75 station, 750 bike System for five years. If the agreed upon System Financing Agreement does not provide sufficient revenues for launching a system with 750 bicycle and 75 stations for five years, the City and Alta shall negotiate a scaled approach to launching bike share in Portland in a timely manner that still achieves the targets set for the RFP, in Alta's response to the RFP, and established by contract herein as "The Goals of Bike Share System in Portland" outlined in Attachment A, 1a) *Scope of Work Summary*. The desired minimum system size is a

minimum of 50 stations and 500 bicycles. The Financing Report, at a minimum must secure the monies for five (5) years of System operation.[Payment of \$40,000]

Task 2: Station Plan and Service Area. **CONTRACTOR will provide both a preliminary station map that the City and CONTRACTOR will release for public comment and a publicly vetted final recommended station map.**

- Task 2A: Submit initial 150% System station map. Map should include station placement rationale and methodology, alternative plans which include helmet rental at stations, actual station physical location, owner of property, and parking impact. Recommended stations must comply with underlying zoning, the Americans with Disabilities Act and the City's *Private Encroachments in the Public Right-of-Way* and *Portland Pedestrian Design Guide*. Station locations must be in proposed service area and should emphasize maximizing ridership across all demographics while minimizing operating costs and the loss of on-street parking revenue. Any station location proposed for private property must receive initial oral or written expression of interest from property owner.
- Task 2B: Present initial 150% station map for public comment. Coordinate with City to present station map up to three public meetings, coordinated meetings with PBOT staff at neighborhood coalition offices and up to 16 community, neighborhood and business organization board meetings.
- Task 2C: Submit of recommended System station map that incorporates feedback from City and public meetings.
- Task 2D: Incorporate final changes of City (Final station locations subject to approval by the City Traffic Engineer). Other than code required changes, City agrees to no more than two changes to site plans.
- Task 2E: Obtain rights and permissions for all stations not sited on Bureau of Transportation property, for both placement of station, right of CONTRACTOR to conduct work on property and for public access to the site, 24 hours a day, 365 days a year to use System, including publicly and privately owned sites. Submit these written agreements to City.
- Task 2F: Develop site plans for all final station locations, providing necessary information for City to designate locations within the public ROW [Payment of \$50,000].

Task 3: Marketing Plan **CONTRACTOR will develop a marketing plan that successfully promotes bike share and results in meeting or exceeding membership sales and ridership projections from Business Plan.**

- Task 3A: Develop marketing plan based on research into potential customer markets, methods to increase ridership, bring in corporate memberships, partner with organizations throughout the community, align with other transportation activities and goals.
- Task 3B: Identify key messages for different customer target areas area.
- Task 3C: Identify social media strategies.
- Task 3D: If not already incorporated into target markets, identify strategies to engage low-income users and traditionally under-represented groups including communities of color, immigrants, refugees and individuals.

Task 3E: Develop collateral, including letterhead, system brochures.

Task 3F: Develop registration packet.

Task 4: City Council Approval of Preferred and Alternative Plans CONTRACTOR will develop and present Preferred and Alternative plans, including branding concepts, helmet options and safety encouragement.

Task 4A: Submit draft brand concept. Brand concept should incorporate target markets from Business Plan and/or title sponsor wishes.

Task 4B: Incorporate City comments on Brand concept and resubmit.

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

Task 4D: Incorporate PBOT staff feedback.

Task 4E: Submit Preferred and Alternative Plans for Council review and approval. At a minimum this plan will include recommended branding concept and the preferred and alternative options for promoting and facilitating helmet use and availability and safe bicycling behavior. Preferred or Alternative Plan should include a technological solution to helmet use, along its costs and implications for System size and station placement.

Task 4F: Incorporate any Council changes into approved Plan.

Task 5: Acquire and Launch System CONTRACTOR will purchase and coordinate all System equipment,; store and check equipment, and hire local employees and contractors; install and execute System launch.

Task 5A: Upon mutual agreement between City and CONTRACTOR on the quantities of bicycles and stations, Purchase System capital equipment from Public Bike System Company, including but not limited to spare parts, software licensing and warranties as shown in Attachment A.

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

Task 5C: Create a High Road Committee and Implement High Roads Standards to insure that the economic benefits from the Project are shared by a broad cross section of the community, using the principles outlined in Attachment C.

Task 5D: Conduct job and CONTRACTOR recruitment and hiring process, using the principles outlined in Attachment C.

Task 5E: Submit draft website to City of Portland.

Task 5F: Incorporate City's comments on website.

Task 5G: Conduct pre-launch marketing activities, including but not limited to web site launch, membership pre-sales, a "Big-Bang" launch event, and appearance at up to four (4) marketing events. (media ads).

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

Task 5G: Install 75% of Stations and Launch System.

Task 5H: Install 100% of Stations.

Task 6: Operate System (ongoing from System launch) **CONTRACTOR will operate the system under the parameters agreed upon in the Operations, Pricing, and Revenue Collection plan to be developed in Task 1a.**

1E. Task Schedule

Task #	Task Description	Completion
1	System Funding, Financing and Revenue Sharing Agreement	As soon as possible after contract signing, progress to be reviewed monthly
2	Station Plan and Service Area	6 months after contract signing
3	Marketing Plan	6 months after contract signing
4	Council review and approval of Preferred and Alternative Plans	6-9 months after contract signing
4	Acquire and Launch System	Operational Date Six (6) months after issuance of purchase order for equipment
5	Operate System	Continuously from Partially Operational Date through the end of Contract.

3. WORK PERFORMED BY THE CITY: Bureau staff shall make available sufficient hours of staff personnel as is required to meet with the CONTRACTOR and provide such information as required. The Bureau of Transportation has assigned a project manager who will oversee the work and provide support as needed.

The City shall be responsible for implementing and maintaining usual, customary and appropriate internal accounting procedures and controls, internal controls and other appropriate procedures and controls for the City. These controls will include information technology, proprietary information, and trade secret safeguards if appropriate to City work.

4. TIME IS OF THE ESSENCE: CONTRACTOR shall make every reasonable effort to meet established delivery dates and other deadlines. Circumstances that may delay the delivery of goods and services from established delivery dates and other deadlines, including excusable delays and force majeure events, shall be reported to the City immediately upon discovery. The City and CONTRACTOR shall mutually agree upon any schedule or pricing change due to excusable delays or force majeure events in writing. In the event CONTRACTOR does not meet the established delivery dates or other deadlines and CONTRACTOR has failed to cure such breach within fifteen (15) days of written notice by the City, the City may obtain the undelivered goods and/or non-performed service from another source, and no recurring charges, one-time charges, or termination charges or other penalties shall be due the CONTRACTOR. In addition, the City will be entitled to reasonable compensation as stated under REMEDIES.

5. **CONSIDERATION:** Unit price payments shall be made to the CONTRACTOR by the City on a monthly basis for the total product delivered to the City's specified location and accepted by the City. Acceptance occurs when the City authorizes payment of the invoice. Unit prices shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to the CONTRACTOR upon request. Product payments shall be in accordance with Attachment A.

6. **DELIVERY:** All equipment shall be FOB delivered to Alta, 711 SE Grand Avenue, Portland, OR 97214. CONTRACTOR may change the address for delivery by contacting the City in writing at the time or before the issuance of purchase order for bicycles and stations. All bid prices offered shall be exclusive of all shipping and delivery costs.

If installation or assembly be required, offered prices shall include all costs associated with delivery, assembly, setup, and proper disposal of packaging material. The offer price shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to the successful Offeror, upon request.

7. **PRICES AND PRICE CHANGES:** Initial Contract prices shall be as established herein. Unit prices shall remain firm through the first year of the Contract. At the end of the one-year period following the date of acceptance, price changes may be allowed herein. CONTRACTOR agrees to provide pricing for all products for which CONTRACTOR is an authorized distributor for the duration of this Contract if and when requested by the City. Following the end of the one year period referenced above, City and CONTRACTOR acknowledge that prices for goods and services furnished by CONTRACTOR under this Contract may need to be adjusted during the term of the Contract due to changes in CONTRACTOR's prices, rate plans, or product offerings. Such price changes shall be documented in writing between CONTRACTOR and City's Chief Procurement Officer as amendments.

CONTRACTOR shall submit any proposed pricing revisions in writing to the Project Manager for consideration at least thirty (30) days before the proposed effective date. All proposed price adjustments shall be calculated consistent with the methodology used to calculate the prices set forth in the CONTRACTOR's original Proposal, the CONTRACTOR shall certify this in its request for price adjustments. Price adjustments shall become effective thirty (30) days from the date of last signature on the Contract amendment document or as otherwise stated therein. Except that no increase in price adjustments shall become effective prior to a date one year following the date of acceptance. Price adjustments will only become effective by fully executed amendments, following receipt by the Project Manager of the requested price adjustment.

Attachment B

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS
(Race and Gender Neutral)**

The DBE program is administered by the Oregon Department of Transportation, Office of Civil Rights (OCR). As the City is entering into this Contract under authority granted by ODOT. The DBE Supplemental Required Contract Provisions apply the same as if ODOT were the contracting agency.

For purposes of these DBE Provisions, "Contract" means any project-specific contract, Price Agreement (PA), Work Order Contract (WOC), Task Order, or any other contract entered into with Agency. "Consultant" and "Contractor" are hereinafter referred to as "Contractor". Each Contract that includes Federal funding from FHWA/FTA/FAA must include these DBE Provisions when no DBE participation goal is assigned to the Contract by OCR.

All forms referenced or linked in these DBE Provisions are available on line at:

http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/forms.shtml#DBE_Form

- a. **DBE Goals:** This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. ODOT's overall goal for DBE participation is 16.95% for FHWA funded Contracts and 2% for FTA funded Contracts.

A DBE participation goal has not been established for this procurement.
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- b. **Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance of its contract no later than 10 calendar days from receipt of each payment Consultant receives from Agency. In addition, Contractor shall return any retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed.
- d. **Reporting Requirement:** Contractor shall report all subcontractor utilization (including any DBE participation obtained through race-neutral means) throughout the period of performance. Contractor shall submit a completed "**Summary Report of Subcontractor's Paid**" (form 734-2722) to APM no later than the fifth day of each month following date payment was made to a subcontractor or supplier. For Contracts with no DBE goal assigned, ODOT may count race-neutral DBE participation toward its overall goal, provided the DBE is performing a commercially useful function (CUF) as set forth in **49 CFR 26.55**.
- e. **Notification Requirement:** Contractor must promptly notify ODOT whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work.
- f. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (OCR). Questions related to the DBE Program may be sent via email to **ocrinforequest@odot.state.or.us** or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 355 Capitol Street NE, Room 504 Salem, OR 97301-3871 Phone: 503-986-4350 Fax: 503-986-6382

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Directory of Certified Firms: A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at:
<http://www4.cbs.state.or.us/ex/dir/omwesb/search/index.cfm?fuseaction=code>

Attachment C High Road Standards

CONTRACTOR and City agree to a three-pronged approach to equity, including: a) training and hiring staff from under-represented communities, b) offering a dynamic pricing and access approach, and c) expanding system coverage over time to underserved parts of the City.

CONTRACTOR and City recognize the importance of engaging community stakeholders from historically underserved communities to develop a meaningful and effective approach for insuring that the economic benefits derived from the Project are shared by a broad cross section of the community. City and CONTRACTOR are therefore committed to the following approach to equity:

1. By 45 days after Contract signing, City and CONTRACTOR will hold an initial meeting with representatives from the Coalition of Communities of Color to form a High Roads Committee. Other participants could include the Coalition for a Livable Future, Worksystems, Inc, Oregon Tradeswomen, Inc. and New Avenues for Youth. After the System Financing Report has been submitted by CONTRACTOR and approved by the City, The High Road Committee shall meet monthly for the first six months of the project, and shall set a regular meeting schedule thereafter.
2. The role of the High Roads Committee will be to refine, implement, monitor and enforce the High Road Standards and implementation strategy outlined in Attachment C. Committee responsibilities will include, but are not limited to: providing refinements to the equity strategies outlined in Attachment A, Scope of Work and Attachment C; providing feedback on CONTRACTOR's reports on achieving the goals related to workforce diversity, including recommended changes to program activities; creating opportunities for mentoring, capacity-building and business startups, including participating in subcontractor selection processes (e.g., design and review of Request for Proposals,); identifying new equity goals as appropriate; and developing enforcement mechanisms, including consequences for noncompliance, for these High Road Standards.

Therefore, Alta Bicycle Share, Inc. is committed to upholding the following

High Road standards, through minimum requirements for CONTRACTOR's, incentives

to encourage excellence, and support for assistance as needed. For these standards, the terms

"historically underrepresented and underutilized" can include women and people of color, and the term

"economically disadvantaged" can include veterans, immigrants and refugees, disabled individuals,

formerly incarcerated people and low-income residents.

High Road Standards

1. ABS will submit a quarterly report with data on workforce diversity, subcontracting, workforce certification status, wages and benefits, and other issues relevant to the three-pronged commitment for equity and diversity.
2. Part-time employees will receive a minimum 150% of state minimum wage after 90 days of employment.
3. Full benefits including healthcare coverage are provided to full-time employees after 90 days of employment.

4. Diverse Workforce: Historically underrepresented and economically disadvantaged people will make up not less than 50% of total employment hours.
5. Diverse Business Participation: As opportunities arise for contract services, businesses owned by historically underrepresented or underutilized people will make up not less than 20% of program elements, exclusive of equipment provision.
6. Designating Training Providers to Maximize Recruitment Success: CONTRACTOR will work with High Road Standards committee as described in Attachment C to designate a training provider or provider(s) (such as WorkSource Oregon, PCC Workforce Network, IRCO, and other job source programs that are directed at historically underrepresented or underutilized people) that will be used exclusively to recruit and hire workforce, entry level and bike mechanic jobs until 50% of the aforementioned jobs hours are represented by a historically underrepresented and economically disadvantaged people, with at least 30% of job hours represented by people of color, low income residents, veterans, disabled individuals, immigrants and refugees, and formerly incarcerated people.
7. In coordination with the City, CONTRACTOR will provide up to 500 discounted memberships to be purchased by the City and/or other organizations for low income residents or individuals from traditionally underserved communities for \$35 or lower.

APPENDIX A

CONTRACTOR shall observe all applicable federal, state and local laws pertaining to public contracts including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules, Oregon statutes require every public contract to contain certain provisions. Without limitation, the following provisions shall be a part of this contract, as applicable.

Pursuant to ORS 279B.220, on every public contract, the CONTRACTOR shall make payment promptly, as due, to all persons supplying to the CONTRACTOR labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the CONTRACTOR or subCONTRACTOR incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

- Pursuant to ORS 279B.230(1), in every public contract, the CONTRACTOR shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the CONTRACTOR, of all sums that the CONTRACTOR agrees to pay for the services and all moneys and sums that the CONTRACTOR collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- Pursuant to ORS 279B.235(1), persons may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or b) for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.
- waived.
- Pursuant to ORS 279C.515 (3), in every public improvement contract and every contract related to the public improvement CONTRACTOR, if the CONTRACTOR or subCONTRACTOR fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction CONTRACTORS Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The CONTRACTOR shall give notice to

employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The CONTRACTOR shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.