

2/3/2016

14-R-16

A RESOLUTION

**Authorizing the City Manager to Execute an
Operator Agreement with Motivate International, Inc. for the operation
of the Divvy Bike Share System in the City of Evanston**

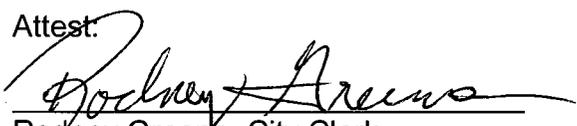
**NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: City selects Motivate International, Inc., a Delaware corporation, to operate the Divvy Bike share system in Evanston. The operation of the system involves the procurement of various equipment and technology necessary to assemble, install, develop, implement and operate such equipment and technology for the 10 Evanston Divvy Bike share stations, and to provide on-going operational support and maintenance of the system.

SECTION 2: The City Manager is hereby authorized to negotiate any remaining terms and thereafter execute the Operator Agreement with Motivate International, Inc., attached as Exhibit 1 and incorporated herein by reference. The Agreement will be approved as to form by the City's Corporation Counsel prior to execution.

SECTION 3: Resolution 14-R-16 shall be in full force and effect from and after its passage and approval, in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene, City Clerk

Adopted: February 22 2016

EXHIBIT 1
DIVVY BIKE OPERATOR AGREEMENT

**OPERATOR AGREEMENT BETWEEN
THE CITY OF EVANSTON
AND
MOTIVATE INTERNATIONAL INC.
FOR A
BICYCLE SHARING SYSTEM**

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EXHIBIT 3	INSURANCE REQUIREMENTS AND EVIDENCE OF INSURANCE
EXHIBIT 4	CONTRACTUAL REQUIREMENTS RELATED TO HIPAA
EXHIBIT 5	PREVAILING WAGE PROVISIONS
EXHIBIT 6	FEDERAL PROVISIONS
EXHIBIT 7	CHICAGO AGREEMENT

AGREEMENT

This Agreement is entered into as of February ____, 2016 (“**Effective Date**”) by and between Motivate International Inc., a Delaware corporation (“**Motivate**” or “**Operator**”), and the City of Evanston, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its City Manager’s Office at Evanston, Illinois (“**City**”). The City and Operator agree as follows:

BACKGROUND INFORMATION

WHEREAS, the City wishes to enhance the existing public transportation system by providing bicycles to complete the first and/or last leg of a trip (e.g., from a train station to the workplace), among other reasons; and

WHEREAS, the City wishes to help reduce dependency on automobiles, particularly for short trips, thereby reducing traffic congestion, vehicle emissions, and the demand for parking; and

WHEREAS, the City is committed to promoting environmentally responsible initiatives and to exploring alternative modes of transportation to ensure that it is a bicycle-friendly municipality; and

WHEREAS, Motivate currently operates a bicycle sharing system in the City of Chicago pursuant to that Operator Agreement between the City of Chicago Department of Transportation and Motivate International Inc. (formerly known as Alta Bicycle Share, Inc.) dated as of January 24, 2013 (the “Chicago Agreement,” attached hereto as Exhibit 7); and

WHEREAS, the City desires to purchase and implement an expansion of that bicycle sharing system in Evanston; and

WHEREAS, the City wishes to hire a vendor to procure various equipment and technology necessary for the foregoing and to assemble, install, develop, implement and operate such equipment and technology such that it operates together as a “System” (as defined herein), and to provide on-going operational support and maintenance of the System (collectively, the “Project”); and

WHEREAS, the City has passed all resolutions necessary to authorize it to enter into this agreement; and

WHEREAS, Operator represents and warrants that it has the authority to execute this Agreement and it is highly qualified and competent to provide and to perform such services as described herein and has expertise and knowledge in such matters;

NOW, THEREFORE, the City and the Operator agree as follows:

ARTICLE 1. INCORPORATION OF BACKGROUND INFORMATION

The Background Information set forth above is incorporated and made a part of this Agreement by reference.

TERMS AND CONDITIONS

ARTICLE 2. DEFINITIONS

2.1 Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

“Access Key” means a fare card for rental of Bicycles, as further described in Schedule 3 to Exhibit 1 of the Chicago Agreement.

“Agreement” means this agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

“Bicycle” means a device propelled solely by human power, upon which a person may ride either on or astride a regular seat attached thereto, having two or more wheels in tandem, as further described in Schedule 3 to Exhibit 1 of the Chicago Agreement.

“Capital Costs” means the costs invoiced to the City for Equipment, Hardware, Software, and Installation Services.

“City Manager” means the City Manager of the City of Evanston and any representative authorized in writing to act on the Commissioner's behalf.

“Computer Hardware” means the computer hardware necessary to operate the System.

“Data” means all data recorded, gathered, or produced by the System, including but not limited to data pertaining to individual users, whether gathered through the website, social media, the Equipment, or customer service communications.

“Documentation” means the documentation, written materials, work papers, configurations, manuals, and other work product prepared by or on behalf of PBSC or Motivate, its subcontractors or agents in connection with Software, and all specifications related thereto, that Motivate and/or PBSC provides to licensees of the Software.

“Dock” or “Docking Point” means a locking mechanism contained on a Station designed to receive a Bicycle for locked storage, as further described in Schedule 3 to Exhibit 1 of the Chicago Agreement.

“Equipment” means all physical components of the System, including without limitation Bicycles, Docks, Terminals, Station batteries, Bicycle and Station spare parts and all necessary cables.

“Equipment Costs” means the actual cost incurred by Motivate to procure the Equipment, without mark-up.

“Identifier” means Data that that could be used to identify users of the System, including all personal demographic and financial information.

“Information Panel” means the printed material displayed inside of the Map Frame.

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

“Manager's Office” means the City Manager's Office.

“Marketing Services” means promotions and advertising of the System directed at individuals and businesses, as well as reaching all customer bases through the Website and social media accounts.

“PBSC” means the Equipment manufacturer and system back-end software provider, PBSC Urban Solutions.

“Rates” means the customer charges specified in Exhibit 1, Schedule 12.

“Report” means a report Motivate is required to deliver to the City under the terms hereof.

“Services” means all of the services described herein that Operator must perform, in order to provide the Bicycle Sharing System described herein.

“Site” means a designated area on publicly or privately owned real property, which area contains one or more of each of the following items made available by Motivate to perform the Services: Bicycles, Docks, Terminal, Technical Platforms and Information Panel.

“Site Plan” means an illustration which shows the location of all Sites before installation, 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 belowground structures, utilities, infrastructure, and appurtenances in the immediate vicinity.

“Station” means all Equipment related items except the Bicycles and Bicycle toolkits, including, without limitation, keys, and shipping costs, as further described in Exhibit 1, Schedule 1.

“Subcontractor” means any person or entity with whom Operator contracts to provide any part of the Services (including Equipment), including subcontractors and subconsultants of any tier, suppliers and materials providers, whether or not in privity with the Operator.

“System” means the bicycle sharing system, including all Equipment, Software, Technical Platform, Terminal, and Computer Hardware, operating together with the system described in the Chicago Agreement (the **“Chicago System”** and together, the **“Divvy System,”** as may be expanded by agreements with other municipalities in the greater Chicago area) as an integrated whole to perform the functions described herein.

“Technical Platform” means a base component which rests on the ground and supports the Docks, Terminal, and Information Panel.

“Terminal” means a kiosk which provides Bicycle rental instructions, contains payment equipment (i.e. credit card device), and includes all other means necessary for the rental of Bicycles, as further described in Schedule 3 to Exhibit 1 of the Chicago Agreement.

“Website” means the customer-facing and internal websites maintained by Motivate for the System.

2.2 Interpretation

- (a) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.
- (b) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- (c) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.
- (d) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.
- (e) All references to a number of days mean calendar days, unless indicated

otherwise.

2.3 Incorporation of Exhibits

The following attached Exhibits are made a part of this Agreement:

EXHIBIT 1	SCOPE OF SERVICES and associated Schedules 1 through 12
EXHIBIT 2	COMPENSATION SCHEDULE
EXHIBIT 3	INSURANCE REQUIREMENTS AND EVIDENCE OF INSURANCE
EXHIBIT 4	CONTRACTUAL REQUIREMENTS RELATED TO HIPAA
EXHIBIT 5	PREVAILING WAGE PROVISIONS
EXHIBIT 6	FEDERAL PROVISIONS
EXHIBIT 7	CHICAGO AGREEMENT

2.4 Order of Precedence

In the event of any conflict or inconsistency of terms among the various documents that at any given time, constitute this Agreement, the order of precedence that shall apply is as follows, with each listed document or type of document superseding and prevailing over any subsequently listed document or type of document, and with later-executed documents prevailing over earlier documents of the same type, each solely to the extent of any irreconcilable conflict or inconsistency of the terms and condition thereof: (i) the terms and conditions set forth in Articles 1 through 12 of this Agreement; (ii) the Scope of Services in Exhibit 1; and (iii) any Schedules and Exhibits to this Agreement.

Notwithstanding anything in the Agreement to the contrary, Operator is subject to and must conform to all of the terms and conditions of Exhibit 6 relating to Federal Provisions. In the event of any conflict or inconsistency between the terms set forth in the Agreement and the terms set forth in Exhibit 6, the terms and provisions Exhibit 6 take precedence over the terms and provisions in the Agreement, except to the extent that the Agreement contains provisions more favorable to the City or federal government or requiring a higher standard of the Operator. Operator must not by action or omission cause the City to be in breach of the grant agreement between the City and the funding source.

ARTICLE 3. DUTIES AND RESPONSIBILITIES OF OPERATOR

3.1. Scope of Work

General. The purpose of this Agreement is for Motivate to provide, install, implement, operate and maintain the System for use by the public. Subject to the terms and conditions of this Agreement, Motivate must (i) sell to the City the System, including Bicycles, Stations, and Computer Hardware, and provide to the City licenses for the Software, to enable use of the System by the City and the public as contemplated in this Agreement, (ii) install the Stations, at sites to be determined by the City, subject to the terms of this Agreement, and deliver all Bicycles, and provide all integration services to make the System fully operational, in compliance with the terms of this Agreement, (iii) provide all ancillary services for the expansion and operation of the System, including maintaining a website to be used by the public and marketing of the System to the public, and (iv) operate, support and maintain the System (collectively, the "Services"). Motivate shall provide all technical expertise, qualified personnel, Equipment, tools, and material to safely and competently accomplish all of the Services. Exhibit 1, Scope of Services, describes in more detail the elements of the Services; this description of the Services is intended to be general in nature and is neither a complete description of Motivate's obligations nor a limitation on the Services that Motivate is to provide under this Agreement. Motivate must provide City with all work and services required to build, deliver, operate, and maintain the System, including the Services described in the Scope of Services, Exhibit 1, and work and services not specifically delineated in this Agreement, but consistent with, and reasonably inferable to be within, the scope of this Agreement and necessary for the delivery and operation

of the System.

Motivate must complete all of its obligations hereunder in a timely manner. Regardless of any other express duties of Motivate, City is relying on Motivate to provide, and Motivate must provide the expertise, assistance, and recommendations that are necessary to ensure the launch of the System and the delivery of a System that meets City's needs and requirements and accomplishes the objectives of the City. In performing the Services, Motivate must at all times take appropriate advantage of and, unless expressly directed otherwise by City, implement or incorporate with regard to the System, best business practices.

3.2. Advertisement and Sponsorship

Revenue from sponsorship agreements related exclusively to the System shall belong to City, net of commission, if any. Revenue from sponsorship agreements related to the entire Divvy System shall be allocated to the City on a proportional per dock basis. The City shall not receive any revenue for sponsorship agreements that do not relate to any part of the System, including, for example, sponsorship agreements related exclusively to the Chicago System.

Sponsorship may include, but is not limited to, revenue from:

- Placement for payment sponsor on payment equipment or Docks;
- Placement for station sponsor on map header;
- Placement for advertiser on Docks;
- Placement for advertiser in membership packets;
- Placement for sponsor on digital products such as the Website, social media, email, or apps of the System;
- Placement for advertiser on t-shirts or other gear of System staff (such as "Valet Sponsor"); and
- Sampling opportunities at or nearby Stations

Motivate will receive 15% commission on any sponsorship it secures.

Notwithstanding any of the foregoing, (a) City acknowledges and agrees that it shall have no rights to the name, logo, or branding of the System or Divvy System and shall have no right to select or change any of the same, (b) City may not secure its own advertiser or sponsor placements on Docks, in order to allow for system-wide sponsors of the Divvy System, but shall receive a proportional share of revenue derived from such sponsorship in accordance with this Article 3.2, and (c) no sponsorship agreement may conflict with the terms of that Sponsorship Agreement between the City of Chicago and Blue Cross and Blue Shield of Illinois ("BCBSI") entered into as of May 1, 2014 ("BCBSI Sponsorship Agreement"). For the avoidance of doubt, BCBSI will, for the duration of the BCBSI Sponsorship Agreement and throughout the entire Divvy System, remain entitled to:

- Exclusive system branding on bikes and vehicles
- Exclusive sponsor/advertiser in the Health Insurance category
- Helmet safety message on website and map panel

3.3. Compliance with Federal Grant Requirements

Operator recognizes that a significant portion of this Agreement is funded through federal grant dollars received through the FHWA and agrees to cooperate with the City to address and if necessary, amend this Agreement, to conform with any additional requirements or changes to the System or Agreement necessary to comply with such grant requirements.

3.4. Ownership of Equipment and Computer Hardware

Upon acceptance by the City of any element of the Equipment, including but not limited to Bicycles, the City shall be the owner of all Stations, including up to ten (10) Bicycles per Station,

purchased by the City under this Agreement free and clear of all liens, encumbrances, financing statements, and rights of third persons or entities. All owner rights, warranties, and the like shall be in the name and inure to the benefit of the City. At the expiration or termination of this Agreement or earlier upon request, Motivate shall prepare and deliver to the City an inventory list of all Equipment and supplies purchased by the City under this Agreement and all related documentation, such as maintenance and service manuals and warranty information. The City shall have the right to perform a physical inventory of such Equipment at all times.

Motivate must represent and warrant in such bill of sale that the Equipment and any components thereof are entirely new. Motivate shall include the original manufacturer's warranty, which shall be transferred to the City.

3.5. Software Licenses

(a) Licenses. Motivate must obtain in City's name as licensee or sub-licensee for City and its authorized users to access, use, display and reproduce (and permit third party service providers to access, use, display and reproduce) the Software, and any other software used in the System, purchased or described in this Agreement. Motivate represents and warrants to City that Motivate has the authority and right to provide to City the license rights to all Software embedded in the System or otherwise provided by Motivate to City in accordance with the terms and conditions of this Agreement. The terms of the license are set forth more fully in Schedule 2.

(b) Source Code Escrow. Motivate represents that it has entered into a Source Code Escrow Agreement with PBSC, with Motivate as beneficiary, which provides that PBSC will deposit, within 10 calendar days of the Launch date, into trust the Escrow Materials to permit Motivate to use the Escrow Materials once released to configure, install, and support the Software solely in conjunction with the System. The Source Code Escrow Agreement shall provide that Motivate have access to the Escrow Materials from the Escrow Agent upon, including but not limited to (i) PBSC discontinues support for the Software as a result of a decision or order of a governmental authority; (ii) PBSC files a voluntary petition in bankruptcy or liquidation; (iii) PBSC proposes any dissolution, liquidation, reorganization, or recapitalization with its creditors; (iv) an involuntary petition in bankruptcy or liquidation is filed against PBSC or a receiver is appointed or takes possession of PBSC's property, and such petition or receiver is not dismissed or stayed within 90 days after such filing, appointment or taking possession; (v) PBSC makes an assignment for the benefit of creditors or is adjudicated as bankrupt; or (vi) PBSC takes any similar action under similar laws of any jurisdiction.

Motivate shall pay the reasonable costs of the Escrow Agent. Motivate shall not be liable for any breach by PBSC of the Source Code Escrow Agreement, including but not limited to PBSC's failure to deposit or maintain Escrow Materials.

Upon gaining access to the Escrow Materials pursuant to the Escrow Agreement, the City, or its third party consultants (subject to limitations in the sentence immediately following), and if applicable, Motivate, will be entitled to modify, alter, adjust, translate or create derivative works from the Software solely as needed for City's own use in support of the operations of the System (to the exclusion of any other use). Notwithstanding the preceding, the City may not provide access to the Escrow Materials to a third party that is a direct competitor of PBSC, namely an entity engaged in the implementation of bike-sharing systems.

"Escrow Materials" means, with respect to the Software, the source code of the Software and associated documentation, including all relevant files called for in Exhibit A of the Source Code Escrow Agreement.

PBSC shall be allowed to transfer the Escrow Agreement without the City's or Motivate's authorization if (i) PBSC's transferee or assignee has sufficient rights to source code to perform under the escrow, (ii) PBSC's transferee or assignee takes subject to all terms of the Escrow Agreement and this Agreement, and (ii) PBSC sends a written notice to Motivate and the City of

such assignment at least 30 days before the closing of any such transaction.

3.6. Deliverables

In carrying out the Services, the Operator must prepare or provide to the City various deliverables, including work product, reports (financial or otherwise), recommendations, and analyses, as further described in Exhibit 1.

The City may reject Deliverables that do not conform to the specifications in this Agreement or reasonably necessary for the purpose for which the City made this Agreement. If Motivate fails to comply with the foregoing standards, the City has 30 days from its discovery of the failure to notify Motivate thereof. If Motivate does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as an event of default.

3.7. Standard of Performance

Motivate must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a consultant performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Motivate acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City. Any review, approval, acceptance of Services or Deliverables or payment for any of the Services by the City does not relieve Motivate of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Motivate under this Agreement, at law or in equity.

Motivate must be appropriately licensed to perform the Services, if required by law, and must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as may be required by law. Motivate remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Motivate or its Subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Manager's Office and delivered in a timely manner consistent with the requirements of this Agreement.

If Motivate fails to comply with the foregoing standards, Motivate must, at the City's option, perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure, unless the reason is failure to have and maintain required licensure, which is an event of default as described in Article 9.1(b)(i) below.

3.8. Standard of Performance Project Management and Personnel

(a) Project Management. The System shall have the same Project Managers as are defined and designated under the Chicago Agreement. The City Project Manager shall serve as the primary point of contact for Motivate with respect to this Agreement. The Motivate Project Manager shall have overall responsibility for day-to-day management and administration of the Services provided under this Agreement and shall serve as the primary contact for the City with respect to this Agreement. Where specifically stated in this Agreement, Motivate shall obtain from the City Project Manager prior written approval of specified activities. However, it shall be the responsibility of Motivate to manage the details of the execution and performance of the Services under this Agreement. The Motivate Project Manager shall, at the request of City, attend any meeting of the management personnel of the City related to this Agreement, the System or the Services.

(b) Adequate Staffing. Motivate must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it

an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services.

(c) Salaries and Wages

Motivate and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement Motivate underpays any such salaries or wages, the City may withhold, out of payments due to Motivate, an amount sufficient to pay to employees the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the City for and on account of Motivate to the respective employees to whom they are due. The parties acknowledge that this clause is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

3.9. Insurance

Motivate must provide and maintain at Motivate's own expense, during the term of this Agreement and any time period following expiration if Motivate is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified in Exhibit 3 of this Agreement, insuring all operations related to this Agreement.

3.10. Indemnification

(a) Motivate and the City shall take all reasonable precautions to protect all persons and the property of the City and others from damage, loss or injury caused by operations of Motivate or its subcontractors under this Agreement.

(b) Motivate shall defend, indemnify and hold City and its commissioners, officers and employees (each, an "Indemnified Party," and collectively, "Indemnified Parties") harmless, to the fullest extent permitted by law, from any and all claims of, or judgments for, a third-party for (i) damages on account of any injuries or death to such third-party or damage to any property of such third-party, or (ii) economic, pecuniary or financial losses of such third-party, together with costs and expenses to which such Indemnified Party may be subjected of account of such claims or judgments, to the extent arising out of the negligence or intentional misconduct by Motivate or its subcontractors or a violation of law by Motivate or its subcontractors (collectively, "Operator Actions"); provided, however, that Motivate shall not be responsible for any negligence by Indemnified Parties or their respective agents or contractors or for any damages caused by Indemnified Parties or their respective agents or contractors (together with matters covered by the following sentence, "Indemnified Party Actions"). In addition, and notwithstanding anything to the contrary in the foregoing, Motivate's obligations under this paragraph shall not apply to liability to the extent arising from Motivate's complying with the directives or requirements of the City. Insofar as the facts or law relating to any claim would preclude an Indemnified Party from being completely indemnified by Motivate, such Indemnified Party shall be partially indemnified by Motivate.

(c) Motivate shall defend, indemnify and hold the Indemnified Parties harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the Indemnified Parties may be subject to or which the Indemnified Parties may suffer or incur allegedly arising out of or in connection with any infringement by Motivate of any copyright, trade secrets, trademark or patent rights or any other similar intellectual property right of any third party by Motivate or its subcontractors in the performance of this Agreement. Motivate shall defend, indemnify, and hold the Indemnified Parties harmless regardless of whether or not the alleged infringement arises out of compliance

with the Agreement's scope of services/scope of work. Insofar as the facts or law relating to any claim would preclude an Indemnified Party from being completely indemnified by Motivate, such Indemnified Party shall be partially indemnified by Motivate.

(d) Upon receipt by an Indemnified Party of actual notice of a proceeding against such Indemnified Party in respect of a matter for which such Indemnified Party is entitled to indemnification under Article 3.10(b) or Article 3.10(c) (a "Proceeding"), such Indemnified Party shall notify Motivate with respect thereto. In addition, an Indemnified Party shall notify Motivate after any Proceeding is commenced (by way of service with a summons or other legal process giving information as to the nature and basis of the claim) against such Indemnified Party. In any event, failure to notify Motivate shall not relieve Motivate from any liability that Motivate may have on account of this indemnity, except to the extent Motivate has been prejudiced by such failure. Motivate shall assume the defense of a Proceeding, including the employment of counsel reasonably satisfactory to such Indemnified Party and the payment of the fees and expenses of such counsel, in which event, except as provided below, Motivate shall not be liable for the fees and expenses of any other counsel retained by such Indemnified Party in connection with such Proceeding. In any such Proceeding in which Motivate assumes the defense, such Indemnified Party shall have the right to participate in such Proceeding and to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless: (i) Motivate and such Indemnified Party have mutually agreed in writing to the retention of such counsel, or (ii) the named parties to any such Proceeding (including any impleaded parties) include Motivate and such Indemnified Party and representation of both parties by the same counsel would, in the reasonable opinion of counsel to Motivate, be inappropriate due to actual or potential differing interests between Motivate and such Indemnified Party, in which case the reasonable fees and expenses of counsel for an Indemnified Party shall be borne by Motivate, provided that such Indemnified Party's selection of counsel has been approved by Motivate, which approval shall not be unreasonably withheld or delayed. Motivate will not settle any Proceeding to which such Indemnified Party is a party without the consent of such Indemnified Party unless such settlement includes an unconditional release of such Indemnified Party from all claims made against such Indemnified Party in connection with such Proceeding without any admission of liability or wrongdoing. Notwithstanding anything to the contrary in this Article 3.10(d), if any judgment or settlement establishes that the personal injury, property damage or financial loss underlying any Proceeding arose from Indemnified Party Actions, then such Indemnified Party shall reimburse Motivate for the legal fees and costs incurred by Motivate in defending such Indemnified Party, or if such personal injury, property damage or financial loss arose from both Operator Actions and Indemnified Party Actions, then such Indemnified Party shall reimburse Motivate for such Indemnified Party's share of Motivate's legal fees and costs based such Indemnified Party's share of the liability for such personal injury, property damage or financial loss.

(e) The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against Motivate or the Indemnified Parties or their respective officers and employees.

3.11. Ownership of Documents and Data

(a) The ownership of all Deliverables, Data, findings or other information (excluding any intellectual property rights or embodiment thereof owned or created by PBSC), in any form prepared, assembled, gathered, or encountered by or provided to Operator under this Agreement (subject to subarticle b below) shall be governed by the Chicago Agreement, including, as provided below, all copyrights, or other intellectual property rights inherent in their preparation.

(b) Any user data provided to or gathered by the System with respect to specific users, including, without limitation, the user's profile, payment information, trip history, and the like ("User Information") shall remain, as between the User and the Operator, the property of the user, and Operator may not claim ownership of such information, and may not request that any

user waive his or her ownership rights with respect to such information. User Information may be anonymized or aggregated to generate certain Deliverables or reports as required by this Agreement.

3.12. Copyright Ownership

Motivate and the City intend that, to the extent permitted by law, the Deliverables produced by Motivate at the City's instance and expense under this Agreement (excluding any intellectual property rights or embodiment thereof owned or created by PBSC) are conclusively deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. '101 *et seq.*, and that the City will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

To the extent that any Deliverable does not qualify as a "work made for hire," Motivate hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Agreement, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Motivate will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. Motivate warrants to the City, its successors and assigns, that on the date of transfer Motivate is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Motivate further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. Motivate warrants that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship. City and Motivate acknowledge that the Divvy marks, name and associated trademarks are the property of the City of Chicago, whose permission shall be secured for such use.

3.13. Records

Motivate must deliver or cause to be delivered to the City all documents, including all Deliverables prepared for the City under the terms of this Agreement, promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under this Agreement.

Motivate must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the final payment made in connection with this Agreement. Motivate must not dispose of such documents following the expiration of this period without notification of and written approval from the City in accordance with Article 11.

3.14. Confidentiality of City Data

(a) All City information must be kept strictly confidential, except as specifically authorized by this Agreement, or as may be required by law. The Operator must not allow the City's confidential information to be made available to any other individual or organization without the prior written consent of the City, except to Operator's employees, officers, directors, partners, shareholders, agents, attorneys, accountants, or contractors who need to know the confidential information to assist the Operator, or act on its behalf, in relation to the exercise of its rights or performance of its obligations under this Agreement. Operator must implement such measures

as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement.

Without limiting the foregoing, the Operator agrees that the User Information must be kept strictly confidential, and that Operator may not distribute, convey, transfer, license, or sell, in any fashion, such data, to any third parties, and Operator may not seek permission from users to do such. Notwithstanding this prohibition, the Operator shall seek permission from the users to share with the City user information on an aggregated basis for City purposes, including the enhancement and operation of the bicycle sharing program.

(b) Motivate must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the City.

(c) If Motivate is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Motivate's possession by reason of this Agreement, Motivate must immediately give notice to the City, including the City's counsel, with the understanding that the City will have the opportunity to contest such process by any means available to it before the records, data or documents are submitted to a court or other third party. Motivate, however, is not obligated to withhold the delivery beyond the time ordered by a court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

(d) HIPAA and AIDS Confidentiality Act. To the extent not defined here the capitalized terms below and in Exhibit 4 will have the same meaning as set forth in the Health Insurance Portability and Accountability Act (Act). See 45 CFR parts 160, 162 and 164. Operator and all its Subcontractors must comply with the Act and all rules and regulations applicable to it including the Privacy Rule, which sets forth the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164 subparts A and E; the Standards for Electronic Transactions, which are located at 45 CFR parts 160 and 162 and the Security Standards, which are located at 45 CFR parts 160, 162 and 164. Operator must also comply with the Illinois AIDS Confidentiality Act (410 ILCS 305/1 through 16) and the rules and regulations of the Illinois Department of Public Health promulgated under it. If Operator fails to comply with the applicable provisions under the ACT or the Illinois AIDS Confidentiality Act, such failure will constitute an event of default under this Agreement for which no opportunity for cure will be provided.

3.15. Assignments and Subcontracts

(a) Motivate must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement: (i) unless otherwise provided for elsewhere in this Agreement; or (ii) without the express written consent of the Manager's Office. The absence of such a provision or written consent voids the attempted assignment, delegation or transfer and is of no effect as to the Services or this Agreement. No approvals given by the City, including approvals for the use of any Subcontractors, operate to relieve Motivate of any of its obligations or liabilities under this Agreement.

(b) If any Subcontractor fails to perform the Services in accordance with the terms and conditions of this Agreement to the satisfaction of the City, the City has the absolute right upon written notification to require the performance of this Agreement by Motivate personally or through any other City-approved Subcontractor. Any use of Subcontractors in the performance of the Services under this Agreement under no circumstances operates to relieve Motivate of any of its obligations or liabilities under this Agreement.

(c) Motivate, upon entering into any agreement with a Subcontractor, must furnish upon request of the City a copy of its agreement. Subcontracts may not contain any terms and

conditions that are in contradiction of the material terms and conditions of this Agreement. If the agreements do not prejudice any of the City's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Services.

(d) Motivate must not transfer or assign any funds or claims due or to become due under this Agreement without the prior written approval of the City. The attempted transfer or assignment of any funds, either in whole or in part, or any interest in them, which are due or to become due to Motivate under this Agreement, without such prior written approval, has no effect upon the City.

(e) The City shall not assign or otherwise transfer all or any part of its interests under this Agreement to any successor without the prior written approval of the City of Chicago.

3.16. Collateral Assignment

In the event that the City has exercised its right to terminate this Agreement, under the early termination or for cause, all as set forth in Article 9, the City shall have the right, at its election but subject to the approval of the City of Chicago, to take over and operate the System, either directly or through third parties. Notwithstanding the preceding, the City may not operate the System through a third party that is a direct competitor of PBSC, namely an entity engaged in the implementation of bike-sharing systems.

3.17. Prevailing Wage Provisions

To the extent applicable, Operator must adhere to the additional terms as outlined in Exhibit 5.

ARTICLE 4. DURATION OF AGREEMENT

4.1. Term of Performance

This Agreement takes effect as of the Effective Date and continues until January 24, 2018, unless the Chicago Agreement is extended pursuant to its Article 4.3, in which case the City may elect, pursuant to Article 4.3 below, to simultaneously extend this Agreement. If the Chicago Agreement terminates for any reason at any time, this Agreement shall terminate simultaneously. If the Chicago Agreement is assigned at any time to a new operator, the City and Motivate shall immediately take all steps necessary to transfer this Agreement to the same operator.

4.2. Timeliness of Performance

Motivate must provide the Services and Deliverables in a timely manner. Neither Motivate nor Motivate's agents, employees or Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Motivate by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

4.3. Agreement Extension Option

The City may exercise its right to extend this Agreement following the expiration of the base Agreement term for up to two additional sixty month terms, subject to acceptable performance by Motivate and contingent upon (i) a corresponding extension of the Chicago Agreement and (ii) the appropriation of sufficient funds for the Services provided for in this Agreement.

Before expiration of the then current Agreement term, the City will give Motivate notice, in writing, that the City wishes to exercise its option to renew the Agreement for the approaching option period. The date on which the City gives notice is the date the notice is mailed, if it is mailed, or

the date the notice is delivered, if sent by courier or messenger service.

With the same amount of notice as for options, the City reserves the right to extend the Agreement for a period of no more than one-hundred eighty-one (181) calendar days, either in lieu of exercising an option period or following the exhaustion of all option periods, for the purpose of providing continuity of service while procuring a replacement contract, provided however that the same is elected by the City of Chicago pursuant to the Chicago Agreement.

ARTICLE 5. COMPENSATION

5.1. Fees and Invoices

Motivate will invoice the City for Capital Costs, Operator Fees and any other payments owed by the City to Motivate in accordance with the terms of invoicing and payment set forth in Exhibit 3, Compensation Schedule. An original invoice must be mailed to: Evanston Project Manager, Attn: Katherine Knapp, 2100 Ridge Avenue, Evanston, IL 60201 with a copy to the City Chief Financial Officer/Assistant City Manager, 2100 Ridge Avenue, Evanston, IL 60201. The City will process payment within 30 days after receipt of invoices. Late payments will accrue interest at a rate of 1% per month.

5.2. Taxes

Illinois Retailers Occupation Tax, Use Tax, and Municipal Retailers Occupation Tax do not apply to materials or services purchased by the City by virtue of Statute. The price or prices quoted herein shall include all other Federal and/or State, direct and/or indirect taxes which apply. The prices quoted herein shall comply with all Federal laws and regulations.

5.3. Funding

The source of funds for payments for Capital Costs under this Agreement shall be identified by the City. The source of funds for payments for Operations Costs will be the Account described in Exhibit 2. Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council. Neither Operating Revenues, Revenue Allotment, nor the balance of the Account shall have any bearing on the City's obligation to pay the Operator Fees to Motivate. For the avoidance of doubt, in the event that Revenue Allotment for any period is less than the Operator Fees due for the same period, the City shall nevertheless be obligated to pay Motivate the Operator Fees in full and without any offset or deduction.

5.4. Non-Appropriation

Pursuant to 65 ILCS 5/8-1-7, any contract for the expenditure of funds made by a municipality without the proper appropriation is null and void.

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, then the City will notify Motivate of that occurrence and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments will be made to Motivate under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Contract.

ARTICLE 6. DISPUTES

Except for a claim relating to intellectual property or breach of confidentiality provisions, the parties, through their respective project managers, will attempt to settle any dispute arising from this Agreement through consultation and good faith negotiation. If the project managers are unable to resolve the issue, the parties will declare a 30-day resolution period in which the issue will be escalated to the City Manager, or his designee, and to the President of Motivate, or his

designee. The parties agree to timely respond to reasonable requests for information required to establish facts related to the dispute that they are not prohibited by law or policy to produce. At the end of the 30-day period, the Operator shall give notice to the City of disputes or claims it believes cannot be resolved before filing any claim with a court of proper jurisdiction.

ARTICLE 7. COMPLIANCE WITH ALL LAWS

7.1. Compliance with All Laws Generally

(a) Operator must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, including those set forth in this Article 7, and Operator must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Operator must require all Subcontractors to do so, also.

(b) Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

7.2. Nondiscrimination

(a) Operator

Operator must comply with applicable federal, state, and local laws and related regulations prohibiting discrimination against individuals and groups. If this Agreement is federally funded in whole or in part, additional provisions related to nondiscrimination may be set forth in Exhibit 6.

(i) Federal Requirements

Operator must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Operator's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

Operator must comply with, and the procedures Operator utilizes and the Services Operator provides under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e *et seq.* (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§621-34; Rehabilitation Act of 1973, 29 U.S.C. §§793-794 (1981); Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 41 C.F.R. Part 60 *et seq.* (1990); and all other applicable federal statutes, regulations and other laws.

(ii) State Requirements

Operator must comply with, and the procedures Operator utilizes and the Services Operator provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code §750 Appendix A. Furthermore, Operator must comply with the Public Works Employment Discrimination Act, 775

ILCS 10/0.01 *et seq.* (1990), as amended, and all other applicable state statutes, regulations and other laws.

Operator must furnish such reports and information as requested by the federal, state, and local agencies charged with enforcing such laws and regulations.

7.3. Deemed Inclusion

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

ARTICLE 8. SPECIAL CONDITIONS

8.1. Warranties and Representations

In connection with signing and carrying out this Agreement, Operator:

- (a) warrants that Operator is appropriately licensed under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Operator is not appropriately licensed;
- (b) warrants it is financially solvent; it and each of its employees and agents are competent to perform the Services required under this Agreement; and Operator is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;
- (c) warrants that it will not knowingly use the services of any ineligible contractor or Subcontractor for any purpose in the performance of its Services under this Agreement;
- (d) warrants that Operator is not in default at the time this Agreement is signed, and has not been deemed by the City to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City;
- (e) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Operator warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;
- (f) represents that Operator and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1;
- (g) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Article 9.2 of this Agreement; and
- (h) warrants that the System complies with all laws governing accessibility for the disabled as required by the Americans with Disabilities Act (ADA) or any such applicable laws and regulations and agrees that during the Term of the Agreement it will comply with all such laws governing accessibility; and

(i) warrants and represents that neither Operator nor an Affiliate of Operator (as defined below) appears on the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by the Bureau of Industry and Security of the U.S. Department of Commerce (or their successors), or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment. "Affiliate of Operator" means a person or entity that directly (or indirectly through one or more intermediaries) controls, is controlled by or is under common control with Operator. A person or entity will be deemed to be controlled by another person or entity if it is controlled in any manner whatsoever that results in control in fact by that other person or entity (either acting individually or acting jointly or in concert with others) whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

8.2. Ethics

(a) In addition to the foregoing warranties and representations, Operator warrants:

(i) no officer, agent or employee of the City is employed by Operator or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement.

(ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to Operator or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

8.3. Joint and Several Liability

If Operator, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by Operator is the joint and several obligation or undertaking of each such individual or other legal entity.

8.4. Business Documents

At the request of the City, Operator must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

8.5. Conflicts of Interest

(a) No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no council member of the City or City employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

(b) Operator represents that it, and to the best of its knowledge, its Subcontractors if any (Operator and Subcontractors will be collectively referred to in this Article 8.5 as "**Consulting Parties**"), presently have no direct or indirect interest and will not acquire any direct or indirect interest in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

(c) Upon the request of the City, Consulting Parties must disclose to the City their past client lists and the names of any clients with whom they have an ongoing relationship.

Consulting Parties are not permitted to perform any Services for the City on applications or other documents submitted to the City by any of Consulting Parties' past or present clients. If Consulting Parties become aware of a conflict, they must immediately stop work on the assignment causing the conflict and notify the City.

(d) Without limiting the foregoing, if the Consulting Parties assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

(e) Further, Consulting Parties must not assign any person having any conflicting interest to perform any Services under this Agreement or have access to any confidential information, as described in Article 3.14 of this Agreement. If the City, in its reasonable judgment, determines that any of Consulting Parties' services for others conflict with the Services that Consulting Parties are to render for the City under this Agreement, Consulting Parties must terminate such other services immediately upon request of the City.

(f) Furthermore, if any federal funds are to be used to compensate or reimburse Operator under this Agreement, Operator represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 U.S.C. §1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, Operator must execute a Certification Regarding Lobbying.

8.6. Non-Liability of Public Officials

Operator and any assignee or Subcontractor of Operator must not charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Agreement or because of the City's execution, attempted execution or any breach of this Agreement.

8.7. Certification Regarding Suspension and Debarment

Operator certifies, by its acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. If Operator is unable to certify to this statement, it must attach an explanation to the Agreement.

ARTICLE 9. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND RIGHT TO OFFSET

9.1. Events of Default Defined

The following constitute events of default:

(a) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Operator to the City.

(b) Operator's failure to perform any of its obligations under this Agreement including the following:

- (i) Failure to have and maintain all professional licenses required by law to perform the Services;
 - (ii) Failure to timely perform the Services;
 - (iii) Failure to perform the Services in a manner reasonably satisfactory to the City or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
 - (iv) Failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, Services that are rejected as erroneous or unsatisfactory;
 - (v) Failure to provide Support or remedy any Software defect or malfunction or other failure of the Software to perform in accordance with Schedule 2 for more than 5 calendar days.
 - (vi) Discontinuance of the Services for reasons within Operator's reasonable control;
 - (vii) Failure to comply with Article 7.1 in the performance of the Agreement;
 - (viii) Any other acts specifically stated in this Agreement as constituting an act of default.
- (c) Any change in ownership or control of Operator without the prior written approval of the City (when such prior approval is permissible by law), which approval the City will not unreasonably withhold.
- (d) Operator's default under any other agreement it may presently have or may enter into with the City for the duration of this Agreement. Operator acknowledges that in the event of a default under this Agreement the City may also declare a default under any such other agreements.
- (e) Operator's default under the Chicago Agreement or any other agreement with the City of Chicago related thereto.
- (f) Operator's violation of City ordinance(s) unrelated to performance under the Agreement such that it indicates a willful or reckless disregard for City laws and regulations.

9.2. Remedies

- (a) **Notices.** In an event of default, the Operator shall have an opportunity to cure the default within 30 days unless extended by the City. The City will give Operator written notice of the default in the form of a cure notice ("**Cure Notice**"). If the Operator fails to cure the event of default within the cure period, the City may give a default notice ("**Default Notice**"), in which it will also indicate any present intent it may have to terminate this Agreement. The decision to terminate is final and effective upon giving the notice. If the City decides not to terminate, this decision will not preclude it from later deciding to terminate the Agreement in a later notice, which will be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. When a Default Notice with intent to terminate is given as provided in this Article 9.2 and Article 11, Operator must discontinue any Services, unless otherwise directed in the notice, and deliver all materials belonging to the City and accumulated in the performance of this Agreement, whether completed or in the process, to the City.
- (b) **Exercise of Remedies.** After giving a Default Notice, the City may invoke any or

all of the following remedies:

(i) The right to take over and complete the Services, or any part of them, at City's expense and with the consent of the City of Chicago, either directly or through others, and refrain from making any payments of Operator Fees to Operator;

(ii) The right to terminate this Agreement;

(iii) The right of specific performance, an injunction or any other appropriate equitable remedy;

(iv) The right to money damages;

(v) The right to withhold all or any part of Operator's compensation under this Agreement;

(vi) The right to deem Operator non-responsible in future contracts to be awarded by the City;

(vii) The right to declare default on any other contract or agreement Operator may have with the City.

(c) **City's Reservation of Rights.** If the City considers it to be in its best interests, it may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Operator to continue to provide the Services despite one or more events of default, Operator is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

(d) **Non-Exclusivity of Remedies.** The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers expedient.

9.3. Suspension

If the City declares that there is an event of emergency, the City may at any time request that Operator suspend its Services, or any part of them, by giving 15 days prior written notice to Operator or upon informal oral, or even no notice. Operator must mitigate any costs incurred after the effective date of such suspension. Operator must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the City and such equitable extension of time as may be mutually agreed upon by the City and Operator when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Operator as a result of the suspension period or for recommencing the Services must be treated in accordance with the compensation provisions under Article 5 of this Agreement.

9.4. Right to Offset

In connection with Operator's performance under this Agreement, the City may offset any incremental costs and other damages the City incurs in any or all of the following circumstances:

(i) if the City terminates this Agreement for default or any other reason

resulting from Operator's performance or non-performance;

(ii) if the City exercises any of its remedies under Article 9.2 of this Agreement;

(iii) if the City has any credits due or has made any overpayments under this Agreement.

The City may offset these incremental costs and other damages by use of any payment due for Services completed before the City terminated this Agreement or before the City exercised any remedies. If the amount offset is insufficient to cover those incremental costs and other damages, Operator is liable for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

ARTICLE 10. GENERAL CONDITIONS

10.1. Entire Agreement

(a) General

This Agreement, and the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other terms, conditions, warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not addressed in this Agreement.

(b) No Collateral Agreements

Operator acknowledges that, except only for those representations, statements or promises contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced Operator to enter into this Agreement or has been relied upon by Operator, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

(c) No Omissions

Operator acknowledges that Operator was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Operator did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Operator relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

10.2. Counterparts

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic submission shall be effective as delivery of a manually executed original counterpart of this Agreement.

10.3. Changes, Modifications, and Amendments

No change, modification, or amendment of this Agreement, or any part hereof, is valid unless stipulated in writing and signed by the parties. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Article 10.3. This Article 10.3, does not apply, however, to Agreement extensions governed by Article 4.3, Agreement Extension Option.

10.4. Governing Law and Jurisdiction

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Operator irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Service of process on Operator may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Operator, or by personal delivery on any officer, director, or managing or general agent of Operator. If any action is brought by Operator against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

10.5. Severability

If any provision of this Agreement is held or deemed to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

10.6. Assigns

All of the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

10.7. Cooperation

Operator must at all times cooperate fully with the City. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Operator must make every effort to ensure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Manager's Office in connection with the termination or expiration.

10.8. Waiver

Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance.

Whenever under this Agreement the City by a proper authority waives Operator's performance in any respect or waives a requirement or condition to either the City's or Operator's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to Operator in writing.

10.9. Independent Contractor

(a) This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Operator and the City. The rights and the obligations of the parties are only those set forth in this Agreement. Operator must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of the City.

(b) This Agreement is between the City and an independent contractor and, if Operator is an individual, nothing provided for under this Agreement constitutes or implies an employer-employee relationship such that:

(i) The City will not be liable under or by reason of this Agreement for the payment of any compensation award or damages in connection with the Operator performing the Services required under this Agreement.

(ii) Operator is not entitled to membership in any City Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City.

The City is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Operator.

10.10. Electronic Ordering and Invoices

The Operator shall cooperate in good faith with the City in implementing electronic ordering and invoicing, including but not limited to catalogs, purchase orders, releases, and invoices. Operator shall accept electronic purchase orders and releases upon request of the City. Operator shall provide the City electronic catalogs, copies of invoices and other electronic documents upon request. The electronic ordering and invoice documents shall be in a format specified by the City and transmitted by an electronic means specified by the City. Such electronic means may include, but are not limited to, disks, e-mail, EDI, FTP, web sites, and third party electronic services. The City reserves the right to change the document format and/or the means of transmission upon written notice to the Operator. Operator shall ensure that the essential information, as determined by the City, in the electronic document, corresponds to that information submitted by the Operator in its paper documents. The electronic documents shall be in addition to paper documents required by this contract, however, by written notice to the Operator, the City may deem any or all of the electronic ordering and invoice documents the official documents and/or eliminate the requirement for paper ordering and invoice documents.

in it, including the representations, certifications and warranties collectively incorporated by reference in it.

[Signature Pages, Exhibits and Schedules follow.]

CONTRACT SIGNATURE PAGE

MOTIVATE INTERNATIONAL INC.

Jay Walder, President and CEO

Date

State of _____

County of _____

This instrument was acknowledged before me on this _____ day of _____, 20__
by _____ as President (or other authorized officer) of
Motivate International Inc.

(Seal) Notary Public Signature

Commission Expires: _____

CITY OF EVANSTON

Wally Bobkiewicz, City Manager

Date

EXHIBIT 1

Scope of Services

The following is an overview of the Services that Operator must provide under the Agreement. All schedules to this Exhibit are fully incorporated by reference.

I. The System.

The City and the Operator agree that the Operator will provide the System to the City in a timely manner, including the following:

- A. The System comprises the following two components: Stations and Bicycles.
- B. All components of the Equipment as listed in Schedule 1.
- C. The technical and functional specifications for each item of Equipment are included in Schedule 3 to Exhibit 1 of the Chicago Agreement.
- D. All the Software to be included in the System is listed in Schedule 4 to Exhibit 1 of the Chicago Agreement.
- E. The performance specifications for the Software are included in Schedule 5 to Exhibit 1 of the Chicago Agreement.
- F. The License Agreement and warranties for the Software are described in Schedule 2. The City shall have a perpetual, fully paid, irrevocable, right to use the Software, subject to the terms of the License Agreement.
- G. The warranty provisions for the System and its Equipment are included in Schedule 3.

II. Implementation of the System

The City and the Operator agree that Operator will implement the System consistent with the following list of protocols and procedures:

- A. A protocol for the location, relocation or reapportionment, and resizing of Sites as specified in Schedule 4.
- B. The procedures for assembly of Bicycles and installation of Stations at Sites are set forth in Schedule 5.
- C. The Operator will provide performance tests of the Equipment prior to installation in a manner set forth in Schedule 6. If the City determines that the Equipment fails the tests at that Site, Operator will promptly make such changes and perform appropriate repairs as are necessary to fix any problems, and will re-perform the tests for the City. Such procedure will be repeated until the City accepts the Equipment as performing within System Specifications at that Site. If the Equipment is performing within System Specifications at that Site.
- D. Ownership and risk of loss of the Equipment will pass to the City upon acceptance, and the Software license will begin to run upon acceptance. Warranties will only begin upon such acceptance.

III. Support Services and Launch

Prior to provision and installation of the Equipment, the Operator will perform various services, including the following:

- A. The Operator will maintain, and include the System in, the website created pursuant to the Chicago Agreement.
- B. The Operator will perform such marketing services as are described in Schedule 7, to promote the bicycle sharing program.
- C. The Operator will include the System in its operation of the call center required by the Chicago Agreement.

IV. Operations, Support and Maintenance

- A. After acceptance of the Equipment to be provided by Operator in 2016, Operator will make the System at these Sites available for use by the public. The first date of operation shall be known as the "Launch" date. Thereafter, the Operator will operate the System at all Sites at which it has been accepted for the duration of this Agreement. All features of the System, which are described in the Agreement and in the Schedules, will be fully operational, and all warranties described herein shall apply.
- B. The Operator will obtain from each user a signed Bicycle Rental Agreement, Liability Waiver and Release of the Operator and City. This agreement will provide that the user will hold the City and all entities on which the Sites are located, and all of their employees, officers, and agents, harmless from all liability as a result of the use of the Equipment and the participation in the Bicycle Program.
- C. The Operator will perform the procedures pertaining to operations and maintenance of the System after the Launch described in Schedule 8.
- D. Terms relating to damaged, lost, and stolen bicycles are set forth in Schedule 9.
- E. The calculation of system revenues and compensation arrangement for the operations, support and maintenance are as set forth in Exhibit 2 and any attachments thereto.
- F. Rates for bike rentals shall be those determined under the Chicago Agreement, as amended.

V. Standards of Performance

The Operator shall report on its performance and System asset management consistent with Schedule 10.

SCHEDULE 1

Components of the Equipment that Compose the System

Bicycle

- PBSC Bicycle

Station

- Kiosk
- Docking Point
- Map Frame
- Technical Pavement
- Cables

SCHEDULE 2

Software Rights

“Documentation” shall mean all documentation, written materials and technical and user manuals prepared by PBSC relating to the use and functioning of the Software.

“License Agreement” means the agreement between Motivate and PBSC, which includes licensing and support provisions, for the licensing and support of the Software and pursuant to which Motivate is authorized to sub-license the Software to the City and to provide Support.

“Software” means the software PBSC licenses with the Equipment including any enhancements, changes or modifications to the Software included in the Support obligations set forth below.

“Software Fees” means the monthly per Station fees paid by the City for the license rights specified herein and Support of the Software. Software Fees are based on the number of Stations actually installed.

“Support” means the support and maintenance services provided by Motivate (through PBSC) in connection with the use of Software on the System as specified in Section 2 of this Schedule 2 in accordance with the terms and conditions set forth in the support and maintenance sections of the License Agreement, which terms may not be changed without the City’s consent.

“Upgrade” means new versions and/or releases and performance enhancements of the Software and related documentation that PBSC makes available to its customers.

1. Sub-License Grant. In consideration for the Software Fees, Motivate hereby grants, pursuant to rights obtained under the License Agreement, to City a revocable (solely under conditions specified herein), non-exclusive and non-transferable right to reproduce, operate, and use the Software for the sole purpose of operating the System.
2. Software Support. In consideration of the Software Fees, Motivate must provide the Support for the Software and provide the following services:
 - a. Service Obligation. Motivate warrants that it shall maintain (through PBSC) the Software in good working order, keep it free from defects in material and workmanship, and remedy any failure of the Software to perform in accordance with this Agreement, the Documentation or the specifications in Schedules 4 and 5 to Exhibit 1 of the Chicago Agreement, or any other malfunction, defect or non-conformity in the Software. Motivate will provide to the City (through PBSC) all bug fixes and maintenance releases PBSC provides for the Software. Alta must provide (through PBSC) technical support to resolve all issues as necessary. This service obligation is subject to the terms describing support and maintenance in the License Agreement.
 - b. Upgrades. Motivate must provide (through PBSC) all software Upgrades that PBSC provides for its Software. Motivate must provide (through PBSC) technical support to resolve all issues as necessary. This Upgrade obligation is subject to the terms describing support and maintenance in the License Agreement.
 - c. Custom Development. A custom modification of the Software made at the request of the City (other than for defects) will be billable at hourly rates to be agreed between the parties and PBSC.
3. Software Fees. As of the Effective Date the Software Fees will be invoiced to the City monthly based on the number of Stations actually installed multiplied by \$60.00. Motivate

agrees that the Software Fees may not increase on a per Station basis during the first and second Operating Periods. Thereafter, and for the Term, as extended from time to time, Motivate may not increase the Software Fees more than the change in the Consumer Price Index adjusted for any fluctuation in currency exchange rates between the Canadian dollar and US dollar relative to the exchange rate on the Effective Date.

4. Revocation of Sub-License. This Software Sub-License to the City is revocable during the Term if the City breaches Section 5 or 6 of this Schedule 2 or fails to make a timely payment to Motivate of Software Fees (in accordance with the payment provisions specified in the Agreement), when such breach or failure to pay is not cured within 30 days following Motivate's written notice thereof to the City. For the purpose of this Section 4, the Software Sub-License may not be terminated for failure to timely pay Software Fees so long as the City has timely paid Motivate the License Fees (or within the cure period specified above). If Motivate fails to remit City's monthly payment of Software Fees to PBSC, the City may elect to make overdue and future payments directly to PBSC. The City shall also have the right to cure Motivate's failure when the next monthly invoice is due (but no longer than 60 days). Other than pursuant to this Section 4, the City Software Sub-License may not be revoked for any reason.
5. Restrictions. Except as may be expressly (i) authorized under the Source Code Escrow Agreement or (ii) authorized in writing and in advance by PBSC, the City must not directly or indirectly:
 - a. sell, lease, license, sublicense, loan, encumber, or otherwise transfer the Software, in whole or in part, to any 3rd party;
 - b. decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of any portion of the Software;
 - c. write or develop any derivative software or any other software program based on the Software, except with respect to any mobile application to be used by End-Users for the purpose of obtaining information related to the System, such as locating the stations and bicycles;
 - d. make modifications, corrections, alterations, enhancements, or other additions to the Software;
 - e. make the Software available to a third party by "bulletin boards", online services, remote dial-in or network, or telecommunication links of any kind; or
 - f. use the Software or allow someone to use the Software other than for the System.
6. Exclusivity. During the Term of this Agreement, the City will not use purchase or license any software, other than the Software, with the System; provided, however, that this exclusivity will not apply in the event of (i) a material breach by Motivate of its obligation to support the Software and such breach is not cured within 30 days of a written notice thereof from the City, and (ii) a release of the source code pursuant to the Source Code Escrow Agreement. The exclusivity described herein shall not apply to any 3rd party that may create, develop, and sell to anyone, including the City and any End-User, any mobile application to be used by End-Users for the purpose of obtaining information related to the System such as locating the stations and bicycles.
7. License Agreement Terms. Motivate represents and warrants that the License Agreement contains the following terms:

- a. The Software license to use rights and Support rights under the License Agreement may be assigned directly to the City of Evanston in the event of a transition of Motivate's operation of the System to another operator;
 - b. PBSC must send to the City of Evanston any notices of potential or actual breach PBSC sends to Motivate;
 - c. PBSC must send to City of Evanston any notices of termination PBSC sends to Motivate;
 - d. PBSC cannot terminate the License Agreement, nor can it expire, unless PBSC first offers the City of Evanston the right to obtain directly the Software license to use rights and Support rights.
8. Source Code. The City acknowledges that it is not entitled to receive a copy of the source code of the Software save pursuant to the Source Code Escrow Agreement.

SCHEDULE 3

System and Equipment Warranties

For all Equipment purchased, or otherwise acquired in accordance with the terms of this Agreement, Motivate shall complete, submit to the seller and/or manufacturer, and retain copies of all documents required to maintain all sellers and manufacturer's warranties. Motivate shall cooperate with any effort by the City to submit a warranty claim.

All Equipment shall be warranted by the manufacturer for a minimum of five (5) years from the date of purchase. Motivate shall promptly comply with all recalls of Equipment, whether issued by a manufacturer, government agency, or other entity.

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 Equipment.

The Warranty terms of the Equipment Manufacturer are set forth in Schedules 7 and 8 to Exhibit 1 of the Chicago Agreement. Motivate must diligently inspect all Equipment for any "Defects" during the warranty period for any piece of Equipment.

For the avoidance of doubt, Motivate does not and shall not in any way provide its own warranty over the Equipment. Motivate shall not be required to honor the terms of any manufacturer's or seller's warranties. The City's sole recourse for any warranty claim shall be with the manufacturer or seller directly.

SCHEDULE 4

Station Location, Moving, and Resizing

It is the mutual objective of the City and Motivate to maximize usage and revenue of the bike share system. Demand estimates will be based on the Motivate demand model, or a model approved by Motivate and the City. Potential demand will be a high-priority criterion in the selection of stations and sizing stations. The City will control the final site selection, relocation, and station size.

Motivate is not responsible for any permit or City required fees/charges under this Section. The City shall be responsible for permit and City required fees/charges.

(1) Rental Site Location and Station Size

The Parties, working in good faith, shall determine the location for each Rental Site. Within 30 days of contract signing, the City shall provide Motivate with a draft list of desired Rental Site locations ("Proposed Initial System Locations"). The initial list shall include proposed station sizes at all locations. Motivate will review potential Rental Site locations developed by the City and use this information as part of its demand analysis and Rental Site location analysis.

Based on projected revenue and/or feasibility constraints, Motivate will provide the City with the Draft Final List of Desired Rental Site Locations ("Draft Final List of Desired Rental Site Locations"). After Motivate's submission of the Draft Final List of Desired Rental Site Locations, the City and Motivate shall meet to mutually agree to the Final List of Rental Site locations and Station Sizes.

The Operator will determine whether the site provides sufficient solar power to operate a bike sharing station of the proposed size at the proposed location. If the site is not sufficient, the Operator will identify an alternate site in close proximity that will provide sufficient site and power and must receive consent for the alternative site by the City prior to finalizing the list of Rental Site locations.

(2) Site Design

The City shall prepare all site designs and perform any construction/modification to proposed sites. The City may direct Motivate to manage this work. The Operator will conduct this work on a reimbursable basis.

(3) City's Obligation to Obtain Rental Sites; Permitting

With regard to each Proposed Initial System Location, it shall be the responsibility of the City to:

- (a) determine the ownership of or title to the underlying real estate;
- (b) verify whether the placement and use of a Rental Site are permissible under zoning and other applicable ordinances and regulations; and
- (c) obtain all permits and permissions necessary to place a Rental Site at such location.

Prior to performing work on any site of any proposed Rental Site, the City, at its sole cost and expense, shall obtain from the property owner(s) of public and private property, and from all applicable government entities, all rights and permissions to install, maintain, repair, replace, remove, and use all Rental Sites and Equipment, and provide the services. Such rights and permissions further shall provide access by the public at large to the Rental Site(s) and Equipment located thereon.

No later than 30 days before Launch, the City shall provide Motivate with a complete packet of

permits, which include engineered diagrams to scale showing the location of the station, size of station, location of kiosk, for the Final List of Rental Site Locations.

(4) Station Relocation or Resizing

Through the course of operating the System the Operator or the City may recognize the need to move a station or increase or decrease the size of a particular station in order to satisfy customer demand or for other reasons. All moves and increases or decreases in size will be conducted on a quarterly basis or coordinated with installation of new equipment.

The City may request moving or resizing of up to two (2) stations per year. Any station moves over this number shall be charged at \$2,000 per occurrence in the first Operating Period and at a reasonably increased price in subsequent years. Any station moves made at the request of a third party, including instances where a private property owner requests a station move from City property in order to perform construction, shall be charged to the third party at \$2,000 per occurrence.

SCHEDULE 5

Procedures for Installation

Prior to the installation of any station, City shall provide to the Operator a site design and permit. The Operator shall provide the City with a schedule of Equipment to be installed on a monthly basis. The Operator shall provide a monthly report of Equipment actually installed.

On a weekly basis, after submitting the monthly report of equipment installation to the City, and with City approval, the Operator shall provide electronic notification to members of the Divvy System.

Installation Services

Installation Services include items that vary on a per-dock basis and include, but are not limited to:

- Equipment procurement
- Assistance with location planning
- Station assembly
- Bike assembly
- On-street station installation

SCHEDULE 6

Performance Testing Prior To Operation

Pre-launch Performance Testing

Stations

Prior to deployment, each station is programmed with a unique identification number, latitude and longitude and station name. Once these elements are programmed in the kiosk, it is connected through the cellular data network to the back end servers. System diagnosis tests are run to ensure the station is fully operational, these are performed from both the server side, and from the terminal user interface (TUI). These tests include but are not limited to the touch screen, card reader, printer and modem. Each kiosk must successfully pass all connection and diagnostic tests before it can leave the warehouse for installation.

The kiosk is then connected to a series of docks to test bike activity. Bikes are rented and returned to ensure all stations are ready to operate on the street.

Docks

Bike docks are programmed electronically and then tested with a bike. Each dock must have a bike successfully inserted and removed before it can leave the warehouse for installation.

Bikes

Bikes are subject to quality and safety tests by mechanics. Once bikes have passed these tests, they will have their RFID chips programmed with a unique number. This process doubles as a physical test that the bike can be docked and un-docked. No bike will be deployed unless it has passed these tests and has been programmed.

Credit Card Processing

Transactions are initiated with multiple card types from a random sampling of kiosks and from the public website. Transaction flow is verified from card swipe to credit card processor to bank.

Back End Software

Fail over and backup processes are tested to ensure proper functionality. All stations are checked to ensure that the physical data (number of docks, number of bikes, solar readings) matches what is being reported in the back end system and on the system maps.

Web Site and Mobile App

Account creation, editing, trip history and billing are testing by initiating accounts for all subscription types via the public website and initiating rentals with member key fobs. Public map on the web site and mobile app is tested against visual checks of the real time station inventory

SCHEDULE 7

Pre-Launch Marketing Scope of Work

The name, logo, and branding of the System shall be identical to that developed under the Chicago Agreement, including but not limited to:

- Bike and station color scheme
- Keys
- Decals – kiosks, bikes, headers
- Pricing schematic
- Website
- Welcome kit – letterhead, letter, envelope, activation instructions
- Information cards and brochures for selling memberships
- Event kit – tent, signage, banners
- System Map design
- Station header layout
- Webpage layout
- Social media – Facebook and Twitter logo

Motivate will include the System in the marketing strategy developed pursuant to the Chicago Agreement.

The marketing and communications plan includes, but is not restricted to:

- Demonstration events and pre-membership campaign
- Launch event/press conference
- Membership advertisement campaign
- Sustaining PR/marketing campaign

Motivate and the City will perform certain marketing activities to promote and drive membership sign-up for the System substantially as described in the Pre-Launch Marketing Plan attached to this Schedule 7.

SCHEDULE 8

Standard Operations and Maintenance Procedures

Motivate agrees to operate and maintain the System in accordance with standard operating procedures developed by Motivate pursuant to the Chicago Agreement (Chicago SOP). The Chicago SOP documents how the Operator shall conduct day-to-day operations. Repeated failure to operate and maintain the System according to the Chicago SOP will be a default under this Agreement. Day to day operations include, but are not limited to, the following:

Station preventive maintenance and routine maintenance, station monitoring, all routine cleaning procedures of Stations, including graffiti removal, snow removal and all emergency and weather response protocols, Bicycle checking procedures, Bicycle preventive maintenance and routine maintenance (both in-Station and in-shop), the "break-fix" obligations for all Equipment, ongoing marketing obligations, customer service obligations, special events procedures and reporting obligations.

In addition, the Chicago SOP shall cover such events as inclement weathers, accidents, system failure, and other issues identified through coordination between the City and the Operator.

SCHEDULE 9

Lost, Stolen, and Damaged Bikes

Damage to Bicycles

The City will be responsible for costs associated with damage to bicycles if the damage clearly occurred within the City (with respect to the City of Evanston, the "Evanston Costs" and with respect to the Village of Oak Park the "Oak Park Costs").

Chicago will be responsible for the costs associated with damage to bicycles if the damage clearly occurred within the City of Chicago (the "Chicago Costs").

The costs of damages to bicycles that are neither Evanston Costs, Oak Park Costs, Chicago Costs, nor attributable to a particular Member, will be divided in proportion to the number of bicycles in a jurisdiction's system compared to the number of bicycles in the Divvy System.

Stolen or Missing Bicycles

The City will be responsible for costs associated with stolen or missing bicycles (the "Costs of Missing Bicycles") in proportion to the number of bicycles in the System as compared to the number of bicycles in the Divvy System. Solely for the purpose of illustration, and not of limitation, if the number of bicycles in the System is ten, and the number of bicycles in the Divvy System is 100, the City would be responsible for ten percent of the Costs of Missing Bicycles in the Divvy System; provided, however, the City's share of the Costs of Missing Bicycles shall not exceed the cost of two (2) bicycles per year.

Notwithstanding the above, if any loss, theft, or damage is due to any Operator error, the Operator is responsible for the replacement or equivalent cost of replacement of such bikes.

SCHEDULE 10

Reporting Requirements and Asset Management

The Operator will be required to report information on a regular basis, as delineated below:

On a monthly basis, the Operator shall provide final reports including the following:

Performance Metrics:

- YTD Count of active registered members by type at the end of the reporting month
- YTD Count of unique casual memberships initiated at the end of the reporting month
- Number of new members by type who signed up during the reporting month, by week/month
- Number of cancellations and/or expirations of registered members by type during the reporting month

Ridership:

- Trips per day by member type
- Total trips per month and YTD per member type
- Average number of trips per day of week and hour of the day for weekdays and weekends during the reporting month
- Average duration of trips by member type
- Average and total length of trips (Straight line distance) by member type
- Total and average calories burned per week/month by member type. Based on calculation using total and average trip durations.
- Carbon offset per week/month. Based on calculation using total miles traveled (straight line distance)
- Average carbon offset per member by type for the month. Based on "total members/total carbon offset"

Financial Performance:

- Operating revenues

The Operator shall prepare an annual report that provides annualized information on all the above relevant to the prior year's operations.

The Operator is also responsible for providing up-to-date records of all equipment purchased through this contract.

SCHEDULE 11

Call Center

The Operator shall provide all subscribers, and the public at large, the telephone number for the call center required by Schedule 22 to Exhibit 1 of the Chicago Agreement. The call center shall service the entire Divvy System.

SCHEDULE 12

Rate Schedule

During the Term of the contract, rental, membership, and usage fees shall be identical to the rates set under the Chicago Agreement, including in the event of any rate change in accordance with the Chicago Agreement. The Operator must give 60 days written notice to the City of Evanston in the event of any rate change.

EXHIBIT 2

Compensation Schedule

I. Definitions

“**Account**” means that segregated fund, established pursuant to the Chicago Agreement, under the control of the City of Chicago into which the Operating Revenue is placed.

“**Additional Equipment**” means any Equipment other than the Initial Equipment purchased during the term of this Agreement.

“**Initial Equipment**” means the Equipment specified in Section II.A.1 of this Exhibit 2.

“**Initial Equipment Fee**” means the amount paid to Motivate for the Initial Equipment, which is specified herein.

“**Installation Fee**” means the amount paid to Motivate for the Installation Services specified in Schedule 5 to Exhibit 1.

“**Installation Services**” means those services specified in Schedule 5 to Exhibit 1.

“**Launch**” means the date on which paid rental service is available to the general public.

“**Operating Costs**” means the actual costs, without markup, incurred by Motivate in performing OSM. Any costs incurred by Motivate will be the responsibility of Motivate.

“**Operating Period**” means the period in which Motivate performs OSM (defined below) under the Agreement. The first Operating Period under this Agreement shall be from the Launch Date to December 31, 2016. The second Operating Period will be calendar year 2017. The third Operating Period will be from January 1, 2018 to January 23, 2018, unless this Agreement is extended pursuant to its terms, in which case the third Operating Period will be calendar year 2018. Each subsequent Operating period will be for successive calendar years, except the final Operating Period, which will be from January 1 to January 23 of the final calendar year.

“**Operating Revenue**” means all revenue derived from fees paid by riders for use of the System, including subscription fees, rental fees, and overage fees.

“**OSM**” means all operations, support, and maintenance services Motivate is obligated to perform under this Agreement.

“**Revenue Allotment**” means the portion of the total operating revenue of the Divvy System allocated and belonging to Evanston, as further described in this Exhibit 2, Section III.A.

II. Equipment and Installation Fees

A. Initial Equipment. Upon issuance of a notice to proceed, the City will issue a Purchase Order to Motivate for the Initial Equipment. Such Purchase Order will contain a release schedule that directs Motivate to place orders for the Initial Equipment from its supplier at specified dates and in specified amounts (“Sub-Orders”). After the City has issued a Purchase Order, it will become bound to purchase the portion of the Initial Equipment specified therein.

1) Prices for Equipment.

The following prices will govern the Initial Equipment order. For any subsequent orders, Motivate will charge the City for actual costs incurred by Motivate to procure the Equipment, without mark-

up, including but not limited to the costs of: the Equipment, shipping, shipping insurance, customs, and taxes.

Kiosk (1 per station location)	\$13,750.00 each
Back lit Map Frame (1 per station)	\$3,800.00 each
Docking Point Assembly (average of 16 per station)	\$732.00 each
Technical Platform (Standard) (average of 4 per station)	\$1,024.00 each
Yellow Cables (2 per kiosk)	\$80.00 each
Black Cables (1 per docking point)	\$83.00 each
Terminal Plugs (2 per station)	\$38.00 each
Bicycles (average of 10 per station)	\$1,115.00 each
Customer Keys (200 per bicycle)	\$2.50 each
Station Spare Parts	\$700.00 per station
Bicycle Spare Parts	\$119.00 per bicycle
Shipping and Customs	\$1,500.00 per station

2) **Schedule for Invoicing.** Motivate may invoice the City for the amount of the relevant Purchase Order according to the following schedule:

- Motivate may invoice the City 25% of the full amount of the Purchase Order upon acceptance of the City's Purchase Order by Motivate;
- Motivate may invoice the City 65% of the cost of each Sub-Order when all Equipment in such Sub-Order has arrived at Motivate's warehouse in Chicago; and
- Motivate may invoice the City the remaining 10% as the stations on each Sub-Order are installed.

B. Initial Equipment Installation Services

Motivate shall provide the Installation Services at a rate of **\$306.00** per dock. Motivate may invoice the City on a monthly basis for the Installation Services for each Station installed that is confirmed by Motivate to be in working order upon installation.

City shall pay Motivate for the actual costs of the following ancillary services which shall not be considered part of Operating Costs, if provided by Motivate and attributable to the City's portion of the Divvy System, provided however that any such services shall be mutually agreed upon in advance: website development and maintenance, marketing events, printed marketing materials, and design of marketing materials.

III. Operations

Motivate represents that there will be no duplication of costs among each of the various categories of Operating Costs, Installation Fees, or Equipment Fees.

A. Allocation of Revenues

The City's Revenue Allotment shall comprise: (i) membership fees associated with annual memberships whose mailing addresses contain a zip code within the City; (ii) rental fees from 24-hour passes purchased at a station in the City; and (iii) usage fees from a 24-hour pass trip or an annual membership trip initiated at a station in the City.

B. Deposit of Revenues

All Operating Revenues and Operator Fees shall be deposited in the Account. Any payments to the City for its Revenue Allotment shall be from the Account.

C. Payments to Motivate for Operating Costs

1) Monthly Invoices

Within **15 days** after the end of any month, Motivate will submit an invoice to the City, for its OSM costs at a rate of \$125.00 per dock per month ("Operator Fees"). The invoice shall include such other information as the City shall reasonably request.

Invoices will be paid within 30 days after submission.

2) Costs

In all Operating Periods, Motivate is responsible for all Operating Costs.

Any revisions affecting scope or compensation must be made by written amendment to the Agreement.

EXHIBIT 3

Insurance Requirements and Evidence of Insurance

The Operator must provide and maintain at Operator's own expense, until Agreement completion and during the time period following completion if Operator is required to perform any additional work, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Contract and Employers Liability coverage with limits of not less than \$500,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations explosion, collapse, underground, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for the Operator must maintain limits of not less than \$1,000,000 with the same terms herein.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Operator must provide Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City is to be named as an additional insured on a primary, non-contributory basis.

Subcontractors performing work for the Operator must maintain limits of not less than \$1,000,000 with the same terms herein.

4) Property All Risk

The Operator must maintain All Risk Property Insurance at full replacement cost covering all loss, damage or destruction to the machinery, equipment, bicycles, stations and/or any facility/property (if applicable) including improvements and betterments. The City of Evanston is to be named as an additional insured and loss payee.

The Operator is responsible for all loss or damage to City property and to personal property of Operator (including bicycles, materials, equipment, stations, fixtures and contents) that are part of this Agreement.

5) Professional Liability

When any architects, engineers, EDP professionals, project managers/administrators or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or

replaced must have an extended reporting period of two (2) years.

6) Valuable Papers

When any plans, designs, drawings, specifications, media, data, reports, records and any other documents are produced or used under this Contract, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

7) Blanket Crime

The Operator must provide Blanket Crime coverage covering all persons handling funds under this Contract, against loss by dishonesty, robbery, burglary, theft, destruction, or disappearance, computer fraud, credit card forgery, and other related crime risks. The policy limit must be written to cover losses in the amount of maximum monies collected, received and in the possession of Operator at any given time.

B. ADDITIONAL REQUIREMENTS

The Operator must furnish the City of Evanston, 2100 Ridge Avenue, Evanston, IL 60201, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. The failure of the City to obtain certificates or other insurance evidence from Operator is not a waiver by the City of any requirements for the Operator to obtain and maintain the specified coverages. The Operator must advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Operator of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Operator. The Operator hereby waives and agrees to require their insurers to waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Operator in no way limit the Operator's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self insurance programs maintained by the City do not contribute with insurance provided by the Operator under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

The Operator must require all subcontractors to provide the insurance required herein, or Operator may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of Operator unless otherwise specified in this Agreement.

If Contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

EXHIBIT 4

Contractual Requirements Related to HIPAA

The terms below that are capitalized and in bold have the same meanings as set forth in the Health Insurance Portability and Accountability Act. See 45 CFR parts 160 and 164.

1. Operator must not use or further disclose Protected Health Information ("PHI") other than as permitted or required by this Agreement or as Required by Law.
(<http://www.hhs.gov/ocr/hipaa/>)
2. Operator must use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for in this Agreement.
3. Operator must mitigate to the extent practicable any harmful effect that is known to Operator of a use or disclosure of PHI by Operator in violation of the requirements of this Agreement.
4. Operator must report any use or disclosure of the PHI not provided for by this Agreement to the City.
5. Operator must ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Operator on behalf of the City agrees to the same restrictions and conditions that apply through this Agreement to Operator with respect to such information.
6. If the Operator has PHI in a Designated Record Set then Operator must provide access, at the request of the City, and in the time and manner designated by the City, to PHI in a Designated Record Set, to City or, as directed by City, to an Individual in order to meet the requirements under 45 CFR 164.524.
7. If the Operator has PHI in a Designated Record Set then Operator must make any amendments to PHI in a Designated Record Set that the City directs or agrees to pursuant to 45 CFR 164.526 at the request of City or an Individual, and in the time and manner designated by City.
8. Operator must make internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Operator on behalf of, City available to the City, or at the request of the City to the Secretary, in a time and manner designated by the City or the Secretary, for purposes of the Secretary determining City's compliance with the Privacy Rule.
9. Operator must document the disclosure of PHI and information relating to such disclosures as would be required for City to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
10. Operator must provide to City or an Individual, in time and manner designated by City, information collected which relates to the disclosure of PHI, to permit City to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
11. Operator must either return all PHI to the City or destroy it, at the City's option, upon termination or expiration of this Agreement.
12. Operator must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic health information that it creates, receives, maintains, or transmits on behalf of the City as required by 45 CFR part 164.
13. Operator must ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it.
14. Operator must report to the City any security incident of which it becomes aware.

EXHIBIT 5

Prevailing Wage Rates

In accordance with 820 ILCS 130/1 et seq., in the performance of the work, Operator is fully responsible for paying not less than the prevailing rate of wages as determined by the Illinois Department of Labor, which must be paid to all laborers, mechanics, and other workers performing public works under this Agreement. These wage rates are also the prevailing wage rates for the City of Chicago, as determined by the Department. If the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid for the work before completion of the Project, the revised rate applies to this Agreement from the effective date of the revision. If federal wage provisions apply, such provisions will supersede this provision.

EXHIBIT 6

Federal Provisions

Operator acknowledges that it will be subject to all applicable contractual provisions and certification documents required by the funding source if federal grant funds are used. Such contractual provisions may include, but are not limited to, the following:

A. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, Operator:

- 1) Will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Operator will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action must include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. Operator must post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) Will, in all solicitations or advertisements for employees placed by Operator or on Operator's behalf state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3) Will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and must post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) Will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) Will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Operator's books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
- 6) In the event of Operator's noncompliance with the nondiscrimination clause of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Operator may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) Operator will include the provisions of the above Paragraphs 1) through 6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that the provisions will be binding upon each subcontractor or vendor. Operator will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. If,

however, Operator becomes involved in, or are threatened with, litigation with a subcontractor or vendor as a result of such direction by the federal government contracting agency, Operator may request the United States to enter into such litigation to protect the interests of the United States.

B. OTHER FEDERAL PROVISIONS

1) Interest of Members of or Delegates to the United States Congress

In accordance with 41 USC 22, Operator will not admit any member of or delegate to the United States Congress to any share or part of the Contract or any benefit derived therefrom.

2) False or Fraudulent Statements and Claims

a) Operator recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 USC 3081 et seq. and U.S. DOT regulations, Program Fraud Civil Remedies, 49 CFR Part 31, apply to actions pertaining to the Contract. Accordingly, by signing the Contract, Operator certifies or affirms the truthfulness and accuracy of any statement Operator has made, Operator makes, or Operator may make pertaining to the Contract, including any invoice for Operator's services. In addition to other penalties that may be applicable, Operator also acknowledges that if Operator makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on Operator to the extent the federal government deems appropriate.

b) Operator also acknowledges that if Operator makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the City or federal government in connection with an urbanized area formula project financed with federal assistance authorized by 49 USC 5307, the Government reserves the right to impose on Operator the penalties of 18 USC 1001 and 49 USC 5307(n)(1), to the extent the federal government deems appropriate.

3) Federal Interest in Patents

a) General. If any invention, improvement, or discovery of Operator is conceived or first actually reduced to practice in the course of or under the Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Operator must notify City immediately and provide a detailed report.

b) Federal Rights. Unless the federal government later makes a contrary determination in writing, the rights and responsibilities of the City, Operator, and the federal government pertaining to that invention, improvement, or discovery will be determined in accordance with applicable federal laws and regulations, including any waiver of them; and irrespective of Operator's status or the status of any Subcontractor at any tier (e.g., a large business, small business, non-profit organization, institution of higher education, individual), Operator will transmit to the federal government those rights due the federal government in any invention resulting from the Contract.

4) Federal Interest in Data and Copyrights

a) Definition

The term "subject data" used in this Section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Agreement. Examples include computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Agreement administration.

b) Federal Restrictions

The following restrictions apply to all subject data first produced in the performance of the Agreement. Except as provided in the Agreement and except for Operator's own internal use, Operator may not publish or publicly reproduce subject data in whole or in part, or in any manner or form, nor may Operator authorize others to do so, without the written consent of the City and the federal government, until such time as the federal government may have either released or approved the release of such data to the public.

c) Federal Rights in Data and Copyrights

In accordance with subparts 34 and 36 of the Common Rule, the City and the federal government reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for City or federal government purposes, the types of subject data described below. Without the copyright owner's consent, the City and federal government may not extend their license to other parties.

(1) Any subject data developed under the Contract or subagreement financed by a federal Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and

(2) Any rights of copyright in which Operator purchase ownership with federal assistance.

5) No Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by federal statute or regulations, Operator will comply with the requirements of 49 USC 5323(h)(2) by refraining from using any federal assistance to support subcontracts procured using exclusionary or discriminatory specifications.

6) Cargo Preference - Use of United States Flag Vessels

Operator must comply with U.S. Maritime Administration regulations, "Cargo-Preference - U.S. Flag Vessels," 49 CFR Part 381, and include the clauses required by those regulations, modified as necessary to identify the affected parties, in each subcontract or sub-agreement involving equipment, materials, or commodities suitable for transport by ocean vessel.

7) Fly America

Operator must comply with 49 USC Section 40118, and related regulations at 41 CFR Part 301-10, regarding use of United States air carriers, and included clauses requiring Operator's Subcontractors to comply with the requirements of 49 USC Section 40118, and related regulations at 4 CFR Part 52, in all of Operator's subcontracts.

8) No Federal Government Obligations to Third Parties

Absent the federal government's express written consent, the federal government is not subject to any obligations or liabilities to any contractor or any other person not a party to the Grant Agreement or Cooperative Agreement between the City and the federal government, which is a source of funds for this Contract. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, agreement, or contract, the federal government continues to have no obligations or liabilities to any party, including Operator.

9) Allowable Costs

Notwithstanding any compensation provision to the contrary, Operator compensation under this Contract is limited to those amounts that are allowable and allocable to the Contract in accordance with OMB Circular A-87 and the regulations in 49 CFR Part 18. To the extent that an

audit reveals that Operator have received payment in excess of such amounts, the City may offset such excess payments against any future payments due to Operator and, if no future payments are due or if future payments are less than such excess, Operator must promptly refund the amount of the excess payments to the City.

10) Contract Work Hours and Safety Standards Act

If applicable according to their terms, Operator must comply and assure compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC 327 through 333, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction" (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act), 29 CFR Part 5; and U.S. DOL regulations, "Safety and Health Regulations for Construction", 29 CFR Part 1926. In addition to other requirements that may apply:

a) In accordance with sections of the Contract Work Hours and Safety Standards Act, as amended, 40 USC 327 through 332, Operator must assure that, for the Contract, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for Work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Determinations pertaining to these requirements will be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction" (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act), 29 CFR Part 5.

b) In accordance with section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC 333, Operator must assure that no laborer or mechanic working on a construction contract is required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety, as determined in accordance with US DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926.

11) Seismic Safety

If this Contract is for the construction of a building or an addition thereto, Operator must apply the requirements of US DOT regulations applicable to seismic safety requirements for US DOT assisted construction projects at 49 CFR Part 41, (specifically, 49 CFR 41.120), and any implementing guidance the federal government may issue, to the construction of any new building and to additions to any existing building.

12) Buy America

Operator must ensure that any Work performed under this Contract complies with the "Buy America" regulations of the FHWA, as set forth in 23 CFR Part 635.410, which generally require that all manufacturing processes for steel and iron products to be incorporated in a construction project occur in the United States.

13) Buy America Certification

The Operator agrees to comply with all statutes and regulations that provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in federally funded projects are produced in the United States, unless a waiver has been granted or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds.

14) Audit and Inspection

The Operator agrees to permit the Secretary of Transportation ("Secretary") and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Operator and its subcontractors pertaining to the Project. The Operator agrees to require each third party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

15) Certification Regarding Lobbying

Operator certifies that it will comply with 6 CFR Part 9, and other applicable regulations, including the following:

Operator certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of Operator, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan or cooperative agreement.

If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence any of the above persons in connection with the Agreement, the undersigned must also complete and submit federal form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

If there are any indirect costs associated with the Agreement, total lobbying costs must be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs.

Operator must include the language of this certification in any contracts with its Subcontractors. All Subcontractors are also subject to certification and disclosure.

This certification is a material representation of fact upon which reliance was placed to enter into this transaction and is a prerequisite for this transaction, pursuant to 31 U.S.C. Section 1352 (1989). Any person who fails to file the required certifications are subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

16) Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549 its implementing regulations, as applicable, the Operator certifies that it and its principals:

(i) are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by an federal department or agency;

(ii) have not within a three year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust

statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(iv) have not within a three year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

If Operator is unable to certify to any of the statements in this Section, Operator must attach an explanation.

This certification is a material representation of fact upon which reliance was placed to enter into this transaction and is a prerequisite for this transaction.

17) International Anti-Boycott

Operator certifies that neither it nor any substantially-owned affiliated company is participating or will participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated thereunder.

18) Liability

The FHWA and City assume no liability for actions of Operator under the Agreement, including, but not limited to, the negligent acts and omissions of Operator's agents, employees, and Subcontractors in their performance of the Operator's duties as described under the Agreement. To the extent allowed by law, Operator agrees to hold harmless the FHWA and City against any and all liability, loss, damage, cost or expenses, including attorneys fees, arising from the intentional torts, negligence, or breach of the Agreement by Operator, with the exception of acts performed in conformance with an explicit, written directive of the FHWA and City, unless such actions are covered by indemnities stated elsewhere in the Agreement between the parties.

19) Records and Site Visits

Operator shall, upon request, grant access to the City and/or FHWA and the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Operator which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Operator must maintain all such books, documents, papers, and records for a period of three years after City makes final payment and all other pending matters are closed. Operator acknowledges that, if applicable, it will comply with any and all reporting requirements under applicable regulations.

20) Drug Free Certification

Operator shall comply with the federal Drug-Free Workplace Act of 1988, 41 USC §701, 44 CFR Part 17. The Drug Free Workplace Act requires that Operator shall not be entitled to receive any monies hereunder unless Operator has certified that Operator will provide a drug free workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract or grant payments, termination of the agreement and debarment of contracting or grant opportunities with the City or State for at least one (1) year but not more than five (5) years. Operator certifies and agrees that it will provide a drug free workplace by:

- (a) Publishing a statement:
 - (1) Notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including cannabis, is prohibited in the Operator's workplace.
 - (2) Specifying the actions that will be taken against employees for violations of such prohibition.
 - (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will:
 - (A) abide by the terms of the statement, and
 - (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- (b) Establishing a drug free awareness program to inform employees about:
 - (1) the dangers of drug abuse in the workplace;
 - (2) the Operator's policy of maintaining a drug free workplace;
 - (3) any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) the penalties that may be imposed upon an employee for drug violations.
- (c) Providing a copy of the statement required by subparagraph (s) to each employee engaged in the contract or grant and to post the statement in a prominent place in the workplace.
- (d) Notifying the contracting or granting Agency within ten (10) days after receiving notice under part (B) of paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.
- (e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5 of the Drug Free Workplace Act.
- (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.
- (g) making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

21) Copeland Anti-Kickback

To the extent applicable, Operator must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3)

22) Davis-Bacon

To the extent applicable, Operator must comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). The current wage determination is incorporated by reference:

<http://www.wdol.gov/wdol/scafiles/davisbacon/IL9.dvb>

23) Compliance with Law and Regulations

Operator must comply with all applicable provisions of FHWA regulations, and all state and local laws, ordinances and executive orders relating to the Agreement, including, but not limited to: Provisions of 49 CFR applicable to grants and cooperative agreements, including Parts relating to Administrative Review Procedures and Nondiscrimination. Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60) Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act (ADA) (1990); the Age Discrimination Act of 1975; Sections 102 and 107 of Contract Work Hours and Safety Standards Act (40 USC 327-333) as supplemented by 29 CFR part 5; all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution Control Act (33 USC 1251 et seq.), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); all applicable provisions of federal Environmental and Historic Preservation regulations; all mandatory standards and policies relating to energy efficiency that are contained in the Illinois energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871). Information National Historic Preservation Act of 1966, 16 U.S.C. §470 et seq. and Executive Order 11593; Archeological and Historical Preservation Act of 1966, 16 U.S.C. 569a 1 et seq.; Historical and Archeological Data Preservation Act of 1960, as amended, 16 U.S.C. §469 et seq.; the Illinois Procurement Code, 30 ILCS 500 et seq. Operator certifies that its facilities are not listed and are not under consideration for listing on the U.S. Environmental Protection Agency's list of Violating Facilities.

EXHIBIT 7
Chicago Agreement

See attached.