

**AMENDED AND RESTATED  
SERVICES CONTRACT**

**CONTRACT NO. \_\_\_\_\_**

**for a**

**Bike Share System in the City of Portland**

This AMENDED AND RESTATED SERVICES CONTRACT (this “Contract”) is made and entered into this \_\_\_\_\_ day of September, 2015 (the “Effective Date”) by and between Motivate International, Inc. (“Motivate”) and the City of Portland, a municipal corporation of the State of Oregon, by and through its Bureau of Transportation (the “City”). The City and Motivate may be referred to herein individually as a “Party” or jointly as the “Parties.”

**RECITALS**

A. The City and Alta Bicycle Share, Inc., an Oregon corporation (“Alta”) entered into that certain Services Contract dated January 9, 2013 (the “Original Contract”) regarding the design, acquisition, installation, implementation, management and operation of a bike share system for the City within the municipal boundaries of the City of Portland (the “Project” or the “System”);

B. On December 17, 2014, Bikeshare Holdings, LLC (“Bikeshare Holdings”) purchased all of the outstanding stock of Alta. Consequently, Alta became a wholly owned subsidiary of Bikeshare Holdings.

C. In January 2015, Alta changed its name to Motivate International, Inc. (the contracting Party hereto) and Motivate then changed its domicile from Oregon to Delaware. This name change had no effect on the assets and liabilities of Motivate, including its obligations under the Original Contract;

D. As a result of the foregoing and other changes to the deal structure, the Parties have renegotiated the terms of the Original Contract as set forth herein.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **DEFINED TERMS.**

Words that are capitalized, and that are not the first word of a sentence, are defined terms. A defined term has the meaning given it when it is first defined in this Contract. Some defined terms are first defined in the text of this Contract and some are first defined in Exhibit A, which is a glossary of all defined terms in this Contract. Defined terms may be used together and the combined defined term has the meaning of the combined defined terms. A defined term that is a noun may be used in its verb or adjective form and vice-versa. If there is any difference between the definitions of a defined term in the text of this Contract and a definition of that term in Exhibit A, the definition in the text controls. Defined terms may be used in the singular or the plural.

## 2. **THE PROJECT GENERALLY.**

- 2.1. The goals of the Project include:
  - 2.1.1. Increasing mobility options within the Central City by adding another low cost trip option.
  - 2.1.2. Reducing single occupancy vehicular trips to reduce congestion, improve air quality and achieve the carbon-reduction goals in the Portland Plan.
  - 2.1.3. Providing an immediate increase in the number of Bicycle trips to support the Portland Plan's goal of making the Bicycle the preferred mode for trips under three miles.
  - 2.1.4. Reduce transportation-related greenhouse gas emissions toward the City's goal to reduce CO2 emissions to 40% below 1990 emissions by 2030.
  - 2.1.5. Bringing new people to bicycling by reducing financial barriers to transportation and complementing transit service for underserved populations.
  - 2.1.6. Creating jobs for Portlanders who are low-income and traditionally underserved with a goal that at least 50% of Motivate's entry-level workforce and Bicycle mechanic paid staff hours will be represented by women, people of color, low income people, people with disabilities, immigrants and refugees, veterans and formerly incarcerated people.
  - 2.1.7. Enhancing the economic and civic vitality of the Central City.
  - 2.1.8. Increasing Portlanders' disposable income by reducing transportation costs.
  - 2.1.9. Increasing the capacity of transit by creating improved last mile connections within the Portland region.
  - 2.1.10. Increasing participation of the private sector in promoting bicycling and active transportation.
  - 2.1.11. Improving the health of Portlanders by increasing access to active transportation.
  - 2.1.12. Develop, test and implement less carbon-intensive methods to System operations that reduce or strive to eliminate the use of motorized vehicles including pricing incentives and penalties, dynamic pricing, gamification, bike trailer utilization, station design, and other innovative strategies.

## 3. **SCOPE OF WORK; OPERATIONS PLAN.**

**Scope of Work; Schedule.** Motivate shall provide the Capital Equipment and implement the System as set forth in Exhibit B attached hereto and as further described in this Contract (collectively, the “Work” or the “Scope of Work”). In addition, Motivate shall operate the System in accordance with the Operations Plan attached hereto as Exhibit C (the “Operations Plan”). Motivate shall be responsible for managing the details and execution of the Work and thereafter to operate the System in accordance with the Operations Plan, it being understood that the City is relying on Motivate’s experience with designing, implementing, managing and operating other bike share systems in other cities. All Work must be performed in accordance with this Contract, including, but not limited to, the statutory requirements set forth in Attachment A attached hereto (the “Statutory Requirements”) and the Project Task Detail, Completion and Payment Schedule specified in Exhibit B hereto.

3.1. **Adjustments or Changes to the Work.** Subject to the terms and conditions hereof, the City may order adjustments or changes to the Work consisting of additions, deletions, or other revisions. Such adjustments or changes to the Work by the City will not result in any change to the amount of compensation due to Motivate, unless such adjustments or changes to the Work are material and the Parties have agreed to a written amendment to this Contract memorializing any resultant changes. The Parties agree that without the prior written consent of Motivate, Motivate shall not be required to accept any adjustments or changes to the Work from the City that require additional expenditures or other material commitments to the Project beyond those specified herein.

3.2. **Helmet Vending Option.** Within sixty (60) days of the Effective Date, Motivate shall provide its proposal for integrating an automated helmet vending solution into the System. If Motivate and the City cannot agree on terms to supply and/or operate a helmet vending solution within sixty (60) days after the City’s receipt of Motivate’s proposal, Motivate acknowledges and agrees that the City may solicit a third party to provide a helmet vending solution and that Motivate shall have no claim for compensation with respect to such helmet vending solution. In no event shall any such third party vendor of helmet solutions have the right to sell sponsorships or other promotional association with the System and/or the helmet vending solution during the first year after the Effective Date (unless otherwise approved in advance in writing by Motivate) or at any time to the extent that any sponsorships or other promotional association proposed to be sold by such vendor conflicts with existing System Sponsors.

3.3. **Inspection.** The City and its agents and representatives have the right at any reasonable time to inspect any portion of the Work, including examination of all materials, plans, specifications, drawings and other matters relating to the Work, in order to verify that the Work is progressing in an expeditious and continuous manner; provided, however, such inspection by the City is solely for the purpose of protecting the City’s rights and interests, and will under no circumstances impose any liability on the City or result in a waiver of any default of Motivate or be a representation that Motivate is or will be in compliance with applicable Laws.

3.4. **Failure to Address Maintenance Obligations.** In the event that Motivate, after having been given notice by the City in writing of a maintenance or operation failure

regarding the System, or component thereof, fails to correct such failure within the notice periods set forth in Section 14, the City may charge Liquidated Damages (except in the case where the maintenance or operation failure arises out of and/or persists as a result of a Force Majeure Event or Supplier Defect).

3.5. **Correction of Defective Work.** Subject to the terms and conditions hereof, Motivate shall be solely responsible for the correction of defective or non-conforming Work.

3.6. **Supplier.** Motivate and the City shall mutually agree upon a Supplier to supply the Capital Equipment for the System (currently anticipated to be Social Bicycle). Motivate shall negotiate with and enter into a Supply Agreement with the Supplier subject to and in accordance with the applicable terms hereof by the date specified in the Scope of Work. The City shall have the right to review and approve the Supply Agreement and any amendments thereto. The City shall be a third party beneficiary under the Supply Agreement and shall have the right to seek recovery directly from the Supplier thereunder, including, without limitation, under the Supply Agreement warranty. Motivate shall issue a Purchase Order to the Supplier on or before the Purchase Order Date and the City shall remit payment to Motivate for 50% of the amount specified on the Purchase Order. Motivate shall not be liable to the City with respect to the performance, acts or omissions of the Supplier, provided that, following Equipment Acceptance, Motivate shall be responsible that during the Term the Capital Equipment performs in accordance with specifications for such equipment as specified in the Supply Agreement (except to the extent failure of such equipment to perform arises out of a Supplier Defect or Force Majeure Event). After Equipment Acceptance by Motivate, the City shall remit the remaining 50% of the invoiced amount on the Purchase Order to Motivate. Motivate acknowledges and agrees that the City is relying on Equipment Acceptance by Motivate for performance of the System as specified herein.

#### 4. **LICENSE; OWNERSHIP.**

4.1. **License to Operate.** Subject to the terms and conditions set forth in this Contract, the City hereby grants to Motivate an exclusive license to operate the System within the municipal boundaries of Portland (as the same may be expanded within the City beyond the original equipment specified in Exhibit B hereto) (the "License"). Motivate has no property interest in or to the System other than (a) the License; and (b) all title in and to System components purchased exclusively with Motivate Funds (if any).

4.2. **License to Use System Marks, City Marks, Sponsor Marks and Motivate Marks.** Subject to the terms and conditions set forth in this Contract, the City and Motivate agree to cooperate to license and or sub-license, as their interests may appear, the City Marks, the System Marks, the Sponsor Marks and/or the Motivate Marks (as applicable) for use in association with promoting the System. For illustrative purposes, in the event that Motivate secures the Title/Presenting Sponsor and enters into a sponsorship agreement with such Title/Presenting Sponsor, Motivate shall secure a sublicense for the City to use the Sponsor Marks of such Title/Presenting Sponsor for promotion of the System.

4.3. **Ownership.** The City is the sole owner of, and holds title to, all components of the System purchased with Public Funds, free and clear of all liens, encumbrances, financing statements, and rights of third persons or entities (except to the extent such components include licenses from third parties, such as, for illustrative purposes only, a license to use the software of the Supplier to operate the System, or to the extent such components are subject to patents of Motivate or third parties in connection with the design and manufacture thereof). Motivate acknowledges and agrees that the City has the right to file UCC financing statements, instruments, and documents and such other action as may be required to perfect or to continue the perfection of the City's interest in that portion of the System purchased with Public Funds. To the extent that Motivate purchases portions of the System with Motivate Funds, Motivate will own such portions (including during the Term), provided that, on the Termination Date, Motivate will offer the City the opportunity to purchase those portions of the System (if any) purchased with Motivate Funds at that its depreciated book value or at an annualized depreciation rate of 20%, whichever cost is lower for the City. Motivate shall coordinate the allocation of funding sources in its purchase of the Capital Equipment so that the Public Funds are used to purchase the critical operating components for a complete System. Motivate shall purchase all of the Capital Equipment, material, Supplies, tools, labor, and other services necessary for the completion of the System in the City's name (except for any Capital Equipment purchased for expansion and paid for exclusively with Motivate Funds) in quantities mutually agreed upon between Motivate and the City. If Motivate purchases any System components with Motivate Funds, such purchases shall be segregated so that components can be clearly assigned for ownership by Motivate. All owner rights, warranties, and the like must be in the name and inure to the benefit of the City for all Capital Equipment purchased with Public Funds. On the Termination Date, Motivate shall prepare, submit and deliver to the Project Officer an inventory list of all components of the System purchased with Public Funds, including the Capital Equipment and all related documentation, such as, maintenance, leases, permits and service manuals and warranty information.

4.4. **Rights, Authorizations, Licenses, Permits and Other Permissions.** The City's Bureau of Transportation will not require permits on any of the Bicycles, Stations, Kiosks or other physical elements of System as it will own the System. Motivate shall, at its sole cost and expense, obtain any and all rights, authorizations, licenses, permits and other permissions (collectively, "Permits") required from all local, state and federal governments, and other entities, including City bureaus other than Transportation, necessary for Motivate to perform and complete the Work in accordance with this Contract. The City shall order the merchant ID for the System. The City's execution of this Contract shall neither constitute nor be deemed to be governmental approval of, or consent to, any Permits required or needed to be obtained by Motivate. The City agrees to use reasonable efforts to assist Motivate in securing Permits needed from City bureaus and agencies of the State of Oregon.

4.5. **News Releases and Public Announcements.** Subject to the terms hereof, the Parties shall work together to issue press releases, public statements and respond to media inquiries regarding this Contract and the System; provided, however, that the City may issue press statements or marketing communication independently. Except as otherwise specified herein, no Party shall make any statement to the press or issue any material for publication

through any medium of communication with respect to the System or this Contract without the prior written approval of the other Party hereto, provided, however that, (a) in the event of any operational matters pertaining to the System that are time-sensitive and outside of the usual course (such as closing for weather), Motivate shall have the right to make announcements to Subscribers and on the System website/mobile application regarding such matters without the prior approval of the City, (b) Motivate shall have the right to publish information regarding performance under this Contract, or of the results and accomplishments attained in such performance, (c) the City and City officials shall not be limited in responding to inquiries about the System and (d) nothing contained herein shall limit Motivate's right, in the performance of its obligations hereunder, to make announcements and issue statements to promote the System, System-related events (e.g. new station opening) and promotions for the purpose of promoting the System, including in connection with the use of City Marks, System Marks and/or Sponsor Marks. Except with respect to the performance of its obligations hereunder, Motivate shall not use in its external advertising, marketing programs, or other public promotional efforts, any data, pictures or other representations of the System, except with prior specific written authorization from the City. The foregoing restriction shall not prevent Motivate from using information or images relating to the System without City approval in connection with (a) the promotion of its services directly to specific prospective clients (such as in presentation materials or responses to requests for proposals) or (b) its website pages where Motivate-operated bicycle systems are identified. Any approvals required under this Section 4.5 shall not be unreasonably withheld.

## 5. **INTELLECTUAL PROPERTY.**

5.1. **System Marks.** The Parties will work together to create and/or select the official name and logo of the System which shall be part of the System Marks. The City shall be responsible for clearing and registering such System Marks if they are newly created marks; for existing Sponsor Marks, if Motivate secures such Sponsor, Motivate shall be responsible for acquiring a license from the Sponsor for Motivate and the City to use the Sponsor Marks. Such System Marks shall be the Intellectual Property of the City, unless otherwise agreed to or approved by the City. Subject to the terms hereof, Motivate shall have the right to license the System Marks to Sponsors for the purpose of promoting and raising funds for the System as contemplated herein. The City hereby grants to Motivate a non-exclusive, royalty-free license to use and sublicense for Sponsors to use, during the Term, any and all of such System Marks to promote the System, including for use with the System in the event that a Replacement Operator operates the System for any portion of the Term. Any created System Mark shall be the Intellectual Property of the City regardless of the source marks and the City retains the right to use such System Marks regardless of the continued participation in the System by Motivate or the Title Sponsor or Sponsor. Notwithstanding the foregoing, the City may agree to creation and/or selection of a System Mark that is the Intellectual Property of a Sponsor (e.g., "CitiBike" is a mark of the New York City system belonging to the title sponsor, Citigroup, Inc.) in which case such System Mark shall be the property of such Sponsor during and after the Term in accordance with the Sponsorship agreement to which such Sponsor is a party.

5.2. **City Marks.** The City hereby grants to Motivate and sublicensees a non-exclusive, royalty-free license to use, during the Term, the City Marks and other Intellectual Property of the City to, upon prior written approval by the City, operate and promote the System in accordance with the terms hereof. Upon expiration or termination of this Contract, Motivate's license in and to City Marks and City Intellectual Property will be immediately terminated and Motivate shall cease use of the City Marks and City Intellectual Property. If requested by the City, all physical, electronic, and other tangible representations of same will be destroyed or returned to the City at no additional cost or expense to the City.

5.3. **Motivate Marks.** Motivate hereby grants to the City a non-exclusive, royalty-free license to use, during the Term, the Motivate Marks (including any System Mark if and to the extent it includes a reference to Motivate) to, upon prior written approval by Motivate, promote the System in accordance with the terms hereof. For the avoidance of doubt, if and to the extent any System Mark includes a reference to Motivate (or any Motivate Marks) the same shall be considered "Motivate Marks" to be owned by Motivate hereunder. Upon expiration or termination of this Contract, the City's license in and to Motivate Marks will be immediately terminated and the City shall cease use of the Motivate Marks and Motivate Intellectual Property.

5.4. **Sponsor Marks.** Motivate will obtain or assist the City in obtaining non-exclusive licenses or sublicenses to use, during the Term of any Sponsorship agreement, any and all of the Sponsor Marks to promote the System in accordance with the terms hereof; provided, however, the City's use of any Sponsor Marks will comply with reasonable quality control measures required by a Sponsorship agreement to which the City and Sponsor have given its advance written approval. Upon expiration or termination of this Contract, the City's license in and to Sponsor Marks will be immediately terminated and the City shall cease use of the Sponsor Marks and Sponsor Intellectual Property.

5.5. **Approvals.** In order to maintain consistency and quality with respect to the style and appearance of the Marks, before (a) commencing production of any commercial or other advertisement, promotion, or other materials for exploitation hereunder using any of the Marks, or (b) releasing any advertising, publicity, or press releases or other press materials using any of the Marks (subject to Section 4.5 hereof), the producing/releasing Party shall submit, as applicable, the concept, artwork, design, text, and/or photographs for same to the other Party hereto at least five (5) business days prior to production or release of such item for approval (such approval not to be unreasonably withheld). In addition, the Parties agree that they shall review concepts and designs of any advertising, promotional or other materials using the Marks at regularly scheduled marketing meetings. Under no circumstances shall a use of any Marks be approved which reflects unfavorably upon or disparages any Party hereto or any Sponsor. All approvals shall be in writing (confirmed e-mail communication shall be sufficient). In the course of performing its obligations or exercising its rights hereunder, each Party may request that the other Party provide certain material (e.g., camera-ready artwork for the City Marks or the Motivate Marks, as applicable) in connection with the development of promotional material hereunder (including but not limited to development of signage and print and other media promotional materials). Each Party agrees

to provide such material as reasonably requested by the other Party for such development, in a timely manner and free of charge, provided it has such material in its possession.

**5.6. Intellectual Property Acknowledgement and Protection.** Each Party acknowledges that it acquires no title or interest in the Intellectual Property of the other Party by virtue of the licenses set forth herein. Any goodwill attaching to the use of the Intellectual Property of any Party hereto as it appears in materials created by any Party hereto shall be the sole property of the owner of such Intellectual Property or its designees and is hereby irrevocably assigned to such owner or its designees. Each Party shall cause to appear on all advertising and promotional materials used in exercising the rights (to the extent such materials use the Marks of the other Party) hereunder appropriate copyright and/or trademark notices as designated by the other Party. Neither Party shall, during the Term or thereafter, attack the rights or interests of the other Party or its designees in and to the Intellectual Property of the other Party. The Parties agree to reasonably assist each other in protecting the System Marks, including but not limited to reporting to the other Party any infringement or imitation of System Marks of which it becomes aware. Each Party will have the sole right to determine whether to institute litigation with respect to any such infringements of System Marks to the extent that a Party has ownership interest in such System Marks, as well as the sole right to select counsel. Pursuant to the preceding sentence, a Party may commence or prosecute any claims or suits for infringement of System Marks in its own name (if it has an ownership interest in the affected System Marks) or join as a party thereto. If any Party brings an action against any infringement of the System Marks owned by it, the other Party will reasonably cooperate and be reimbursed for its reasonable and pre-approved out-of-pocket expenses (if any) in connection therewith.

**5.7. Copyright.** The copyright to any work developed under this Contract by Motivate exclusively for the City ("Work Product") will be the exclusive property of the City, except to the extent that any such Work Product includes the Intellectual Property of Motivate or Sponsor, in which case such Work Product shall be the property of Motivate or Sponsor as their interests may appear. If this Contract results in a copyright owned and/or controlled by Motivate, the City reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, for the City's governmental purposes including after the Term, such copyright.

**5.8. Patent.** If during the course of performing its obligations hereunder, Motivate jointly creates with the City any patentable items, processes or inventions (other than any Motivate Intellectual Property existing as of the Effective Date), then Motivate shall own such patentable item, process or invention as its Intellectual Property and Motivate agrees to grant the City a royalty-free, nonexclusive and irrevocable license to use such patentable item, process or invention solely for the City's governmental purposes including after the Term (even if such Intellectual Property derives from Motivate's existing Intellectual Property as of the Effective Date).

## **6. SYSTEM FUNDING AND USES; PAYMENTS; REPORTING.**



6.1. **Source of Funding.** Subject to the terms and conditions of this Contract, including the conditions precedent set forth in Section 8 hereof, the Parties expect that the System shall be funded through a combination of Public Funds and Motivate Funds, as required hereunder.

6.2. **Public Funds.** The City will provide funding for the System from a Metro Regional Flexible Funds grant of Federal Highway Administration funds from the Oregon Department of Transportation (“ODOT”) pursuant to the ODOT IGA in an amount not to exceed \$1,842,000 (the “ODOT Grant”). The ODOT Grant, together with the Title Sponsorship Funds (regardless of which Party secures), the Secondary Sponsorship Funds (regardless of which Party secures) and the System Revenue are collectively considered “Public Funds” hereunder. The City shall have no liability for any expenditure by Motivate in excess of the Public Funds. Costs in excess of the Public Funds (if any) are Motivate’s sole responsibility (except to the extent such expenditures arise out of a Force Majeure Event, a Supplier Defect, a default by the City or any material change or modification to the System ordered by the City). The City will pay Motivate in accordance with the terms of payment set forth in this Section 6 and as described in the Work and Project Schedule. The Public Funds, along with the Motivate Funds (if and when applicable) shall be used by Motivate to perform the Work. For the avoidance of doubt, payments owed to Motivate hereunder, including with respect to any System Revenue, Operations Fee, or Sponsorships shall be treated as Motivate Funds and not Public Funds hereunder.

6.3. **Sponsorship Funds.** Subject to and in accordance with the terms hereof, Motivate shall have the semi-exclusive right to procure Sponsors for the System (whether directly or through its designated sponsorship agency) as more particularly described herein. The City shall be the only other entity with a right to secure Sponsors for the System but only with respect to (a) a Title Sponsor prior to the Effective Date; and (b) beginning one (1) year after the Effective Date, Secondary Sponsors solely in connection with expansion of the System to areas outside of the original System size specified in Exhibit B hereto. The City will work in good faith with Motivate to assist Motivate in obtaining Sponsorships throughout the Term and all revenues derived therefrom (except for Sponsorship Funds with respect to the Sponsors specified in clause (b) of the preceding sentence) shall be considered "Public Funds" hereunder. The Parties will collaborate regarding efforts to secure Sponsors including identifying all target sponsors, developing pitch materials and strategies and participating in meetings and conference calls with prospective Sponsors.

6.4. **Motivate Funds.** To the extent that there are not sufficient Public Funds to operate the System in accordance with the terms and conditions hereof, but subject to the City's contribution of no less than \$1,800,000 toward the System, Motivate shall use its private funds, including revenues from its Sponsorship Administrative Fee, Other Sponsorships and Motivate’s portion of Revenue Sharing (collectively, the "Motivate Funds") to operate the System during the Term. In addition, Motivate, has the right, but not the obligation, to use Motivate Funds to expand the System as contemplated herein.

6.5. **Types of Sponsorships.** Sponsorship categories are as follows:

- 6.5.1. **Title Sponsorship.** Motivate, working with the City, shall use reasonable efforts to procure a Title Sponsor for the System ("Title Sponsorship") with a target revenue of \$800,000 per year for 5 years (the "Title Sponsorship Funds") for the System, provided that such Title Sponsorship period may be as short as 3 years at Motivate's reasonable discretion subject to City approval. Title Sponsors may have the right to receive recognition on some or all of the following System components: Bicycles, Hubs, Kiosks, Subscriber Cards, Racks, vehicles, uniforms, website, mobile applications, Subscriber mailings and communications and other components as mutually agreed upon by the Parties. The Title Sponsor may also have the right to name the System and/or jointly create System Marks that include Sponsors Marks, subject to the prior approval of the City.
- 6.5.2. **Secondary Sponsorships.** Motivate shall use reasonable efforts to procure Secondary Sponsors for the System ("Secondary Sponsorships") in accordance with Section 6.7.1 below. Secondary Sponsors may have the right to receive recognition on some or all of the following System components: Bicycles, Hubs, Kiosks, Subscriber Cards, Racks, vehicles, uniforms, website, mobile applications, Subscriber mailings and communications and other components as mutually agreed upon by the Parties. Beginning one (1) year after the Effective Date, the City shall have the right to secure Secondary Sponsors, but solely for expansion of the System beyond the original size specified in Exhibit B provided that (a) such Sponsors shall only have the right to be recognized on System Racks and Kiosks within the expansion area and (b) such Sponsors shall not conflict with any other Sponsor that has exclusive rights in connection with the System.
- 6.5.3. **Other Sponsorships.** Motivate shall have the right to procure Other Sponsorships for the System. "Other Sponsorships" are sponsorships that (a) provide Sponsor recognition on non-physical aspects of the System (i.e., excluding Bicycles, Hubs, Kiosks, Subscriber Cards, Racks and vehicles) including, without limitation, website, mobile application, licensing relationships and the like irrespective of the amount of revenue derived in exchange for such recognition and/or (b) that provide recognition on physical components of the System but that do not exceed \$200,000 in aggregate gross revenue throughout the Term (or the term of such Sponsorships if that is longer than the Term) in exchange for such recognition. Motivate agrees that during the first twelve (12) months of the Term it shall not pursue Other Sponsorship opportunities (unless otherwise approved by the City) on physical components, but will focus on sales efforts pertaining to the Title Sponsor and Secondary Sponsors. The City acknowledges Motivate's right to

pursue Other Sponsorships on non-physical components throughout the Term. Other Sponsors on physical components may have the right to receive recognition on the some of the following System components: Bicycles, Hubs, Kiosks, Subscriber Cards, Racks, vehicles, uniforms, website, mobile applications, Subscriber mailings and communications and/or other components as mutually agreed upon by the Parties.

## 6.6. Use of Sponsorship Funds.

6.6.1. **Title Sponsorship Funds and Secondary Sponsorship Funds Raised by Motivate.** All Title Sponsorship Funds and Secondary Sponsorship Funds shall be deposited into the O&M Account for distribution in accordance with Section 6.15 hereof, except if the Title Sponsor or Secondary Sponsor(s) pays in a lump sum or in installments in advance, such amounts shall populate the O&M Account at \$1,000,000 per calendar year up to five (5) years. For avoidance of doubt, , the maximum payment to Motivate per calendar year to cover Cumulative Operations Losses from Title Sponsorship Funds and Secondary Sponsorship Funds is \$1,000,000.

6.6.2. **Title Sponsorship Funds Raised by the City.** If the City secures a Title Sponsor prior to the Effective Date, Title Sponsorship Funds from such Sponsorship shall be allocated as follows: the first \$3,000,000 of such Sponsorship Funds shall be deposited into the O&M Account at up to \$1,000,000 per calendar year. The remaining Title Sponsorship Funds over \$3,000,000 shall go toward System expansion and/or a capital reserve account, (a separate sub-fund in SAP), as determined solely by the City. For avoidance of doubt, within the first three (3) calendar years of the Term, the maximum payment to Motivate per calendar year to cover Cumulative Operations Losses from Title Sponsorship Funds is \$1,000,000.

6.6.3. **Other Sponsorships.** All Sponsorship Funds derived from Other Sponsorships ("Other Sponsorship Funds") shall be considered to be Motivate Funds hereunder and shall be retained by Motivate without deduction or setoff whatsoever.

6.7. **City Approval of Sponsors; Conditions to Sponsorship Agreements.** The City shall have the right to approve each Sponsor prior to the execution of a binding Sponsorship agreement between Sponsor and Motivate (such approval not to be unreasonably withheld), provided that a Sponsor that operates in any of the Approved Categories and that does not conflict with any existing Sponsors shall be deemed approved hereby. Without limiting the foregoing, the City shall have the right, if and as requested by the City to review the terms of any Sponsorship Agreement (and any and all amendments thereto). Motivate may enter into

agreements with Sponsors that conform to the following requirements and any other applicable requirements of this Contract:

- (i) Motivate may offer exclusive rights in each of the Approved Categories to the Title Sponsor and Secondary Sponsors, in Motivate's reasonable discretion based on the amount of the financial commitment of each such Sponsor to the System. Motivate may exercise its rights to sell Sponsorships hereunder either directly or through a sponsorship agency, provided that Motivate shall retain all responsibility for fulfilling the obligations hereunder notwithstanding the engagement of any such sponsorship agency.;
- (ii) Motivate shall have the right to provide Sponsors with incentives and other promotional elements related to the System as consideration for a Sponsor's support of the System, including discounts on standard pricing for all products and free memberships, provided that (1) for any Title Sponsor any such incentives and promotional elements shall not have an aggregate value greater than 10% of the funds payable by the Title Sponsor for such Sponsorship and (2) for all other Sponsors, such incentives and promotional elements shall have a value not greater than (x) 10% of the funds payable by such Sponsor or (y) \$50,000, whichever is less. For Sponsors identified in clause (2) of the preceding sentence, Motivate may ask the City for permission to provide incentives and promotional elements that have an aggregate value greater than \$50,000 or 10% of the funds payable by the Sponsor for such Sponsorship. At the City's sole discretion, the Project Officer shall approve or disapprove the request. If any incentives and/or other promotional elements related to the System contemplated in this clause (ii) include a discount on an annual membership to the System, such discount shall not exceed 25% off the then-current, published cost of an annual System membership.
- (iii) Nothing contained herein shall require Motivate to enter into Sponsorship Agreements unless all of the terms therein are acceptable to Motivate.
- (iv) The Parties agree that no entity shall be approved as a Sponsor hereunder if such entity (whether a business or other organization) restricts membership or access based upon any category protected under the City's civil rights ordinance or state or federal law and/or is not legally open to, or may not legally sell its products or provide its services to the City's citizens of all ages.

6.8. **Secondary Sponsorship Agreement Template.** Motivate shall propose a template for Secondary Sponsorship Agreements for the City's review, comment and approval. Once the template has been approved by the City, Motivate need only seek the

City's approval of substantive changes from the City-approved form. At a minimum, each Sponsorship Agreement shall expressly provide the following (unless otherwise agreed to by the City):

- (i) That upon the occurrence of either: (a) an early termination of this Contract or the Sponsorship Agreement; or (b) a breach and failure to cure by Motivate of the Sponsorship Agreement, that the City shall have the right (but not the obligation) to assume the rights and obligations of Motivate under such Sponsorship Agreement (excepting those obligations relating to any right of first refusal) and/or to cure any breach of Motivate under such Sponsorship Agreement;
- (ii) That in the event of an assumption of a Sponsorship Agreement by the City, the City shall not assume any liability arising from any act or failure to act prior to the date of such assumption by the City;
- (iii) That the City shall have no liability to the Sponsor or any third party as a result of or arising out of the acts or omissions of Motivate, its officers, agents, employees or contractors under the Sponsorship Agreement or in connection with the System;
- (iv) Sponsor's acknowledgement that the City shall have the right to assign the Sponsorship Agreement to a Replacement Operator and that such Sponsor shall accept any such Replacement Operator selected by the City, provided such Replacement Operator is ready, willing and able to assume all of Motivate's obligations under the Sponsorship Agreement;
- (v) Each Sponsorship Agreement must be between Motivate and the Sponsor with the City being expressly designated as a third-party beneficiary to each Sponsorship Agreement;
- (vi) An agreement to indemnify the City for any action or omission of Sponsor or the intentional misconduct of such Sponsor under the Sponsorship Agreement;
- (vii) An express agreement to comply with the Sponsorship Policy and an acknowledgment that no provision of the Sponsorship Agreement shall be valid and binding to the extent that such provision is inconsistent with any of the terms hereof that are for the benefit of the City; and
- (viii) Each Sponsorship agreement shall provide that Motivate has the right to assign such agreement to the City without Sponsor

approval, provided that the City is ready, willing and able to assume all of Motivate's obligations under any such Sponsorship agreement. Motivate may not assign any Sponsorship Agreement to any other party (other than to a parent, subsidiary or affiliate of Motivate) without the City's written approval of such assignment which may or may not be given in the City's sole discretion.

**6.9. Other Sponsorship Agreements.** Motivate will include City-approved language in Other Sponsorship Agreements and provide copies to the City of any such Sponsorship agreements within thirty (30) days of execution. Motivate will have discretion on Other Sponsorships, but must conform to the City's rules, including the Sponsorship Policy. The term of Other Sponsorship Agreements will be co-terminus with the Term.

**6.10. Sponsorship Policy.** Motivate acknowledges and agrees that the following Sponsorship Policy (collectively, the "Sponsorship Policy") applies to all Sponsors and all components of the System.

- (i) Recognition of Title Sponsor and Secondary Sponsors on the System (including on digital components thereof) shall be in accordance with the terms and conditions set forth in the Contract and City of Portland Transportation Rule 10.28 PDOT Sponsorship Policies Regarding Public Interest Messages. If there is any conflict, City of Portland Transportation Rule 10.28 shall control. For the avoidance of doubt, the Parties acknowledge and agree that any advertisements or promotions of the System on third party media (including Sponsor-controlled media) and similar promotional vehicles not controlled by the City are not "City Signage" as defined in City of Portland Transportation Rule 10.28 PDOT Sponsorship Policies Regarding Public Interest Messages and therefore, such rule shall not apply to Sponsor recognition or messaging appearing on such third party media. Nevertheless, all Sponsor recognition related to the System shall be subject to the prior written approval of the City.
- (ii) The City expressly retains control over any speech on the System, which is the City's speech;
- (iii) Advertisements are prohibited on any part of the System;
- (iv) Recognition of Sponsors on physical components of the System, including the Title Sponsor, is limited to text of Sponsor name, including font treatment, and logo, but may not include corporate slogans, contact information or text suggesting a call to action by consumers. Public interest messaging that the City determines to be non-commercial in nature may also be included. Sponsors may

elect to provide the same allowable information from a non-profit organization of their choice as long as the non-profit organization meets all the other Sponsorship Policy criteria and provides services within the Territory;

- (v) Sponsors may receive recognition on different elements of the System, including Bicycles; Kiosk, Map Panel; Project web and social media sites; Rack; collateral, such as vans, t-shirts, helmets, reports, casual Subscriber receipts; and member key. Motivate may request additional locations to recognize Sponsors, which requests will be approved or not in the City's reasonable discretion;
- (vi) Sponsor recognition on System website, mobile application and social media sites may include promotional offers for Subscribers and users from Sponsors, public interest messages or promotional offers to Subscribers or users that link to Sponsor web site, and the re-posting of public interest messages from Sponsor's social media sites; Motivate shall provide users a clear and simple way to opt out of such public interest messages and/or promotional offers; and
- (vii) The City may consider and allow the placement of decorative photographic images on the System and the System website, mobile application and System social media sites if the City determines that such images are iconic or representative of the City or the State of Oregon, and that such images are not Advertisements and that such images could appropriately be adopted as the City's speech. If Motivate on a Sponsor's behalf wishes to propose the use of any such images, Motivate must first provide the image to the City for its review and approval, together with Sponsor's representation that the image is legally available for such use and that such use will not violate the rights of any third parties (such as copyright or trademark rights). The City shall have sole and final discretion to determine whether to permit and adopt such decorative images as City speech.

**6.11. Payment Procedures.** Motivate shall handle all System monetary transactions, including Sponsorship funds in strict accordance with the following (except for funds derived from Other Sponsorships which Motivate shall handle in its sole discretion):

- (i) The City shall establish, in the City's name, a commercial checking account called "Bike Share System Revenue Account" (the "O&M Account") for the sole purpose of facilitating the System's financial transactions. Motivate shall deposit Title Sponsorship Funds and Secondary Sponsorship funds directly into the O&M Account;

- (ii) Motivate's point-of-sale system will process Subscriber Fees and Usage Fees through the City's hosted payment gateway, using the City's Merchant ID and under City's Tax ID number, with all System Revenues deposited directly into the O&M Account. The City shall grant Motivate on-line real-time access to the merchant account information, including transaction history in order to process refunds and reply to charge-backs and retrieval requests;
- (iii) Motivate shall deposit directly to the O&M Account (a) all Subscriber Fees and Usage Fees within 24-hours of receipt and (b) all Title Sponsorship Funds and Secondary Sponsorship Funds within XXX of receipt;
- (iv) All interest earnings on the O&M Account, if any, shall be designated as System Revenues;
- (v) All bank fees on the O&M Account will be paid from the O&M Account.
- (vi) All merchant fees, including interchange, processing and gateway fees, will be paid from the O&M Account.
- (vii) These procedures do not relate to Other Sponsorship Funds, which are Motivate's private funds.

6.12. **System Revenues.** Motivate acknowledges and agrees that, with the exception of Other Sponsorship Funds (which belong 100% to Motivate), all Title Sponsorship Funds, Secondary Sponsorship Funds, Subscriber Fees and Usage Fees generated within, or arising out of the System are Public Funds and shall be accurately reported to the City as System Revenues in accordance with the reporting requirements set forth herein.

6.13. **Operations Fee.** Beginning on the date that is the first day of a calendar month after the Operational Date and every first day of the month thereafter during the Term, Motivate shall invoice the City monthly for its Operations Fee in connection with its performance of the Work for the previous month of operation (such Operations Fee to be a pro rata amount based on the number of Bicycles in operation as a percentage of 600 Bicycles as well as a pro rata portion of any incomplete month for the first month of operation of the System). Payment for the Operations Fee is solely derived from System Revenues and will be paid by the City in accordance with the Payment Priority Schedule. Motivate acknowledges and accepts the risk of a Cumulative Operations Loss. Under no circumstances will the City compensate Motivate for any such loss(es) except as follows: during the Term, any Cumulative Net Profit will go first toward rectifying any Cumulative Operations Loss. In such case, Motivate will invoice the City for that month's Operations Fee plus any Cumulative Operations Loss up to the amount of the Cumulative Net Profit. For any month in which an Operations Fee is due and payable to Motivate in accordance with the Payment



Priority Schedule, payment of such Operations Fee shall be made within thirty (30) days of receipt by the City of an invoice therefor from Motivate. If the Operations Fee due hereunder is not remitted within 45 days of receipt of the invoice therefor, the City shall pay interest to Motivate at a rate of 1.5% per month (18% per annum) on such past due amounts from such due date until the date such Operations Fee is remitted.

Beginning with the date that is one(1) year after the Operational Date, the Operations Fee will be increased each calendar year by any cumulative increase over the previous calendar year in the National Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI-U) for the greater Portland area. In the event of a decrease of the CPI-U for the greater Portland area, the Operations Fee will remain the same as the previous year.

**6.14 Sponsorship Administrative Fee.** Where Motivate secures a Sponsorship, Motivate may invoice the City for a Sponsorship Administrative Fee of 20% on the gross Title Sponsorship Funds and Secondary Sponsorship Funds procured by Motivate, except for Title or Secondary Sponsorships with Kaiser Permanente, New Seasons Market, Umpqua Bank or Ford Motor Company, for which the Sponsorship Administrative Fee is 10%. Motivate accepts that it has no right to a Sponsorship Administrative Fee on a Title Sponsorship procured by City (by way of a fully-executed, binding Sponsorship agreement) before the Effective Date. For any month in which a Sponsorship Administrative Fee is due and payable to Motivate in accordance with the Payment Priority Schedule, payment of such Sponsorship Administrative Fee shall be made within thirty (30) days of receipt by the City of an invoice therefor from Motivate. If the Sponsorship Administrative Fee due hereunder is not remitted within 45 days of receipt of the invoice therefor, the City shall pay interest to Motivate at a rate of 1.5% per month (18% per annum) on such past due amounts from such due date until the date such Sponsorship Administrative Fee is remitted. Motivate's invoice for the Sponsorship Administrative Fee shall be submitted to the Project Officer with an itemization of Sponsorship Funds and the requested Sponsorship Administrative Fee amount.

**6.14.1 Sponsorships and Funding Types and Parties without Sponsorship Administrative Fees.** Motivate shall have no right to a Sponsorship Administrative Fee on the follow types of Sponsorships or funding: any Title Sponsorship procured by the City prior to the Effective Date; Secondary Sponsorships raised by the City in connection with expansion of the System; government and public agency funds; funds provided by philanthropic and service organization grants or loans, such as foundations or nonprofit organizations and any other funding specifically granted to the City not in exchange for any recognition on the System; and gifts to the City with a value less than \$5,000 or provided for non-monetary consideration.

**6.15 Payment Priority Schedule.** The Parties agree that disbursements from System Revenues shall occur in the following order of priority (the "Payment Priority Schedule"). Table 1 provides an example:

- (i) Payment of all merchant services and bank fees.
- (ii) The City's withdrawal for reimbursement to City of lost parking meter revenue due to Station placement in any metered parking space(s) not expressly requested by the City;
- (iii) Payment to Motivate of the Sponsorship Administrative Fee on the gross amount of Title Sponsorship Funds and Secondary Sponsorship Funds procured by Motivate;
- (iv) Payment to Motivate of the Monthly Operations Fee;
- (v) Payment to Motivate up to the amount of any Cumulative Operations Loss; and
- (vi) Revenue Sharing on a 60%/40% basis to Motivate and the City, respectively of any balance in the O&M Account on any December 31st during the Term (after payment of (i) through (v) above) beginning with December 31, 2017 which exceeds \$1,000,000.

Table 1: Payment Priority Schedule Example

<b>Example: Payment Priority Schedule</b>	<b>Deposits and Withdrawals</b>	<b>Balance</b>	<b>Motivate Cumulative Operating Loss</b>
User revenues and fees from November 2017	\$80,000	\$80,000	0
Title and Secondary Sponsor Payments from November 2017 (assumes Sponsors not the 10% exceptions)	\$20,000	\$100,000	
November 2017 Ending Balance		\$100,000	
Merchant services and bank fees	(\$1,000)	\$99,000	
Lost parking meter revenue from November 2017	(\$1,000)	\$98,000	
Payment of Sponsorship Administrative Fee to Motivate for Title and Secondary Sponsor Payments (\$20,000 * 20% Administrative Fee)	(\$4,000)	\$94,000	
Payment of Operations Fee for November 2017 (ex assumes: \$100,000)	(\$94,000)	\$0	\$6,000

<b>Example: Payment Priority Schedule</b>	<b>Deposits and Withdrawals</b>	<b>Balance</b>	<b>Motivate Cumulative Operating Loss</b>
Ending Balance, November Year 2		\$0	
User revenues and fees from December 2017	\$150,000	\$150,000	\$6,000
Title and Secondary Sponsor Payments from previous month (assumes Sponsors not the 10% exceptions)	\$20,000	\$170,000	\$6,000
Merchant services and bank fees	(\$1,000)	\$169,000	\$6,000
Lost parking revenue from December 2017	(\$1,000)	\$168,000	\$6,000
Payment of Sponsorship Administrative Fee to Motivate (\$20,000 * 20% Administrative Fee)	(\$4,000)	\$164,000	\$6,000
Payment of Operations Fee for December 2017 (ex assumes: \$100,000)	(\$100,000)	\$64,000	\$6,000
Payment of Cumulative Operating Loss to Motivate	(\$6,000)	\$58,000	0
Revenue Sharing (60% to Motivate/40% to the City)	(NA if balance is less than \$1M)	\$58,000	
Starting Balance for January 2018		\$58,000	

#### 6.15.1

**6.16 Breach by Motivate.** In the event that Motivate Defaults under this Contract and fails to cure in accordance with the terms hereof, Motivate shall have no right to a Sponsorship Administrative Fee on any Sponsorship Revenues deposited or earmarked for use after such breach except that if an agency fee is payable by Motivate to a third party with respect to any Sponsorship for periods after such breach

either (a) the Sponsorship Administrative Fee shall continue to be paid to Motivate in an amount equal to such agency fees to the extent that Sponsors are continuing to pay Sponsorship fees in connection with such Sponsorships or (b) such agency fees shall become the obligation of the party that is assigned or assumes the Sponsorship Agreement.

**6.17 Revenue Sharing.** For the period from January 1, 2017 to December 31, 2017, each subsequent twelve-month period during the Term, and for any stub period through and including the last day of the Term or any Renewal Term Motivate shall do an accounting of Cumulative Net Profit or Cumulative Operations Loss. Any Cumulative Net Profit over \$1,000,000 as of December 31st (beginning with December 31, 2017) shall be split on a 60%/40% basis between Motivate and the City, respectively (the "Revenue Sharing"). Any Cumulative Net Profit under \$1,000,000 shall be forwarded to the following year's O&M Account, which shall be established as a separate sub-fund in SAP. The City's portion of Revenue Sharing shall go toward a capital reserve account (a separate sub-fund in SAP), system expansion, equipment replacement and/or City System project staff costs. For any period in which a Revenue Sharing payment is due and payable to Motivate in accordance with the Payment Priority Schedule, payment shall be made within thirty (30) days of receipt by the City of an invoice therefor from Motivate. If the Revenue Sharing payment due hereunder is not remitted within 45 days of receipt of the invoice therefor, the City shall pay interest to Motivate at a rate of 1.5% per month (18% per annum) on such past due amounts from such due date until the date such Revenue Sharing payment is remitted.

**6.18 Subscriber and User Pricing Plan.** Motivate shall at a minimum provide the two fare products listed below:

(i) Either a single-use, one-time ticket or pay-as-you-go ticket charged per minute for up to 30min of riding for an average price of \$2.50. Motivate has the ability to charge up to \$10 for 60 minutes or down to \$0 (or even provide credit) to encourage rebalancing and manage demand. The maximum 60 minute price excludes any out-of-home and out-of-hub fees. In cases of special events, City and Motivate can agree to pricing that exceeds \$5 for a 30 minute ride. Motivate shall not use real-time demand based surge pricing on standard fare products for the first six months of the System.

(ii) An annual membership/subscription with up to 90 minutes of daily ride time at a maximum cost of \$14.95/month on a 12-month contract. Out-of-home and out-of-hub fees may apply at Motivate's discretion.

Motivate shall have authority to create and price additional fare products, including fare products that discourage usage during peak hours through variable and/or increased rates.

**6.18.1 Products for Low Income Populations.** Motivate will create programs with the PBOT as set forth in the High Roads Standards - Exhibit F to provide

lower cost products for targeted low-income populations. Specifically, in coordination with the City, Motivate will provide up to 500 discounted annual 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 provided that such memberships shall be subject to standard eligibility requirements.. In addition, City and Motivate may provide together to provide a discounted product for monthly and/or annual memberships to provide access to low-income customers. The price will be set at a 50% discount from list prices on a monthly or annual membership. This may be administered by a third party, Motivate, and/or the City. The City and Motivate will explore providing a cash-only fare product to provide access to those without credit cards or checking accounts. If any such cash-only plan is executed, Motivate shall not be responsible for any losses of bikes by users of the cash payment plan beyond the annual allowed shrink rate of 1% per year.

- 6.18.2 Review of Plan** After the first year, Motivate and City shall review usage and revenue and explore changes to the pricing policy. Motivate with the consent of the City may increase pricing beyond the above ceilings to meet the goals listed in 6.16.3, along with others that are mutually beneficial.
- 6.18.3 Additional Fare Products.** Motivate has the authority to develop and price additional fare products to meet these and other goals: a) increase system utilization; b) increase system revenue; c) low-carbon solution to system rebalancing; and d) align trip pricing with the operational cost of that trip. Motivate will consult the City on other user products.
- 6.19 Reimbursement of Lost Parking Meter Revenue.** The City shall have the ability to withdraw funds from the System Revenue Account to cover the value of the Lost Parking Meter Revenue for Stations placed in metered parking areas without the express request of the City. In such instances, City shall retain the average meter revenue specific to the block face on which the Station is placed.
- 6.20 Invoicing.** The City, as a municipal corporation of the State of Oregon, is a tax-exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.. Prices must not include federal, state, local, or other taxes designated now or hereafter, unless the City is responsible therefore. Motivate shall submit billings in a timely fashion. Invoicing and all payments to Motivate must comply with the date requirements in the Project Schedule and will, in no event, exceed the amount set forth for each task in the Scope of Work. Invoices must be sent to:

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

Motivate is at all times solely responsible for billing accuracy and timeliness (except that the City shall be responsible for calculating amounts related to parking meter revenues and permitting fees and providing supporting documentation therefor); Motivate shall provide invoices for the Work 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. Invoice payment terms including any offered prompt payment discounts shall start on the date of the invoice. Invoices shall be paid by the City no later than forty-five (45) days after receipt from Motivate.

(ii) Merchant services fees and bank fees shall be calculated daily and payable monthly, in accordance with City contracts for these services. Fees will be automatically debited from the O&M Account by the City's authorized vendors during the first week of each month payable for the prior month's activity and in accordance with monthly statements or other reports provided by these vendors to the City.

## 7. **REPRESENTATIONS AND WARRANTIES.**

7.1. **The City's Representations and Warranties.** The City's representations and warranties under this Contract are limited to the following. The City hereby warrants and represents to Motivate as of the Effective Date:

- 7.1.1. The City has the legal power, right, and authority to enter into this Contract; and all requisite action has been taken by the City in connection with entering into this Contract and that no further consent of any administrative body, governmental authority or other party is required;
- 7.1.2. This Contract is a valid, legally binding obligation of and enforceable against the City in accordance with its terms and execution of this Contract by the City will not cause a breach of any other agreement to which the City is a Party;
- 7.1.3. The representations and warranties furnished by the City in this Contract are accurate, correct, and complete in all respects and do not contain any untrue statement of fact or, when considered in the context in which presented, omit to state a fact necessary to make the statements and information contained herein not misleading;
- 7.1.4. The persons executing this Contract on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions of this Contract;

- 7.1.5. The City shall perform its obligations hereunder in a good and workmanlike manner, in conformance with this Contract, and in accordance with customary professional and/or industry standards;
- 7.1.6. The City maintains a self-insurance program with coverage types and amounts reasonably necessary to satisfy its obligations and liabilities in connection with this Contract and the System;
- 7.1.7. The use of the City Marks and of any materials created by or on behalf of the City and provided to Motivate for use in connection with the System or the promotion thereof as permitted and approved hereunder shall not infringe upon the intellectual property rights of any third party when used by Motivate and any sublicensees in the Territory; and
- 7.1.8. The City is in material compliance with all federal, state and local laws, rules, regulations, ordinances and orders applicable to it in connection with the System and this Contract, including, without limitation, Civil Rights Policy Requirements, all applicable health and safety, environmental, and zoning laws (collectively, "Laws") and the fulfillment of its obligations and exercise of its rights under this Contract.

7.2. **Motivate's Representations and Warranties.** Motivate's representations and warranties under this Contract are limited to the following. Motivate hereby warrants and represents to the City as of the Effective Date:

- 7.2.1. Motivate has full power and authority to enter into and perform this Contract in accordance with its terms and does not require the consent of any third party that has not been secured, and all requisite action (corporate, trust, partnership, membership or otherwise) has been taken by Motivate in connection with entering into this Contract and that no further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required;
- 7.2.2. This Contract is a valid, legally binding obligation of and enforceable against Motivate in accordance with its terms and execution of this Contract by Motivate will not cause a breach of any other agreement to which Motivate is a Party;
- 7.2.3. The representations and warranties furnished by Motivate in this Contract are accurate, correct, and complete in all respects and do not contain any untrue statement of fact or, when considered in the context in which presented, omit to state a fact necessary to make the statements and information contained herein not misleading;

- 7.2.4. The persons executing this Contract on behalf of Motivate have the legal power, right and actual authority to bind Motivate to the terms and conditions of this Contract;
- 7.2.5. Motivate and its subcontractors shall be in compliance with the then-current Payment Card Industry's Data Security Standards;
- 7.2.6. Motivate shall perform the Work in a good and workmanlike manner, in conformance with this Contract, and in accordance with customary professional and/or industry standards;
- 7.2.7. Motivate warrants that each of Motivate's employees assigned to perform the Work have the proper skill, training, and background to be able to perform the Work in a competent, timely, and professional manner and that all Work shall be so performed;
- 7.2.8. Motivate shall, at all times during the Term, maintain and keep current all licenses and certifications required to perform the Work;
- 7.2.9. No action, suit or proceeding (and to Motivate's knowledge, no investigation) is pending against Motivate before any court or administrative agency, (a) the outcome of which, by itself or taken together with other such litigation, would be reasonably expected to have a material adverse effect on the business, assets, operations, or financial condition of Motivate or the power of Motivate to complete the Work or (b) which purports to affect the legality, enforceability, or validity of this Contract;
- 7.2.10. Motivate is in material compliance with all Laws applicable to it in connection with the System and this Contract and pertaining to the fulfillment of its obligations and exercise of its rights under this Contract;
- 7.2.11. Motivate represents and warrants that any and all agreements, contracts and subcontracts entered into by Motivate related to the Project will include the obligation for such subcontractors and Suppliers to comply with the Civil Rights Policy Requirements and the Statutory Requirements; and
- 7.2.12. The use of the Motivate Marks and of any materials created by or on behalf of Motivate and provided to the City for use in connection with the System or the promotion thereof as permitted and approved hereunder shall not infringe upon the Intellectual Property rights of any third party when used by the City and any sublicensees in the Territory.

## 8. **CONDITIONS PRECEDENT**

8.1. **Conditions Precedent.** The Parties are not obligated to proceed with the transactions contemplated herein, unless the following conditions (each a "Condition Precedent") are



satisfied to their respective reasonable satisfaction on or before the Purchase Order Date. The Party benefited by a particular condition shall not unreasonably withhold, condition or delay acknowledgment that such condition has been satisfied.

- 8.1.1. City has received reasonable proof that Motivate is a Delaware corporation and that Motivate has full authority to enter into and perform its obligations under this Contract.
- 8.1.2. The Parties have identified a Supplier for the Capital Equipment, including the Bicycles, acceptable to the City and Motivate;
- 8.1.3. Motivate has provided the City with a pro forma and a Pricing Plan for the Project, and an updated financial statement of Motivate's financial condition, that, in the City's reasonable discretion, demonstrate Motivate's financial capacity to operate the System;
- 8.1.4. Motivate has provided the City with an updated business plan demonstrating that the System is expected to be financially sustainable;
- 8.1.5. Motivate has conducted due diligence on and acquired (or is in the process of acquiring) any permits required in conjunction with the System;
- 8.1.6. Motivate has provided the City with documentation that Motivate and its subcontractors are fully compliant with the then-current Payment Card Security and Identity Theft Prevention Obligations in Exhibit G.
- 8.1.7. Motivate has provided the City with manufacturers' certificates (and/or copies of contracts demonstrating obligations of Suppliers to furnish certificates) verifying that all Suppliers comply with the Buy America Regulations as described in Section 13.7.6.
- 8.1.8. Motivate has provided the City with a draft Purchase Order for the Capital Equipment for the City's review and approval;
- 8.1.9. The City has provided documentation to Motivate that it has entered into a binding agreement for the ODOT Grant Funds and such ODOT Grant Funds have been earmarked by the City for purchase of the Capital Equipment and other launch costs;
- 8.1.10. Motivate has provided the City with copies of Supply agreements with all Suppliers of Capital Equipment and any other significant subcontractors for the City's review;
- 8.1.11. Motivate has provided the City with a recruitment and hiring plan that is consistent with the objectives of the High Roads Standards;

- 8.1.12. Motivate has provided the City with a subcontracting plan demonstrating how Motivate intends to meet the objectives of the DBE Provisions;
- 8.1.13. Motivate has provided the City with a sustainable vehicle operations plan, that includes proposed steps to reduce and strive to eliminate the need for motor vehicles in System operations during the Term; and
- 8.1.14. Motivate has provided the City with the Certificates of Insurance required in Section 11.

8.2. **Elections upon Non-Satisfaction of Conditions.** If any Condition Precedent in Section 8.1 is not fulfilled to the satisfaction of the City or Motivate as of the Purchase Order Date (or such later date, if any, designated pursuant to Section 8.2(c) below, then each of the City and Motivate may elect as follows:

- (a) Terminate this Contract by and effective upon written notice to the other Party; or
- (b) Waive in writing the benefit of that Condition Precedent and proceed in accordance with the terms hereof; or
- (c) Designate in writing a later date for the Purchase Order Date, to allow additional time for the Condition Precedent to be satisfied, if the condition can be satisfied and the other Party agrees in writing to the later date.

8.3. **Final Termination Date.** If all of the Conditions Precedent set forth in Section 8.1 have not been satisfied or waived by the later of (a) the Purchase Order Date or (b) such later date, if any, designated pursuant to Section 8.2, then this Contract shall terminate sixty (60) days after written notice from the Party seeking termination unless the specified condition shall have been satisfied or waived and the Purchase Order shall have been issued within such 60-day period.

8.4. **Effect of Termination for Non-Satisfaction of Condition Precedent.** If this Contract terminates or is terminated for non-satisfaction of the Conditions Precedent and neither Party is in Default under this Agreement, then all rights and obligations of the Parties under this Contract shall terminate upon termination of this Contract. If a Party is in Default under this Contract on the date this Contract terminates or is terminated for non-satisfaction of the Conditions Precedent, then the rights and remedies accruing to the other Party under this Contract as a result of such Default shall survive termination of this Contract.

## 9. **TERM; TERMINATION.**

9.1. **Term.** This Contract will commence on the Effective Date and remain in effect until the date that is (3) years from the Operational Date, unless earlier terminated in accordance with the terms hereof (the "Term"). This Contract will terminate on earlier of: (i) three (3)

years from the Operational Date; or (ii) early termination hereunder (the earliest of which is the "Termination Date").

9.2. **Renewal.** The Parties may agree to extend this Contract on similar terms and conditions hereunder for periods to be determined by the Parties (any such extension period, a "Renewal Term"), provided however that any extension of the Term may not go beyond January 2023. At least one-hundred and eighty (180) days prior to the expiration of the Term or any Renewal Term, each Party must notify the other of its intent in writing to renew this Contract (a "Renewal Notice") and the Parties shall have ninety (90) days from receipt of the Renewal Notice to extend this Contract in writing by way of a binding amendment signed by each Party. If the Parties do not agree to extend the Contract within such ninety (90) day period (or such other longer period as the Parties may agree to in writing) or if no Renewal Notice is issued hereunder, then this Contract shall automatically terminate as of the expiration of the Term (or the Renewal Term, as the case may be). If this Contract is renewed by the Parties for any Renewal Term(s), any references to "Term" herein shall be deemed to include any such Renewal Term(s). For the avoidance of doubt, nothing contained herein binds or requires either Party to renew or extend this Contract.

9.3. **Early Termination for Convenience.** The City and Motivate, by mutual written agreement, may terminate this Contract at any time.

9.4. **Payment on Early Termination.** In the event of an early termination hereof, the City shall pay Motivate for Work performed in accordance with the Contract prior to the Termination Date (including Operations Fee and Motivate's pro rata portion of Revenue Sharing) as well as Motivate's earned Sponsorship Administrative Fee for any Sponsorships through either the Termination Date or the term of each such Sponsorship (whichever period is longer) to the extent that Sponsors are continuing to pay Sponsorship fees in connection with such Sponsorships. In the event of an early termination hereof by the City due to a breach by Motivate, then the City shall pay Motivate for Work performed in accordance with the Contract prior to the Termination Date (including Operations Fee and Motivate's portion of Revenue Sharing) and Motivate's earned Sponsorship Administrative Fee through the Termination Date subject to set off for excess costs, as provided for in Section 14 (Remedies). Motivate shall have no right to any Sponsorship Administrative Fee(s) on any Sponsorship funds received or earmarked for use after the date of such breach. In the event of an early termination hereunder, any and all Work Product will become and remain the property of the City subject to and in accordance with Section 5.7 hereof).

## 10. **AUDIT RIGHTS AND RECORD MAINTENANCE; DISCLOSURE OF TERMS.**

10.1. **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 during the period established by Section 10.3. Audits shall be conducted in accordance with generally accepted auditing standards.

If an audit discloses that any payment to Motivate was in excess of the actual amount to which Motivate was entitled, then Motivate shall repay the amount of the excess to the City. The costs of such audit shall be paid by the City unless such audit reveals an under reporting of profits by Motivate 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 Motivate 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 Motivate 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 reveals non-compliance with Government Auditing Standards, the City may pursue remedies as provided herein.

10.2. **Access to Records.** Each Party, and, if applicable, its subcontractors, shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, each Party shall maintain all other records pertinent to this Contract and the Project and shall do so in such a manner as to clearly document such Party'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 (CGUS), on the one hand, and Motivate and its auditors, on the other hand, shall have access, and each Party shall permit the aforementioned entities and individuals reasonable access, to such fiscal records and other books, documents, papers, plans and writings of such Party that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Each Party 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 this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Any cost data submitted by Motivate pursuant to this Contract may be shared with ODOT, FHWA, OSS and CGUS, as necessary, for audit purposes. Copies of applicable records shall be made available upon request at no charge to the other Party.

10.3. **Confidentiality.** Subject to the terms and conditions hereof and all Laws, including without limitation, freedom of information laws and related requests, each Party (a "Receiving Party") agrees that it shall not, directly or indirectly, use, make available, sell, disclose, disseminate or otherwise communicate to any person, in whole or in part, other than in the course of such Party's performance of its obligations hereunder, either during the Term or at any time thereafter, any Confidential Information (as defined below). The foregoing shall not apply to any information that (a) was known to the public prior to its disclosure to the Receiving Party or (b) the Receiving Party is required to disclose by applicable law, regulation or legal process (including for purposes of a request made to the City), provided that, in the case of this clause (b), the Receiving Party provides the Disclosing Party (defined below) with prior notice of the contemplated disclosure and, if requested by the Disclosing Party, cooperates with the Disclosing Party in seeking, if available, a protective order or other appropriate protection of such information. As used herein, "Confidential Information" means any and all information that in any way relates to the System (including,

without limitation, personally identifiable information ("PII") of System participants), and with respect to each Party, the finances, agreements, business operations, trade secrets, plans, proceedings, marketing strategies, media and promotional activities or other non-public information of the Party disclosing such information (the "Disclosing Party"), whether disclosed orally, in writing or through another medium, by the Disclosing Party's officers, employees, agents or other persons. Motivate acknowledges that, as a municipality, the City is subject to the Oregon Public Records Laws. Nothing contained herein shall be deemed to prohibit or otherwise restrict the City's ability to comply with laws applicable to the City regarding disclosure of information to the public.

## 11. **INSURANCE; INDEMNITY**

11.1. **Insurance – Proof Of Coverage.** The 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. The insurance requirements are as follows.

### 11.1.1. **Commercial General Liability Insurance –Liability and Property Damage**

Motivate shall provide and maintain liability and property damage insurance in the minimum amount of \$2,000,000 per occurrence and \$4,000,000 in aggregate that protects Motivate 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 Motivate's work under this Contract, including the use of Bicycles by Motivate employees in the performance of Motivate's obligations hereunder.

The insurance shall be primary, 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, Motivate shall provide a new policy with the same terms. Motivate agrees to maintain continuous, uninterrupted coverage of the required insurance coverage hereunder for the duration of the Contract.

### 11.1.2. **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, or other vehicles by Motivate. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by Motivate.

**11.1.3. Workers' Compensation**

Prior to the performance of any work under a Contract awarded by the City, Motivate 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, Motivate 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.

**11.1.4. Technology Errors, And Omissions and Cyber Liability;  
Information Security & Privacy Liability.**

Motivate shall maintain liability insurance covering acts, errors and/or omissions arising out of the performance or failure to perform professional services required to be performed by Motivate under this Contract. The policy shall include the following coverage: Technology Products & Services E&O - Information Security & Privacy Liability for Service Provided to Others. Such insurance shall cover errors, omissions and/or negligent acts in the delivery of products and services under this Contract. Such errors and omissions insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data) and infringement of copyrights, trademarks, service marks and trade dress. Such insurance shall include limits of coverage of not less than US\$5,000,000.00 (five million U.S. dollars) written on a per claim and in the aggregate basis. If coverage is written on a claims-made basis, coverage shall remain in effect for not less than three (3) years following the date of termination or expiration of this Contract. Evidence of coverage must be sent to the City for three years following termination or expiration of this Contract.

**11.1.5. Insurance Requirements for Subcontractors.**

Should Motivate subcontract any part of this Contract, Motivate will require those subcontractors if not covered under Motivate's insurance, to obtain and keep in force for the Term, adequate insurance coverage with appropriate limits and endorsements for the services to be performed, but in no event Commercial General Liability insurance less than \$1,000,000. Each subcontractor shall comply with the worker's compensation laws of the state of Oregon.

11.2. **Certificates of Insurance.** As evidence of the required insurance coverage, Motivate shall furnish acceptable insurance certificates to the City with the return of the signed Contract. The certificates (other than the workers compensation coverage) shall specify the City of Portland and State of Oregon as additional insureds to the extent of their interests and indemnification rights hereunder 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.

11.3. **Warehouse Legal / Bailee's Legal Liability.** Motivate shall maintain Property Insurance providing coverage to property/equipment procured, owned or provided that is in Motivate'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 \$2,000,000 subject to the 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 Additional Insureds to the extent of their interests and indemnification rights hereunder.
- D. Waiver of Subrogation in favor of the City of Portland.

11.4. **Assumption of Risk.** Motivate assumes all risks for direct and indirect damage or injury to the property or persons used or employed by Motivate on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any negligent action, omission, commission or operation by Motivate under this Contract. No acceptance or approval of any insurance by the City shall be construed as relieving or excusing Motivate from any liability or obligation imposed upon Motivate by the provisions of this Contract. Motivate shall be responsible for the Work performed by it under this Contract and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used by Motivate in connection with the Work (provided that Motivate shall not be responsible for any Supplier Defect). Motivate shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons employed by the subcontractors as Motivate is for acts and omissions of persons directly employed by Motivate.

11.5. **Limited Warranty.** Motivate agrees to secure from the Supplier a limited warranty that the Capital Equipment (excluding any "wear parts") is free from defects in materials and workmanship, given normal use and care, over the period of the manufacturer warranty (which limited warranty the City acknowledges may range from three (3) years to one (1)

year in the case of various System components as specified in the Supply Agreement). Motivate shall be responsible at its own cost and expense for ordinary repair and/or maintenance of the Capital Equipment during the Term and if any Supplier Defect is discovered Motivate shall seek from Supplier to immediately replace without charge (including freight inbound and outbound) any piece of Capital Equipment or part thereof, that proves to be defective or fails within the specified limited warranty period.

**11.6. Indemnity from Liability Claims.** Motivate shall hold harmless, defend, and indemnify the City of Portland and the State of Oregon, their officers, employees, and agents, from and against all third party claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, to the extent resulting from or arising out of (a) the acts or omissions of Motivate or its officers, employees, or agents arising out of or in connection with negligence or intentional misconduct of Motivate or its officers, employees, or agents under this Contract, except to the extent: (a) caused by the City or its employees, officers, agents, contractors, subcontractors, licensees or invitees; (b) caused by the negligence or willful misconduct of the City or its employees, officers, agents, contractors, subcontractors, licensees or invitees or (c) caused by any action(s) taken by Motivate per City requirements and/or directives which action(s) was contrary to Motivate's recommendations to the City as evidenced by Motivate's written communication(s) that includes a specific explanation of how such requirement and/or directive might expose Motivate and/or the City to liability to the Project Officer prior to the action(s) being taken.. The indemnity set forth in this Section 11.6 shall survive any expiration or termination of this Contract.

**11.7. Indemnity from Liens.** Motivate shall hold harmless, defend, and indemnify the City of Portland and the State of Oregon, their officers, employees, and agents, from and against all third party claims, costs, expenses, losses, damages and liabilities whatsoever to the extent arising from or in connection with any mechanics', materialmen's, laborers' or other construction or statutory liens filed against any portion of the Project as a result of any act or omission of Motivate hereunder or to the extent arising from or related to construction of the Project performed by or at the request of Motivate or Motivate's subcontractors or agents. The indemnity set forth in this Section 11.7 shall survive any expiration or termination of this Contract.

## **12. THIRD PARTY STATUS.**

**12.1. The City as Third-Party Beneficiary.** The Parties agree that all System-specific contracts executed by Motivate and any entity, vendor, contractor, subcontractor, corporation, partnership, or individual for the provision of any good provided or service rendered in connection with the System which contract is vital to the continuous performance of the System (such as the Supply Agreement, other supply agreements, contracts to purchase, use, lease or rent real property, and other operation-specific agreements) shall expressly acknowledge the City's status as a third party beneficiary of the contract and shall further expressly acknowledge that the City, as a third party beneficiary, shall have the right to enforce the provisions of the contract or to seek remedies available to it, should a party to the contract fail to comply with any of the contract's terms (excluding any pre-existing



contracts to which Motivate is a party which contracts will not need to be amended to comply with this provision). Without limiting the generality of the forgoing, all such contracts shall contain the following, or a substantially similar, provision:

**“Third Party Beneficiary Status.** The parties hereto acknowledge, agree, and intend that this agreement confer benefits and rights to the City. The parties hereto further acknowledge and agree that the City, as a third party beneficiary, shall have the right but not the obligation to enforce the provisions of this agreement or to seek remedies available to it, should a party to this agreement fail to comply with any of this agreement's terms. Except with regard to the City or as otherwise specified herein, the parties hereto do not intend this agreement to confer any benefits or rights on any third party not a signatory hereto.”

Full audit rights are hereby granted to the City to ensure Motivate's compliance with this Section 12.1, it being understood that the City's review of such contracts will not allow the City to require any modification to such contracts other than the inclusion of the above-mentioned provision to such contracts and the City shall observe the confidentiality and non-disclosure provisions of each such contract.

**12.2. The City as Third-Party Beneficiary on Certain Obligations.** The Parties agree that for any non-performing contract related to the System for which the City is a third party beneficiary the City may enforce any and all obligations, debts, or contracts between Motivate and any entity, vendor, contractor, subcontractor, corporation, partnership, or individual providing any good(s) or rendering any service(s) in connection with the System by seeking any and all remedies available to it against such entity, should any party to the contracts described herein fail to comply with any of the contract's terms, provided that prior to seeking enforcement of any such contract term, the City shall provide prior written notice to Motivate and an opportunity to seek a resolution with respect to such non-performance for a reasonable, limited time period not to exceed ninety (90) days.

**12.3. Supply Agreements and Other Agreements.** Motivate shall include a provision in the Supply Agreement and other key agreements with suppliers of System components which allows for (a) assignment of such agreements to the City without the consent of the Supplier and (b) right for the City to cure any default of Motivate under such agreements. In the case of any other key agreements which Motivate enters into in connection with the operation of the System that are not co-terminus with the Term, such agreements shall include provisions that allow for (a) assignment of such agreements to the City without the consent of the other contracting party and (b) right for the City to cure any default of Motivate under such agreements..

### **13. OTHER REQUIREMENTS AND POLICIES.**

**13.1. Civil Rights Policy Requirements.** During the performance of this Contract, Motivate for itself, its assignees and successors in interest agrees to comply with the following requirements (collectively, the “Civil Rights Policy Requirements”):

- 13.1.1. **Compliance with the Nondiscrimination Regulations.** Motivate shall comply with regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, which are herein incorporated by reference and made a part of this Contract (as may be amended from time to time, the “Nondiscrimination Regulations”).
- 13.1.2. **Nondiscrimination.** Motivate, with regard to the Work performed by it during the Term, 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. Motivate shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Nondiscrimination Regulations, including employment practices when this Contract covers a program set forth in Appendix B of the Nondiscrimination Regulations.
- 13.1.3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by Motivate 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 Motivate of Motivate’s obligations under this Contract and the Nondiscrimination Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin. For the avoidance of doubt, nothing contained herein shall require Motivate to submit any contracts entered into by it in connection with the System to a competitive bidding process.
- 13.1.4. **Information and Reports.** Motivate shall provide all information and reports required by the Nondiscrimination 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, ODOT, the Federal Highway Administration (“FHWA”) or the Federal Transit Administration (“FTA”) as appropriate, to be pertinent to ascertain compliance with such Nondiscrimination Regulations, orders and instructions. Where any information required of Motivate is in the exclusive possession of another who fails or refuses to furnish this information, Motivate shall so certify to City, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information. The Parties agree that any federal disclosure and reporting requirements hereunder shall only apply to Motivate to the extent that the System receives federal funding and such funding specifically requires such disclosure by Motivate.
- 13.1.5. **Sanctions for Noncompliance.** In the event of Motivate’s noncompliance with the Civil Rights Policy Requirements of this Contract, the City shall impose such sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:

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

13.2. **Incorporation of Provisions.** Motivate shall include the provisions of Section 13.1.1 through 13.1.5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Civil Rights Policy Requirements, or directives issued pursuant thereto. Motivate 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.

13.3. **Disadvantaged Business Enterprise Provisions.** Motivate shall comply with the Disadvantaged Business Enterprise Supplemental Required Contract Provisions set forth in Exhibit E attached hereto (the “DBE Provisions”).

13.4. **High Road Standards.** Motivate shall comply with the High Road Standards set forth in Exhibit F attached hereto (the “High Road Standards”).

13.5. **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, Motivate is encouraged to incorporate these principles into the Work wherever possible and commercially reasonable, in Motivate's reasonable discretion. Therefore, in accordance with the principles and the City's Sustainable Procurement Policy, it is the policy of the City to encourage the use of products or services that are Environmentally Preferable. “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.

13.6. **Certification as an EEO Affirmative Action Employer.** Motivate 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 must be maintained throughout the duration of the Contract.

13.7. **Non-Discrimination in Employee Benefits (Equal Benefits).** Motivate must demonstrate Equal Benefits compliance by providing the Equal Benefits Compliance Worksheet/Declaration Form indicating: Full Compliance, Option B.

13.8. **Business License.** Motivate must be in compliance with the City’s Business License requirements as prescribed by Portland City Code Chapter 7.02 and such compliance must be maintained throughout the Term.

13.9. **Buy America.** The Capital Equipment purchased from the Supplier shall comply with Buy America Requirements Section 635.410 of Title 23, Code of Federal Regulations, and the Intermodal Surface Transportation Efficiency Act.

Motivate 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. Motivate 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.

14. **DEFAULT; REMEDIES.**

14.1. **Default**

14.1.1. **Default by Motivate.**

- (i) Motivate will be in default under this Contract if Motivate breaches a material provision of this Contract, whether by action or inaction, and such breach continues and is not remedied within forty-five (45) days after Motivate receives written notice from the City specifying the breach; provided, however, in the case of a breach that cannot with due diligence be cured within a period of forty-five (45) days, Motivate shall not be in default hereunder *if and so long as* Motivate commences the cure within forty-five (45) days after Motivate receives written notice from the City and thereafter diligently prosecutes such cure to completion.
- (ii) Motivate shall also be in default under this Contract if Motivate makes an assignment for the benefit of creditors, or is adjudicated or bankrupt, or has a receiver, trustee or creditor’s committee appointed over it that is not removed within one hundred eighty (180) days after appointment.

14.1.2. **Default by the City.**

- (i) The City shall be in default under this Contract if the City breaches a material provision of this Agreement, whether by action or inaction, and such breach continues and is not remedied within forty-five (45) days after the City receives written notice from

Motivate specifying the breach; provided, however, in the case of a breach that cannot with due diligence be cured within a period of forty-five (45) days, the City shall not be in default hereunder *if and so long as* the City commences the cure within forty-five (45) days after the City receives written notice from Motivate and thereafter diligently prosecutes such cure to completion.

14.2. **Remedies.** In the event of an early termination of this Contract by any Party due to Default hereof by the other Party, the non-breaching Party shall be entitled to any and all equitable and legal remedies available under applicable law and hereunder. In the event of an early termination by the City due to Default by Motivate, then the City may procure services outstanding from a Replacement Operator. Motivate shall be liable for any additional re-procurement costs incurred by the City. The City is also entitled to any and all other equitable and legal remedies that are available. Except as expressly contained in this Contract, the remedies for Default under 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.

14.3. **Liquidated Damages.** If Motivate fails to complete the Work by the specified deadlines set forth herein, the Parties agree that the City will be damaged and that the amount of damage to the City and to the public will be difficult to determine. Accordingly, Motivate agrees to pay to the City the liquidated damages specified in this section (the "Liquidated Damages") with respect to the failure(s) by Motivate to complete a specific element of the Work by the date specified for such element (except in the case where such delay or failure is attributable to a Force Majeure Event, Supplier Defect or Supplier delay). The following terms shall apply to all Liquidated Damages:

14.3.1. Liquidated Damages are assessed for each calendar day of delay, including holidays and weekends and shall run until the Project is substantially complete.

14.3.2. In the event Motivate fails to complete a specific element of the Work by the date specified for such element, then the City shall present a written notice to Motivate setting forth the City's request for payment of Liquidated Damages and the basis for such request. Unless otherwise specified herein, Motivate shall have thirty (30) days from receipt of such notice to pay such Liquidated Damages to the City or to contest such request in good faith in writing. If requested in writing by Motivate, the City may recover Liquidated Damages by deducting all undisputed amounts due from payments owing to Motivate hereunder.

14.3.3. If Motivate fails to perform any element of the Work by the due date therefor as a result of a Force Majeure Event, delay or failure to perform by the Supplier under the Supply Agreement, defect in the Capital Equipment including Supplier Defect or the Software not caused by Motivate and/or

delay or failure by the City in the performance of its obligations hereunder, then Liquidated Damages shall not be payable hereunder. The Parties agree that in the event of a Force Majeure Event, Supplier delay, Supplier Defect and/or delay or failure by the City in the performance of its obligations hereunder, the Parties will work in good faith to adjust the deadlines for Motivate's performance herein as mutually agreed upon by the Parties.

- 14.3.4. In no event shall Liquidated Damages payable by Motivate hereunder for any calendar year period of the Term exceed four percent (4%) of the Operations Fee payable to Motivate hereunder for the prior calendar year.
- 14.3.5. For the avoidance of doubt, in any one month of the Term, Liquidated Damages shall be payable either under Sections 14.3.7 (i), (ii), (iii) or (iv), but not under two or more of those sections.
- 14.3.6. Except as specifically set forth in this Section 14.3, there shall be no Liquidated Damages payable by Motivate hereunder.
- 14.3.7. Subject to the foregoing terms and conditions applicable to Liquidated Damages, the Parties agree to the following Liquidated Damages as amounts that are fair and reasonable to compensate the City for failure by Motivate to perform on a timely basis hereunder:
- (i) **Delayed Delivery of Capital Equipment.** If the Capital Equipment is not delivered by the Supplier to Motivate within one hundred eighty (180) days of submission of the Purchase Order, Motivate shall proceed against the Supplier to recover liquidated damages for such delayed delivery pursuant to the liquidated damages provisions specified in the Supply Agreement. Motivate agrees to transfer to the City all such liquidated damages actually collected by Motivate (if any) within five (5) days of receipt thereof as its Liquidated Damages obligations hereunder. Such amounts shall not be subject to the cap specified in Section 14.3.4.
  - (ii) **Delayed Launch of System.** If the Operational Date does not occur within thirty (30) days of Equipment Acceptance, then Motivate shall pay to the City Liquidated Damages in the amount of 1% of System Start-Up Fees as shown in Exhibit B and an additional .143% for each subsequent day thereafter that the Operational Date is delayed.]
  - (iii) **Delay in achieving Fully Operational Status.** If the Operational Date has occurred but the System is not Fully Operational within sixty (60) days of Equipment Acceptance, then Motivate shall pay to the City Liquidated Damages in the form of a pro rata reduction in the monthly Operations Fee payable to Motivate by the City hereunder until such time as the System is Fully Operational based

on the number of Bicycles in the System (e.g., if the System has 80% of 600 Bicycles in operation, then the City shall reduce the monthly Operations Fee payable hereunder by 20%). Such Liquidated Damages amounts shall not be subject to the cap specified in Section 14.3.4.

- (iv) **Operations Shutdown.** If the System is shut down due to mechanical, software, or Motivate delay or error for longer than eight (8) continuous hours, Motivate will pay the City Liquidated Damages in the amount of 1/12th of the Operations Fee for the previous month for each eight (8) hours of the occurrence. In addition, after more than three (3) instances of any shut down lasting more than two (2) hours each during a calendar year, Motivate will pay the City Liquidated Damages of 1/12<sup>th</sup> of the Operations Fee for the previous month.
- (v) **Operable Fleet below minimum levels.** If Motivate maintains less than 70% of the minimum operable Fleet of Bicycles as described in Exhibit B, Section 4A and does not correct the problem within 30 calendar days, Motivate will pay the City Liquidated Damages in the amount of 1/12<sup>th</sup> of the Operations Fee for the previous month. If the minimum levels are still not maintained for subsequent months, Motivate will continue to pay the City Liquidated Damages for 1/12<sup>th</sup> of the Operations Fee and an additional 1/12 of the Operations Fee for each subsequent month.
- (vi) **Graffiti.** Motivate shall pay Liquidated Damages to the City for failure to remove graffiti on the System on a timely basis as specified in Exhibit C, Section II.F hereof.

14.3.8. **Expansion.** Subject to and in accordance with the terms hereof, the Parties may agree to expand the System and issue additional purchase orders for additional Capital Equipment for such expansion. If such additional Capital Equipment is not installed within thirty (30) days of Equipment Acceptance, then Motivate will pay Liquidated Damages to the City equal to .143% of the purchase price of such additional Capital Equipment for each day that is thirty (30) days after such installation date until such equipment is installed.

14.4. **Force majeure.** Neither the City nor Motivate will be held responsible for failure to perform hereunder to the extent that such performance is prevented by acts or events beyond the Party's reasonable control including, but not limited to: acts of God; fire, flood, earthquakes, severe inclement weather or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; terrorism, or acts of legislative, judicial, executive, or administrative

authorities (other than acts by the City contrary to its obligations hereunder); or any other circumstances that are not within its reasonable control (each a "Force Majeure Event").

## 15. **DISPUTE RESOLUTION; ARBITRATION**

15.1. **Dispute Resolution.** In the event of a dispute between the Parties, including, without limitation, a dispute regarding Liquidated Damages pursuant to Section 14.3 or a dispute regarding a breach of this Agreement or regarding the occurrence or continued existence of a Default, such dispute shall be addressed and resolved in accordance with the following (the "Dispute Resolution Process"):

15.1.1. The City's Project Officer and Motivate's General Manager, or their respective delegates, shall meet, within ten (10) days after receipt by one Party of notification from the other Party of such dispute, to negotiate in good faith in order to try to resolve such dispute (the date of the first such meeting, or the expiration of such 10-day period if the meeting is not timely held, being the "Initial Meeting Date"). If such persons fail to resolve such dispute within 15 days after the Initial Meeting Date, then the Director of the Bureau of Transportation and the CEO of Motivate shall meet promptly and negotiate in good faith in order to resolve such dispute. If such persons fail to resolve such dispute within 30 business days after the Initial Meeting Date, then such dispute shall be subject to arbitration under Section 15.2. As used in this Section 15.1, a meeting may be held in person, by conference call or by video conference. By agreement of the Parties, any of the deadlines set forth in this Section 15.1 may be extended or shortened. The process described in this Section 15.1 shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

15.2. **Arbitration.** Unless the Parties otherwise agree, arbitration shall be administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Rules, or similar service. A request for mediation shall be made in writing, delivered to the other Party and filed with the applicable mediation service. Either Party may submit such request. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Portland, Oregon. The Parties shall be represented by individuals of their choosing. Agreements reached in mediation shall be binding on the Parties and enforceable in a State or Federal Court of competent jurisdiction sitting in Multnomah County, Oregon. The arbitration process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

## 16. **MISCELLANEOUS**

16.1. **Project Officer.** For the purposes of managing the implementation of the provisions of this Contract on behalf of the City, the City has designated a Project Officer. As of the Effective Date, the Project Officer is Steve Hoyt-McBeth.



16.2. **Independent Contractor Status.** Nothing contained in this Contract or any acts of the Parties hereby shall be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the Parties other than that of independent contracting parties. Motivate is engaged as an independent contractor and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. Motivate, its subcontractors, and its 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. Any City employees, officials, representatives, agents and subcontractors are not employees of Motivate and are not eligible for any benefits offered by Motivate to its employees, including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

16.3. **No Third Party Beneficiaries.** Motivate and the 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.

16.4. **Successors in Interest.** The provisions of this Contract are binding upon and inure to the benefit of the Parties hereto, and their respective successors and approved assigns.

16.5. **Headings.** Titles of the sections of this Contract are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

16.6. **Calculation of Time.** All periods of time referred to herein include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period will be extended to include the next day which is not a Saturday, Sunday or legal holiday.

16.7. **Waivers.** No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Contract will be considered a waiver of any other rights of the Party making the waiver. No waiver by the City or Motivate of any provision of this Contract or any breach thereof, will be of any force or effect unless in writing and no such waiver will be construed to be a continuing waiver.

16.8. **Survival.** Sections \_\_\_\_\_ shall survive any termination or expiration of this Contract.

16.9. **Compliance with Applicable Law.** In connection with its activities under this Contract, Motivate and the City shall comply with all Laws.

16.10. **Governing Law; Venue.** The provisions of this Contract are 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 must be brought in the appropriate court in Multnomah County, Oregon. By executing this Contract, Motivate agrees to personal jurisdiction of the Oregon courts and federal courts with jurisdiction therefrom.

16.11. **Entire Agreement.** This Contract and its exhibits are the entire agreement between the Parties with regard to the subject matter herein and the non-binding Term Sheet between the Motivate International, Inc. and the City is hereby expressly superseded. There is no other oral or written agreement between the Parties with regard to this subject matter. There are no oral or written representations or warranties made by either Party, implied or express, other than those contained in this Contract.

16.12. **Assignment of Anti-Trust Rights.** Motivate hereby irrevocably assigns to the City any claim for relief or cause of action that Motivate now has or that may accrue to Motivate 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 Motivate by any person, which goods or services are used, in whole or in part, for the purpose of carrying out Motivate's obligations under this Contract.

16.13. **Severability.** In the event that a court, government agency, or regulatory agency with proper jurisdiction determines that any provision(s) of this Contract, is unlawful or otherwise unenforceable, then such provision(s) of the Contract to the extent it is unlawful, will 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 will continue in full force and effect.

16.14. **Assignment and Subcontracting.** This Contract or any interest therein shall not be assigned or subcontracted by Motivate to any other person or entity (other than subcontracting of certain sponsorship agency services to assist Motivate in procuring Sponsors for the System) without the prior written consent of the City, not to be unreasonably withheld. In the event of a an unauthorized assignment or subcontracting hereof by Motivate without prior written consent of the City, the purported assignment or subcontracting is void and Motivate will remain liable for full performance of this Contract. Notwithstanding the City's approval of a subcontractor, Motivate shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to Motivate hereunder. Motivate agrees that if subcontractors are employed in the performance of this Contract, Motivate and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

16.15. **Amendments.** Any changes to this Contract must be made by written amendment and approved by the City's Chief Procurement Officer in order 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 that such amendments are in writing, signed by both Parties, and approved by the City Attorney's Office. Motivate acknowledges and agrees 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.

16.16. **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 any Party to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

16.17. **Employees Not to Benefit.** No City employee or elected official of the City shall be permitted to any share or part of this Contract or to any benefit that may arise therefrom.

16.18. **City Furnished Property.** No materials, labor or facilities will be furnished by the City unless specifically provided for within this Contract. For the avoidance of doubt, facilities/locations are to be provided by the City for installation of the stations, bike racks, payment kiosks and other Capital Equipment needed for operation of the System (such locations to be mutually agreed upon by the Parties). The Parties agree that storage and staging locations for the System are the responsibility of Motivate.

16.19. **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:

Motivate:  
Motivate International, Inc.  
5202 Third Avenue  
Brooklyn, NY 11201

Attn: Justin Ginsburgh

With a copy to the same address:

Motivate International, Inc.  
Attn: General Counsel

The City:

City of Portland  
Bureau of Transportation  
1120 SW 5<sup>th</sup> Avenue, Suite 800  
Portland, OR 97204

Attn: 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.

16.20. **Time is of the Essence.** Each Party shall make every reasonable effort to meet the Project Schedule and other deadlines. Circumstances that may delay the delivery of goods and services from established delivery dates and other deadlines, including excusable delays, Supplier delays and Force Majeure Events, shall be reported to the City immediately upon discovery. The City and Motivate must agree on any schedule or pricing change due to excusable delays, Supplier delays or Force Majeure Events in writing.

16.21. **Incorporation.** The exhibits attached to this Contract are incorporated into and made a part of this Contract. In the event of a conflict between a provision in this Contract and a term in an exhibit, the provision in this Contract shall be controlling.

16.22. **Counterparts.** 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.

IN WITNESS WHEREOF, the City and Motivate have caused this Contract to be executed by their duly authorized representative(s) on the Effective Date.

THE CITY:  
CITY OF PORTLAND

By \_\_\_\_\_  
Chief Procurement Officer

Approved as to form:

\_\_\_\_\_  
Lisa Gramp, Deputy City Attorney

Motivate:

Motivate International, Inc.

By:

## ATTACHMENT A Statutory Requirements

Motivate shall comply with 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 City's Equal Benefits 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, Motivate shall make payment promptly, as due, to all persons supplying to Motivate 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 Motivate or subcontractors 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, Motivate 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 Motivate, of all sums that Motivate agrees to pay for the services and all moneys and sums that Motivate 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 Motivate, if Motivate 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. Motivate 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. Motivate 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.

Attachment B

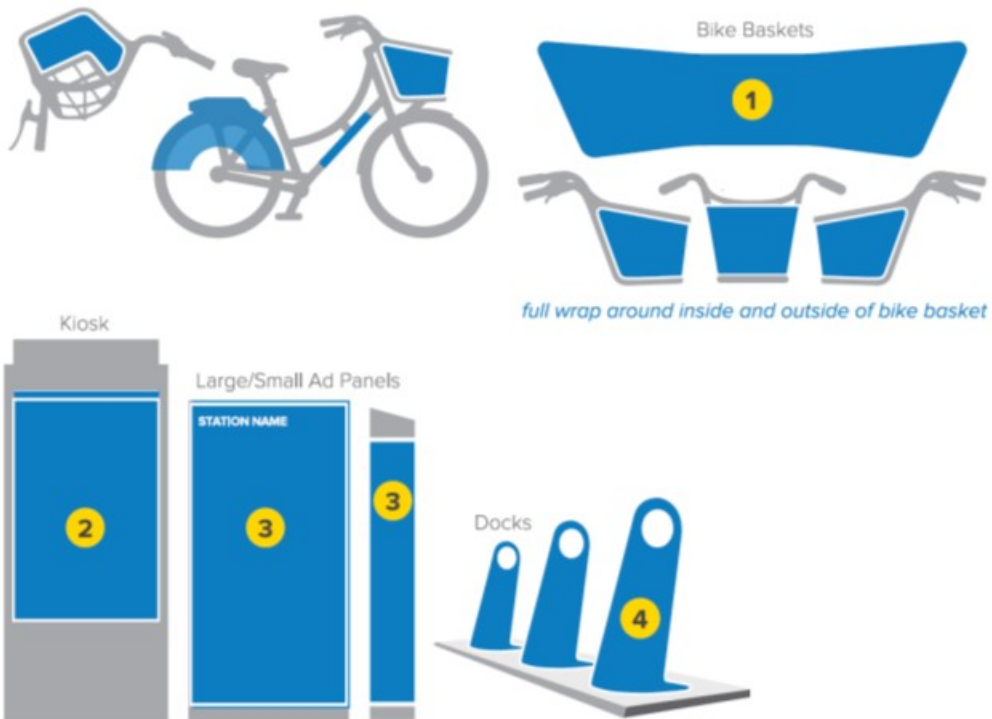
LOGO PLACEMENT ON CAPITAL EQUIPMENT

Spaces permitted for logo placement

A small, discrete element of the Bicycle shall be reserved for recognition of Metro (regional government in Portland)

**SPONSORSHIP / ADVERTISING ASSETS**

1	<b>Bike Assets</b>	Bike basket (inside & outside), bike downtube, rear lockplate, skirt guard
2	<b>Kiosk Ad Panels</b>	Display advertising on backlit advertising panels
3	<b>Freestanding Ad Panels</b>	Display advertising on dedicated advertising panels
4	<b>Bike Docks</b>	Print advertising wrapped on bicycle docks





## **EXHIBIT A**

### Definitions

The following words and phrases, when used in this Contract, have the meanings described below:

"Advertisements" has the meaning set forth in City of Portland Transportation Rule 10.28 PDOT Sponsorship Policies Regarding Public Interest Messages;

"Approved Categories" means the following areas of business and enterprise which are pre-approved categories for Sponsorships of the System: air transportation; athletic and outdoor apparel; specialty retail chains such as sporting goods; auto manufacturing and parts; bicycle manufacturing; construction and real estate development; consumer electronics; creative services (including advertising, marketing, and film and video production); department store and large format retail; quick service and casual dining chain restaurants; specialty chain restaurants such as coffee; non-alcoholic beverages and juices; energy; financial services, including investments and banking; credit cards; grocery and natural food products; health care services, health insurance, alternative care and hospitals; insurance (auto, home, life); Internet search providers and media streaming services; legal services; manufacturing; telecommunications; and transportation (except for bicycle) and logistics; and such other categories as reasonably requested by Motivate and approved by the City.

"Backend Software and Computer Hardware" means the electronic interface enabling, among other things, Stations, Bicycles, subscriber customer service, cellular service, Subscriber Cards, Motivate's website, and call center to function and customer payments to be made.

"Base Plate" means a base component which rests on the ground and supports the Racks, Kiosk, and Map Frame;

"Bicycle" means a device propelled solely or partially 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, allows for the initiation, holding, and ending of a trip without the need of a Kiosk, and as such device is required to be supplied by Supplier and subject to Equipment Acceptance by Motivate.

"Capital Equipment" means Bicycles, Kiosks, Racks and any and all physical components that are purchased or leased in connection with the System as more particularly described in Exhibit B.

"Capital Equipment Pricing Sheet" means the maximum price that the City will pay for the Capital Equipment as set forth on Exhibit D.

"Category" means the primary business activity of an individual, company or organization.

"City Bike Corral" means a series of public bike racks installed in the public right of way for temporary storage of privately owned bicycles or Bicycles.

"City Marks" means individually or collectively the City name and ~~Se~~ together with all trademarks, service marks, copyrights, logos, taglines, slogans, graphics, designs, color schemes, trade dress, trade name and other marks associated with the City and includes those City Marks shown on Exhibit G - Intellectual Property Schedule attached hereto, as the same may be amended from time to time.

"Civil Rights Policy Requirements" has the meaning set forth in Section 7.2.10 hereof.

"Crash" means any incident or event involving a Subscriber, Bicycle user (whether or not authorized), and/or Capital Equipment, the System, or a component thereof, resulting in personal injury or property damage of any kind.

"Condition Precedent" has the meaning set forth in Section 8 hereof.

"Confidential Information" has the meaning set forth in Section 10.3 hereof.

"Contract" means this Contract and the exhibits hereto, including the statutory requirements attached hereto as Attachment A.

"Corporate Memberships" means agreements with employers that provide discounted membership prices for its employee through either cash or in-kind payments by employer. Corporate Memberships are not Sponsorships.

"Cumulative Net Profit" means the cumulative amount as of the end of any month of System Revenue minus the Lost Parking Meter Revenue, minus all Sponsorship Administrative Fees, minus the Operations Fees.

"Cumulative Operations Loss" means the cumulative amount as of the end of any month by which System Revenues minus Lost Parking Meter Revenue, and minus all Sponsorship Administrative Fees, is less than sum of the Operations Fees. The Parties agree that the \$224,108 of the System Start Up costs paid by Motivate will be included the Cumulative Operations Loss.

"Days" means calendar days.

"DBE Provisions" has the meaning set forth in Section 13.3 hereof.

"Default" whether by Motivate or the City, has the meaning set forth in Section 14 hereof.

"Disclosing Party" has the meaning set forth in Section 10.3 hereof

"Environmentally Preferable" has the meaning set forth in Section 13.5 hereof.

"Equipment Acceptance" means receipt from Supplier of 100% of any Capital Equipment specified on any purchase order for the System and determination by Motivate that such Capital Equipment is in good working order and ready for installation;

"Equipment Maintenance Record" means the detailed records of all maintenance performed on the Capital Equipment.

"Fleet" means 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 within one calendar month of Motivate reporting them lost or stolen, as counted at 7:00 a.m. each day.

"Force Majeure Event" has the meaning set forth in Section 14.4 hereof.

"Fully Operational" means one hundred percent (100%) of the Bicycles and Stations are functional and available for use by the public as determined by the Project Officer (subject to reduction in the number of Bicycles for purposes of standard maintenance and repair).

"Fully Operational Date" means the date when all of the Stations are Fully Operational. The Parties agree that such date shall be within forty-five (45) days of Equipment Acceptance.

"High Road Standards" has the meaning set forth in Section 13.4 hereof.

"Hub" means a Station that does not include a Kiosk.

"Informational Panel" means the printed material displayed inside of the Map Frame.

"Intellectual Property" means (a) trade dress, trademarks, trade names, service marks, copyrights, logos, taglines, patents, slogans, color schemes, designs or other valuable marks, whether common law or registered, state or federal or other jurisdiction, (b) patents, patent rights or applications, trade secrets, all forms of protection applicable to inventions, conceptions, methods, procedures, processes, designs, works of authorship, derivative works, algorithms, and utility models or (c) other forms of intellectual or industrial property under the laws of any jurisdiction.

"Kiosk" means a structure that provides Bicycle rental instructions, contains payment equipment to collect the Subscriber Fees and Usage Fees, and includes all other means necessary for the rental of Bicycles and helmets (if found to be in Preferred plan).

"Laws" has the meaning set forth in Section 7.1.7 hereof.

"License" has the meaning set forth in Section 4.1 hereof.

"Liquidated Damages" has the meaning set forth in Section 14.3 hereof.

“Limited English Proficiency” means having limited abilities in speaking, reading or understanding communications in English.

“Lost Parking Meter Revenue” means the amount of revenue lost by the City as a result of Stations being placed in metered parking spaces not expressly requested by the City (City to notify Motivate in advance prior to approval of any Stations in such locations).

“Marks” means the City Marks, Motivate Marks, Sponsor Marks and/or System Marks, as the context may require hereof.

“Map Frame” means a two-sided metal informational display unit, including a translucent covering and lock.

"Motivate Funds" has the meaning set forth in Section 6.4 hereof.

"Motivate Marks" means individually or collectively the name and logo of Motivate together with all trademarks, service marks, copyrights, logos, taglines, slogans, graphics, designs, color schemes, trade dress, trade name and other marks associated with Motivate and includes those Motivate Marks shown on Exhibit I - Intellectual Property Schedule attached hereto, as the same may be amended from time to time.

"O&M Account" has the meaning set forth in Section 6.11 hereof.

"ODOT" has the meaning set forth in Section 6.2 hereof.

“ODOT IGA” means that certain Intergovernmental Agreement by and between the City and the Oregon Department of Transportation dated September 19, 2012, that provides for funding for the System.

“Operational Date” means the earlier of (i) the date that is thirty (30) days from Equipment Acceptance; or (ii) the date that Motivate notifies the City that seventy-five (75%) percent of the 600 Bicycles, for which all required permits have been issued, are operational and available for use by the public.

“Operation Zones” mean the four contiguous geographic areas comprising the entire service area determined by mutual agreement between City and Motivate.

“Operations Fee” means the amount that Motivate may invoice the City on a monthly basis for fulfilling its operational duties as set forth in the Pricing Sheet attached hereto as Exhibit D.

"Operations Plan" has the meaning set forth in Section 3.1 hereof.

"Oregon Tax Laws" has the meaning set forth in Section 15.20 hereof.

"Other Sponsorship" has the meaning set forth in Section 6.5.4 hereof.

"Other Sponsorship Funds" has the meaning set forth in Section 6.6.3 hereof.

“Payment Card Security Obligations and Identity Theft Prevention” has the meaning set forth in Exhibit G attached hereto.

"Payment Priority Schedule" has the meaning set forth in Section 6.12 hereof.

"Permits" has the meaning set forth in Section 4.4 hereof.

“Project Officer” means City staff/employee or the person or persons designated in Section 15.1 to oversee the Project.

"Public Funds" has the meaning set forth in Section 6.2 hereof.

“Public Involvement Plan” means a plan to engage the general public and traditionally underserved stakeholders to provide meaningful input on the Project.

“Purchase Order” means the purchase order issued by Motivate for the Capital Equipment listed on Exhibit D.

“Purchase Order Date” means the date, no later than one hundred twenty (120) days after City Council approval of this Contract when Motivate must issue the Purchase Order and the City remit payment to the Supplier for 50% of such Purchase Order.

“Rack” means a branded bike rack contained on a Kiosk Station or Hub designed for locked storage for System Bicycles.

"Receiving Party" has the meaning set forth in Section 10.3 hereof.

"Renewal Term" has the meaning set forth in Section 9.2 hereof.

“Replacement Operator” means a City-approved successor operator of the System, which may be the City itself.

"Revenue Sharing" has the meaning set forth in Section 6.15 hereof.

"Secondary Sponsorship" has the meaning set forth in Section 6.5.2 hereof.

"Secondary Sponsorship Funds" has the meaning set forth in Section 6.5.2 hereof.

“Site Plan” means an illustration that shows the proposed location of a 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.

“Sponsor” means third-party financial contributors to the System that meet the requirements of the Sponsorship Policy. Sponsors may be provided recognition through a number of different venues depending on the amount of the Sponsorship.

“Sponsorship” means support of the System by Sponsors, including financial and promotional support thereof, which is used toward the acquisition, launch, marketing, operation of

the System (including, as applicable, for consideration to Motivate) in the form of either Title Sponsorship, Secondary Sponsorship, or Other Sponsorship, in exchange for recognition of such Sponsors as set forth in the respective Sponsorship agreements between Sponsor and Motivate. Funds awarded from or awarded by government organizations to the System are not Sponsorships.

“Sponsorship Administrative Fee” means an amount deducted from a Sponsorship that is procured by Motivate and paid to Motivate in accordance with the Payment Priority Schedule and as described in Section 6.

“Sponsor Marks” means individually or collectively the name and logo of any Sponsor(s) together with all trademarks, service marks, copyrights, logos, taglines, slogans, graphics, designs, color schemes, trade dress, trade name and other marks associated with such Sponsor(s).

“Sponsorship Policy” has the meaning set forth in Section 6.10 hereof.

“Station” means a designated area on publicly or privately owned real property where the public can begin, hold or end a trip on the System, and that contains at a minimum: Bicycles, Map Frame, and Racks or City Bike Corral, and may also contain Base Plates, helmet rental device, and a Kiosk.

“Station Corral” means either a temporary Station or a temporary location staffed by Motivate where the public can check out and return Bicycles.

“Station Protective Devices” means all pavement markings/paint, islands, and/or protective bollards, at or adjacent to Station locations.

"Statutory Requirements" has the meaning set forth in Section 3.1 hereof.

“Subscriber” means a party that completes the Subscriber Agreement to use the System.

“Subscriber Agreement” means an agreement as described in the Operations Plan that is signed online or in writing by all persons authorized to use the System.

“Subscriber Card” means a membership card for rental of Bicycles;

“Subscriber Fees and Usage Fees” means funds collected by Motivate that allow Subscribers to use the System, including but not limited to different type of subscription products (e.g., annual, pay-as-you-go, etc.), fees for rides extending beyond a time allotment, Bicycle replacement fees, etc.

“Supplier” means the vendor(s) contracted by Motivate to supply the Capital Equipment and Back End Software, website, etc.

"Supplier Defect" means any defect or malfunction in the Capital Equipment or any component thereof which prevents or materially limits or interferes with the operation of the System as contemplated by the Parties hereunder and which is not discoverable upon reasonable

inspection, including in connection with Motivate's inspection of the Capital Equipment as part of the Equipment Acceptance process, or which develops in a latent manner over time.

"Supply Agreement" means the agreement between Motivate and the Supplier which shall be subject to review and approval by the City;

"Supplies" means computers, software, office furniture, and office supplies, but excludes computers, software, office furniture, and office supplies of Motivate (if any) not dedicated to the System.

"System" means the Project, inclusive of the Capital Equipment, Supplies, Technical Platform, Program Marks, System website, and Backend Software and Computer Hardware.

"System Marks" means the System name and logos together with all trademarks, service marks, copyrights, logos, taglines, slogans, graphics, designs, color schemes, trade dress and other marks associated with the System. For the avoidance of doubt, System Marks may be a combination of the Intellectual Property of the City, Motivate or the Title/Presenting Sponsor, as their interests may appear.

"System Revenues" means the funds derived from the System that are eligible for disbursement as per Section 6 of the Contract. For any period, System Revenues are the sum of Subscriber Fees and Usage Fees plus Title Sponsorship Funds and Secondary Sponsorships Funds plus interest earnings, minus all merchant services fees (including interchange, processing and gateway fees) and bank fees. System Revenues do not include Other Sponsorships Funds which funds shall not be deposited into the O&M Account, but shall be paid to or retained by Motivate in their entirety and not subject to Revenue Sharing hereunder.

"System Start-Up Fees" means Motivate's planning, operating and launch costs in connection with the System prior to the Fully Operational Date (but excluding costs of the Capital Equipment).

"Term" has the meaning set forth in Section 9.1 hereof.

"Territory" means the City of Portland, as defined by the City's incorporated areas (except that such Territory shall be expanded to the United States for purposes of promoting the System through the use of the System website, mobile application and other promotional media that is not gated to the City of Portland).

"Title Sponsor" means the lead Sponsor who purchases the naming rights to or the presenting rights to the System.

"Title Sponsorship" has the meaning set forth in Section 6.5.1.

"Title Sponsorship Funds" has the meaning set forth in Section 6.5.1.

"Usage Data" means the complete System information on trip origin, route, and destination, and Subscriber information including non-personally identifiable demographic data.

"Work Product" has the meaning set forth in Section 5.7 hereof.



## **EXHIBIT B**

### SCOPE OF WORK

#### 1. Description of the Work

Motivate shall undertake the following to implement the System in accordance with the schedule on behalf of and at locations approved by the City. Motivate will design, acquire, install, operate, maintain, and market a publicly available network of at least 600 Bicycles, 60 Stations (consisting of 30 City Bike Corrals, 19 Hubs and 11 Kiosks), that will make bike sharing a convenient option for the vast majority of trips within the Central City. Motivate agrees to perform the services described in this Contract (collectively, the "Work"). The primary purpose of the Work is for Motivate 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"). It shall be Motivate's responsibility to provide the specific Services set forth herein. The City is relying on Motivate's experience with designing, conducting, managing and operating similar projects in other cities. Motivate will furnish all of the material, supplies, tools, equipment, labor, and other services necessary for the completion of the project described herein (including procuring the Capital Equipment pursuant to the Supply Agreement).

#### 2. Task Detail, Completion and Payment Schedule

Based on the expectation of City council approval of the terms hereof and of the System in September of 2015, Motivate expects to launch the System by July 2016. The dates set forth on the Task Detail, Completion and Payment Schedule Table below are based on City Council approval in September of 2015. All dates listed below are subject to modification and extension based on the actual public approval schedule.

The City will reimburse Motivate based on completion of the tasks listed below. Task 2 will assume a System of at 600 Bicycles, 60 Stations (consisting of 30 City Bike Corrals, 19 Hubs, and 11 Kiosks).

Task #	Task	Description	Payment not to exceed	Deliverable Date
1	Recruit Sponsors	<p>A. Submit plan for Sponsorship acquisition.</p> <p>B. Conduct monthly Sponsorship planning meetings to report progress on Sponsor acquisition and coordinate efforts.</p> <p>C. Submit Title Sponsorship and Secondary Sponsorship plans for City approval</p>	\$0	<p>1A: 30 days from Council approval</p> <p>1B: Ongoing</p> <p>1C: Ongoing</p>
2	Public Participation Plan	A. Work with City to develop the Public Participation Plan that complies with Title VI.	\$0	November 1, 2015
3	Station Plan and Public Outreach	<p>A. Initiate public outreach as outlined in Public Participation Plan.</p> <p>B. Propose four Operations Zones to the City that fully comprise the service area.</p> <p>C. Submit initial System station map. Map should include station placement rationale and methodology, proposed City Bike Corrals proposed to be designated as auxiliary Stations, alternative plans which include helmet rental, if provided by Motivate, 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, minimize operating costs and the loss of on-street parking revenue, and rebalancing demand on Stations. Any station location proposed for private property must receive initial oral or written expression of interest from property owner.</p> <p>D. Solicit public comment on the proposed station map. At a minimum, this will include uploading an interactive online map and coordinating with City to present station map at one large public meeting, coordinated meetings with PBOT staff at every neighborhood coalition office and up to 10 community, neighborhood and business organization board meetings.</p> <p>E. Submit recommended System station map that incorporates feedback from City and public meetings. Where City has denied an exact Station location, City shall provide an alternative within</p>	\$60,000 upon completion of 3H	All tasks complete within 180 days of Council approval

		<p>500' of the proposed Station unless City determines that a better location exists for Station within service area.</p> <p>F. Incorporate final changes of City (Final station locations subject to approval by the City Traffic Engineer).</p> <p>G. Obtain rights and permissions for all stations not sited on Bureau of Transportation property, for both placement of station, right of Motivate 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.</p> <p>H. Develop site plans for all final station locations except for City Bike Corrals, providing necessary information for City to designate locations within the public ROW. City agrees to provide two set of consolidated comments. Motivate will address City comments and make one set of revisions and resubmit to City for final approval.</p>		
4	Marketing Plan	<p>Motivate will develop a marketing plan that successfully promotes System with the goal of meeting or exceeding membership sales and ridership projections from System Financing Report.</p> <p>A. Develop marketing plan for the Portland market, including specific customer markets (low-income users and traditionally under-represented groups including communities of color, immigrants, refugees and individuals) identified within the service area in the Public Participation Plan. The plan should also include methods to increase ridership, procure corporate memberships, partner with organizations throughout the community, and align with other transportation activities and goals.</p> <p>B. Identify key messages for different customer target areas area.</p> <p>C. Identify social media strategies.</p> <p>D. Develop a Subscriber and User Pricing Plan as described in Section 6.</p> <p>E. Develop collateral, including letterhead, system brochures.</p> <p>F. Develop registration packet.</p>	\$0	All tasks complete within 180 days of Council approval
5	Develop System Brand	<p>Motivate will develop or select brand concept for System that meets the marketing and public goals of the System and that may recognize a Title Sponsor subject to City approval.</p>	\$50,000 at completion	All tasks complete within 30 days of

		<p>A. Submit draft brand concept. Brand concept should incorporate target markets from Marketing Plan and/or title sponsor wishes.</p> <p>B. Incorporate City comments on brand concept and resubmit.</p> <p>C. Submit draft image, including color scheme, logo images, and messages not already identified in brand concept.</p> <p>D. Incorporate PBOT staff feedback.</p> <p>E. Finalize system brand</p>	n of Task 5E	execution of Title Sponsorship Agreement or within 240 days of Council approval, whichever is earlier
6	Acquire System	<p>Motivate will purchase and coordinate all Capital Equipment, store and check equipment; install and execute System launch.</p> <p>A. Upon mutual agreement between the City and Motivate on the quantities of Bicycles and Stations, place Purchase Order for Capital Equipment, including but not limited to spare parts, software licensing and warranties as shown in the Services Contract and Exhibit D.</p> <p>B. Receive and perform detailed inspections of all Capital Equipment in accordance with the contract. Submit detailed inspection report for all Capital Equipment.</p>	<p>\$771,600 in advance of Task 6A</p> <p>\$771,600 after completion of Task 6B</p>	<p>6A: Within 90 days of Council approval</p> <p>6B: Within 180 days of completion of 6A</p>
7	Launch System	<p>Motivate will hire and train local employees and contractors; install and execute System launch.</p> <p>A. Hire a General Manager for the System. Work with the High Road Committee to implement High Road Standards to further the goals that the economic benefits from the Project are shared by a broad cross section of the community, using the principles outlined in Exhibit F. Conduct job and contractor recruitment and hiring, using the principles outlined in Exhibit G.</p> <p>B. Rent a warehouse to store the Capital Equipment and conduct operations in the Territory.</p> <p>C. Launch the Project website</p> <p>D. Develop a sustainable rebalancing plan test that reduces and strives to eliminates the use of motorized vehicles. At a minimum, plan should identify potential strategies, including pricing incentives and penalties, dynamic pricing, gamification, storage hubs, bike trailer utilization, station density and size, and A/B testing of different combinations of strategies, along with a cost-benefit analysis of the different approaches. The plan shall also set</p>	<p>\$50,000 at completion of Task 7B</p> <p>\$90,000 at the completion of Task 7F</p> <p>\$38,000 at the completion of Task 7G</p>	<p>7A: Within 120 days of Council approval</p> <p>7B: Within 240 days of Council approval</p> <p>7C: Within 240 days of Council approval</p> <p>7D: Within 240 days of Council approval</p> <p>7E: Within 30 days of Equipment Acceptance</p>

		<p>goals for maximum motorized vehicle use for each year, with the intent of reducing or eliminating use over the Term.</p> <p>E. Install 75% of Stations and Launch System (Operational Date) and conduct large public launch event.</p> <p>F. Install 100% of Stations (Fully Operational Date).</p>		7F: Within 45 days of Equipment Acceptance
8	Operate System	<p>A. Motivate shall operate the System in accordance with the Operations Plan attached herein as Exhibit C. Motivate will also undertake research to determine the best approach to ensuring user safety, including helmet usage. This will include exploration of: a technological solution with helmets, Bicycles or stations; a social campaign to encourage helmet availability and usage; or a combination of these.</p> <p>B. Relocate Stations or make system modifications at the City's request to respond to construction needs, emergencies, or other unforeseen events. Perform audits at the City's request.</p>	See Section 6	Ongoing from Operational Date through end of Term.
		<b>TOTAL BUDGET</b>	<b>\$1,832,000</b>	

## EXHIBIT C

### Operations Plan

#### I. CONTINUOUS OPERATION AND MANAGEMENT.

Motivate shall operate the System and the toll-free telephone service center such that it will be available for use twenty-four (24) hours per day, three hundred sixty-five (365) days per year beginning with the Operational Date. Motivate shall operate and manage the on-site aspects of the System including repairs, Bicycle service and maintenance, and relocating of Bicycles from one Station to another, three hundred sixty-five (365) days per year from 6:00 AM to 10:00 PM from April 1<sup>st</sup> to October 31<sup>st</sup> and from 7:00 AM to 9:00 PM from November 1<sup>st</sup> to March 31<sup>st</sup> unless otherwise mutually agreed upon by the Parties.

#### II. INSPECTION AND MAINTENANCE.

- A. Motivate shall, at all times, follow and strictly comply with the manufacturer's requirements, warranties, and recommendations for assembly, maintenance, storage, repair, and replacement of all Capital Equipment.
- B. Motivate shall perform, for every Bicycle placed, the following tasks at least (i.e., at a minimum) every month, unless the manufacturer's requirements, warranties, and recommendations for assembly, maintenance, storage, repair, and replacement of all Capital Equipment require, recommend, or call for, a different frequency, in which case Motivate shall comply with such requirement or recommendation:
  - i) inspect drive chain for proper functioning and lubrication and repair as needed;
  - ii) inspect handlebar for proper centering and tightness and repair as needed;
  - iii) inspect tires for proper inflation, defects, and wear and repair as needed;
  - iv) inspect brakes for excessive wear and ensure proper working order and repair as needed;
  - v) inspect saddle for proper tightness, excessive wear, and deterioration and repair as needed;
  - vi) inspect shifters for proper functioning and repair as needed;
  - vii) inspect lights for proper functioning and repair as needed;
  - viii) inspect fenders and chain guard for proper functioning, defects, and wear and repair as needed;

- ix) ensure that all other Bicycle components including, without limitation, the basket, bell, and sponsor attribution are properly attached and functioning and repair as needed; and
  - x) clean Bicycle.
- C. Motivate shall perform, for every Bicycle at any time placed in service the following tasks at least (i.e., at a minimum) annually and on an as-needed basis, unless the manufacturer's requirements, warranties, and recommendations for assembly, maintenance, storage, repair, and replacement of all Equipment require, recommend, or for a different frequency, in which case Motivate shall comply with such requirement or recommendation:
- i) remove and clean entire drive train;
  - ii) inspect and adjust tension, and true wheels;
  - iii) inspect tires for excessive wear, defects, and replace inner tubes; and
  - iv) inspect hubs for proper functioning.
- D. Motivate shall, immediately upon discovery of a damaged and/or malfunctioning Bicycle proposed to be placed, or placed, in service in the Portland service area, remove the Bicycle from service. In addition, the Project Officer may require Motivate to remove a Bicycle from service for any reason.
- E. Motivate shall inspect every Kiosk and Bicycle keypad to review for Identity Theft issues per industry standards and Exhibit G.
- F. Motivate shall remove all graffiti from all Capital Equipment no later than seventy-two (72) hours after discovery thereof, or receipt by Motivate of a report of graffiti (such removal period to be no later than four (4) hours in the case of racist or hate graffiti). If Motivate fails to remove graffiti within the time periods specified in the preceding sentence, Motivate shall pay Liquidated Damages to the City in the amount of (a) \$50 per 24 hour period that graffiti remains visible after the original 72 hour removal period has elapsed or (b) \$50 for each 4 hour period that racist or hate graffiti remains visible after the original 4 hour removal period has elapsed.
- G. Motivate will, at a minimum, replace all Capital Equipment and parts pursuant to the manufacturer's warranty or as necessary due to damage or any other cause throughout the Term.

### III. DISTRIBUTION OF THE BICYCLES.

- A. Motivate shall at a minimum distribute the Bicycles among the Stations and place the Bicycles in operable Racks throughout the day, three hundred sixty-five (365) days per year between the hours of 6:00 AM to 10:00 PM from April 1<sup>st</sup> to October 31<sup>st</sup> and from 7:00 AM to 9:00 PM from November 1<sup>st</sup> to March 31<sup>st</sup> unless

otherwise directed by the Project Officer. Such distribution shall be critically timed to increase the probability that each Station, at all times, contains a sufficient number of empty Racks for Bicycles to be returned and occupied Racks containing Bicycles available for users. All Bicycles placed in operational Racks shall be in acceptable operating condition.

- B. At a minimum, 10% of total bike fleet will be in each of the specified four Operation Zones during each AM and PM peak, designated as from 6:00AM to 9:00 AM and 4:00 PM to 7:00 PM, respectively. There will be a 30-minute grace period for any instance where the number of bikes drops below 10%.
- C. Each kiosk will have available bikes for use and racks available to complete a trip for a minimum of two hours during the AM and PM peaks, cumulatively.
- D. Motivate will report at least once per week any occurrence of full or empty Racks exceeding these requirements. After the first two months of operation, if Motivate fails to meet this threshold on four instances during a calendar year, Motivate shall develop a mutually-agreed upon corrective action plan within ten (10) business days. These requirements will be waived for any day the System averages more than five (5) trips per Bicycle.

#### IV. FLEET AND REQUIRED LEVEL OF OPERATIONAL BICYCLES.

- A. From two weeks after the Fully Operational Date, Motivate shall ensure that on the average (by day) ninety percent (90%) of the Fleet shall be in acceptable operating condition and placed in service from April 1<sup>st</sup> to October 31<sup>st</sup> and 70% from November 1<sup>st</sup> to March 31<sup>st</sup>.
- B. If, at any time, Motivate knows or expects that, for any month, the required percentages will not be met, then Motivate shall immediately deliver to the Project Officer the Motivate's plans to meet the required percentages of Bicycles in service.
- C. The percentage of the Fleet in operating condition and available for service shall be calculated at 7:00 AM each and every day and averaged over each calendar month to calculate the monthly percentage in service.

#### V. RELOCATION AND RECONFIGURATION OF STATIONS.

- A. The City may require that a Station or parts thereof be relocated to accommodate unexpected commuting patterns, construction or other reasons. At the request of the Project Officer, Motivate shall adjust the placement or configuration of a Station. The City shall compensate Motivate \$500 per Hub and \$700 per Station with Kiosk move requested by the City. The Project Officer will provide a minimum of 48 hours in advance for any requests regarding Station relocation or reconfiguration. The City has the right to move Stations with its own labor and equipment with no compensation to Motivate.

#### VI. SYSTEM CALL CENTER



Motivate shall provide to the City, all Subscribers, and the public at large, a toll-free telephone number for Motivate's call center.

- A. The call center shall be in continuous operation twenty four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year.
- B. The average time to transfer the call to a knowledgeable customer service representative (including hold time) shall not exceed an additional thirty (30) seconds. This standard shall be met by Motivate eighty percent (80%) of the time during each calendar month.
- C. Motivate shall ensure that call center operators are fluent in English and Spanish for all persons who contact the call center.
- D. The operators at the call center shall be fully competent and knowledgeable to answer questions and provide information concerning, among other things, subscription process, subscription prices, billing, Crashes, comments, complaints, malfunction problems, and location of the Stations. The call center manager shall be knowledgeable about the Portland region.
- E. The call center operators shall keep accurate and complete written records of each such call as hereinafter required, including the primary reason for each call, date, time and caller's name if provided.
- F. The call center shall keep record of the primary reason for each call. Motivate shall deliver a monthly report, by the 30<sup>th</sup> day of the following month, to the Project Officer which documents the calls and Motivate's responses to each.

## VII. PROJECT WEBSITE AND SOCIAL MEDIA

- A. In consultation with Motivate, City shall register in the City's name a project web site, Facebook and Twitter accounts. The Parties may decide to create other project social media accounts. If so, these accounts will be registered by the City unless otherwise directed by the Project Officer.
- B. Motivate shall create and maintain the content for the Project website and Facebook and Twitter accounts and any other Project social media accounts.
- C. The Project Officer may request removal of content from website or social media accounts. Motivate shall act judiciously and in a timely manner to remedy the content of the website and social media accounts to reflect the best interests of the City.
- D. Use of the City Marks must have the prior approval of the Project Officer.
- E. After written approval from the Project Officer, Motivate shall upload a Project Website at least sixty (60) days prior to the Operational Date. The website shall include an API that allows software Motivate's to develop third party applications,

data visualizations and other tools to help enhance users' experience and to further the understanding of the System and bike share systems as a whole. Motivate shall strive, but not be required, to enable membership purchasing through the website within thirty (30) days before Operational Date. Website shall comply with the current Payment Card Industry Data Security Standards and Identify Theft Prevention standards as set forth in Exhibit G. Motivate shall, at all times, keep the website information updated, current, and accurate. Motivate shall provide Project Officer continual and perpetual access to back end of web site that allows to create daily reports on System and operator performance, including but not limited to number of trips, number of bikes in operation, sum of time that Hub or Station is empty or full, number of bikes with maintenance requests by users, total number of outstanding service requests, and last servicing of bike.

The website shall address, at a minimum:

- i. Eligibility requirements;
- ii. Subscription information, rates, schedules;
- iii. Payment information and subscription processing;
- iv. Method for Subscribers to update required information;
- v. Subscriber Agreement and acceptance of terms;
- vi. A map with the entire network of Stations and real-time availability of Bicycles at each Station displayed both graphically and in text, both for a standard computer screen and mobile devices;
- vii. Frequently Asked Questions;
- viii. Safety requirements and information (including notification in the event of malfunction or Crash);
- ix. Encouragement of helmet use;
- x. Special events calendar;
- xi. News.
- xii. State and local Bicycle Laws
- xiii. Rider etiquette
- xiv. Link to Portland Bureau of Transportation web site
- xv. Title VI project related information, with a hyperlink conspicuous on the home page;

- E. Thirty (30) days prior to the Operational Date, Motivate will also provide a bike share application for smartphone users to register for the System, identify the location of the Stations on a map in real-time, display status of the Station (availability of the Bicycles and the Racks), availability of a specific Station, reserve a Bicycle, place a hold on a Bicycle during a trip, and the ability to perform searches.

VIII. Motivate STAFFING

- A. Motivate shall, at all times, provide sufficient and adequately trained staff to efficiently and promptly perform the Work.
- B. Motivate's General Manager. Motivate shall designate, in writing to the Project Officer, an General Manager. Such General Manager shall be fully knowledgeable of the contents of this Contract, the Project, and the Work. The General Manager shall be the primary point-of-contact between the Project Officer and Motivate. The General Manager, or his/her designee, shall be available to Motivate's employees, staff, and subcontractors and to the Project Officer at all times, twenty-four (24) hours a day, seven (7) days a week, and three hundred sixty-five (365) days per year by telephone or by email. The General Manager shall have the authority of Motivate to make prompt operational decisions concerning the Project and the Work. Motivate may, at its option, designate by written notice to the Project Officer an additional person(s) who may be contacted by the City concerning the Work, provided however that: (i) the notice shall clearly specify the matters about which such additional person(s) is authorized to make operational decisions on behalf of Motivate; and, (ii) the designation of such additional person(s) shall neither replace, supplant, or relieve the General Manager as the primary point of contact between the Project Officer and Motivate.
- C. Personnel and Staffing Requirements. Motivate shall deliver to the Project Officer copies of all written personnel policies that, at a minimum, address employee conduct and qualifications. Motivate shall deliver to the Project Officer, Motivate's staffing plan. Such plan shall specify, by task or assignment, the number of employees who shall perform such tasks or assignment, and the corresponding days and hours of such performance so as to fully and continuously perform the Work in strict accordance with this Contract. Such plan also shall address any other staffing matters required by the Project Officer.

IX. SUBSCRIBER AGREEMENT AND PRIVACY CONDITIONS

- A. Motivate shall, at all times, protect the privacy rights of all Subscribers. All personally identifiable information that is held by Motivate and pertains to subscribers, including all names, addresses, phone numbers, email addresses, and credit and debit card numbers, will be kept confidential by Motivate in accordance with the Exhibit G, Payment Card Security Guidelines and Identify Theft Prevention Obligations; provided, however, that:

- i. if there is any Crash where a Subscriber is unable to communicate personal information to the appropriate authorities, then Motivate may, in its sole discretion, provide the Subscriber's name, address, phone number, and other important information to such authorities,
  - ii. If Motivate receives a subpoena from any court or other authority, then Motivate will provide all requested information in accordance with applicable Laws and Regulations,
  - iii. Motivate may disclose trip data, gender, age, aggregate and other data about customers in accordance with applicable Federal, State, and local laws, ordinances and regulations, including but not limited to zip codes for customer addresses (provided this would not allow any individual's address to be separately identified), and
  - iv. Motivate may disclose contact information for subscribers to the City and to third parties for non-commercial, non-marketing purposes, including but not limited to gathering feedback on the program and services, provided that City and any such third parties agree to keep any such information regarding Subscribers confidential. Motivate shall provide a clear and simple way for Subscribers to opt out. Motivate and the City shall strictly comply with all applicable Federal, State, and local laws, ordinances and regulations concerning the privacy of all subscriber information obtained by Motivate in the course of performing Work under this Contract.
- C. Motivate shall create and provide the Subscriber Agreement and Privacy Policy to the Project Officer. The Subscriber Agreement shall include, at a minimum, the following:
- i. Subscriber Fees and Usage Fees, and deposits (if any).
  - ii. Subscriber's personal and financial data and information shall remain confidential, accessible only by Motivate and the City, subject to the provisions described above and in accordance with the Credit Card Security Obligations.
  - iii. Subscriber must return the Bicycle in the same condition as it was rented.
  - iv. Subscriber's acknowledgement and acceptance of responsibility to provide notices to Police Bureau and call center of Crash, damage, loss, and/or personal injury, theft, and vandalism.
  - v. Subscriber's acknowledgement and acceptance of responsibility and liability for any misuse, consequences, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses,

penalties, attorneys' fees, judgments, suits, or disbursements of any kind or nature whatsoever related to a stolen or lost Bicycle or Subscriber Card.

- vi. Penalty amount for stolen or lost Bicycle, Subscriber Card, lock, etc.
- vii. Prohibited uses including, without limitation, no more than one person on a Bicycle at one time.
- viii. Prohibition of operation of any Bicycle rented from Motivate to anyone other than subscriber. Subscriber Cards may not be transferred to anyone in any manner whatsoever.
- ix. A representation by each subscriber that he/she is: physically able to ride a Bicycle without risk to one's health; knowledgeable about the operation of a Bicycle, and is knowledgeable about the laws pertaining to Bicycles operated within the jurisdictions where the Bicycles are to be used.
- x. Subscribers must be 18 years of age or older
- xi. Recommendation of helmet use by Bicycle riders.
- xii. Prohibited use of Bicycle while under the influence of alcohol, marijuana, drugs, any controlled substance, or any medication which would impair the subscriber's operator's ability to operate the Bicycle in a manner consistent with local laws and regulations.
- xiii. Improper use of Bicycle basket as to type of contents, weight, or visual obstruction.
- xiv. Bicycles shall not be used for any illegal purpose.
- xv. To be included in the agreement in capital letters and bold font:
  - a) Subscriber's acknowledgement and acceptance of responsibility to immediately report to the call center and to the Police: a stolen or lost Bicycle and to the call center a lost or stolen Subscriber Card.
  - b) Subscriber's acknowledgement of and acceptance of responsibility and risk,
  - c) Subscriber's acceptance to indemnify and hold harmless the City, its officers, employees, and agents, including release of all claims, including injuries and death.

## X. REPORTING

A Monthly Reporting Requirements to the City. Motivate shall deliver a monthly report, by the 30th day of each month to the Project Officer with the following data in a form acceptable to, and approved by, the Project Officer. The data shall reflect the Motivate's applicable Work during the immediately preceding month. The monthly reports shall be as described below.

i. Usage Statistics:

- a) Miles traveled during the quarter and fiscal year-to-date;
- b) Total number of trips (a "trip" is the use of a Bicycle from one Rack to another Rack or back to the initial Rack or that ends or begins with the user placing or removing the Bicycle on/from hold for 1 minute or more) during the month and fiscal year-to-date;
- c) Average time duration per trip;
- d) Number of existing and number of new subscriptions, by subscription type designated by age, gender and ethnicity;
- e) Number of trips originating from and arriving to each Station;
- f) Number of trips and number of users from users utilizing membership products targeted at increasing use by low-income users;
- g) Analysis of ridership trends, operational problems; and recommendations for Service improvements, as criteria therefore is mutually agreed to by the Motivate and the Project Officer.

ii. Crash Summary:

- a) Number of each type of Crash (traffic violation, property damage, personal injury, hospital visit).

iii. Financial Summary:

- a) Revenue generated from subscriptions, by subscription type;
- b) Revenue generated from Subscriber Fees and Usage Fees;
- c) Revenue generated from other sources, including, without limitation, sponsorships;

iv. Comments and Complaints Summary:

- a) Total number of calls and number of calls by type received by Motivate from subscribers or the public at large;

- b) Statistics regarding responsiveness to calls, (including time of call, time to answer, and duration of call).
- v. Station and Fleet Summary:
- a) Average number of Bicycles in service each day and average percentage of total Bicycle fleet in service;
  - b) Number of Bicycles inspected, by Motivate;
  - c) Number of Bicycles repaired;
  - d) Percent of time when all of the Stations in the System are concurrently Fully Operational.
  - e) Number of Bicycles in the categories of: stolen, lost damaged, and vandalized during the quarter and fiscal year-to-date;
  - f) Daily record of the number of times and duration of time that Stations were full or empty; and
  - g) Any instances of the project web site being not operational or malfunctioning for more than 10 minutes.
- vi. Sustainable Rebalancing Progress:
- a) Number of miles driven by motorized rebalancing vehicles;
  - b) Staff hours spent in motorized vehicle rebalancing
  - c) Number of miles ridden by bike trailer rebalancing;
  - d) Number of staff hours spent in bike trailer rebalancing;
  - e) Number of Bicycles parked outside of Stations or service area returned by users by: a) incentives; b) gamification;
  - f) Progress on using predictive modeling and/or observation to reduce rebalancing need or fine-tune incentives and penalties;
  - g) Recommended modifications to Station size or location based to improve System and rebalancing efficacy;
  - h) Number of Bicycles parked outside of Stations or service area returned by users by: a) incentives; b) gamification;
- vii. High Road Standards performance on a quarterly basis:

- a) Percentage of work hours conducted by employees from traditionally underserved populations;
- b) Any subcontractors hired during quarter and M/W/E certification status;
- c) Workforce certification status, wages and benefits, and other issues relevant to the three-pronged commitment for equity and diversity as stated in the High Road Standards;
- d) Number of discounted memberships sold during past quarter and cumulative for the Term;
- e) Meetings and any actions taken based on recommendations, queries or statements from the High Road Committee;
- f) Initiatives, partnerships, outreach and any other actions taken to meet the letter and spirit of the High Road Standards;

B. Motivate's Reporting Requirements Regarding Theft and Vandalism. Motivate shall report in writing each incident of theft or vandalism of every Bicycle and Station to the Project Officer when Motivate determines that a Bicycle or Station has been stolen or vandalized. It shall be the obligation of Motivate to notify its insurance carrier(s) of all such incidents of theft or vandalism if necessary. Immediately upon notice of each incident of theft or vandalism, Motivate also shall: report such incident to the Police Department; investigate the incident; and accurately determine and record the information described in subparagraphs one (i) through three (iii) below. Motivate shall also encourage all subscribers to file immediately a Police Report with the Police Department for incidents of theft and vandalism. Motivate shall require subscribers to file immediately a Theft and Vandalism Report to Motivate after notice of a theft or vandalism. The report shall include at a minimum, the following information:

- i. the subscriber's name; subscriber #; sex; phone; date of birth; address;
- ii. the theft/vandalism details: including date; time; city; state; address/location of theft; description of theft/vandalism; police report #; officer name and badge #; police precinct/department;
- iii. names, addresses, and telephone numbers of all witnesses and other persons with knowledge of the theft/vandalism.

Promptly upon receipt of a written request from the City, Motivate shall provide to the Project Officer requested information and documents to assist the City in meeting any existing and future reporting requirements for, or related to, the application for, or continuation of, Project funding from charitable, local, regional, state, or Federal sources.



## XI. THEFT AND VANDALISM

Motivate is solely responsible to repair and replace Bicycles and Stations damaged by vandalism and theft. There will be an allowable “shrink rate” of 1% per year for stolen City-owned bikes over the Term. Motivate will make every effort to expedite the repatriation of all stolen City-owned equipment.

## XII. STANDARD OPERATING PLAN.

Within three months of the Operational Date, Motivate shall submit a draft Standard Operating Plan (“SOP”) to the Project Officer. The SOP shall include detailed operating policies and procedures.

## XIII. DATA

- A. All usage data generated by the System, is recorded and maintained, along with a separate backup by Motivate, and will be the property of the City and Motivate (excluding any PII which shall be the property of Motivate). Usage data includes complete information on trip origin and destination, and Subscriber information including non-personally identifiable demographic data.
- B. At the request of the Project Officer, Motivate shall make usage data available to the general public on the project web site. Operational data, proprietary technical information and personally identifiable information of Subscribers is not included in usage data, notwithstanding the City’s perpetual license to subscriber information.
- C. Motivate shall be permitted to use such data in an aggregate form for any other purpose, including the promotion of bike share systems around the world. Motivate shall provide login access to the System and the program usage data to the City.
- D. Motivate shall not sell, lease, or transfer personal identifiable information to any third party without explicit consent from the users. Motivate and may use personally identifiable information data for promotional and marketing activity for financial gain but must abide by the Sponsorship Policy in Section 6 and must provide a conspicuous and simple process for customers to opt out of receiving promotional information from Motivate.
- E. Non-personal identifiable information data will be made accessible via an API provided by Motivate.

## XIV. INTERRUPTION OF SERVICE.

- A. Intentional Interruption of Service. If, at any time, Motivate, determines, intends, or is required, to temporarily interrupt all or a portion of the Service, for any reason

including, without limitation, weather, or other event or circumstance where continued service would be unavailable, impractical, or impossible, then Motivate shall comply by a mutually agreed upon System Closure Policy. This policy shall be included in the Standard Operating Procedures.

- B. Unintentional Interruption of Service. If, at any time, a System malfunction or an event or circumstance occurs where continuous service would be unavailable, and this causes or will cause a temporary interruption of Service, then Motivate shall immediately contact the Project Officer by telephone and by email and specifically describe the reason, estimated duration, Motivate's proposed actions to correct the cause of the interruption (if possible), and minimize the interruption, and Motivate's plans to resume Service.
- C. In the case of both Intentional and Unintentional Interruptions of Service, Motivate shall be obligated to perform all necessary and appropriate acts to restart the Service as soon as possible.

#### XV. HELMET VENDING OPERATION

- A. If City and Motivate agree to terms to include Motivate's proposed technological solution to providing helmets as part of System, Motivate shall incorporate helmet vending operations into its Standard Operating Plan. Motivate staff will be available to service the helmet vending kiosk during the same hours as Section III, Distribution of Bicycles.



**EXHIBIT D**

**PRICING SHEET**

Prices shall be as established herein in Exhibit D, Capital Equipment Pricing Sheet.

1. Capital Equipment Cost Table

<b>Social Bicycle Costs</b>	Quantity	Unit Cost	Total
Smart Bikes	600	1400	\$ 840,000
Replacement parts for bikes	600	75	\$ 45,000
Exterior Basket Printed Assets and Design Template	600	15	\$ 9,000
Interior Basket Printed Assets and Design Template	600	15	\$ 9,000
Upgrade to Skirt Guard	600	85	\$ 51,000
Skirt Guard Printed Assets and Design Template	600	20	\$ 12,000
Docking Point	600	400	\$ 240,000
Dock Printed Assets and Design Template	600	35	\$ 21,000
Kiosks (POS terminals)	11	9500	\$ 104,500
Large map frames	11	2650	\$ 29,150
Compact map frames	19	1200	\$ 22,800
Printed map and ad design	30	500	\$ 15,000
Implementation Services			\$ 25,000
Website Landing Page			\$ 10,000
RFID Cards	5000	2	\$ 10,000
<b>Total</b>			\$ 1,443,450
Sales Tax			\$ -
Shipping			\$ 99,750.00
<b>Total Capital Costs</b>			\$ 1,543,200

Upgrade to eight (8) speed Bicycle: \$135 per Bicycle.

- a. Bicycle description                      Bicycle shall be equipped, at all times, with the following items in good, acceptable operating condition:
- (iii) Shimano Nexus 3-speed or 7-speed internal hub,
  - (iv) step-thru design,
  - (v) reflective sidewall tires,

(vi) Dynamo front and rear lights which automatically illuminate upon Bicycle use with a rated lifespan of at least 10,000 hours and which remain illuminated for at least 90 seconds after bicycle comes to a stop,

(vii) rustproof chain guard and fenders,

(viii) basket or luggage carrier rated to carry more than 20 lbs and certified by the manufacturer's test laboratory under CEN 14872 standard and strap,

(ix) adjustable seat height with built-in theft deterrence measure in seat post that can accommodate riders from 4'10" to 6'4",

(x) bell,

(xi) u-lock style (non-cable) self locking mechanism,

(xii) activated capability to provide the following from solar panel, hub, and/or other mechanisms or other portable mechanisms:

a) built-in active GPS,

b) initiate basic maintenance report directly from Bicycle to operator backend,

c) ability to initiate trip by manually entering member number, PIN and/or other identifying information directly on the Bicycle; via smartphone app; and communication with RFID card,

(xiii) front and rear handlebar brakes,

(xiv) kickstand, and

(xv) space as shown in the Attachment B and other mutually agreed upon locations..

b. Unit prices for equipment shall remain firm for a period of one year from the execution of this Contract. At the end of the one-year period following the date of acceptance, equipment price changes may be allowed herein. Such price changes shall be documented in writing between Motivate and the City's Chief Procurement Officer as amendments. Motivate agrees to provide pricing for all products for which Motivate is an authorized distributor for the duration of this Contract if and when requested by the City.

## 2. Services

- a) Phase I System Start Up Fee: \$ 288,800 of the fee will be reimbursed by PBOT in accordance with Exhibit B and the invoicing procedures under this contract. Additional projected launch expenses of \$224,108 will be paid up-front by Motivate and will be applied to the Cumulative Operations Loss for later reimbursement through any Cumulative Net Profit.
- b) Station Corrals: up to three at no more than four hours each at no cost to City during Term. After that: \$1,000 for set up and \$100 per hour or operation
- c) Installation Fee after Phase I Launch: \$2,000 per station, including the site drawing
- d) Relocation of Station at City's request: \$700 per Station and \$500 per Hub.
- e) Service prices for equipment shall remain firm for a period of one year from the execution of this Contract. Following the end of the one year period referenced above, Motivate's prices may increase annually no more than the rate of the Consumer Price Index for the Portland region (CPI-U). Such price changes shall be documented in writing between Motivate and the City's Chief Procurement Officer as amendments.

Motivate shall submit any proposed pricing revisions in writing to the Project Officer 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 Motivate's original Proposal, Motivate 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 Officer of the requested price adjustment.

**EXHIBIT E**

**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](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](mailto: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

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 online at: <http://www4.cbs.state.or.us/ex/dir/omwesb/search/index.cfm?fuseaction=code>



## **EXHIBIT F**

### HIGH ROAD STANDARDS

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

Motivate 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 Motivate are therefore committed to the following approach to equity:

1. By 45 days after Contract signing, City and Motivate will hold an initial meeting with representatives from the Coalition of Communities of Color to form a High Road Committee. Other participants could include Worksystems, Inc, Oregon Tradeswomen, Inc., and New Avenues for Youth. After the System Financing Report has been submitted by Motivate 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 Road Committee will be to refine, implement, monitor and enforce the High Road Standards and implementation strategy outlined in Exhibit F. Committee responsibilities will include, but are not limited to: providing refinements to the equity strategies outlined in Exhibit B, Scope of Work and Exhibit E; providing feedback on Motivate'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, Motivate is committed to upholding the following High Road Standards, through minimum requirements for Motivate'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. Motivate 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 or \$15 per hour after 90 days of employment, whichever is less. Increases to the project's minimum wage will be tied to the Consumer Price Index for the prior calendar year beginning on January 1, 2017 and each January 1st of the Term thereafter. Full benefits including healthcare coverage are provided to full-time employees after 90 days of employment.
3. Diverse Workforce: Historically underrepresented and economically disadvantaged people will make up not less than 50% of total employment hours.
4. 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.
5. Designating Training Providers to Maximize Recruitment Success: Motivate will work with High Road Committee as described in Exhibit F 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 Bicycle 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.
6. In coordination with the City, Motivate will provide up to 500 discounted annual 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. City and Motivate will explore providing a cash-only fare product to provide access to under- and un-banked customers.

## EXHIBIT G

### PAYMENT CARD SECURITY AND IDENTITY THEFT PREVENTION OBLIGATIONS

A. All payment card processing equipment and networks must meet all PCI DSS standards (as defined herein) as evidenced by the inclusion of the equipment on Visa's "Validated Payment Applications" list, as well as any and all standards required by federal or state law, as all are currently in effect throughout the duration of the Term hereof. Motivate agrees to comply with Visa's Cardholder Information Security Program/CISP, MasterCard's Security Data Program and SOP Rules, and with all other card association or National Automated Clearing House Association (NACHA) rules or rules of member organizations, and further agrees to maintain compliance with the Payment Card Industry Data Security Standards (PCI DSS), MasterCard Site Data Protection (SOP), and (where applicable) the Payment Application -Data Security Standards (PA-DSS), and ORS 646A.600 Identity Theft Prevention (collectively, the "Security Guidelines") as all are currently in effect during the Term hereof. All payment card equipment and service providers that Motivate uses under this Contract must be compliant with the Security Guidelines. Motivate further agrees to exercise reasonable due diligence to ensure that all of its agents, business partners, contractors and subcontractors maintain compliance with the Security Guidelines. Motivate shall deliver to the City annually its PCI Attestation of Compliance (AOC).

B. Motivate shall not retain or store PIN/CWZ/CVC2 data subsequent to authorization of a payment card transaction, shall prohibit disclosure of any and all cardholder information, and in the event of a compromise of payment card information of any kind by Motivate, Motivate shall immediately notify the City in writing, and shall provide, at Motivate's sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure and compromise.

C. To the extent any upgrades, or system changes, may be required to comply with payment card processor changes or changes to the any of the Security Guidelines, the City agrees to consult with Motivate and may allow implementation of such upgrades prior to the effective date of such changes depending upon the resulting consultation.

D. In addition to all other defense and indemnity obligations undertaken by Motivate under this Contract, Motivate, to the extent that its performance under this Contract includes the utilization by the public of payment cards to pay monetary obligations to the City or Motivate, or includes the utilization, processing, transmittal and/or storage of payment card data by Motivate, and to the extent arising from Motivate's negligence or willful misconduct, shall defend, release, indemnify and save and hold the City harmless against any and all fines, penalties, assessments, costs, damages or other financial obligations, however denominated, assessed against the City and/or Motivate by the payment card brand(s), financial institution(s) or by the National Automated Clearing House Association (NACHA) or successor or related entity, including but not limited to, any payment card company fines, regardless of whether considered to be consequential, special, incidental or punitive damages, costs of notifying Parties and persons affected by payment card information disclosure, the cost of replacing active payment cards, and

any losses associated with fraudulent transaction(s) occurring after a security breach with respect to payment card information, and shall defend, release, indemnify, and save and hold the City harmless from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, of or by anyone whomsoever, in any way affected by such payment card data or utilizing a payment card in the performance by Motivate of this Contract.

## EXHIBIT H

### INTELLECTUAL PROPERTY SCHEDULE

1. City Marks:

*Insert text of City name, logos and other City of Portland and PBOT marks including City skyline and other City-specific images approved for use in connection with the promotion of the System*

2. Motivate Marks:

*Insert name and logo of Motivate and other Motivate Marks*

3. System Marks:

*Insert name and logo of System and other System Marks upon creation/selection*