

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.8**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Sustainable Streets

**BRIEF DESCRIPTION:**

Requesting the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors to authorize the Director of Transportation to execute the Agreement between the City and County of San Francisco, through the SFMTA, and City CarShare for the implementation of an electric bicycle sharing program.

**SUMMARY:**

- On November 21, 2011, the Federal Highway Administration (FHWA) approved funds in the amount of \$1,504,221 for a Value Pricing Pilot Program (the Program). The funds will be shared among the SFMTA, City CarShare, and the University of California Berkeley Transportation Sustainability Research Center.
- Under the Program, City CarShare will offer the use of electric bicycles and electric cargo bicycles to City CarShare members at 20 off-street electric bicycle sharing stations located in San Francisco and Berkeley, and City CarShare will build, operate, and maintain the electric bicycle sharing stations.
- City CarShare is eligible for up to \$739,221 in federal grant funds to operate this Program. City CarShare will provide an in-kind contribution of \$1,199,660.
- The SFMTA will act as the fiscal sponsor and provide oversight and administration of the Program, and is eligible for reimbursement up to \$30,000 for services to support the Program.
- The term for the Agreement is six years from August 16, 2012.

**ENCLOSURES:**

1. SFMTA Board Resolution
2. City CarShare Agreement

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_ August 12, 2013

SECRETARY \_\_\_\_\_ August 12, 2013

**ASSIGNED SFMTAB CALENDAR DATE:** August 20, 2013

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### **PURPOSE**

Requesting the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors to authorize the Director of Transportation to execute the Agreement between the City and County of San Francisco, through the SFMTA, and City CarShare for the implementation of an electric bicycle sharing program.

### **GOAL**

The SFMTA will further the following goals of the Strategic Plan through this agreement:

Goal 2 – Make transit, walking, bicycling, taxi, ridesharing and carsharing the preferred means of travel

- Objective 2.3: Increase use of all non-private auto modes
- Objective 2.4: Improve parking utilization and manage parking demand

Goal 3 – Improve the environment and quality of life in San Francisco

- Objective 3.1: Reduce the Agency’s and the transportation system’s resource consumption, emissions, waste and noise

Goal 4 – Create a workplace that delivers outstanding service

- Objective 4.4: Improve relationships and partnerships with our stakeholders

### **DESCRIPTION**

On November 21, 2011, the FHWA approved funds for the Program in the amount of \$1,504,221. The funds will be shared among the fiscal sponsor, the SFMTA, and the collaborative partners: City CarShare, and the University of California Berkeley Transportation Sustainability Research Center (“TSRC”). The California Department of Transportation, Caltrans, will provide oversight on behalf of FHWA and will not be reimbursed under the Program.

The Value Pricing Pilot grant was awarded to SFMTA to study changes in behavior of City CarShare members when offered shared-use of electric bicycles and electric cargo bicycles, compared to offering members shared automobiles alone. Under this Agreement, SFMTA will oversee and administer the Program. City CarShare will be responsible for implementing, operating, and maintaining the Program, with oversight from SFMTA. The Agreement is retroactive to August 16, 2012, the original date for which City CarShare was eligible for reimbursement under the grant.

Under the Program, City CarShare will offer the use of electric bicycles and electric cargo bicycles to City CarShare members at twenty off-street electric bicycle sharing stations located in San Francisco and Berkeley. City CarShare is eligible for up to \$739,221 in FHWA grant funds to operate the Program. In exchange, City CarShare is obligated to provide an in-kind contribution of \$1,199,660. The SFMTA is eligible for reimbursement up to \$30,000 for administrative services provided to support the Program. The term for the Agreement is six

years.

### **ALTERNATIVES CONSIDERED**

Not applicable.

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### **FUNDING IMPACT**

The SFMTA is eligible for reimbursement up to \$30,000 for administrative services provided to support the Program. City CarShare is eligible for up to \$739,221 in FHWA grant funds to operate the Program. In exchange, City CarShare is obligated to provide an in-kind contribution of \$1,199,660.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

A Master Agreement for Federal Aid Projects between the SFMTA and Caltrans, and a Cooperative Agreement between FHWA, Caltrans, and SFMTA regarding the operation and funding for the Program have both been executed between the parties. Any environmental review required by the California Environmental Quality Act for the operation of the Program and location and placement of the electric bicycle sharing stations is the responsibility of City CarShare.

The City Attorney's Office has reviewed this calendar item.

### **RECOMMENDATION**

Staff recommends that the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors authorize the Director of Transportation to execute the Agreement between the City and County of San Francisco, through the SFMTA, and City CarShare for the implementation of an electric bicycle sharing program.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, Section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, as amended by section 1216(a) of the Transportation Equity Act for the 21st Century (TEA-21), and section 1604 (a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA- LU), Pub. L. 109-59 (August 10, 2005), established the Federal Highway Administration (FHWA)'s Value Pricing Pilot Program; and

WHEREAS, The program seeks to support State and local governments or other public authorities to establish local value pricing pilot programs and to gather information about the role that various types of value pricing methods can play in improving the efficiency of transportation systems and in dealing with congestion, pollution, energy, and other problems related to automobile use in congested areas; and

WHEREAS, In response to FHWA's notice on October 19, 2010 (75 Fed. Reg. 201) soliciting pilot program applications, the SFMTA applied for a pilot program grant to establish, maintain, and monitor a value pricing program to implement short-term rental of electric bicycles and bicycle trailers or electric cargo bicycles as an alternative to carshare vehicles for members in a carshare program in the San Francisco Bay Area of California (the "Program"); and

WHEREAS, On November 21, 2011, the FHWA approved funds for the Program in the amount of \$1,504,221; and

WHEREAS, The Program will be administered as a collaboration between City CarShare, the University of California Berkeley Transportation Sustainability Research Center and the SFMTA with Caltrans providing oversight on behalf of FHWA; and

WHEREAS, Under the Program, City CarShare will offer the use of electric bicycles and electric cargo bicycles to City CarShare members at twenty electric bicycle sharing stations located in San Francisco and Berkeley; and

WHEREAS, City CarShare will build, operate and maintain the electric bicycle sharing stations; and

WHEREAS, Under the grant, City CarShare is eligible for up to \$739,221 in FHWA grant funds to operate the Program, and is required to provide an in-kind contribution of \$1,199,660; and

WHEREAS, The SFMTA will act as the fiscal sponsor and provide oversight and administration of the Program, and is eligible for reimbursement up to \$30,000 for administrative services provided to support the Program; and

WHEREAS, A Master Agreement for Federal Aid Projects between the SFMTA and CalTrans, and a Cooperative Agreement between FHWA, CalTrans, and the SFMTA regarding the operation and funding for the Program have both been executed between the parties; and

WHEREAS, Any environmental review required by the California Environmental Quality Act for the operation of the Program, and location and placement of the electric bicycle sharing stations is the responsibility of City CarShare; be it therefore

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute the Agreement between the City and County of San Francisco, through the SFMTA, and City CarShare for the implementation of an electric bicycle sharing program.

I certify that the foregoing resolution was adopted by San Francisco Municipal Transportation Agency Board of Directors at its meeting of August 20, 2013.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**Caltrans Program Supplement  
04-0328-N024-ISTEA**

**AGREEMENT BETWEEN  
THE CITY AND COUNTY OF SAN FRANCISCO, THROUGH ITS MUNICIPAL  
TRANSPORTATION AGENCY, AND  
CITY CARSHARE**

This Agreement, dated the \_\_\_ day of \_\_\_\_, 2013, is between the City and County of San Francisco (City), a municipal corporation, by and through its Municipal Transportation Agency (SFMTA), and City CarShare, Inc., a California nonprofit corporation, (individually, a "Party," or collectively, the "Parties").

**RECITALS**

**A.** Section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, as amended by section 1216(a) of the Transportation Equity Act for the 21st Century (TEA-21), and section 1604 (a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA- LU), Pub. L. 109-59 (August 10, 2005), established the Federal Highway Administration (FHWA)'s Value Pricing Pilot Program, hereinafter referred to as the "pilot program." The pilot program seeks to support State and local governments or other public authorities to establish local value pricing pilot programs and to gather information about the role that various types of value pricing methods can play in improving the efficiency of transportation systems and in dealing with congestion, pollution, energy, and other problems related to automobile use in congested areas.

**B.** In response to FHWA's notice on October 19, 2010 (75 Fed. Reg. 201) soliciting pilot program applications, City CarShare applied for a pilot program grant, with the SFMTA as the fiscal sponsor for grant administration and disbursement of grant funds, to establish, maintain, and monitor a value pricing program to implement member-based short-term rental of Electric Bicycles and Trailers or Electric Cargo Bicycles in the San Francisco Bay Area of California.

**C.** On November 21, 2011, the FHWA approved funds for the Program in the total amount of \$1,504,221. These funds will be allocated among the SFMTA, City CarShare, the University of California Berkeley Transportation Sustainability Research Center ("TSRC"). Caltrans will provide oversight on behalf of FHWA.

**D.** This Agreement relates to City CarShare's roles and responsibilities under the Program and the oversight, administration and disbursement of grant funds to City CarShare. As described in this Agreement, the scope of the Program includes offering shared-use Electric Bicycles as an additional mobility option for City CarShare members, establishing a system to control access to and track use of the Electric Bicycles, and quantifying changes in behavior due to the provision of Electric Bicycles, Electric Cargo Bicycles (or Trailers), and automobiles versus offering members shared automobiles alone. The budget for this Agreement, including a

listing of all costs and services, as well as Program deadlines is described in Attachments A and B.

**E.** City CarShare was formed in 2001 as a Bay Area nonprofit carsharing organization. Carsharing decreases the number of cars on the road, minimizes congestion, and lessens pollution.

**F.** The parties desire to (i) ensure compliance with FHWA and Caltrans requirements for the administration of the Project, and (ii) provide for reimbursement to SFMTA for its administrative costs for the Project as described in this Agreement.

**G.** The parties understand that all encumbrances and disbursements from the Grants are subject to the approval of the Controller of the City.

Now, therefore, the Parties agree as follows:

## **1. Definitions**

**1.1. Agreement.** This Agreement, including all attachments to the Agreement and all amendments made in accordance with the provisions of the Agreement.

**1.2. California Department of Transportation; Caltrans.** The California State agency which is a direct recipient of the FHWA Grant and which will be providing the FHWA Grant to SFMTA, as a subrecipient.

**1.3. City.** The City and County of San Francisco, a municipal corporation. The rights of City in this Agreement inure to the benefit of the City and County of San Francisco and all of its constituent departments. However, except as otherwise expressly provided herein, the powers and duties to be exercised by City pursuant to this Agreement shall be exercised by SFMTA by and through the Director of Transportation.

**1.4. Director of Transportation.** The Director of Transportation of the SFMTA, or his or her designee.

**1.5. Electric Bicycle.** A two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

**1.6. Electric Cargo Bicycle.** An Electric Bicycle, as defined above, with the capacity to carry cargo such as grocery bags on an extended platform behind or in front of the rider.

**1.7. Electric Bicycle Sharing Station.** A location that is furnished with one or more bicycle lockers for storage and charging of Electric Bicycles or Electric Cargo Bicycles when not in use.

**1.8. Federal Highway Administration; FHWA.** An operating administration of the U.S. Department of Transportation.

**1.9. FHWA Grant.** The grant of \$1,504,221 to establish local value pricing pilot programs and to gather information about the role that various types of value pricing methods can play in improving the efficiency of transportation systems and in dealing with congestion, pollution, energy, and other problems related to automobile use in congested areas.

**1.10. Force Majeure Event.** An inability for any Party to perform under this Agreement that the Party demonstrates could not have been avoided by the Party's exercise of due care, prudence, foresight, or diligence and that arises directly from: an act of God; fire; flood; windstorm; tornado; earthquake; war; riot; insurrection; epidemic; quarantine restrictions; acts of terrorism; inability of the Party, its suppliers, or subcontractors to procure labor; freight embargo; accident; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; the prevention by the one Party of the other Party from commencing or prosecuting any of its duties under the Agreement; inability of a Party to obtain applicable permits and licenses from relevant governmental authorities; change of law that prevents implementation of the Program; a judgment, order, or decree issued by a court preventing implementation of the Program; or failure of public utility service outside the control of the Party.

**1.11. Program.** The Electric Bicycle Sharing Program which is intended to provide Electric Bicycles as an alternative to carshare vehicles in a carshare program.

**1.12. San Francisco Municipal Transportation Agency; SFMTA.** The Municipal Transportation Agency, an agency of the City and County of San Francisco established by San Francisco Charter Article VIII A, or any successor agency.

**1.13. SF Environment.** The City's Department of the Environment.

**1.14. Trailer.** A bicycle trailer comprised of a motor-less wheeled frame with a hitch system for transporting cargo by bicycle.

## **2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.**

This Agreement is subject to the applicable budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City's Controller and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and Board of Supervisors as applicable. City Carshare's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. Notwithstanding the above, the FHWA Grant is not subject to appropriation by the Board of Supervisors.



THIS SECTION 2 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3. Term of the Agreement.**

Subject to Section 2, the term of this Agreement shall be from August 16, 2012 to August 16, 2018.

**4. Effective Date of Agreement.**

This Agreement shall become effective upon issuance of a Notice to Proceed by the SFMTA.

**5. Program Phases.**

**5.1. Phase 1.** Phase 1 of the Program is intended to gather data and best practices on electric bicycles, design the infrastructure and technology necessary for electric bicycle sharing, plan and design for operations, conduct a market survey on available Electric Bicycles and ancillary equipment, and conduct marketing and outreach.

**5.2. Phase 2.** Phase 2 of the Program is intended to deploy electric bicycle sharing at up to twenty-five (25) locations, operate and maintain the electric bicycle sharing system, scale operations to meet demand, and report and evaluate the Program. Phase 2 will be commenced upon completion of Phase 1.

**6. Roles and Responsibilities of Parties.**

**6.1. City Carshare.** City Carshare shall design, build, market, operate, and maintain the Program subject to the direction and oversight by the SFMTA. The specific tasks and activities that are the responsibility of City CarShare under phases 1 and 2 of the Program are set forth in Attachment B.

**6.1.1. Subgrantee.** City CarShare will be a subgrantee, responsible for compliance with all applicable provisions of the FHWA Master Agreement (“FHWA MA 10”) which is attached as Attachment C, the grant application for the Project, and all applicable laws and regulations, using sound management practices. Every provision of FHWA MA 10, as it may be amended from year to year, is incorporated by reference and will govern City CarShare’s expenditure of all funds under the Project, as well as expenditure of local matching funds required to fulfill the obligations of the Project. City CarShare will be responsible for providing all of the required local matching funds (20% of total Project Budget), or \$376,055, of the Program budget (“CCS In-Kind Match Obligation”), which is attached as Attachment A.

**6.1.2. Reports.** City CarShare will provide SFMTA with all required quarterly Narrative and Financial Reports no later than thirty (30) calendar days after each reporting period. The reporting periods will end December 31, March 31, June 30 and September 30. “Narrative Reports” shall mean written reports that will contain the following information: a description of the work completed during the period; tasks expected to be performed during the next period; major project milestones, changes to milestones, and reasons for the changes; and explanations of problems or delays encountered or anticipated. “Financial Reports” shall mean written reports that delineate which items and amounts are funded by local matching funds and which are submitted for reimbursement.

**6.1.3. Approval of Invoices.** City CarShare can invoice SFMTA for work performed on a monthly or quarterly basis. Invoices will include the total value of work performed by City CarShare, as well as any materials, supplies or services procured for the project and identified in the scope, and any approved overhead and indirect expenses, and delineating which expenses (or percentage thereof) are funded by the local match portion of City CarShare funding. Any materials and activities that do not fall within the current project Phase are not eligible for reimbursement. Invoices will substantially conform to a model to be provided by SFMTA Finance.

**6.1.4. Recordkeeping.** Unless otherwise directed by SFMTA, City CarShare will maintain the original records of all procurements, payments and contract expenses related to the Program in the form required by federal regulations and FHWA grant requirements during the term of this Agreement, and for a period of three years thereafter. Upon at least seven business days' written notice detailing the nature of information sought, City CarShare will allow SFMTA to review and inspect said records during business hours to ensure compliance with such requirements, and to audit the books, records, and accounts of City CarShare and its subcontractors as related to the Program. Upon seven business days' advance written request, City CarShare will provide SFMTA with copies of any records in its files relating to procurements and other expenditures using funding from the Project. City CarShare agrees to extend these rights of review, inspection and audit to the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives.

**6.1.5. Audit.** City CarShare will provide thorough and complete accounting for all funds expended in the performance of the Project to the extent that such funds are provided by SFMTA through the Grants or local matching funds, consistent with 49 C.F.R. Section 18.37(b). City CarShare will be responsible for meeting audit requirements of the "Single Audit Act of 1984" as implemented by OMB Circular A-133, as it may be revised from time to time.

**6.1.6. Design.** City Carshare shall provide all architectural, engineering and design services required to procure and install the Electric Bicycles and Electric Bicycle Sharing Stations at the electric bicycle sharing locations which shall be approved by the SFMTA. This shall include preparation of all design documents, plans, specifications and drawings required for bidding purposes subject to approval by the SFMTA. Approval or direction for modification will be provided to City Carshare by the SFMTA Program Manager within 10 business days of receipt of materials. If no approval or direction for modification is provided to City Carshare by the SFMTA Program Manager within 10 business day of receipt of materials, such materials are deemed approved. To the extent that the FHWA Grant permits City Carshare to be reimbursed for these costs, City Carshare may be reimbursed subject to approval by the SFMTA.

**6.1.7. Environmental Review.** City Carshare shall be responsible, at City Carshare's sole cost and expense, to the extent that the FHWA Grant permits City Carshare to be reimbursed for these costs, for any and all environmental review and approvals to ensure that the selected site(s) for the Electric Bicycle Sharing Station(s) complies with the provisions of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), City of San Francisco Municipal Code, City of Berkeley Municipal Code, and applicable rules and regulations for the Program. City Carshare is responsible for producing any and all data,

documents, plans or reports necessary and will work with the City of San Francisco Planning Department and the City of Berkeley to complete any applicable environmental review.

**6.1.8. Leases, Licenses, Permits, Agreements and Approvals.** City Carshare, at its sole cost and expense, but subject to the extent that the FHWA Grant permits City Carshare to be reimbursed for these costs, shall obtain and secure all required leases, license, permits, agreements and approvals, including all planning, building, and City's required approvals for the development of the Electric Bicycle Sharing Stations. To the extent that the FHWA Grant permits City Carshare to be reimbursed for these costs, City Carshare may be reimbursed subject to approval by the SFMTA. Approval or direction for modification will be provided to City Carshare by the SFMTA Program Manager within 10 business days of receipt of materials. If no approval or direction for modification is provided to City Carshare by the SFMTA Program Manager within 10 business day of receipt of materials, such materials are deemed approved.

**6.1.9. Construction.** City Carshare will be responsible for bidding out, administering, and managing the installation of the Electric Bicycle Sharing Stations. City Carshare certifies that it will procure construction services as necessary for the Program and maintain Program files consistent with the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and the Caltrans Local Assistance Manual, including, but not limited to, ensuring full and open competition, procurement by sealed bids, implementation of DBE requirements, and including all state and federal contract provisions. City CarShare will be responsible for any and all construction activities related to the Electric Bicycle Sharing Stations following completion of the Program.

**6.1.10. Selection of Electric Bicycle Sharing Station Locations.** City CarShare will be responsible for the selection of locations where Electric Bicycle Sharing Stations will be installed subject to approval by the SFMTA which shall not be unreasonably withheld. Approval or direction for modification will be provided to City Carshare by the SFMTA Program Manager within 5 business days of receipt of materials. If no approval or direction for modification is provided to City Carshare by the SFMTA Program Manager within 5 business day of receipt of materials, such materials are deemed approved.

**6.1.11. Operation of the Program.** City Carshare will be responsible for operation of the Program for the term of this Agreement in compliance with applicable requirements of federal, state and local laws and any applicable written lease agreements. Participants in the Program will be City Carshare members. Membership in City Carshare is determined by City Carshare.

**6.1.12. Maintenance.** City Carshare will be responsible for maintaining the Electric Bicycle Sharing Stations, Electric Bicycles, Electric Bicycle Cargo Bicycles, and all other leased equipment from the City in good working order for the term of this Agreement and in compliance with applicable requirements of federal, state and local laws and any applicable written parking agreements subject to direction by the SFMTA. City Carshare will provide the SFMTA Project Manager with monthly updates on any Electric Bicycles, Electric Bicycle Cargo Bicycles, or Electric Bicycle Sharing Stations that are not currently in good working order and not available to City Carshare members under the Program. These reports will include a plan for

bringing the Electric Bicycles, Electric Bicycle Cargo Bicycles, or Electric Bicycle Sharing Stations into good working order. SFMTA may direct City Carshare to bring equipment into good working order. To the extent that the FHWA Grant permits City Carshare to be reimbursed for these costs, City Carshare may be reimbursed subject to approval by the SFMTA.

**6.1.13. Marketing; Outreach Activities.** City Carshare will be responsible for marketing and outreach to educate the public about the Program. The marketing and outreach efforts shall be determined by City Carshare. City Carshare will be responsible for any costs accrued from marketing and outreach efforts, which may be reimbursed to the extent eligible under the FHWA Grant. Use of the SFMTA logo or reference to SFMTA in any of the marketing or outreach materials is prohibited under this Agreement.

**6.1.14. Safety.** City Carshare will be responsible for informing all participants in the Program about the safe, responsible and legal operation of Electric Bicycles in compliance with state law, including proper use of a helmet. City Carshare shall determine how best to inform participants. To the extent that the FHWA Grant permits City Carshare to be reimbursed for these costs, City Carshare may be reimbursed subject to approval by the SFMTA.

**6.1.15. Parking Agreements.** City Carshare shall enter into the necessary written parking agreements, as appropriate, to obtain sites that are suitable for the Electric Bicycle Sharing Stations. It is the sole responsibility of City Carshare to enter into these parking agreements. To the extent that the FHWA Grant permits City Carshare to be reimbursed for these costs, City Carshare may be reimbursed subject to approval by the SFMTA.

**6.1.16. Staffing.** City Carshare will provide the following staff to support the Program:

(a) **Manager.** The Manager will guide and oversee the delivery of City Carshare's Program commitments by working with multiple stakeholders and project teams.

(b) **Additional Staff.** Additional staff may be added as necessary at the sole discretion and expense of City Carshare.

**6.2. SFMTA.** Under the Program, SFMTA's responsibilities are applicable for Program activities occurring in both the City and County of San Francisco and the City of Berkeley as follows:

**6.2.1. Project Sponsor.** As the subrecipient of the FHWA Grant from Caltrans, SFMTA will serve as the Project Sponsor and will provide oversight of the administration, planning, procurement, construction, maintenance and operation of the Program.

**6.2.2. Disbursement of Grant Funds.** Upon written approval of the City's Controller, SFMTA will disburse funds to reimburse City CarShare for Program costs incurred subject to (1) adequate documentation of costs incurred as described in Attachment C, (2) compliance with the terms and conditions of Caltrans' e-76 Grant Obligation document, (3) fulfillment of City CarShare's responsibilities as set forth above in Section 6.1, and (4) approval of the Program Manager, but without undue or unreasonable delay.

**6.2.3. Allowable Costs.** The City will reimburse City CarShare for those services and expenses required to perform the work in accordance with Attachment A. Reimbursement will be in accordance with the cost principles set forth in Office of Management and Budget Circular A-122, "Cost Principles Applicable to Nonprofit Organizations," and consistent with the FHWA's Master Agreement.

**6.2.4. Administrative Services.** SFMTA will provide required administrative services to the Program in connection with the FHWA Grant. These services may include, but not be limited to, accounting services, financial services, contract administration, grant administration and oversight, services of its Contract Compliance Office, including administration of DBE matters, legal services, and other administrative services as determined to be appropriate by the SFMTA (collectively "Administrative Services"). SFMTA will also provide engineering, estimating, and other technical professional guidance as needed and upon request of City CarShare (collectively, "Technical Guidance").

**6.2.5. Staffing.** SFMTA will provide the following staff to support the Program:

(a) **Grant Manager.** SFMTA will designate one individual to be its Grant Manager for all activities involving the FHWA Grant. The Grant Manager's primary responsibility will be to ensure compliance with all requirements of the FHWA Grant, and will provide counsel and advice to City Carshare on grant issues, City contracting policies, and federal regulations. The Grant Manager may enlist and utilize other SFMTA resources or staff personnel as necessary to carry out such work and perform the administrative services described in Section 6.2.4 above. The Grant Manager will also be responsible for evaluating and compiling Program data for reporting to Caltrans and/or FHWA, as required.

(b) **Program Manager** SFMTA will designate one individual to be its Program Manager for all activities involving the Program, other than the FHWA Grant. The Program Manager's primary responsibility will be to provide guidance and oversight regarding City/SFMTA policy matters involving the Program, City policies, as well as pertinent federal and state regulations and guidelines.

**6.2.6. Monitoring of Construction Activities.** SFMTA shall monitor the construction activities of City Carshare to ensure that City Carshare procures goods and services as necessary for the Program consistent with the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and the Caltrans Local Assistance Manual. Additionally, SFMTA will ensure that procurements comply with the federal Disadvantaged Business Enterprise requirements, in conformity with the Caltrans DBE Program.

**6.2.7. SFMTA Reimbursement for Administrative Services.** For all Administrative Services performed by the SFMTA under this Agreement, the SFMTA shall receive reimbursement in an amount not to exceed \$30,000. SFMTA will include its administrative costs in regular Project invoices submitted to Caltrans.

## **7. Payments; Cost Principles.**

**7.1. Amount of Contract.** In no event shall the costs to be reimbursed to City Carshare under this Agreement exceed \$739,221, without written amendment to this Agreement. The Program budget for this Agreement, including a listing of all costs and services, is set forth in Attachment A.

**7.2. Payment.** Payments of grant funds for reimbursement of allowable costs for the Program under this Agreement shall be made no more often than monthly on or before the 30th day of each month for work, as set forth in Section 6 of this Agreement, that the Program Manager, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. Additionally, invoices and payments for individual authorized budget items may exceed 80% if the total of other authorized budget items are in excess of the 20% matching funds required by the terms of the grant. For example, City CarShare may choose to pay in full (100%) for authorized marketing expenses in the amount of \$100,000. In this case, \$80,000 (80%) of that amount, which could have been invoiced to the FHWA, would be applicable to other invoices. City shall make payment to City Carshare at the address specified in the Section entitled "Notices to the Parties." No charges shall be incurred under this Agreement nor shall any payments become due to City Carshare until invoices, reports, services, or both, required under this Agreement are received from City Carshare and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to City Carshare in any instance in which City Carshare has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

**7.3. Cost Principles.**

**7.3.1.** City Carshare agrees that the cost principles set forth in Office of Management and Budget Circular A-122, pertaining to cost principals for non-profit organizations, shall be used to determine the allowability of cost individual items.

**7.3.2.** City Carshare also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

**7.3.3.** Any costs for which payment has been made to City Carshare that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by City Carshare to the City.

**8. Guaranteed Maximum Costs.**

The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse City Carshare for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in

excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**9. Submitting False Claims; Monetary Penalties.**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**10. Disallowance.**

If City Carshare claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, City Carshare, as required, shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to City Carshare under this Agreement or any other Agreement. By executing this Agreement, City Carshare certifies that it is not suspended, debarred or otherwise excluded from participation in federal assistance programs. City Carshare acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

**11. Taxes.**

**11.1. Obligation.** Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of City Carshare.

**11.2. Possessory Interest Taxes.** City Carshare recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the City Carshare to possession, occupancy, or use of municipal property for a private gain. If such a possessory interest is created, then the following shall apply:

**11.2.1.** City Carshare, on behalf of itself and any permitted successors and assigns, recognizes and understands that City Carshare, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

**11.2.2.** City Carshare, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. City Carshare accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

**11.2.3.** City Carshare, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). City Carshare accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

**11.2.4.** City Carshare further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **12. Independent Contractor; Payment of Taxes and Other Expenses.**

**12.1. Independent Contractor.** City Carshare or any agent or employee of City Carshare shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the City under this Agreement. City Carshare or any agent or employee of City Carshare shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. City Carshare or any agent or employee of City Carshare is liable for the acts and omissions of itself, its employees and its agents. City Carshare shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to City Carshare’s performing services and work, or any agent or employee of City Carshare providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and City Carshare or any agent or employee of City Carshare. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of City Carshare’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which City Carshare performs work under this Agreement.

**12.2. Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that City Carshare is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced



by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by City Carshare which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by City Carshare for City, upon notification of such fact by City, City Carshare shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to City Carshare under this Agreement (again, offsetting any amounts already paid by City Carshare which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, City Carshare shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that City Carshare is an employee for any other purpose, then City Carshare agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that City Carshare was not an employee.

### **13. Insurance.**

**13.1.** Without in any way limiting City Carshare's liability pursuant to the "Indemnification" section of this Agreement, City Carshare must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

**13.1.1.** Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

**13.1.2.** Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

**13.1.3.** Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

**13.1.4.** Since Contractor shall not be directly providing any professional services under this Agreement, Contractor shall ensure that any subcontractors that provide professional services under this Agreement maintain professional liability insurance with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement..

**13.1.5.** Property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss – Special Form", or its replacement) in an amount not less than one hundred percent (100%) of the then-current full replacement cost of the property being insured with a claim deductible not greater than \$1,000.

**13.2.** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

**13.2.1.** Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

**13.2.2.** That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

**13.3.** Regarding Workers' Compensation, City Carshare hereby agrees to waive subrogation which any insurer of City Carshare may acquire from City Carshare by virtue of the payment of any loss. City Carshare agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the City Carshare, its employees, agents and subcontractors.

**13.4.** City Carshare shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City and address in the "Notices to the Parties" section.

**13.5.** Should any of the required insurance be provided under a claims-made form, City Carshare shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

**13.6.** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

**13.7.** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at their sole option, terminate this Agreement effective on the date of such lapse of insurance.

**13.8.** Before commencing any operations under this Agreement, City Carshare shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

**13.9.** Approval of the insurance by City shall not relieve or decrease the liability of City Carshare hereunder.

**13.10.** If a subcontractor will be used to complete any portion of this Agreement, City Carshare shall ensure that the subcontractor shall provide all necessary insurance and shall name

the City and County of San Francisco, its officers, agents and employees and the City Carshare listed as additional insureds.

#### **14. Indemnification.**

a. City Carshare shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of City Carshare or loss of or damage to property, arising directly or indirectly from City Carshare's performance of this Agreement, including, but not limited to, City Carshare's use of facilities or equipment provided by City or others, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of the City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to City Carshare's obligation to indemnify City, City Carshare specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to City Carshare by City and continues at all times thereafter.

City Carshare shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

#### **15. Liability of City.**

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE FUNDS PROVIDED FOR IN SECTION 7 OF THIS AGREEMENT; NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

#### **16. Default.**

**16.1. City Carshare Default.** Each of the following shall constitute a default by City Carshare (City Carshare Default) under this Agreement:

**16.1.1. Failure to Perform Program Duties.** City Carshare fails to diligently execute the tasks necessary to perform its Program responsibilities under Section 6.1, and such default continues for a period of 30 days after written notice thereof from City to City Carshare, or if the failure or breach cannot be cured within such 30-day period, such longer period as is necessary to cure the failure or breach so long as City Carshare commences the cure within such 30- day period and diligently prosecutes such cure to completion.

**16.1.2. Failure to Perform Other Covenants.** City Carshare fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of 45 days after written notice thereof from City to City Carshare, or for a period of time longer than the time that has been mutually agreed upon between the Parties for City CarShare to cure. .

**16.1.3. Public Welfare.** The cure periods set forth in Sections 16.1.1 and 16.1.2 above may be abrogated in the event that City, determines that any City Carshare Default warrants immediate action on the part of the City to preserve the public health, safety, or welfare.

**16.1.4. Voluntary Insolvency.** City Carshare (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of City Carshare or of any substantial part of City Carshare's property or (e) takes action for the purpose of any of the foregoing.

**16.1.5. Involuntary Insolvency.** A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to City Carshare or with respect to any substantial part of City Carshare's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of City Carshare.

**16.1.6. No Default.** For the purposes of this Section 16.1, each of the following shall not constitute a City Carshare Default:

(a) Where City Carshare's failure to perform any term, covenant or condition results from or is caused by a City Default.

(b) Where City Carshare's failure to perform any term, covenant or condition directly results from or is caused by City's failure to perform any other term, covenants or condition contained in the Agreement.

(c) Where City Carshare's failure to perform any term, covenant or condition results from or is caused by the failure to obtain sites suitable for the Electric Bicycle Sharing Stations.

(d) Where City Carshare's failure to perform any term, covenant, or condition results from or is caused by a Force Majeure Event.

**16.2. City Default.** Each of the following shall constitute a default by City (City Default) under this Agreement:

**16.2.1. Failure to Disburse Funds.** City fails to perform its Program responsibilities under Section 6.2.2, and such default continues for a period of 30 days after written notice thereof from City Carshare to City.

**16.2.2. Failure to Comply with Applicable Laws.** City fails to perform or breaches any federal, state or local law or regulation applicable to this Agreement.

**16.2.3. Voluntary Insolvency.** City (a) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (b) makes an assignment for the benefit of its creditors, (c) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of City or of any substantial part of City's property or (d) takes action for the purpose of any of the foregoing.

**16.2.4. Involuntary Insolvency.** A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to City or with respect to any substantial part of City's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) ordering the dissolution, winding-up or liquidation of City, or (d) takes action for the purpose of any of the foregoing.

**16.2.5. No Default.** For the purposes of this Section 16.2, each of the following shall not constitute a City Default:

(a) Where City's failure to perform under Section 6.2.2 results from or is caused by City Carshare's failure to perform any other term, covenants or condition contained in the Agreement.

(b) Where City's failure to perform under Section 6.2.2 results from an action by FHWA, Caltrans or other granting agency.

(c) Where City's failure to perform any term, covenant, or condition results from or is caused by a Force Majeure Event.

## **17. Force Majeure Events.**

**17.1. No Liability.** Neither Party shall be liable for failure to perform its obligations under this Agreement to the extent such failure to perform is caused by a Force Majeure Event. In the case of a Force Majeure Event, the affected Party shall:

**17.1.1.** Within 10 days of the Force Majeure Event, notify the other Party of the Force Majeure Event and demonstrate that the Force Majeure Event caused the failure to perform;

17.1.2. Take all reasonable steps to minimize delay or damages caused by foreseeable events;

17.1.3. Fulfill all non-excused obligations; and

17.1.4. Resume performance as soon as practicable.

**17.2. Optional Termination.** If a Force Majeure Event inhibits the affected Party's performance for more than a period of 90 days, either Party may (i) require the other Party to renegotiate in good faith the terms of this Agreement related to the execution of the Program, or (ii) terminate this Agreement subject to Section 19.

## **18. Remedies Upon Default.**

**18.1. City Carshare Default.** In the event of a City Carshare Default:

**18.1.1. Termination.** City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement by issuing a written notice to City CarShare ("termination notice") or to seek specific performance of all or any part of this Agreement. In the event of such a termination, and if requested by FHWA, City Carshare shall be responsible for repaying to the City or FHWA, as appropriate, any reimbursements to City CarShare and/or the remaining value, if any, of the federal interest in the Electric Bicycle(s) or Electric Bicycle Sharing Station(s) if City CarShare retains possession of such equipment. Such value, if any, shall be based on a straight-line depreciation of the federal interest in the Electric Bicycle(s) or Electric Bicycle Sharing Station(s) over its Useful Life or other methodology deemed acceptable to FHWA.

**18.1.2. Right to Cure.** City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of City Carshare any City Carshare Default; City Carshare shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law.

**18.1.3. Withholding of Grant Funds.** City may withhold all or any portion of Grant funds not yet disbursed, regardless of whether City Carshare has previously submitted a request for such funds or whether City has approved the disbursement of the FHWA Grant funds under a prior request for such funds. Any Grant funds withheld pursuant to this Section and subsequently disbursed to City Carshare after cure of the applicable City Carshare Default will be disbursed without interest.

**18.2. City Default.** In the event of a City Default, City Carshare shall have the right to exercise their legal and equitable remedies, including, without limitation, the right to terminate this Agreement. Under no circumstances shall City's liability to City Carshare for default exceed the amount specified in Section 7.1, less amounts previously paid to City Carshare.

**18.3. Exercise of Remedies.** All remedies provided for in this Section 18 may be exercised individually or in combination with any other remedy available hereunder or under

applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

**19. Termination for Convenience.**

**19.1. City.** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during its term, for convenience and without cause. City shall exercise this option by giving the Parties at least 120 days written notice of termination. The notice shall specify the date on which termination shall become effective.

**19.2.** Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be at the cost and expense of the City, and subject to the prior approval of City, of an amount not to exceed \$739,221 less the amount reimbursed to City CarShare prior to the date of termination subject to the following limitations set forth in Section 19. Such actions shall include:

**19.2.1.** Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

**19.2.2.** Not placing any further orders or subcontracts for materials, services, equipment or other items.

**19.2.3.** Terminating all existing orders and subcontracts.

**19.2.4.** At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

**19.2.5.** Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders, leases, subcontracts, and employees.

**19.2.6.** Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

**19.2.7.** Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

**19.3. Title to Equipment.** In the event this Agreement is terminated under Section 19.1, title to the Electric Bicycles(s), Electric Cargo Bicycle(s), and Electric Bicycle Sharing Station(s) vest in City Carshare. City Carshare shall be responsible for payment of any remaining federal interest in said equipment to FHWA upon written request by SFMTA or FHWA.

**19.4. Submission of Invoice.** Within 60 days after the specified termination date, City Carshare shall submit to City an invoice, which shall set forth each of the following as a separate line item:

**19.4.1.** The reasonable cost to City Carshare, without profit, for all services and other work City directed City Carshare to perform prior to the specified termination date, for which there is no dispute as to the validity of the charges, and for which services or work City has not already tendered payment. Reasonable costs are those costs allowed under the Federal Acquisition Regulations (FAR) and may include actual indirect cost calculated in accordance with the FAR. Indirect cost rates are subject to approval by Caltrans prior to reimbursement. Any overhead allowance shall be separately itemized. City Carshare may also recover the reasonable cost of preparing the invoice. Reimbursement shall not be made for in-kind services identified as local match to federal funds in the grant authorization documents.

**19.4.2.** The reasonable cost of settling all liabilities and claims directly arising out of the termination of the Contract for convenience (and not preexisting in any respect), including, but not limited to leases, subcontracts, orders, demobilization costs, and employees.

**19.4.3.** The reasonable cost to City Carshare of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

**19.4.4.** A deduction for the cost of materials to be retained by City Carshare, taking into consideration any depreciation of such materials, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

**19.4.5.** Notwithstanding the above, in a termination for convenience where the Parties elect the remedy under Section 19.2.2, provided there is no default on the part of City Carshare, the SFMTA will pay half the cost of removal of the equipment and materials from the site and restoration of the site, less any lease payments the SFMTA may have made on City Carshare's behalf for the site.

**19.5.** In no event shall City be liable for costs incurred by City Carshare or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding Section 19.4. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such section.

**19.6.** In arriving at the amount due to City Carshare under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by City Carshare's final invoice; (2) any claim which City may have against City Carshare in connection with this Agreement including payment of any remaining federal interest owed to FHWA for equipment; (3) any invoiced costs or expenses excluded pursuant to Section 19.4; and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate



of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

**19.7.** Under no circumstances shall City's payment obligation under this Section 19 exceed the amount specified in Section 7.1, less amounts previously paid to City Carshare.

**19.8.** City's payment obligation under this Section shall survive termination of this Agreement.

**20. Consequences upon Expiration; Survival of Contract Provisions.**

**20.1. Expiration of Term.** Upon expiration of the term of this Agreement, and provided that City Carshare is not in default of any of its obligations under this Agreement, City Carshare shall be the sole owner of the Electric Bicycles, Electric Bicycle Cargo Bicycles, and Electric Bicycle Sharing Stations and may, at its exclusive discretion, continue to operate and maintain the Electric Bicycles, Electric Bicycle Cargo Bicycles and Electric Bicycle Sharing Stations in the City, subject to the terms of applicable parking agreement(s). In the event that City Carshare elects not to continue to operate and maintain the Electric Bicycle(s), Electric Bicycle Cargo Bicycle(s) and Electric Bicycle Sharing Station(s) after expiration of the Agreement, and if requested by FHWA, City Carshare shall be responsible for repaying to the City or FHWA, as appropriate, the remaining value, if any, of any federal interest in the Electric Bicycle(s), Electric Bicycle Cargo Bicycle(s), and Electric Bicycle Sharing Station(s) that have been removed from the site(s).

**20.2. Survival.** This Section 20 and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- 7. Payments
- 9. Submitting False Claims
- 10. Disallowance
- 11. Taxes
- 12. Independent Contractor; Payment of Taxes and Other Expenses
- 13. Insurance
- 14. Indemnification
- 15. Liability of City
- 18. Remedies
- 22. Proprietary or Confidential Information of Parties
- 25. Audit and Inspection of Records
- 44. Modification of Agreement.
- 45. Administrative Remedy for Agreement Interpretation
- 46. Agreement Made in California; Venue
- 47. Construction
- 48. Entire Agreement
- 52. Severability
- 53. Protection of Private Information

**21. Conflict of Interest.**

Through its execution of this Agreement, City Carshare acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**22. Proprietary or Confidential Information of Parties.**

The Parties understand and agree that, in the performance of the work or services under this Agreement or in contemplation thereof, a Party may have access to private or confidential information which may be owned or controlled by the other Party and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to a Party. The Parties agrees that all proprietary information disclosed by City to City Carshare and by City Carshare to the City shall be held in confidence and used only in performance of the Agreement, unless required to be disclosed under law. The Parties shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**23. Notices to the Parties.**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, or by e-mail, and shall be addressed as follows:

To City: San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7th Floor  
San Francisco, California 94103-1267  
Attn.: Graham Satterwhite  
email: [grahm.satterwhite@sfmta.com](mailto:grahm.satterwhite@sfmta.com)

with a copy to: San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 8<sup>th</sup> floor  
San Francisco, California 94103-1267  
Attn.: Manager, Capital Procurement & Management  
email: [joel.goldberg@sfmta.com](mailto:joel.goldberg@sfmta.com)

To City Carshare: City Carshare  
28 Geary Street, Suite 590  
San Francisco, California 94108  
Attn.: Dedrick Roper  
email: [droper@citycarshare.org](mailto:droper@citycarshare.org)

with a copy to: City Carshare  
28 Geary Street, Suite 590  
San Francisco, California 94108  
Attn.: Mike Harrigan  
email: [mharrigan@citycarshare.org](mailto:mharrigan@citycarshare.org)

Any notice of default must be sent by registered mail.

**24. Works for Hire.** If, in connection with services performed and paid for under this Agreement, City Carshare or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, notwithstanding any claims the City or FHWA may have to such works of authorship as works for hire as defined under Title 17 of the United States Code, the parties have explicitly agreed that any and all ownership interest or copyrights in such works are the exclusive property of City Carshare.

**25. Audit and Inspection of Records.**

City Carshare agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. City Carshare will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. City Carshare shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

**26. Assignment.**

The services to be performed by City Carshare are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by City Carshare unless first approved by City, as applicable, by written instrument executed and approved in the same manner as this Agreement. Any assignment must contain provisions that the assignee assume all obligations and liabilities under this Agreement. .

**27. Non-Waiver of Rights.**

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**28. Earned Income Credit (EIC) Forms.**

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. City Carshare shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless City Carshare has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by City Carshare; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by City Carshare of the terms of this Agreement. If, within 30 days after City Carshare receives

written notice of such a breach, City Carshare fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, City Carshare fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by City Carshare shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## **29. Disadvantaged Business Enterprise Program/Subcontractors.**

**29.1. Policy.** It is the policy of SFMTA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which DBEs and Underutilized DBEs (UDBEs) can compete fairly for contracts and subcontracts relating to SFMTA's construction, procurement and professional services activities. In connection with this Agreement, City Carshare will cooperate with the SFMTA in meeting these commitments and objectives, as explained more fully in Caltrans' UDBE Program, which is incorporated into this Agreement and which will be implemented in accordance with FHWA requirements. City Carshare shall, under the guidance of SFMTA, carry out the applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by City Carshare to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the SFMTA deems appropriate. SFMTA's Contract Compliance Office shall serve as program management resource for all information, questions, and resources concerning City Carshare's implementation of the UDBE requirements.

**29.2. UDBE Goal.** The SFMTA will evaluate subcontracting opportunities and assign an appropriate UDBE participation goal, if applicable, in accordance with Caltrans' UDBE Program prior to City Carshare requesting a bid, quotation, or proposal for all construction, procurement and/or professional services activities required to implement the Project. City Carshare will submit to the SFMTA CCO the scope of the construction, products, or services it intends to procure in order for SFMTA to establish a UDBE goal for the particular procurement, if appropriate.

**29.3. Monitoring, Counting and Reporting UDBE Participation.** City Carshare shall implement, monitor, count and report on its UDBE participation in accordance with Caltrans' UDBE Program.

**29.4. Substitutions.** No substitutions of UDBE subcontractors shall be made at any time without the written approval of the Manager of the SFMTA Contract Compliance Office. In the event that a UDBE subcontractor is unable to perform successfully and is to be replaced, the City Carshare shall make good faith efforts to replace the original DBE subcontractor with another DBE subcontractor.

## **30. Nondiscrimination; Penalties.**

**30.1. City Carshare Shall Not Discriminate.** In the performance of this Agreement, City Carshare agrees not to discriminate against any employee, City and County employee, working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**30.2. Subcontracts.** City Carshare shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the SFMTA). In addition, City Carshare shall incorporate the provisions of 49 CFR Section 26.13(b) into all of its subcontracts.. City Carshare's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**31. MacBride Principles—Northern Ireland.**

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of City Carshare acknowledges and agrees that he or she has read and understood this section.

**32. Tropical Hardwood and Virgin Redwood Ban.**

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**33. Drug-Free Workplace Policy.**

City Carshare acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. City Carshare agrees that any violation of this prohibition by City Carshare, its employees, agents or assigns will be deemed a material breach of this Agreement.

**34. Resource Conservation.**

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by City Carshare to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**35. Compliance with Americans with Disabilities Act.**

City Carshare acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. City Carshare shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. City Carshare agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of City Carshare, its employees, agents or assigns will constitute a material breach of this Agreement.

**36. Sunshine Ordinance.**

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**37. Left Blank by Agreement of the Parties**

**38. Limitations on Contributions.**

Through execution of this Agreement, City Carshare acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. City Carshare acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. City Carshare further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of City Carshare's board of directors; City Carshare's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in City Carshare; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by City Carshare. Additionally, City Carshare acknowledges that City Carshare must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

**39. Requiring Minimum Compensation for Covered Employees.**

**39.1.** City Carshare agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative

Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of City Carshare's obligations under the MCO is set forth in this Section. City Carshare is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

**39.2.** The MCO requires City Carshare to pay City Carshare's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and City Carshare is obligated to keep informed of the then-current requirements. All SF Access and Group Van contractors shall pay SFMTA-funded paratransit drivers a minimum wage as required by the City's Minimum Compensation Ordinance for the first 90 days of service and/or completion of the driver training requirements, whichever comes first. Currently the hourly wage required by the Minimum Compensation Ordinance is \$11.54 (\$11.03 per hour for non-profit entities). After that period, paratransit provider subcontractors shall pay SFMTA-funded SF Access drivers not less than \$14.80 per hour and Group Van drivers not less than \$12.97 per hour. These minimum wages shall increase on a yearly basis based on cost of living adjustments received by the contractors. All cost of living adjustments received by subcontractors shall be passed on to all SFMTA-funded paratransit drivers with at least a proportional wage adjustment.

**39.3.** City Carshare shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

**39.4.** City Carshare shall maintain employee and payroll records as required by the MCO. If City Carshare fails to do so, it shall be presumed that the City Carshare paid no more than the minimum wage required under State law.

**39.5.** The City is authorized to inspect City Carshare's job sites and conduct interviews with employees and conduct audits of City Carshare

**39.6.** City Carshare's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the City Carshare fails to comply with these requirements. City Carshare agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for City Carshare's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

**39.7.** City Carshare understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, City Carshare fails to cure such breach or, if such breach cannot reasonably

be cured within such period of 30 days, City Carshare fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

**39.8.** City Carshare represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

**39.9.** If City Carshare is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with the SFMTA for the fiscal year is less than \$25,000, but City Carshare later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, City Carshare shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the City Carshare and the SFMTA to exceed \$25,000 in the fiscal year.

**40. Left Blank by Agreement of Parties.**

**41. First Source Hiring Program.**

**41.1. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. City Carshare shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**41.2. First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the City Carshare shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. City Carshare shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

**41.2.1.** Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

**41.2.2.** Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to



provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

**41.2.3.** Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

**41.2.4.** Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

**41.2.5.** Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

**41.2.6.** Set the term of the requirements.

**41.2.7.** Set appropriate enforcement and sanctioning standards consistent with this Chapter.

**41.2.8.** Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

**41.2.9.** Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**41.3. Hiring Decisions.** City Carshare shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**41.4. Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**41.5. Liquidated Damages.** City Carshare agrees:

**41.5.1.** To be liable to the City for liquidated damages as provided in this section;

**41.5.2.** To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

**41.5.3.** That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

**41.5.4.** That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

**41.5.5.** That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

**41.5.6.** That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**41.6. Subcontracts.** Any subcontract entered into by City Carshare shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

## **42. Prohibition on Political Activity with City Funds.**

In accordance with San Francisco Administrative Code Chapter 12.G, City Carshare may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”) in the performance of the services provided under this Agreement. City Carshare agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City’s Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event City Carshare violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit City Carshare from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider City Carshare’s use of profit as a violation of this section.

## **43. Preservative-treated Wood Containing Arsenic.**

City Carshare may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from SF Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. City Carshare may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared

and adopted by the SF Environment. This provision does not preclude City Carshare from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**44. Modification of Agreement.**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. City Carshare shall cooperate with the SFMTA to submit to the SFMTA Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

**45. Administrative Remedy for Agreement Interpretation.**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

**46. Agreement Made in California; Venue.**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**47. Construction.**

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**48. Entire Agreement.**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. Except as otherwise provided in this Agreement with respect to the rights of the federal government, the State of California and other granting agencies, this Agreement is for the benefit of City Carshare and City only and is not for the benefit of, and was not created for the benefit of, any third parties. Nothing in this Agreement creates, or will be construed as creating, any rights enforceable by any person or entity not a party to this Agreement. This contract may be modified only as provided in Section 44, “Modification of Agreement.”

**49. Compliance with Laws.**

City Carshare shall keep itself fully informed of the City’s Charter, codes, ordinances and regulations, and of all state and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**50. Services Provided by Attorneys.**

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of City Carshare, will be paid unless the provider received advance written approval from the City Attorney.

**51. Left blank by agreement of the parties.**

**52. Severability.**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**53. Protection of Private Information.**

City Carshare has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. City Carshare agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the City Carshare pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the City Carshare.

**54. Graffiti Removal.**

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and their residents, and to prevent the further spread of graffiti. City Carshare shall remove all graffiti from any real property owned or leased by City Carshare in the City and County of San Francisco within forty eight (48) hours of the earlier of City Carshare's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a City Carshare to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" located in San Francisco shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art

Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of City Carshare to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

**55. Food Service Waste Reduction Requirements.**

City Carshare agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, City Carshare agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, City Carshare agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of City Carshare's failure to comply with this provision.

**56. Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**57. Contingent Fees.**

City Carshare warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by City Carshare for the purpose of securing business. For breach or violation of this warranty, the City has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**58. Dispute Resolution.**

For any dispute involving a question of fact that does not involve a claim for compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 14 days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

Disputes arising in the performance of this Agreement which are not resolved by negotiation between the parties shall be decided in writing by the Project Manager. The decision

shall be administratively final and conclusive unless within fifteen days from the date of such decision, City Carshare mails or otherwise furnishes a notice demanding neutral dispute resolution.

If City Carshare issues a notice demanding neutral dispute resolution, the parties shall submit the dispute to mediation to be held in San Francisco, California by a mediation service or individual mediator which the parties shall agree to. The costs of mediation shall be borne by the parties equally. The mediation must be held within forty-five (45) days of the receipt of a written request to mediate, unless the parties agree to extend such deadline or the mediator sets a date after this time frame. After the parties have participated in mediation and if such mediation fails to resolve the dispute, claim or contention at issue then either party may pursue resolution through litigation. .

## **59. Safety.**

**59.1.** City Carshare shall comply with OSHA regulations applicable to City Carshare regarding necessary safety equipment or procedures. City Carshare shall comply with safety instructions issued by the City's Safety Officer and other City representatives. City Carshare personnel shall wear hard hats and safety vests at all times while working on any construction project site.

**59.2.** Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

## **60. Debarment and Suspension Certification..**

**60.1.** City Carshare's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that City Carshare has complied with Title 2, Code of Federal Regulations, Parts 180 and 1200, Debarment and Suspension, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City.

**60.2.** Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining contractor responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

## **61. Prohibition of Expending Local Agency State or Federal Funds for Lobbying.**

**61.1.** City Carshare certifies to the best of its knowledge and belief that:

**61.1.1.** No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of City Carshare to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

**61.1.2.** If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; City Carshare shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**61.2.** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**61.3.** City Carshare also agrees by signing this document that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

## **62. Counterparts.**

This Agreement may be executed in one or more counterparts and delivered via facsimile or other means of electronic image transmission which, together, shall constitute one and the same instrument and be deemed an original for all purposes. Although each Party covenants to provide to the other a signed "wet signature" original counterpart of this Agreement, any failure to deliver such "wet signature" original shall not affect the enforceability of fully executed counterparts of this Agreement delivered via facsimile or other means of electronic image transmission.

## **63. Lease of Equipment.**

**63.1. City as Lessor.** Notwithstanding anything to the contrary in this Agreement, the Contractor shall procure the following: Electric Bicycles, Electric Cargo Bicycles, and Electric Bicycle Sharing Stations and related Equipment, on behalf of the City which the City shall own and lease to the Contractor. The Contractor certifies that it will procure all equipment consistent with the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," Circular 4220.1E of the FHWA, FHWA MA 10.



**63.1.1. Electric Bicycles.** The Contractor shall procure approximately one hundred and eight (108) Electric Bicycles. The total cost for these Electric Bicycles shall not exceed \$237,600

**63.1.2. Electric Cargo Bicycles.** The Contractor shall procure approximately twenty-seven (27) Electric Cargo Bicycles and Trailers. The total cost of these items shall not exceed \$59,400.

**63.1.3. Electric Bicycle Sharing Stations.** The Contractor shall procure approximately fifty-six (56) Electric Bicycle Sharing Stations. The total cost of these items shall not exceed \$280,000.

**63.1.4. Related Equipment.** The Contractor shall procure any spare parts, tools, or related equipment necessary for the operations and maintenance of the Program. The total cost of this equipment shall not exceed \$30,000.

**63.2. Conditions Precedent to Possession of Electric Bicycles, Electric Cargo Bicycles, and Electric Bicycle Sharing Stations.** Contractor shall not be entitled to procure the Electric Bicycles, Electric Cargo Bicycles or Trailers, and Electric Bicycle Sharing Stations until Contractor has delivered to City the following:

**63.2.1.** Verification of Commercial General Liability Insurance and Property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95, in accordance with the terms provided in this Lease and in Section 13 of Agreement.

**63.3. Lease Payments.**

**63.3.1. Amount of Lease Payment.**

(a) **Electric Bicycles.** The total lease payment shall be \$1 for all Electric Bicycles for the term of this Lease.

(b) **Electric Cargo Bicycles or Trailers.** The total lease payment shall be \$1 for all Electric Cargo Bicycles or Trailers for the term of this Lease.

(c) **Electric Bicycle Sharing Stations and all other Related Equipment Procured by the City.** The total lease payment shall be \$1 for all Electric Bicycle Sharing Stations and all other related Equipment Procured by the City for the term of this Lease.

**63.3.2. Procedure.** Contractor's Lease payments shall be made concurrently with its first monthly invoice following the procurement of the Electric Bicycles, Electric Cargo Bicycles or Trailers, or Electric Bicycle Sharing Stations.

**63.4. Obligations of Contractor.** With respect to lease of the Electric Bicycles, Electric Cargo Bicycles or Trailers, and Electric Bicycle Sharing Stations, the responsibilities and obligations of the Contractor set forth in Section 6.1.

**63.5. Use of Electric Bicycles, Electric Cargo Bicycles or Trailers, and Electric Bicycle Sharing Stations.** The use of the Electric Bicycles, Electric Cargo Bicycles or Trailers, and Electric Bicycle Sharing Stations defined herein shall be limited to only eligible participants in the Program, as set forth under Section 6.1.11.

**63.6. Insurance.** Insurance requirements during the full term of the Lease are set forth in Section 13.

**63.7. Insolvency.** The Electric Bicycles, Electric Cargo Bicycles or Trailers, and Electric Bicycle Sharing Stations shall be immediately returned to the possession of City upon the bankruptcy, reorganization (within the meaning of the Bankruptcy Code), dissolution or liquidation of Contractor.

**63.8. Transfer of Vehicle.** Contractor shall not transfer or otherwise dispose of any of the equipment leased by the City to the Contractor during the pendency of this Lease without the written approval of the SFMTA Executive Director/CEO or his or her designee.

IN WITNESS WHEREOF, Contractor and City have executed this Agreement as of the date first referenced above

<p><b>CITY</b></p> <p><b>San Francisco Municipal Transportation Agency</b></p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:</p> <hr/> <p>John I. Kennedy Deputy City Attorney</p> <p>Authorized by:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No. _____</p> <p>Adopted: _____</p> <p>Attest: _____</p> <p>Roberta Boomer, Secretary SFMTA Board of Directors</p>	<p><b>CITY CARSHARE</b></p> <hr/> <p>Rick Hutchison CEO</p> <p>City vendor number: 55563</p> <hr/>
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**ATTACHMENT A**  
**Program Budget**

	<b>Schedule</b>	<b>SFMTA Award</b>	<b>Eligible FHWA Grant Funds</b>	<b>CCS* In-Kind Match **</b>	<b>Total</b>
<b>Phase 1: Pre-Implementation</b>					
Task 1.1: Program Design, Research and Management	Sep 2013 – Mar 2014	0	6,400	25,600	32,000
Task 1.2: Technology and Infrastructure	Sep 2013 – Mar 2014	0	57,200	14,300	71,500
Task 1.3: Operations Design and Planning	Sep 2013 – Mar 2014	0	48,750	48,750	97,500
Task 1.4: Outreach and Marketing	Sep 2013 – Mar 2014	0	22,750	22,750	45,500
<b>Phase 2: Implementation</b>					
Task 2.1: Vehicle Equipment and Hardware	Mar 2014 – July 2014	0	234,144	58,068	292,212
Task 2.2: Continued Operations and Management	July 2014 – July 2017	30,000	232,427	816,876	1,079,303
Task 2.3: Scaled Operations and Expansion	July 2014 – July 2017	0	130,830	211,636	342,466
Task 2.4: Reporting and Evaluation	July 2014 – July 2017	0	6,720	1,680	8,400
<b>Total</b>		<b>30,000</b>	<b>739,221</b>	<b>1,199,660</b>	<b>1,968,881</b>

\* City Carshare (“CCS”)

\*\* While CCS is obligated to contribute at least the CCS Match Obligation amount of \$376,055 (including value of in-kind donations), CCS intends to contribute approximately \$1,199,660.

## **ATTACHMENT B** **SCOPE OF SERVICES**

City CarShare will apply Intelligent Transportation Systems (ITS) technology and differential pricing with the co-location of shared electric bicycles within City CarShare's existing systems, in the City of San Francisco and Berkeley. The scope of the project includes establishing the co-location system and data network and to evaluate consumer trade-offs among price and personal-mobility options when a range of different options are presented at the point of departure locations. This Value Pricing Pilot (VPP) program will facilitate the enhancement of shared-use mobility through electric bikes (including light-cargo options in some locations) and carsharing vehicles to combine both pricing and personal mobility alternatives to further reduce automotive traffic congestion and parking pressure.

### **The Project will proceed in Two Phases:**

#### **A. Phase 1. Program Pre-Implementation**

**Task 1.1: Program Design, Research and Management.** City CarShare shall apply the necessary elements to enable ITS electric bikesharing and carsharing, co-location and expansion. Electric bikes and light cargo options will be researched and designed to withstand the rigors of the shared environment. The design of the storage/charging station will provide both security and charging infrastructure for the provision of electric bikes and light cargo options.

City CarShare shall research standards for electric bicycle helmets and a helmet program will be created to ensure member compliance with State of California electric bicycle helmet requirements. Federal and state electric bicycle requirements will be researched and guidelines will be developed to ensure equipment and member compliance with such requirements.

Best practices for electric bicycle safety will be explored and an electric bicycle safety program will be developed. City CarShare will survey the field of electric bicycle insurance plans and secure an insurance policy for City CarShare members. City will be listed as additional insured on any policy purchased by City CarShare to cover Project related activities. The research and design elements of the task will be used to create the Work Plan.

The SFMTA will provide oversight of the design, research, and compliance. The SFMTA will review and approve eligible reimbursement requests from City CarShare as set forth in Attachment C.

Following approval of reimbursement requests by SFMTA, City CarShare will be eligible for reimbursement of costs in an amount not to exceed that specified for Task 1.1 in Attachment A.

*Timeline: September 2, 2013 – March 3, 2014*

**Task 1.2: Technology and Infrastructure Development.** City CarShare shall leverage existing proprietary technology to enable electric bikesharing integration. Existing technology includes communication of reservation data packages and also includes lock/unlock functionality triggered by a combination of electrical relays controlled remotely by utilizing existing carshare technology. City CarShare's reservation system and member interface will be modified to integrate shared, electric

bicycles. Electric bicycles equipped with GPS tracking and data logging capabilities will provide data on travel behaviors and environmental impacts.

The SFMTA will provide oversight of the technology and infrastructure development. The SFMTA will review and approve eligible reimbursement requests from City CarShare as set forth in Attachment C.

Following approval of reimbursement requests by SFMTA, City CarShare will be eligible for reimbursement of costs in an amount not to exceed that specified for Task 1.2 in Attachment A.

*Timeline: September 2, 2013 – March 3, 2014*

**Task 1.3: Operations Design and Planning.** City CarShare shall identify approximately twenty of the most suitable locations in which to co-locate electric bikesharing and carsharing vehicles in the City of San Francisco and Berkeley. Up to five additional electric bikesharing locations will be identified that do not include carsharing vehicles on site, although these locations will be within City CarShare's carsharing network. Overall, the plan calls for approximately ninety electric bicycles to be distributed among approximately twenty-five total locations. City CarShare will provide light cargo options at approximately six to ten of the locations.

City CarShare shall be ultimately responsible for executing all required permits and ensuring that any environmental clearance pursuant to the California Environmental Quality Act (CEQA) is obtained from the San Francisco Planning Department or the City of Berkeley, as appropriate, for all relevant Project related activities. To comply with federal funding requirements, City CarShare will work with Caltrans to obtain environmental clearance under the National Environmental Policy Act (NEPA) as necessary for all relevant Project related activities.

City CarShare will define member guidelines, procedures and conditions for use of electric bicycles, primarily based on existing standards. New City CarShare members will be required to submit an application and qualify under these existing standards prior to gaining access to electric bicycles. Docking and undocking procedures will be provided to guide members through a seamless electric bicycle docking and undocking experience. Charging procedures and reservation buffer zones will be applied to provide optimal state of charge for the electric bicycle fleet. City CarShare will develop and implement a pre-ride checklist, detailing inspection procedures for members to complete prior to riding any of the electric bicycles. City CarShare will research and procure the necessary tools and equipment for the maintenance of electric bikesharing equipment. City CarShare will develop additional procedures and maintenance schedules to facilitate functionality of electric bikesharing equipment in concert with existing carsharing processes.

The SFMTA will provide oversight of the operations design and planning. The SFMTA will review and approve the electric bikesharing station locations. The SFMTA will advise City CarShare and assist in coordination of any required environmental review for any Program operations within the City and County of San Francisco. The SFMTA will review and approve eligible reimbursement requests from City CarShare as set forth in Attachment C.

Following approval of reimbursement requests by SFMTA, City CarShare will be eligible for reimbursement of costs in an amount not to exceed that specified for Task 1.3 in Attachment A.

*Timeline: September 2, 2013 – March 3, 2014*

**Task 1.4: Outreach and Marketing.** City CarShare will apply significant effort to build awareness, educate and promote to existing City CarShare members, to potential new members/prospects and to the community at large announcing the new technology and benefits of electric bikesharing to the satisfaction of the SFMTA. City CarShare will work with public agencies, and area businesses and institutions to provide a high level of hands-on support to guide each group and anticipate the outreach efforts – including design and production of materials and plans.

The SFMTA will review and approve eligible reimbursement requests from City CarShare as set forth in Attachment C.

Following approval of reimbursement requests by SFMTA, City CarShare will be eligible for reimbursement of costs, in an amount not to exceed that specified for Task 1.4 in Attachment A.

*Timeline: September 2, 2013 – March 3, 2014*

## **B. Phase 2. Program Implementation**

**Task 2.1: Vehicle Equipment and Hardware.** City CarShare will procure all electric bicycles, electric cargo bicycles, electric bicycle sharing stations, light cargo options, replacement parts, tools, ancillary enabling equipment and technology necessary to complete the Program on behalf of the City which the City shall own and lease to City CarShare. Electric bikesharing locations will be established for the duration of the Program, with the understanding that some locations may change during the Program due to demand or other circumstances. Additionally, City CarShare will design and produce the necessary marketing collateral and advertising materials to promote electric bikesharing, including safe, legal and proper use of the bicycles and light cargo options. Additional advertising materials will be designed to provide optimal visibility for electric bikesharing Pods and spread awareness in the community.

City CarShare will select locations, negotiate any required contracts and install electric bike charging stations at designated electric bicycle locations. City CarShare will deploy electric bicycles and light cargo options at designated e-bike locations. City CarShare will distribute outreach materials and erect signage as necessary to increase awareness and visibility of e-bike locations. City CarShare will beta test electric bicycle network for at least one month prior to authorizing member access. City CarShare will provide member access to shared-electric bicycles at the conclusion of the beta testing period.

The SFMTA will provide oversight of the vehicle equipment and hardware procurement. The SFMTA will review and approve the electric bicycle and electric bicycle sharing station procurements. The SFMTA will review and approve eligible reimbursement requests from City CarShare as set forth in Attachment C.

Following approval of reimbursement requests by SFMTA, City CarShare will be eligible for reimbursement of costs in an amount not to exceed that specified for Task 2.1 in Attachment A.

*Timeline: March 3, 2014 – July 3, 2014*

**Task 2.2: Continued Operations and Management.** City CarShare will maintain ongoing operations of the electric bikesharing network to evaluate success based on use patterns, emissions reduced, equity factors (usage and costs), member adoption and satisfaction. Ongoing operations include, program administration costs, maintenance of locations, cars, bicycles and light cargo options, cleaning, charging equipment upkeep and ancillary enabling equipment and technology. City CarShare will also provide insurance and electric bikeshare network communications (cellular). Customer service, emergency after-hour support, new application processing and other member related support services will also be provided. City CarShare will continue marketing and outreach efforts and provide reservation, travel data, and any other information requested to UC Berkeley's Transportation Sustainability Research Center researchers for the duration of the Program.

The SFMTA will review and approve eligible reimbursement requests from City CarShare as set forth in Attachment C.

Following approval of reimbursement requests by SFMTA, City CarShare will be eligible for reimbursement of costs in an amount not to exceed that specified for Task 2.2 in Attachment A.

*Timeline: July 7, 2014 – July 2, 2017*

**Task 2.3: Scaled Operations and Expansion.** Existing technological systems used for carsharing will enable the system processes for e-bikes, with enhancements for efficiency and improving user experience. City CarShare will phase in new high-demand locations as demand grows, requiring ongoing procurement of electric bicycles, electric cargo bicycles, light cargo options, replacement parts, tools, charging equipment and signage to support scale and efficiency. City CarShare may relocate equipment from low-demand locations to higher demand locations, including areas serviced by regional bikeshare at the direction of the SFMTA.

The SFMTA will review and approve eligible reimbursement requests from City CarShare as set forth in Attachment C.

Following approval of reimbursement requests by SFMTA, City CarShare will be eligible for reimbursement of costs in an amount not to exceed that specified for Task 2.3 in Attachment A.

*Timeline: July 7, 2014 – July 2, 2017*

**Task 2.4: Reporting and Evaluation.** City CarShare shall provide any and all requested usage data and operation progress reports at pre-determined intervals to the SFMTA, Caltrans, FHWA, and electric bikesharing researchers, including UC Berkeley's Transportation Sustainability Research Center, for the duration of the Program.

The SFMTA will review and approve eligible reimbursement requests from City CarShare as set forth



in Attachment C.

Following approval of reimbursement requests by SFMTA, City CarShare will be eligible for reimbursement of costs in an amount not to exceed that specified for Task 2.4 in Attachment A.

*Timeline: July 7, 2014 – July 2, 2017*

**ATTACHMENT C**  
**FHWA Master Grant Agreement**