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B. CycleHop shall install additional Bike Stations in designated locations in the City, as approved by the City Traffic Engineer. CycleHop shall operate and maintain all bike share equipment during the term of this Agreement. Prior to installation at each location, CycleHop shall complete and submit applications to and receive approval from City's Department of Public Works. This approval may take the form of one or more permits issued by the City. To the extent that CycleHop desires to install Bike Stations in areas requiring additional permits or permission, CycleHop shall complete and submit applications to and receive approval from City's Public Works department and any other governmental agency or entity having jurisdiction or ownership over the proposed location as promptly as possible.

C. As needed, CycleHop shall furnish and pay for electrification or solar-powered illumination of all Bike Stations and shall indemnify the City for costs associated with same. The City will use its best efforts to assist CycleHop in obtaining power for such electrification or illumination.

D. The City may require relocation of any Bike Station, if the City Traffic Engineer determines in his or her reasonable discretion, that public safety or public access is negatively impacted by the selected location. CycleHop shall relocate the identified Bike Station and restore the site to its original condition at the sole cost of CycleHop. The City may require temporary removal or relocation of any Bike Station for work on adjoining streets or on nearby utility facilities and CycleHop shall temporarily remove or relocate that Bike Station at the sole cost of CycleHop. CycleHop shall remove or relocate any Bike Station within seventy-two (72) hours after notice from the City to do so, if time is of the essence. If CycleHop fails to do so within such time, then the parties agree that damages to the City would be difficult or impractical to determine and CycleHop shall pay to the City One Hundred Dollars (\$100) per day per Bike Station not relocated, beginning on the seventy-third hour, as liquidated damages.

1 E. The City may permit CycleHop to relocate a Bike Station, at the  
2 sole cost of CycleHop, if CycleHop demonstrates to the City's satisfaction that  
3 revenue from the Bike Station is insufficient to cover maintenance costs for that Bike  
4 Station. CycleHop shall not remove or relocate any Bike Station without the City's  
5 prior approval.

6 F. In addition to the initial five hundred (500) bikes and  
7 corresponding stations described in Subsection 1.B, the parties may also mutually  
8 agree to place Bike Stations at additional locations. Upon such agreement, Exhibit  
9 "B" shall be supplemented with Attachment "1" to Exhibit "B" to identify said  
10 locations. The terms and conditions of this Agreement shall apply, as far as  
11 practicable, to these other locations. CycleHop may, at its discretion expand the  
12 Program by adding additional bikes and stations, subject to CycleHop receiving  
13 appropriate licenses and permits from the City for placement of the stations. Upon  
14 receipt of additional funding, the City may purchase additional equipment and  
15 request that CycleHop operate that equipment under the same terms hereof.  
16 CycleHop may decline to do so if there is insufficient funding.

17 2. TERM. This Agreement shall begin at 12:01 a.m. on March 10, 2016  
18 and shall end at midnight on March 10, 2021, unless sooner terminated as set forth herein  
19 below. This Agreement may be extended by mutual agreement of the parties for two (2)  
20 additional 5-year terms.

21 3. TERMINATION FOR CAUSE. Either party may terminate this  
22 Agreement upon written notice to the other party if:

23 A. The other party fails to pay any sums due hereunder and does  
24 not cure such failure within ten (10) days after notice thereof is given by the non-  
25 defaulting party.

26 B. The other party attempts an assignment or transfer of this  
27 Agreement or any of its rights or obligations hereunder without the prior written  
28 consent of the other.

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C. The other party files a petition in bankruptcy, or files a petition or otherwise seeks relief under or pursuant to any bankruptcy, insolvency, or reorganization statute or proceeding, or a petition in bankruptcy is filed against the other party, or the other party becomes insolvent or makes an assignment for the benefit of its creditors, or a custodian, receiver, or trustee is appointed for all or a substantial portion of its business or assets.

D. The other party breaches any material term of this Agreement (including but not limited to violations of paragraph 17 relating to advertising, violations of the maintenance, marketing or sustainability policies, failure to maintain or replenish the required deposit amount pursuant to paragraph 18, or failure to comply with a directive from the City Traffic Engineer to relocate a kiosk or Bike Station when the public right of way is negatively impacted) and such breach is not cured within ninety (90) days after notice of the breach is given by the non-breaching party (or, if the default is not susceptible of cure within such thirty-day period, cure is not commenced within such period and thereafter prosecuted diligently to completion).

E. Upon termination or expiration of this Agreement, the City shall own the equipment purchased with local or federal grant funding, which shall be maintained and in good working order. Additional capital equipment shall remain with the City if purchased by or provided by the City by grant or local funding or by revenues slated for revenue sharing but diverted to system expansion. All capital equipment and other personal property or chattels provided by and/or paid for by CycleHop will remain the property and shall be owned by CycleHop. The City may require that CycleHop remove any CycleHop owned Bike Stations and other bike share equipment and restore the locations to their original condition and configuration within thirty (30) days after termination or expiration of this Agreement. If CycleHop fails to restore the locations, then the City shall have the right to undertake the restoration and the City's cost of restoration shall be paid by

1 CycleHop on receipt of an invoice for same from the City.

2 4. MAINTENANCE. CycleHop shall maintain all Bike Stations, bicycles,  
3 monitoring and related equipment in a clean, safe and attractive condition for the term of  
4 this Agreement, as more particularly set forth in Exhibit "A."

5 5. REVENUE SHARING.

6 A. CycleHop agrees to a revenue share program with the City.  
7 The revenue share program will be calculated from net revenue derived from this  
8 Agreement.

9 B. "Net Sharable Revenue" with respect to a particular calendar  
10 year means all revenue income, receipts, and other consideration actually received  
11 from advertising and sponsorship sold in support of the Project net of operating  
12 expenses to CycleHop and sponsorship and advertising sales commissions.

13 C. Revenue sharing shall be calculated according to the schedule  
14 set forth in Exhibit "C," the Revenue Sharing Table, attached hereto and  
15 incorporated herein by this reference. In the event that the Net Sharable Revenue  
16 is a negative number, there shall be no revenue sharing until the fiscal year during  
17 which time the total Net Sharable Revenue becomes a positive number.

18 D. At any time during the term of this Agreement, either party may  
19 request to review and reconsider the revenue sharing so that it results in a  
20 distribution that is equitable to both parties. Both parties must agree to any change  
21 in revenue sharing.

22 6. INSTALLATION. CycleHop shall install Bike Stations and all related  
23 equipment as set forth in Exhibit "A," attached hereto and incorporated herein by this  
24 reference.

25 7. ASSIGNMENT. CycleHop shall not assign its rights or delegate its  
26 duties hereunder, or any interest herein, or any portion hereof, without the prior approval  
27 of the City, except that CycleHop may assign any moneys due or to become due to it with  
28 the prior approval of the City, which consent shall not be unreasonably withheld, delayed

1 or conditioned. Notwithstanding the foregoing, no consent shall be required for any  
2 assignment by CycleHop to a controlled subsidiary of CycleHop or its corporate parents,  
3 or a purchaser of, or party acquiring, all or substantially all of CycleHop's assets, provided  
4 that CycleHop shall guarantee the performance of and cause the assignee to assume in  
5 writing all obligations of CycleHop under this Agreement. The rights and obligations of this  
6 Agreement shall bind and benefit any successors or assigns of the parties. CycleHop shall  
7 not subcontract any portion of the performance of services hereunder without the prior  
8 approval of the City, nor substitute an approved subcontractor without the prior approval of  
9 the City. Any attempted assignment, delegation or subcontracting shall be void, and any  
10 assignee, delegate or subcontractor shall acquire no right or interest in this Agreement by  
11 reason of such attempted assignment, delegation or subcontracting.

12 8. INSURANCE. As a condition precedent to the effectiveness of this  
13 Agreement and notwithstanding any commencement date stated herein, CycleHop shall  
14 procure and maintain at CycleHop's expense for the duration of this Agreement from an  
15 insurance company that is admitted to write insurance in the State of California or that has  
16 a rating of or equivalent to an A:VIII by A.M. Best and Company the following insurance:

17 (a) Commercial general liability insurance or self-insurance  
18 equivalent in coverage scope to an ISO CG 00 01 11 85 naming the City of  
19 Long Beach, its officials, employees and agents as additional insureds on  
20 an endorsement equivalent in coverage scope to an ISO CG 20 26 11 85  
21 from and against all liability, including, but not limited to, advertising injury  
22 liability, claims, demands, causes of action, proceedings, penalties,  
23 expenses, and costs for injury to or death of persons, or damage to or loss  
24 of property arising from CycleHop's performance under this Agreement in  
25 an amount not less than Two Million Dollars (\$2,000,000) per occurrence  
26 and not less than Four Million Dollars (\$4,000,000) general aggregate. This  
27 policy shall be endorsed to waive rights of subrogation against the City of  
28 Long Beach.

1 (b) Workers' compensation coverage as required by the  
2 California Labor Code and employer's liability insurance in an amount not  
3 less than One Million Dollars (\$1,000,000) per accident or occupational  
4 illness. This policy shall be endorsed to waive rights of subrogation against  
5 the City of Long Beach.

6 (c) "All Risk" Property insurance, including debris removal,  
7 covering the full replacement value of the installation of improvements  
8 pursuant to this Agreement. The City of Long Beach shall be named a loss  
9 payee and additional insured on this coverage as its interests may appear.

10 (d) Commercial automobile liability insurance equivalent in  
11 coverage scope to ISO CA 00 01 06 92 in an amount not less than Five  
12 Hundred Thousand Dollars (\$500,000) combined single limit per accident  
13 for bodily injury and property damage covering Symbol 1 ("all autos").

14 Any self-insurance program or self-insurance retention must be approved  
15 separately in writing by City and shall protect the City, its officials, employees and agents  
16 in the same manner and to the same extent as they would have been protected had the  
17 policy or policies not contained retention provisions. Each insurance policy shall be  
18 endorsed to state that coverage shall not be suspended, voided or canceled by either party  
19 except after thirty (30) days prior written notice to City, and shall be primary and not  
20 contributing to any other insurance or self-insurance maintained by City.

21 CycleHop shall deliver to City certificates of insurance and original  
22 endorsements for approval as to sufficiency and form prior to the start of performance  
23 hereunder. The certificates and endorsements shall contain the original signature of a  
24 person authorized by that insurer to bind coverage on its behalf. "Claims made" policies  
25 are not acceptable unless City's Risk Manager determines that "Occurrence" policies are  
26 not available in the market for the risk being insured. If a "Claims made" policy is accepted,  
27 it must provide for an extended reporting period of not less than one hundred eighty (180)  
28 days after the termination of this Agreement. The insurance required herein shall not be

1 deemed to limit CycleHop's liability hereunder. City reserves the right to require complete  
2 certified copies of all policies at any time. Any modification or waiver of these insurance  
3 requirements shall be made only with the approval of the City's Risk Manager. The  
4 procuring of insurance shall not be construed as a limitation on liability or as full  
5 performance of the indemnification provisions of this Agreement.

6 9. INDEMNITY. Besides instances of negligence, recklessness, or  
7 intentional misconduct on the part of the indemnified parties set forth herein, CycleHop  
8 shall indemnify and hold harmless the City, its Boards, Commissions, their officials,  
9 employees and agents (collectively in this Section "City") from and against any and all  
10 liability, claims, demands, damage, causes of action, proceedings, penalties, loss, costs,  
11 and expenses (including attorney's fees, court costs, and expert and witness fees)  
12 (collectively "Claims" or individually "Claim"). Such Claims shall include by way of example  
13 but are not limited to: Claims relating to any property damage, personal injury or death to  
14 the extent arising from the negligent act or omission of CycleHop, its officers, employees,  
15 agents, subcontractors, or anyone under CycleHop's control (collectively "Indemnitor");  
16 CycleHop's breach of this Agreement; misrepresentation; willful misconduct; and Claims  
17 by any employee or Indemnitor relating in any way to worker's compensation. Independent  
18 of the duty to indemnify and as a free-standing duty on the part of CycleHop, CycleHop  
19 shall defend City and shall continue such defense until the Claim is resolved, whether by  
20 settlement, judgment or otherwise. CycleHop shall notify the City of any Claim within ten  
21 (10) days. City shall assist CycleHop, as may be reasonably requested, in such defense.  
22 CycleHop shall include indemnification language in its bicycle rental policy for customers  
23 ("Rental Policy"), attached hereto as Exhibit "D," and incorporated herein by this reference,  
24 as it may be amended or updated from time to time.

25 10. NONDISCRIMINATION. Subject to applicable rules and regulations,  
26 CycleHop shall not discriminate against any employee or applicant for employment on the  
27 basis of race, religion, national origin, color, age, sex, sexual orientation, gender identity,  
28 AIDS, HIV status, handicap or disability. CycleHop shall ensure that applicants are



1 employed and that employees are treated during employment without regard to these  
2 bases. Such actions shall include but not be limited to employment, upgrading, demotion,  
3 transfer, recruitment, layoff, termination, rates of pay or other forms of compensation, and  
4 selection for training, including apprenticeship.

5 It is the policy of the City to encourage the participation of Minority and  
6 Women-owned Business Enterprises in the City's procurement process, and the City  
7 encourages CycleHop to carry out this policy using approved subcontractors.

8 11. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
9 accordance with the provisions of the Ordinance, this Agreement is subject to the  
10 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
11 Long Beach Municipal Code, as amended from time to time.

12 A. During the performance of this Agreement, the Consultant  
13 certifies and represents that the Consultant will comply with the EBO. The  
14 Consultant agrees to post the following statement in conspicuous places at its place  
15 of business available to employees and applicants for employment:

16 "During the performance of a contract with the City of Long Beach, the  
17 Consultant will provide equal benefits to employees with spouses and its  
18 employees with domestic partners. Additional information about the City of  
19 Long Beach's Equal Benefits Ordinance may be obtained from the City of  
20 Long Beach Business Services Division at 562-570-6200."

21 B. The failure of the Consultant to comply with the EBO will be  
22 deemed to be a material breach of the Agreement by the City.

23 C. If the Consultant fails to comply with the EBO, the City may  
24 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or  
25 to become due under the Agreement may be retained by the City. The City may  
26 also pursue any and all other remedies at law or in equity for any breach.

27 D. Failure to comply with the EBO may be used as evidence  
28 against the Consultant in actions taken pursuant to the provisions of Long Beach

1 Municipal Code 2.93 et seq., Contractor Responsibility.

2 E. If the City determines that the Consultant has set up or used its  
3 contracting entity for the purpose of evading the intent of the EBO, the City may  
4 terminate the Agreement on behalf of the City. Violation of this provision may be  
5 used as evidence against the Consultant in actions taken pursuant to the provisions  
6 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

7 12. COPYRIGHTS AND PATENT RIGHTS. Consultant warrants that the  
8 Data does not violate or infringe any patent, copyright, trade secret or other proprietary  
9 right of any other party. Consultant agrees to and shall protect, defend, indemnify and hold  
10 City, its officials and employees harmless from any and all claims, demands, damages,  
11 loss, liability, causes of action, costs or expenses (including reasonable attorney's fees)  
12 whether or not reduced to judgment, arising from any breach or alleged breach of this  
13 warranty.

14 13. TAX REPORTING. As required by federal and state law, City is  
15 obligated to and will report the payment of compensation to Consultant on Form 1099-  
16 Misc. Consultant shall be solely responsible for payment of all federal and state taxes  
17 resulting from payments under this Agreement. Consultant shall submit Consultant's  
18 Employer Identification Number (EIN), or Consultant's Social Security Number if  
19 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of  
20 Financial Management. Consultant acknowledges and agrees that City has no obligation  
21 to pay Consultant until Consultant provides one of these numbers.

22 14. FORCE MAJEURE. Notwithstanding anything to the contrary herein,  
23 the time for performance by CycleHop shall be extended for a number of days equal to any  
24 delay caused by the action of any governmental agency or other circumstance beyond the  
25 reasonable control of CycleHop as long as that circumstance is not created by any act or  
26 omission of CycleHop.

27 15. ADVERTISING.

28 A. CycleHop shall be entitled to sell Program title and station

1 sponsorship as well as street advertising for static, digital, and/or backlit signs  
2 affixed to the bike share stations. Not including any funds that are subject to the  
3 revenue share, CycleHop shall own and hold title to all advertising and sponsorship  
4 revenue generated as part of the Program.

5 B. Notwithstanding the foregoing, no advertisement on any panel  
6 shall contain any reference to or depiction of the specified anatomical areas defined  
7 in Section 21.15.110 (as amended or replaced) of the Long Beach Municipal Code,  
8 any obscene act, gesture, or word as defined in any federal, state, county, or  
9 municipal law or ordinance or in any case law, any sale or use of alcohol or tobacco  
10 products or any sale or use of illegal drugs or drug paraphernalia. If CycleHop does  
11 install or permit the installation of advertising in violation of this Section, then  
12 CycleHop shall remove same within twenty-four (24) hours after notice from the City  
13 to do so. If CycleHop fails to remove such advertising within that time, then the City  
14 reserves the right to do so and CycleHop shall pay to the City the costs incurred by  
15 the City in such removal, immediately on receipt of an invoice of those costs from  
16 the City.

17 C. Digital and Static Signage Network. CycleHop will provide the  
18 City with space on any digital or static signage network. The City will have the right  
19 to ten percent (10%) of the total "small sign" portion of the Bike Stations for City's  
20 use as messages and/or public service announcements. CycleHop will provide the  
21 City with suitable format for the message and an annual rotation calendar. The City  
22 shall be responsible for producing the content and shall provide CycleHop with its  
23 media by the 15<sup>th</sup> of every month for the proceeding month's message. To the best  
24 of its ability, the City will provide CycleHop with its annual campaign or message  
25 calendar. Should the City not provide a message for any period (month or  
26 otherwise) then CycleHop shall have the right to sell the City's rotation as part of the  
27 digital signage inventory. Any proceeds collected from City allocated digital signage  
28 rotations sold by CycleHop will be included as part of the revenue share agreement.

1           16.    NOTICES AND APPROVALS. Any notice or approval hereunder shall  
2 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
3 postage prepaid, registered or certified, return receipt, addressed to CycleHop at the  
4 address first shown above, and to the City at 333 West Ocean Boulevard, Long Beach,  
5 California 90802 Attn: City Manager. Notice of change of address shall be given in the  
6 same manner as stated for other notices. Notice shall be deemed given on the date  
7 personal delivery is made or on the date shown on the return receipt, whichever first occurs.

8           17.    WAIVER. The acceptance of any services or the payment of any  
9 money by the City shall not operate as a waiver of any provision of this Agreement, or of  
10 any right to damages or indemnity stated herein. The waiver of any breach of this  
11 Agreement shall not constitute a waiver of any other or subsequent breach of this  
12 Agreement.

13           18.    LAW. This Agreement shall be governed by and construed pursuant  
14 to the laws of the State of California. CycleHop shall comply with all laws, ordinances,  
15 rules and regulations of and obtain such permits, licenses, and certificates required by all  
16 federal, state and local governmental authorities having jurisdiction over the subject matter  
17 of this Agreement, including but not limited to 23 U.S.C. Sec. 131 and regulations  
18 promulgated therewith, California Business and Professions Code, Section 5200 et seq.,  
19 and the Long Beach Municipal Code, including the requirements for a business license.

20           19.    INSPECTION OF RECORDS. City shall have the right at all  
21 reasonable times, by identifying City's desire to do so by telephone or facsimile at least  
22 seventy-two (72) hours in advance, during the term of this Agreement and for a period of  
23 five (5) years after termination or expiration of this Agreement to examine, audit, inspect,  
24 review, extract information from, and copy all books, records, accounts, and other  
25 documents of CycleHop relating to this Agreement.

26           20.    SUBORDINATION. Any mortgage, deed of trust, lien or other  
27 encumbrance of CycleHop shall be subordinate to all rights and ownership of the City to  
28 the real property underlying the Bike Stations and to the interests of the City under this

1 Agreement.

2 21. REMOVAL. Within thirty (30) days after the expiration or earlier  
3 termination of this Agreement, CycleHop shall remove all Bike Stations wherever located  
4 and shall return the locations to their original condition, at no cost to the City.

5 22. MISCELLANEOUS.

6 A. This Agreement, including exhibits, shall not be amended, nor  
7 any provision or breach hereof waived, except in writing signed by the parties which  
8 expressly refers to this Agreement.

9 B. This Agreement, including the exhibits, constitutes the entire  
10 understanding between the parties and supersedes all other agreements, oral or  
11 written, with respect to the subject matter herein.

12 C. If there is any legal proceeding between the parties to enforce  
13 or interpret this Agreement or to protect or establish any rights or remedies  
14 hereunder, the prevailing party shall be entitled to its costs and expenses, including  
15 reasonable attorney's fees and court costs.

16 D. This Agreement is not intended or designed to or entered for  
17 the purpose of creating any benefit or right for any person or entity that is not a party  
18 to this Agreement.

19 E. This Agreement is created as a joint effort of both parties and  
20 shall not be interpreted against either party as the drafter.

21 F. Termination or expiration of this Agreement shall not affect  
22 rights or liabilities which accrued or existed prior to termination or expiration of this  
23 Agreement, including but not limited to Sections 4E, 12, 18, 23 and 25.

24 G. Time is of the essence in the performance of all of the  
25 provisions of this Agreement.

26 H. The invalidity in whole or in part of any provision of this  
27 Agreement shall not void or affect the validity of the other provisions of this  
28 Agreement.

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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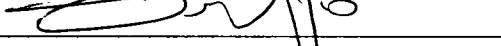
I. If this Agreement creates a possessory interest in CycleHop, then CycleHop shall pay any tax associated with such interest.

J. CycleHop shall have and be allocated the sole responsibility to comply with the Americans with Disabilities Act of 1990 ("ADA"), as amended, with respect to performance of services under this Agreement and CycleHop shall defend, indemnify and hold the City, its officials and employees harmless from and against any and all claims of and liability for failure to comply with or violation of the ADA.


IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

CYCLE HOP, INC., a Florida limited liability company

\_\_\_\_\_, 2016

By   
Name JOSH SQUIRE  
Title CEO

\_\_\_\_\_, 2016

By   
Name RON DURGIN  
Title General Manager

"CycleHop"

CITY OF LONG BEACH, a municipal corporation

6/23/16, 2016

By   
City Manager

"City"

This Agreement is approved as to form on June 14, 2016

CHARLES PARKIN, City Attorney


By   
Deputy

Exhibit A  
Bike Share Services

## **Bike Share Services**

- Site planning in collaborative effort with City;
- Maximize facility utilization to best serve residents, visitors, employees and students;
- Provide reports to monitor usage and maintain optimal subscriber levels;
- Develop fair and efficient user rates based on other successful bike share models, including lessons learned from current bike share systems operating in Southern California;
- Process membership/pass applications, distribute membership/pass cards and welcome kits, develop marketing communications, and control access by activating and deactivating access rights to non-renewing memberships/passes;
- Manage bike share convenience by offering a wide variety of station locations and types, connecting City assets, points of interests, cultural places, hotels, employment and education and other venues;
- Offer a variety of programs based on the needs of diverse customers. The program should include rentals and memberships/passes with tiered pricing; various payment methods accepted; access for walk-up/casual users; special event programs and various validation programs;
- A specific program should be developed for potential corporate accounts, for small and large businesses, that enables employers to utilize state required rideshare programs and subsidy programs to incentivize bike share usage and pass holding;
- Through collaborative efforts with the City and stakeholders, assure that the bike share facilities are easy to locate and provide reliable access;
- Provide fair pricing while balancing supply, convenience and cost of operations;
- Report revenue that is subject to revenue share through transparency and communication in regards to financial resources and obligations;
- Provide quality service that is responsive to demand and customer centric;
- Provide competent Street Teams responsible for monitoring and balancing bikes, review trends and peak usage, manage spaces, monitor equipment, assist in providing a positive user experience and provide valued customer service such as providing instructions, directions and assistance to customers; and
- Coordinate all outreach and marketing activities with the City, Convention and Visitor's Bureau and other stakeholder groups.

## **Provide Clean and Well Maintained Bike Share Facilities**

- Manage a comprehensive cleaning program;
- Manage facilities and equipment through a defined capital maintenance program. The program should include preventative maintenance to enhance bike share appeal; and
- Manage all site installation and any improvements. Provide documentation for all bike share station site plans.



## **Provide Safe and Welcoming Bike Share Stations**

- Create a safe and welcoming environment through collaborative effort with stakeholders. Importance is placed on communication of safety and security along with providing reliable systems and good access to bikes that do not negatively disrupt access and egress on public right of way. A working and attended customer service number shall always be present at stations and on the bicycles;
- Work with the city's Police Department in patrolling bike share stations; and
- Provide excellent customer service through a consistent, friendly and well-informed staff. The customer service members are frontline service providers with direct customer contact.

## **Develop and Promote the Bike Share Program via Website**

- Create community web portal where individuals can access information about the bike share program. The portal shall include and support active communication for:
  - Long Beach bike share program specific website
  - Membership signup and rental information
  - Rates/fares
  - Membership Dashboard for members to track their overall usage
- The website should link to City and other related bike programs, maps and other electronic media used to promote and/or inform the general public on bike facilities;
- Create and implement Long Beach Bike Share branding, public relations and marketing campaigns for the Long Beach Program, in order to increase awareness of the Program with residents of and visitors to Long Beach, and to encourage usage and sponsorship opportunities.

## **Data Collection**

- Data collection and evaluation will be gathered to measure effectiveness. Provide the City with regular (no less than quarterly) user statistics to include:
  - Number of members and casual users/rentals, and trips made
  - Average estimated trip distance
  - Station statistics per day, month, etc.

## **Revenue Sharing**

- The revenue sharing program with the City, will be calculated from net revenues derived from the proposed operating model, including advertising and sponsorship revenues;
- Net revenues reinvested into capital cost outlays would be exempt, as would any revenues from any user fees, including fee charges and forfeited deposits;
- Capital costs financed by the selected candidate for system expansion would check revenue sharing arrangements until such time that a full return on investment is achieved;

- At any time, the City and CycleHop may request to review and reconsider the revenue sharing so that it results in a distribution that is equitable to both parties, if both parties agree to the change.

## **PERFORMANCE STANDARDS**

Meet with the City at least quarterly to discuss ongoing and long-range needs and bike share support plans. Maximize utilization, monitor station usage and maintain optimal subscriber and user levels.

Maintain ridership reports and trends to assure optimal efficiency i.e. Average Riders per day, number of trips per day, station rentals, average trip length (time and estimated distance).

### **Station Monitoring and Uptime**

Stations shall be monitored remotely as well as receiving daily visits from the operations team. The goal is to ensure the facility is clean and fully functional. Full functionality includes all communications, transactions and dock operation at least 98% of the time.

### **Provide Clean and Well Maintained Facilities**

A comprehensive cleaning program will be enacted by contractor. Perform daily cursory inspections at a minimum. All litter is removed at least twice per week. Each station is cleaned and wiped down at least one every 14 days. All graffiti shall be removed within 24 hours of receiving notification.

### **Station Relocation**

At the request of the City, contractor will move a station within 72 hours of notification. This may be for special events, street/sidewalk maintenance, utility repair or other cause the city may deem appropriate.

### **Provide Safe and Welcoming Facilities**

Contractor will work with the City to place stations in areas of high visibility to ensure user safety. The parties will attempt to locate stations in areas that are well lit when possible or plausible. Simple signage will indicate how to access the system and provide a phone number should a customer need assistance.

### **Police Patrolling Assistance**

Collaborate with the Police Department in communicating safety and security initiatives. The PD patrols streets along with trending and reporting crime statistics. Police have agreed to patrol the stations on a regular basis.

## **Welcoming Facilities**

Provide excellent customer service through consistent, friendly and well-informed staff. Customer representatives will be trained and demonstrate solid customer service skills with specific accountability measures. These measures will include response time, satisfaction surveys will be conducted. If satisfaction ratings of 90% or better are not achieved, contractor will work with the City to identify additional programs to increase ratings.

## **Website Availability**

Website associated mobile applications will be fully functional at least 98% of the time. This includes but is not limited to process transactions, provide real-time bike availability map, and provide membership account login and account history.

## **Operational Docks**

Docks must be repaired or replaced within 48 hours of discovery or notification of a defect. Should a needed part not be in stock, contractor shall order such part within 48 hours and install such promptly upon arrival. A defect includes but is not limited to the ability to rent and receive bicycles from all user types and full functionality of communication and transaction systems. Availability will be at least 98% or greater. Contractor shall not be held liable for any mass communication outages of any 3<sup>rd</sup> party cellular data providers.

## **Rebalancing**

Bicycles shall be redistributed through the system as necessary to meet demand. Contractor shall strive to keep stations neither full nor empty during peak hours (Monday to Friday, 7am to 7pm) for more than 30 minutes. During non-peak hours bicycles shall be redistributed as necessary to meet demand. The parties acknowledge that during non-peak hours rebalancing staff may be limited or off-duty. Contractor shall not be required to provide a 24 hour rebalancing staff.

## **Call Center**

The call center will operate at a minimum hour range of 6:00 am to 8:00 pm PST with the objective that 98% of calls are answered within 3 minutes.

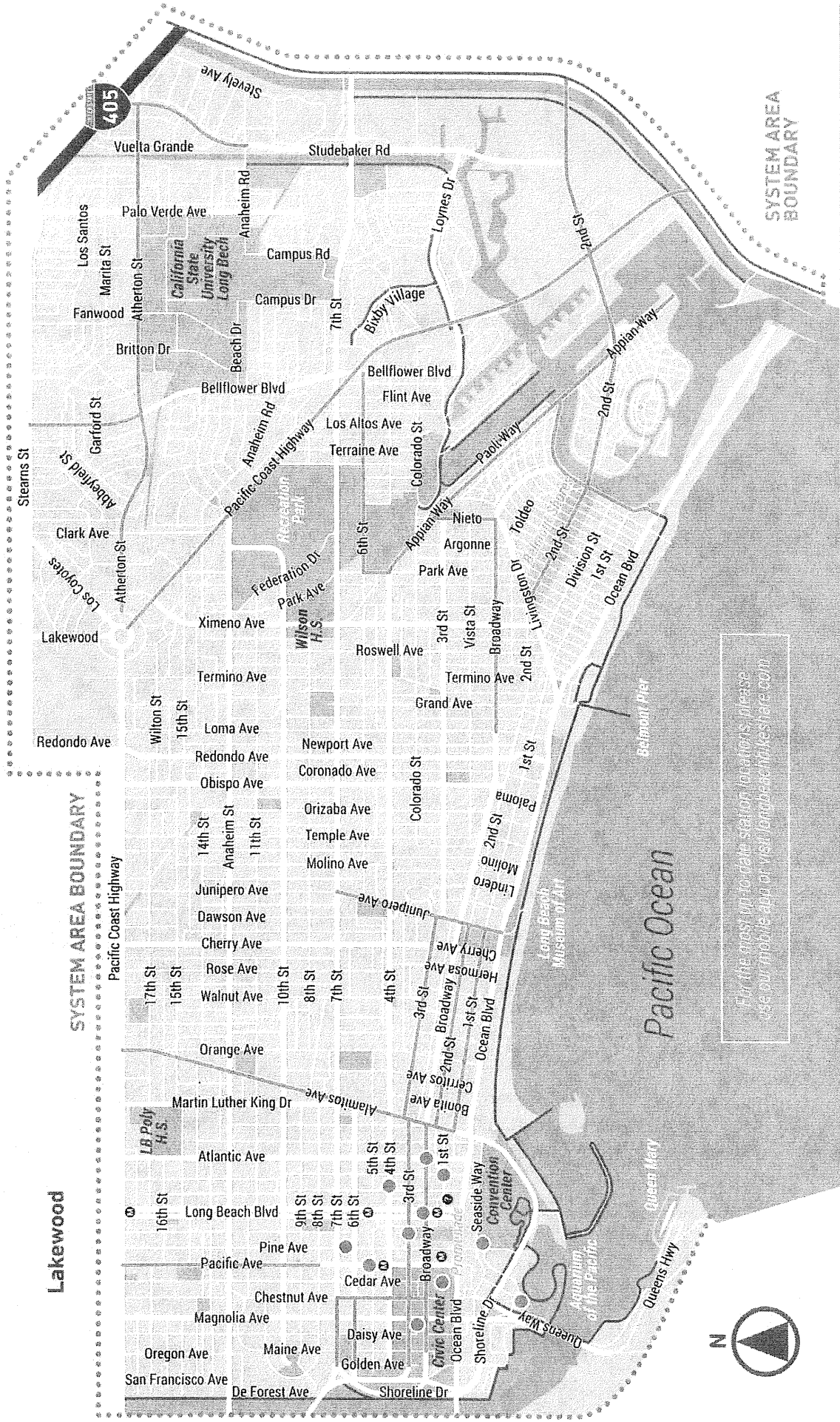
## **Delivery of Reports**

Electronic reports including but not limited to system usage, uptime, estimated miles ridden, average length and duration of trips, user types, will be delivered on a monthly basis with review scheduled at least quarterly.

Exhibit B  
Map

# LONG BEACH BIKESHARE

The red dots on the map below (o) indicate the first 11 Long Beach Bike Share stations, with 40 or more additional stations to be installed over summer 2016.



For the most up-to-date station locations, please use our mobile app or visit [longbeachbikeshare.com](http://longbeachbikeshare.com)



Exhibit C  
Revenue Sharing Table

### Revenue Sharing Table

Year	1	2	3	4	5
Revenue Share (City Portion)	5%	5%	5%	5%	5%

Revenue sharing model calculated from net revenues derived from the operating model, including advertising and sponsorship revenues. Net revenues reinvested into capital cost outlays and user fees (including fee charges and forfeited deposits) are exempt. Capital costs for system expansion will check revenue sharing arrangements until such time that a full return on investment is achieved. At any time, the City and CycleHop may request to review and reconsider the revenue sharing so that it results in a distribution that is equitable to both parties, if both parties agree to the change.

Exhibit D  
Rental Policy



## **Long Beach Bike Share Rental Agreement & Waiver**

PLEASE READ THESE TERMS AND CONDITIONS OF USE CAREFULLY BEFORE RENTING OR USING A BICYCLE ("BIKE") FROM CYCLEHOP, LLC, CYCLEHOP WEST SIDE, LLC, OR ANY OF THEIR AFFILIATES (COLLECTIVELY, "CYCLEHOP") DBA LONG BEACH BIKE SHARE, AND THE CITY OF LONG BEACH, IN ITS CAPACITY AS OWNER OF THE LONG BEACH BIKE SHARE PROGRAM. CYCLEHOP AND THE CITY ARE JOINTLY REFERENCED HEREIN AS "OPERATOR". BY RENTING OR USING A BIKE, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN, INCLUDING, BUT NOT LIMITED TO, THE WAIVERS, RELEASES AND LIMITATIONS OF LIABILITY SET FORTH HEREIN. IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF USE, YOU ARE NOT PERMITTED TO RENT OR USE A BIKE FROM OPERATOR OR ITS AFFILIATES.

### **PARTIES, CONSIDERATION AND BIKE SHARE PROGRAM DESCRIPTION**

1. AGREEMENT. These Bicycle Rental Terms and Conditions of Use (this "Agreement") are between you ("You" or "Rider") and Operator.

1.1. CONSIDERATION: In consideration of Operator renting a Bike to Rider, Rider agrees to the terms and conditions of this Agreement.

1.2. EQUIPMENT. Operator maintains a network of hub stations ("Stations") where Bikes are docked at Bike racks ("Rack") using an electronically controlled lock ("Lock"). Kiosks are located at some Stations for renting Bikes. Bikes are equipped with global positioning system devices. All of the foregoing equipment and other equipment located at a Station or that consists of any Bike, in whole or part, shall be referred to as "Operator Equipment."

1.3. HOW IT WORKS.

(1) Purchase a membership online at [longbeachbikeshare.com](http://longbeachbikeshare.com), from a self-service kiosk located at a hub station, or from the Social Bicycles smart phone app.

(2) Once Rider purchases a membership, Rider can access a bicycle in one of the following ways: sign into your account at [longbeachbikeshare.com](http://longbeachbikeshare.com) and reserve a bicycle for up to ten (10) minutes, or use the Social Bicycles app to locate an available bike and reserve the bicycle for up to ten (10) minutes, or by walking up to a bike and entering your account number and PIN using the keypad on-board the bicycle located on the bicycle rear rack. Please note that when using the reservation feature you will only have ten (10) minutes from the time you reserved the bicycle to the time you unlock the bicycle.

(3) The Lock should be holstered properly on the rear rack during Bike use, and used to lock the Bike whenever the Bike is not in use, including at locations other than a Rack at a designated station. Rider's period of Bike rental begins either when the Bike is unlocked or at the time the Rider reserves a Bike with the mobile app or on the website. The Rental Period ends when the Bike is locked at a

designated hub location or at any other public bike rack using the yellow Lock bar. ("Rental Period"). Rider must wait for verification, on the Bike screen, indicating the Rental Period has ended. Additional fees will apply if the Bike is not returned and locked to a designated station. Rental Periods will be rounded up and then prorated to the next highest minute.

1.4. BOUNDARIES. Bikes may not be left outside of the boundaries posted at each Station ("Program Area"), shown on the mobile app, and visible on the program website [www.longbeachbikeshare.com](http://www.longbeachbikeshare.com). Locking the bike constitutes expiration of the Rental Period and a \$20.00 fee will be charged to Rider's account each time the Bike is locked outside the Program Area boundaries.

## 2. BICYCLE RENTAL PLANS AND FEES

2.1. RENTAL PLANS. You may purchase from Operator Pay As You Go plans or monthly rental plans. The Pay As You Go plan requires a minimum purchase of \$3.50 to activate an account, minutes are purchased in advance and the balance of available time is reduced when used. Unused minutes do not expire. Rider is charged by the minute from the time the Bike is unlocked to the time the Bike is locked.

Monthly member plans entitle Rider to a fixed amount of "Daily Riding Time" defined as the number of minutes included with your plan each day, or as Bike use per day. The Basic plan includes 60 minutes of Bike use per calendar day and the Plus plan includes 90 minutes of Bike use per calendar day, which may be used in one trip or in multiple trips. There will be no rollover credit. Riding minutes in excess of plan minutes will be rounded to the next highest minute and prorated at the Pay As You Go rate.

- "Pay As You Go" plan for \$7 per hour with 30 minute minimum purchase
- Prepaid plan \$21 (purchase 180 minutes up front, receive 60 minute bonus)
- Monthly Basic plan (60 minutes daily riding time) for \$15.00 plus taxes
- Monthly Plus (90 minutes daily riding time) for \$20.00 plus taxes

In addition, the following applies to the rental plans:

- Monthly plans are recurring and Rider will be charged every 30 days until the membership is canceled by Rider. Annual plans are recurring and Rider will be charged every year until the membership is canceled by Rider. To cancel your membership, login to your account at [longbeachbikeshare.com](http://longbeachbikeshare.com).
- Overage fees for the Member plans will be charged on the 1st day of each month for the previous month.
- Overage fees for the Pay As You Go Plan will be charged to Rider within 7 days of initial use.

2.3. OVERAGE FEES. Riders with membership plans shall be responsible to pay any additional time beyond the time to which they are entitled in their chosen plan on any given day. Rider agrees to pay Operator for any additional time beyond the allocated use time at a rate of \$7.00 per additional hour prorated by the minute.

2.4. MAXIMUM RENTAL TIME. If a Bike is not returned to a designated Hub within 12 hours of the start of Rider's Rental Period, Operator may deem the Bike to be stolen and charge Rider the amount of \$2,000.00.

2.5. FEE FOR NOT RETURNING (OR RETURNING) A BIKE TO A LONG BEACH BIKE SHARE HUB. Each time a Rider does not return a Bike to a designated Hub the Operator may charge Rider \$2.00. Each time Rider begins his or her Rental Period with a Bike that is not in a Long Beach Bike Share Hub, but returns that Bike to a Long Beach Bike Share Hub, the Rider shall receive a \$1.00 credit to Rider's account.

2.6. OUT OF PROGRAM AREA FEE. Operator may charge Rider \$20.00 for each time Rider locks a Bike outside of the defined Program Area.

2.7. REPAIR FEE. If a Bike is damaged during Rider's use of the Bike, beyond regular wear and tear, as a result of negligent or intentional conduct on the part of Rider, Rider shall be charged a fee that is equal to the cost of repairing such damage.

2.8. STOLEN BIKE FEE. If Rider leaves a Bike unlocked or unattended and it is stolen, Operator may charge Rider a replacement cost equal to \$2,000.00.

2.9. VIOLATIONS. Rider shall be completely responsible, and shall indemnify Operator, for any tickets or fees assessed against the Bike or Operator during Rider's Rental Period or as a result of the location where Rider parked the Bike. Rider is responsible for all tickets and moving violations incurred during the Rental Period. Rider agrees to reimburse Operator for any costs, expenses and/or attorney's fees for processing, pursuing and/or defending any such claims.

2.10. CREDIT CARD OR DEBIT CARD. Rider must provide Operator a valid credit or debit card number and expiration date before being registered to use a Bike. Rider represents and warrants to Operator that Rider is authorized to use the credit or debit card information provided. Rider authorizes Operator to charge the credit or debit card for which information is provided for all fees incurred by Rider under this Agreement, and all fees are subject to applicable sales taxes and other local government charges, which may be charged and collected by Operator. In the event Rider's payment method on file with Operator is declined for any reason, Operator may suspend Rider's rental plan and ability to use any Bikes until all of Rider's prior charges are paid in full and charge Rider a \$5.00 reinstatement fee.

2.11. RENTAL OF MULTIPLE BICYCLES. Subject to program requirements and availability, a Rider who purchases a membership may rent up to 6 [six] Bikes at the same time on one account. If a Rider elects to rent multiple Bikes at the same time, Rider agrees to rent the first Bike for Rider's

own use and to make subsequent Bikes available to additional riders. Prior to riding, the additional rider renting a Bike under Rider's account will need to review and accept this Agreement on the Bike's lock interface. Rider further acknowledges and agrees that (a) Rider shall be responsible for each Bike rented under Rider's account, (b) Rider shall be responsible for ensuring that any individual operating or using a Bike rented under Rider's account shall read and comply with this Agreement, and (c) Rider is fully and completely responsible and liable for all Claims (as defined in Section 5, below) arising from or related to another individual's use of a Bike rented under Rider's account.

In the event that Rider is renting multiple bicycles and one or more of the riders will be under eighteen (18) years of age, Rider agrees to the following: YOU HEREBY AFFIRM THAT YOU ARE THE PARENT OR LEGAL GUARDIAN OF THE RIDER, WHO IS 16 YEARS OF AGE OR OLDER; YOU ARE AT LEAST 18 YEARS OF AGE; YOU HAVE THE LEGAL AND MENTAL CAPACITY TO ENTER INTO THIS AGREEMENT; YOU HAVE READ AND AGREED TO THIS AGREEMENT, FULLY UNDERSTAND ITS CONTENT, AND INTENTIONALLY AND VOLUNTARILY ACCEPT ITS TERMS ON BEHALF OF THE MINOR MEMBER; AND YOU AUTHORIZE THE USE OF THE SERVICES BY THE MINOR MEMBER.

### 3. RESTRICTIONS AND OTHER TERMS AND CONDITIONS OF BIKE USE

3.1. REPRESENTATIONS AND WARRANTIES. As a condition precedent to Operator's agreement to allow Rider to participate in the Bike Share Program and to rent a Bike, Rider represents and warrants to Operator that:

- Rider meets the minimum age requirements: (1) is 18 years of age or older to check out a Bike with a credit card; and (2) is 16 years of age or older to ride.
- Rider is experienced and familiar with the safe and competent operation of a bicycle, and that he/she is physically and mentally fit to ride the Bike.
- Rider is familiar with all applicable local, state, and county rules, regulations, codes and laws that relate to the safe and legal operation of a bicycle.

3.2. ACKNOWLEDGEMENTS AND AGREEMENTS. As a condition precedent to Operator's agreement to allow Rider to participate in the Bike Share Program and to rent a Bike, Rider acknowledges and agrees as follows:

- Rider is fully aware that riding a bicycle on streets poses a risk of accident due to motorists, pedestrians, and road conditions, and rider must keep a proper lookout to avoid such accidents.
- Rider is fully trained and capable of operating and riding a Bike and is not relying on Operator to learn how to operate or ride a Bike.
- Failure to use a helmet and protective gear or to use the bicycle in a careful and reasonably competent manner may result in bodily injury or death.
- Rider is solely responsible for obtaining and using a helmet and protective gear.
- Riders under the age of 18 are required to wear a helmet pursuant to California Vehicle Code § 21212(a).
- Rider is solely responsible for operating and riding a Bike in a careful and reasonably

competent manner.

- A helmet and protective gear, even when used, does not eliminate the risk of bodily injury in the event of an accident.
- All Bikes are and shall remain the exclusive property of Operator at all times.
- Rider is solely responsible for any moving violations and/or fines incurred by Rider while using the Bike, including any fees for parking the Bike in prohibited locations.
- Operator is not obligated to provide insurance of any kind related to Rider or Rider's use of the Bike, and in the event that Operator, at its option, carries insurance, Rider shall remain liable for any liability, property damage, personal injury, injury to others, damages, penalties, fines, losses, and/or expenses of any kind whatsoever.
- If Rider causes damage to property or injury to another party while operating or in possession of the Bike, Rider is solely liable for such damage or injury.
- Rider shall return the Bike to Operator in the same condition as when received.
- Rider is liable for any and all damages resulting from improper use or abuse of the Bike and the cost of such damages.
- Operator provides Bikes as a convenience, and such rental availability is intended to be used only by those persons who are able and qualified to operate a Bike on their own and who have agreed to all terms and conditions of this Agreement.

3.3. REQUIREMENTS. As a condition precedent to Operator's agreement to allow Rider to participate in the Bike Share Program and to rent a Bike, Rider shall do the following during any use of a Bike ("Use Requirements"):

- Carefully inspect the Bike that Rider wishes to rent prior to use to ensure the Bike is good operating condition.
- Test the Bike's operating components before proceeding with the intended use, including, but not limited to the brakes, tires, gears, pedals, lights, frame and saddle.
- Promptly notify Operator customer service of any defect, malfunction or needed repair to a Bike.
- Adjust saddle to proper height prior to operating the Bike.
- Adjust Bike riding behavior for safe operation according to weather conditions.
- Adjust Bike riding behavior so that it is that of a reasonably experienced and prudent bike rider.
- Contact Operator and local Police immediately in the event of theft of the Bike or an accident that occurred during Rider's use of the Bike resulting in bodily injury.

3.4. RESTRICTED USES. Rider shall not do any of the following acts ("Restricted Uses"):

- Use any Bike if Rider is younger than 16 years of age.
- Use any Bike if Rider has any existing physical or mental condition that would prohibit Rider from safely operating the Bike.
- Operate a Bike while carrying any item that impedes Rider's ability to safely operate the Bike.
- Operate a Bike while under the influence of alcohol, drugs, or any other substance that impair Rider's ability to safely operate the Bike.

- Use any cell phone or mobile electronic device, including, but not limited to, for the purposes of phone calls, text messages, music or any other use that distracts Rider from the safe operation of the Bike.
- Allow any other person to use the Bike or allow more than one person to be carried on the Bike.
- Overfill the Bike basket or place objects weighing in total more 20 pounds in the Bike basket.
- Violate any applicable federal, state, or local law.
- Operate or use a Bike in any manner during adverse weather conditions, including but not limited to: hail, dust storms, fog, heavy rains, or lightning storms.
- Ride or operate a Bike that has any defect, fails to operate as a properly functioning bicycle or that is in need of repair.
- Continue using the Bike if it, or any component of it, should become defective or malfunction.
- Use the Bike for racing, trick riding, jumping, stunt riding and/or, off-road riding.
- Use the Bike for any commercial purposes.
- Tow, pull, carry or push any person or object with a Bike.
- Remove or modify any accessories, parts or components of any Bike.
- Ride the Bike without paying applicable user fees at the time they become due.

#### 4. SERVICE LIMITATIONS.

Rider acknowledges and agrees that from and after the date that Operator makes Bikes available to the public for rental, Operator may suspend all or part of its Bike Share Program at any time, may relocate Stations, reduce the number of Bikes available for rent and otherwise operate its Bike rental program in its sole discretion. Rider further acknowledges that Operator may suspend the availability of Bikes during adverse weather conditions, or may be required to suspend the rental of Bikes by the city in which the Bikes are located. Rider shall not be entitled to a refund of any fees for unused rental periods unless Operator's Bike rental service shall have been suspended for more than 15 days. Operator does not represent or warrant that Bikes will be available for rental at any Station at any time. Operator may require the return of its Bikes at any time.

#### 5. RELEASE AND LIMITATION OF LIABILITY

5.1. FOR AND IN CONSIDERATION OF RENTAL AND USE OF THE BIKE, RIDER, FOR HIMSELF OR HERSELF AND ON BEHALF OF RIDER'S HEIRS, EXECUTORS, ADMINISTRATORS AND ASSIGNS, FOREVER RELEASES AND RELINQUISHES AND DISCHARGES (i) OPERATOR AND OPERATOR'S OFFICERS, BOARDS AND COMMISSIONS, MEMBERS, MANAGERS, EMPLOYEES, SUPPLIERS, AGENTS, REPRESENTATIVES, (ii) ANY MUNICIPALITY WITH WHICH OPERATOR HAS CONTRACTED WITH TO PROVIDE A BIKE SHARE PROGRAM, AND (iii) ANY OWNER OF PROPERTY WITH WHICH CITY OR CYCLEHOP HAS CONTRACTED WITH TO PROVIDE REAL PROPERTY ON WHICH A BIKE SHARE FACILITY, INCLUDING, WITHOUT LIMITATION, STATIONS, HUBS, RACKS, INTENDED FOR BIKE SHARE USE (ALL, COLLECTIVELY, THE "OPERATOR PARTIES") FROM ANY AND ALL CLAIMS,

DEMANDS, DISPUTES, LOSSES, LIABILITIES, DEBTS, LIENS, CHARGES, PENALTIES, PROCEEDINGS, CAUSES OF ACTION AND DAMAGES INCLUDING FOR PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, AND INJURY TO RIDER OR TO THIRD PARTIES (COLLECTIVELY, "CLAIMS"), INCLUDING UNKNOWN OR UNANTICIPATED CLAIMS, WHICH ARISE FROM OR ARE RELATED DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR THE RENTAL, MAINTENANCE, DESIGN, USE AND/OR OPERATION OF THE OPERATOR EQUIPMENT, INCLUDING THE BIKES, OR THE OPERATOR WEBSITE, INCLUDING ANY AND ALL CLAIMS RELATED TO THE SOLE OR PARTIAL NEGLIGENCE OF OPERATOR, THE OPERATOR PARTIES OR ANY OTHER PARTY. RIDER HEREBY EXPRESSLY WAIVES ANY CLAIMS AGAINST THE OPERATOR PARTIES WHICH RIDER DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF RENTING A BIKE, AND EXPRESSLY WAIVES RIDER'S RIGHTS UNDER ANY STATUTES THAT PURPORT TO PRESERVE RIDER'S UNKNOWN CLAIMS.

5.2. IF OPERATOR OR THE OPERATOR PARTIES ARE DEEMED TO HAVE ANY LIABILITY UNDER THIS AGREEMENT OR ARISING OUT OF RIDER'S USE OF THE OPERATOR EQUIPMENT, INCLUDING THE BIKES, OR THE OPERATOR WEBSITE, SUCH LIABILITY SHALL NOT EXCEED THE AMOUNT OF THE MEMBERSHIP OR RENTAL PAID TO OPERATOR BY RIDER.

#### 6. ASSUMPTIONS OF RISKS; DISCLAIMER.

RIDER EXPRESSLY ACKNOWLEDGES AND ACCEPTS THAT RIDER'S RENTAL AND USE OF THE BIKE IS AT HIS/HER OWN RISK. RIDER ACCEPTS THE BIKE FOR USE AFTER EXERCISING HIS/HER OWN FREE CHOICE TO PARTICIPATE VOLUNTARILY IN THIS ACTIVITY AND AFTER HAVING INSPECTED THE BIKE AND CERTIFYING THAT IS IN GOOD OPERATING CONDITION. RIDER UNDERSTANDS THAT BICYCLING MAY BE A HAZARDOUS ACTIVITY. RIDER ACKNOWLEDGES, UNDERSTANDS AND ASSUMES ALL RISK RELATING TO THE RENTAL, MAINTENANCE, DESIGN, USE AND/OR OPERATION OF THE OPERATOR EQUIPMENT, INCLUDING THE BIKES, AND THE OPERATOR WEBSITE AND UNDERSTANDS THAT BICYCLING INVOLVES RISK TO THE RIDER AND OTHERS INCLUDING DAMAGES, BODILY INJURY, PARTIAL OR TOTAL DISABILITY, PARALYSIS AND DEATH TO RIDER OR OTHERS, AND THAT RIDER HAS FULL KNOWLEDGE OF SAID RISKS AND DANGERS, INCLUDING SUCH RISKS, DAMAGES AND INJURIES THAT MAY ARISE FROM THE NEGLIGENCE OF OTHERS OR AS A RESULT OF ROADWAY CONDITIONS. ALL BIKES AND OTHER OPERATOR EQUIPMENT ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. OPERATOR AND THE OPERATOR PARTIES HEREBY DISCLAIM ANY CLAIM IN TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY).

IN NO EVENT WILL RIDER CLAIM THAT OPERATOR PARTIES INDIVIDUALLY OR COLLECTIVELY FAILED TO ADEQUATELY TRAIN RIDER, OR PROVIDE RIDER WITH ADEQUATE INSTRUCTIONS NECESSARY TO RIDE THE BIKE IN THE SAME MANNER AS A PERSON WHO IS AN EXPERIENCED BIKE RIDER WHO HAS BEEN TRAINED TO RIDE A BIKE IN A SAFE AND CAREFUL MANNER.

#### 7. DISPUTE RESOLUTION.

Rider agrees that Operator, at its sole discretion, may submit any disputes whatsoever arising out of, resulting from, and/or relating to this Agreement, Rider's use of Operator's Equipment,

including, without limitation, Bikes, and/or the Operator website, to final and binding arbitration under the Rules of the American Arbitration Association, by one or more arbitrators appointed in accordance with the said rules. In the event that Operator submits such dispute to arbitration, then such arbitration shall be mandatory and binding on the parties. Such proceeding shall be held in the County of Los Angeles, California by the laws of the State of California without regard to choice of law principles. All arbitration proceedings will be conducted in the English language. SHOULD OPERATOR ELECT TO SUBMIT ANY DISPUTE OR CLAIM TO ARBITRATION, TO THE MAXIMUM EXTENT PERMITTED BY LAW, OPERATOR AND RIDER EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS AGREEMENT OR RIDER'S USE OF OPERATOR'S EQUIPMENT, INCLUDING, WITHOUT LIMITATION, BIKES, AND/OR THE OPERATOR WEBSITE.

#### 8. INDEMNIFICATION.

Rider shall indemnify, defend and hold harmless Operator and the Operator Parties for, from and against any and all Claims related to or arising out of this Agreement, including, but not limited to Rider's breach of any representations, warranties or covenants set forth in this Agreement, and the rental, maintenance, design, use or operation of the Bike, the Locks, the Stations and/or the Operator website, even where caused in whole or in part by Operator's negligence, and/or the negligence of others, whether presently known or unknown. At Operator's option, Rider will assume control of the defense and settlement of any Claim subject to indemnification by Rider (provided that, in such event, Operator may at any time elect to take over control of the defense and settlement of any such Claim). In no event may Rider settle any Claim without Operator's prior written consent.

#### 9. ASSIGNMENT.

Operator may assign its rights and duties under this Agreement to any party at any time without notice to Rider.

#### 10. NO WAIVER.

Operator's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any part of this Agreement. No waiver by Operator shall be construed as a waiver of any proceeding or succeeding breach of any provision in this Agreement.

#### 11. TERMINATION OF AGREEMENT.

Operator may terminate this Agreement at any time, without cause, legal process, or notice to the Rider and Rider's use of the Bike Share Program is "at the will" of Operator. Rider waives all claims, causes of actions, expenses, and/or damages connected and/or related to any such termination. Rider shall not be entitled to a refund of any amount paid for unused rental periods if this Agreement is terminated for cause. Rider may terminate Rider's rental plan at any time; provided, however, that no refund will be provided by Operator for time already used by Rider.



12. SEVERABILITY.

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Agreement shall remain in full force and effect.

13. SURVIVAL.

All provisions of this Agreement relating to limitation and exclusion of liability, waivers, assumption of risk, warranties and indemnification obligations shall survive the termination of this Agreement, and all amounts unpaid at the time of termination or expiration of this Agreement shall remain due and payable.

14. PRIVACY POLICY.

Rider may access Operator's privacy policy applicable to this Agreement at: [www.longbeachbikeshare.com](http://www.longbeachbikeshare.com).

15. ENTIRE AGREEMENT.

This Agreement constitutes the final and entire Agreement between Operator and Rider and prevails over any prior or contemporaneous, conflicting or additional, communications, unless otherwise agreed to by the Parties in writing. Operator shall have the right to revise, change and modify the terms and conditions contained in this Agreement at any time without prior written notification by posting the revised Agreement on [www.longbeachbikeshare.com](http://www.longbeachbikeshare.com), and such changes shall apply to all future use of Bikes after the date of such changes. Riders shall be solely responsible for reviewing and becoming familiar with any modification to this Agreement. Use and/or operation of the Bike by Rider following any modifications to this Agreement constitutes Rider's acceptance of the terms and conditions as modified.