

ATTACHMENT A

MEMORANDUM OF UNDERSTANDING
BETWEEN
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
AND
THE CITY OF LOS ANGELES
FOR
THE METRO COUNTYWIDE BIKESHARE - DOWNTOWN LOS ANGELES PILOT

This Memorandum of Understanding, (Contract Number), (the "MOU") is effective this ___ day of _____, 2015 (the "Effective Date"), by and between the Los Angeles County Metropolitan Transportation Authority ("LACMTA") and the City of Los Angeles (the "City"), each individually a "Party" and collectively the "Parties".

RECITALS

WHEREAS, LACMTA and the City desire to initiate a Countywide Bikeshare Program (the "Program") to improve mobility and access to jobs throughout Los Angeles County;

WHEREAS, the Program will increase transportation choices for Los Angeles County workers, students, residents and tourists by making the LACMTA transit system a more viable alternative to driving by providing a first/last mile and short-trips solution. The Program will facilitate reductions in vehicle miles traveled, foster increased environmental sustainability and encourage more active life styles overall throughout Los Angeles County;

WHEREAS, LACMTA and the City desire to test the viability of the Program on a smaller scale through the LACMTA Countywide Bikeshare - Downtown Los Angeles Pilot (the "Pilot");

WHEREAS, LACMTA has been working with the LACMTA Countywide Bikeshare Working Group since January 2014 to develop an implementation plan for a Regional Bikeshare System. The Working Group is comprised of cities that desire to participate in the Regional Bikeshare System and includes, but is not limited to, the cities of Los Angeles and Pasadena (the "Pilot Cities").

WHEREAS, On January 29, 2015, the LACMTA board authorized funding for the Countywide Bikeshare Program (including the Pilot) as follows: (1) LACMTA will be responsible for up to 50% of capital costs and the participating jurisdiction (for Pilot, the City) will be responsible for at least 50% of capital costs, and (2) LACMTA will be

responsible for up to 35% of operation and maintenance costs and the City will be responsible for at least 65% of operations and maintenance costs for the duration of the Pilot.

WHEREAS, On June 25, 2015, the LACMTA Board awarded a contract for the Pilot to the bikeshare contractor Bicycle Transit Systems (BTS) (the "Contractor") who will manufacture, install, and operate a bikeshare system (the "System"), including but not limited to bicycles, bicycle stations, ITS hardware/software and payment kiosks, if applicable (collectively, the "Bikeshare Stations") to be located at various locations ("Bikeshare Locations");

WHEREAS, LACMTA is the owner of the System and Contractor will operate the System. LACMTA is responsible for issuing and managing the contract with the Contractor;

WHEREAS, The City will provide to LACMTA and Contractor construction ready locations within its jurisdiction at no cost;

WHEREAS, LACMTA and the City have agreed that neither Party will seek reimbursement from the other for staff time used to complete the Pilot with the exception of potential permit fees required to provide the Bikeshare Locations for Bikeshare Stations;

WHEREAS, upon conclusion of the Pilot, anticipated to be two years after the execution of the Contractor's contract, (or earlier than conclusion of Pilot, if approved by the LACMTA Board of Directors and the General Manager of the LADOT) and subject to approval by the LACMTA Board of Directors and the General Manager of LADOT, the Parties will have the option to expand the Program into other portions of the City.

WHEREAS, this MOU defines the specific terms, conditions and funding responsibilities between LACMTA and the City for the Pilot.

NOW, THEREFORE, it is mutually understood and agreed by LACMTA and the City as follows:

ARTICLE 1. COMPLETE AGREEMENT

This MOU, including all exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the MOU between LACMTA and the City concerning the Pilot and

supersedes all prior representations, understandings, and communications between the parties. The above-referenced Recitals are true and correct and are incorporated by reference herein.

ARTICLE 2. TERM

The term of this MOU shall commence on the Effective Date of this MOU and shall continue in effect until the conclusion of the Pilot, anticipated to be two years after the execution of the Contractor's contract. The term of this MOU may be extended or shortened by mutual written consent of the Parties (If approved by the LACM TA Board of Directors and the General Manager of LADOT) .

A. Termination For Convenience

Two years after the effective date of this MOU, either party may terminate this MOU for convenience at any time by giving the other party sixty days written notice thereof. Upon receipt of said notice, the party receiving notice shall immediately take action not to incur any additional obligations, costs or expenses, except as may be reasonably necessary to terminate the activities.

ARTICLE 3. RESPONSIBILITIES OF THE CITY

Upon execution of this MOU, LACTMA and City will work in good faith to negotiate the terms of the City's advertising rights on Bikeshare Stations. Any rights granted to the City or its advertising contractor CBS Decaux, will be subject to the conditions set forth in LACMTA's advertising policy, attached hereto as Exhibit A, with the exception of the vendor competitive bidding provision contained in the first paragraph of Section 2.1 of the advertising policy, entitled "Revenue-Generated Advertising."

The City agrees to the following responsibilities for the Pilot:

- A. To pay LACMTA within 45 calendar days of receipt of an acceptable invoice and copies of relevant supporting documentation for the City's share of Capital Costs as described in Article 5, below.
- B. To pay LACMTA within 45 calendar days of receipt of an acceptable invoice and copies of relevant supporting documentation for the City's share of O & M Costs as described in Article 6 below.
- C. The City shall have 45 calendar days to pay or contest an invoice for Capital Costs or O&M Costs. If no payment or contest of an invoice is received within 45 days then the City shall be in breach of this MOU.

- D. City shall provide approximately 65 Bikeshare Locations within Downtown Los Angeles to Contractor for Bikeshare Stations. All Bikeshare Locations shall be appropriately sized to meet the Contractor's specifications without the need for improvements and will be solar or battery powered. Bikeshare Locations should be made available no later than 2 months after LACMTA awards a contract to the bikeshare Contractor.
1. City shall waive any permit fees associated with a Bikeshare Location, whether on City-owned property or private property; provided however, any such permit fees will be credited towards the City's 65% share of O & M Costs. City shall provide invoices and/or back-up documentation to support such permit fees associated with a Bikeshare Location.
 2. At no cost to Contractor or LACMTA, City shall provide Contractor with any necessary leases, licenses or other agreements which allows for the construction and operation of Bikeshare Station ("License") upon City-owned Bikeshare Locations. If the selected Bikeshare Location does not meet Contractor's specification, Contractor shall have the right to refuse to enter into the License and will not be required to install a Bikeshare Station at said location. City will be responsible for finding a suitable replacement Bikeshare Location.
 3. To the extent that City chooses to locate Bikeshare Stations on privately owned property, at no cost to Contractor or LACMTA, City shall negotiate with and obtain from individual property owners permission for Contractor to construct and operate a Bikeshare Station on said property ("Private Property License"). If the selected Bikeshare Location does not meet Contractor's specification, Contractor shall have the right to refuse to enter into the Private Property License and will not be required to install a Bikeshare Station at said location. City will be responsible for finding a suitable replacement Bikeshare Location.
- E. To attend periodic coordination meetings as reasonably requested by the LACMTA project manager.
- F. To bear its own internal staff costs incurred in connection with the Pilot, accept as provided in Article 3, paragraph C1.

ARTICLE 4. RESPONSIBILITIES OF LACMTA

LACMTA agrees to the following responsibilities for the Pilot:

- A. To act as the lead agency for the Pilot.
- B. To procure, contract for and pay for Contractor's services consistent with LACMTA's policies and procedures in consultation with the City and Countywide Bikeshare Working Group/Pilot Cities to provide review and oversight of Contractor performing Pilot to ensure adherence to Pilot schedule, quality, budget, and overall adherence to the contract with Contractor arising from the contract resulting from RFP No. PS 11357, attached hereto as Exhibit B for reference.
- C. To consult with the City and the Countywide Bikeshare Working Group/Pilot Cities in regards to management of the Contractor, including reviewing Contractor invoices, and ensure that all invoicing by LACMTA is done in compliance with Generally Accepted Accounting Principles (GAAP), all applicable provisions of federal, state, and local laws, statutes, ordinances, rules, regulations, and procedural requirements including Federal Acquisition Regulations (FAR).
- D. To include the City in regular conversations with the Contractor and sub-contractors and to report costs and revenue for the City as an individual cost center.
- E. To bill the City, for Capital Costs as described in Article 5, below.
- F. To bill the City, periodically, for costs incurred for the City's share of O & M Costs of the Pilot, described in Article 6, below.
- G. To be responsible for paying 50% of the Capital Costs for the Pilot as described in Article 5, below.
- H. To be responsible for paying 35% of the O & M Costs for the Pilot as described in Article 6, below.
- I. To bear its own internal staff costs incurred in connection with the Pilot.
- J. To ensure that each Bikeshare Station is equipped with advertisement panels on its payment kiosk ("Ad Panel"). Upon execution of this MOU, the Parties will work in good faith to negotiate the terms of City's advertising rights. City will not utilize Ad Panels until a separate agreement is reached between the Parties regarding City's advertising rights.
- K. In the event that the Bikeshare Program is dissolved upon completion of the pilot, LACTMA, as owner of the kiosks, shall remove its kiosks erected on the City public right of way at no cost to the City.

ARTICLE 5. CAPITAL COSTS

- A. The parties shall share equally in the costs of purchasing from Contractor all capital assets necessary to create the System for the Pilot, including but not

limited to: bicycles, bicycle stations, ITS hardware/software and payment kiosks if applicable (the "Capital Costs").

- B. LACMTA shall be the sole owner of the System,
- C. LACMTA together with the City applied for and received a \$3,800,000 ExpressLanes grant (the "Grant"), to pay the Capital Costs of the Pilot.
- D. To the extent that Capital Costs exceed \$3,800,000, LACMTA will pay the Contractor directly and invoice the City for its 50% share of any remaining Capital Costs.
- E. Any permit fees or additional fees associated with the preparation for the Pilot will be credited towards the City's 65% share of operational costs.

ARTICLE 6. OPERATIONS AND MAINTENANCE

- A. Operations and Maintenance ("O & M") services will be performed by the Contractor. O & M services include but are not limited to: Collecting membership and user fees, maintaining/repairing the bicycle fleet, station equipment, and payment kiosks where applicable, rebalancing the fleet, hosting and managing ITS software needs for the System, providing support to the Parties for education and outreach. The Services are more thoroughly defined in the contract with Contractor arising from RFP No. PS 11357, attached hereto as Exhibit B for reference.
- B. Contractor will bill LACMTA directly for the O & M services as required under the Contractor contract.
- C. LACMTA and the City agree to share in the cost of O & M services as follows:
 - 1. The total cost of O & M services will be reduced by any Bikeshare User Revenues generated by the Pilot as described below in Article 7, below (the "Net O & M Costs").
 - 2. LACMTA will be responsible for paying 35% of the Net O & M Costs.
 - 3. The City will be responsible for paying 65% of the Net O & M Costs.
 - 4. Upon receipt of an acceptable invoice from the Contractor for the Net O & M Costs, LACMTA will pay Contractor and bill the City for its 65% share of the Net O & M Costs.

ARTICLE 7. BIKESHARE USER REVENUE

- A. Bikeshare User Revenues include but are not limited to fees collected by the Contractor for membership dues and user fees as more fully described in the

contract with Contractor arising from RFP No. PS 11357, attached hereto as Exhibit B for reference.

- B. Bikeshare User Revenue will be used to offset the cost of O & M services as described above.
- C. To the extent Bikeshare User Revenue generated within the City of Los Angeles exceeds the cost of O & M services, the Parties will jointly determine the use of the revenue to be applied within the City of Los Angeles either to capital expansion of the system or support to under-performing stations. Should the parties fail to agree, the matter will be determined by action of the LACMTA Board of Directors
- D. To the extent that the Program is expanded into other Jurisdictions, the City will receive credit for its share of Bikeshare User Revenue for trips that originate within the City. Trips that originate in another jurisdiction will be credited to the origin city. The Bikeshare User Revenues generated within the City will remain in the City. If annual memberships are determined to be part of the fare structure, annual memberships for members living in The City of Los Angeles, based on zip code or other agreed upon identifier, will be credited to the City.
- E. City shall coordinate with LACMTA in efforts to integrate the Countywide Bikeshare Program with the TAP Fare Payment System,
- F. LACMTA shall consult with the City and the Countywide Bikeshare Working Group/Pilot Cities before establishing the final fare structure.

ARTICLE 8. NAMING AND ADVERTISING RIGHTS

- A. LACMTA Naming Rights:
 - 1. LACMTA will retain the naming rights to the title of the System, including the right to sell the name of the System to a sponsor. The title sponsorship may be displayed throughout the System on bicycles, Bikeshare Stations, payment kiosks, service vehicles and on any System marketing materials. LACTMA shall not be allowed to display commercial advertising on payment kiosks in the public right of way in the City until a separate written agreement is executed between LACTMA, the City, and CBS Decaux regarding the City's advertising rights.

2. LACMTA will consult with the City and the Countywide Bikeshare Working Group/Pilot Cities in the procurement and selection of a title sponsorship and the name assigned to the bikeshare system. The LACMTA Board of Directors will select the title sponsor after receiving LACMTA staff's recommendation for award.

B. Advertising

1. In consultation with Pilot cities, all media and promotional materials, including outdoor advertisement, print, tv, radio, online and mobile shall be reviewed and approved by LACMTA Bikeshare Project Manager (listed in article 10) and LACMTA creative services department prior to public release.
2. In addition to title sponsorship, LACMTA will retain the exclusive right to display and sell advertising on bicycles throughout the System.
3. All LACMTA generated advertising and sponsorship revenue described above in this Article 8 will be applied towards LACMTA's share of costs. LACMTA revenue that exceeds LACMTA's share of costs will then be applied towards the City's share of Net O & M Costs and non-grant funded capital costs.

ARTICLE 9. COORDINATION WITH OTHER AGENCIES

- A. The Parties acknowledge that if the Pilot is successful, the Program may be expanded into other portions of the City or to other cities within Los Angeles County.
1. Acquisition of additional capital assets will be covered by a separate agreement between LACMTA and the city(s) involved.
 2. In order for the Program to be expanded, the System will require bicycles to travel from one jurisdiction to another within Los Angeles County.
 3. City shall cooperate with neighboring cities upon expansion of the Program.
 4. Bikeshare Revenues for intercity trips will be applied to the origin city.

5. Revenues from trips originating and terminating within the same city will be applied to operating costs within such city.

B. Mobility Hubs

1. LACMTA acknowledges that the City is procuring services for a new Mobility Hubs project. The Mobility Hubs may provide integrated bikeshare, carshare, secure bike parking systems and jitney services at strategic locations throughout Downtown Los Angeles, Hollywood and other areas in Los Angeles County.
2. The Contractor shall work with the future prime vendor for the Mobility Hubs project selected via a separate procurement process, to oversee the Mobility Hubs project to: implement, operate and maintain bikeshare station locations.
3. The Contractor will be required to coordinate with the City and other sponsors and selected vendor(s) of the future Mobility Hubs project.
4. The City agrees to assist and facilitate the coordination between the Contractor and the Mobility Hubs Contractor as specified above.
5. The Mobility Hubs contractor shall be required to work with and integrate the identified Contractor technology into the Hubs framework.

C. Call For Project Funding Grants

1. If the City utilizes Call For Projects (CFP) grant funds for the Program, they shall conform to the standards set forth in this MOU and the requirements of a separate CFP funding agreement.

ARTICLE 10. NOTICES:

All parties notices hereunder and communications regarding the interpretation of the terms of this MOU, or changes thereto, shall be effected by delivery of said notices in person or depositing said notices in the U.S., mail, registered, or certified mail and addressed as follows:

To The City:	To LACMTA:
Los Angeles Department of Transportation (LADOT)	Los Angeles County Metropolitan Transportation Authority
100 S. Main St., 9th Floor Los Angeles, CA 90012 Mail Stop: 725	One Gateway Plaza Los Angeles, CA 90012
Attention: Rubina Ghazarian CC. Michelle Mowery	Attention: Avital Shavit CC. Laura Cornejo
Phone: (213) 972-4969	Phone: (213) 922-7518
Email: rubina.ghazarian@lacity.org	Email: Shavita@LACMTA.net

ARTICLE 11. INDEMNIFICATION

A. The CITY shall indemnify, defend and hold harmless LACMTA, its officers, directors, employees and agents from and against any and all claims (including attorney’s fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker’s compensation subrogation claims, damage to or loss of use of property arising from or alleged to be caused by (i) the negligent acts, omissions or willful misconduct by the City, its officers, directors, employees or agents in connection with or arising out of the performance of this MOU, (ii) breach of this MOU by the City, its officers, directors, employees and agents

B. LACMTA shall indemnify, defend and hold harmless the City, its officers, directors, employees and agents from and against any and all claims (including attorney’s fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker’s compensation subrogation claims, damage to or loss of use of property arising from or alleged to be caused by (i) the negligent acts, omissions or willful misconduct by LACMTA, its officers, directors, employees or agents in connection with or arising out of the performance of this MOU, or (ii) breach of this MOU by LACMTA, its officers directors employees and agents.

C. The indemnification and defense obligations of this Agreement shall survive its expiration or termination.

ARTICLE 12. MISCELLANEOUS:

All parties agree to the following responsibilities and understanding regarding the Pilot:

- A. California law shall govern this MOU. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way, unless any of the stated purposes of the MOU would be defeated.
- B. No Amendment, modification alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by authorized representatives for the Parties hereto and no oral understanding or agreement not incorporated herein shall be binding on the Parties.
- C. This MOU and all attachments hereto, contains the entire understanding between the Parties and supersedes any prior written or oral understanding and agreements regarding the subject matter of the MOU.
- D. The covenants and agreements of this MOU shall inure to the benefit of, and shall be binding upon, each of the Parties and their respective successors and assignees.
- E. Both parties shall comply with all applicable laws, regulations and policies.
- F. Neither Party will assign this MOU, or any part thereof, without the written consent of the other Party. Any assignment without such written consent shall be void and unenforceable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: _____ Date: _____
Phillip A. Washington
Chief Executive Officer

APPROVED AS TO FORM:

MARY C. WICKHAM
Interim County Counsel

By: _____ Date: _____
Deputy

CITY OF LOS ANGELES

By: _____ Date: _____
Seleta Reynolds
General Manager, LADOT

APPROVED AS TO FORM:

By: _____ Date: _____
Michael Nagle
Deputy City Attorney