



Office of the City Manager

22PUBLIC HEARING

May 26, 2020

(Continued from April 21, 2020)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Department of Public Works

Subject: Electric Bike Share Program Franchise Amendment

RECOMMENDATION

Pursuant to Berkeley Municipal Code Chapter 9.60, conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance granting a Franchise Agreement Amendment to Bay Area Motivate, LLC, a subsidiary of Lyft Incorporated, to provide shared electric bicycles to the Berkeley public.

FISCAL IMPACTS OF RECOMMENDATION

The proposed Franchise Agreement Amendment requires Bay Area Motivate, LLC (Motivate) to pay a fee of \$75 per electric bicycle (E-Bike) to the City to spend on bicycle parking racks. The 850 E-Bikes to be provided in the City of Berkeley by the end of calendar year 2020 would result in a total revenue amount of \$63,750 for bicycle parking racks, paid in quarterly installments to be deposited in revenue account code 137-54-622-668-0000-000-000-425910-.

CURRENT SITUATION AND ITS EFFECTS

The shared E-Bike program (“E-Bike Share Program”) would provide 850 E-Bikes in total in the City of Berkeley by the end of calendar 2020. This is in addition to the existing fleet of 400 regular station based bikes. The service area would cover eight square miles mainly west of the Berkeley Hills, as shown on the map in Attachment 1, where the population density is high enough to support the service. Motivate would be required to make a minimum number of E-Bikes consistently available in historically underserved communities identified in the proposed Franchise Agreement Amendment. This number would be approximately proportional to the population of the areas in question. In addition, the proposed Franchise Agreement Amendment would extend the existing station-based Bike Share low-income pricing program to the E-Bike Share Program. This program provides \$5 first year membership and significant per ride discounts for people who qualify for CalFresh or PG&E Care.

The E-Bikes would not have to be parked in the City’s existing limited number of Bike Share stations, as the E-Bikes would be equipped with a kickstand and tether in order to

attach them to bicycle racks or park them in an upright position in the furnishings zone of the sidewalk. The furnishings zone is the area of the sidewalk between the walkway zone and the curb where signage, parking meters, and benches are typically located. Motivate will be held responsible for ensuring that the E-Bikes are parked properly and not attached to benches, parking meters, trees, bus-stop signs or shelters, or adjacent to or within disabled parking zones or any other accessible routes that would otherwise create a barrier to accessibility. Motivate will be required to address legitimate reports of improper or unsafe parking submitted through the City's 311 system within 3 hours during business hours (Monday-Friday, 9:00 AM – 6:00 PM) and within 12 hours during non-business hours and on weekends. Motivate may be charged a citation per Berkeley Municipal Code Section 14.64.010 for failure to do so. Motivate will also be required to notify the City via email when a complaint has been addressed and to attach a photograph as evidence that the complaint has been addressed.

BACKGROUND

In January 2016, City Council adopted an Ordinance granting a franchise agreement with Motivate to operate a Bike Share program in the City of Berkeley under the terms set out in the Bay Area Bike Share Coordination Agreement ("Coordination Agreement") adopted by Council in December 2015. The Coordination Agreement is between the Metropolitan Transportation Commission ("MTC"), Motivate, the City of Berkeley and the other Participating Cities (San Francisco, Oakland, Emeryville and San Jose). Section 32.3 of the Coordination Agreement stipulates that Motivate has Right of First Offer to operate a Bike Share program with E-Bikes. In accordance with that Right of First Offer, City of Berkeley staff has concluded negotiations with Motivate on the terms of the E-Bike Share Program, which are incorporated into the proposed Franchise Agreement Amendment, and would provide a consistent E-Bike service in Berkeley, Oakland, and Emeryville.

The Coordination Agreement and original Franchise Agreement laid out the terms for the existing Bike Share system consisting of 37 stations and 400 bikes within the City of Berkeley. The Coordination Agreement requires Motivate to engage in daily rebalancing of bikes, which involves moving bikes from stations that are full to stations that are empty. This is to ensure that all stations are available to users who are either wanting to start a ride or finish a ride. The Coordination Agreement also mandates that Motivate provide a minimum number of Bike Share stations in Communities of Concern as determined by MTC. The proposed Franchise Agreement Amendment extends this mandate to E-Bikes by requiring that minimum numbers of E-Bikes be made consistently available in historically underserved communities, as identified in the Franchise Agreement Amendment. The historically underserved neighborhoods designation is intended to better serve the needs of the Berkeley community than MTC's designated Communities of Concern.

ENVIRONMENTAL SUSTAINABILITY

Increasing the number of Berkeley residents and visitors who are able to utilize shared mobility choices, as an alternative to single-occupant automobile travel, will decrease greenhouse gas emissions. This will help the City achieve the Berkeley Climate Action Plan greenhouse gas emission reduction targets of 33% below year 2000 levels by the year 2020, and 80% below year 2000 levels by 2050.

RATIONALE FOR RECOMMENDATION

The E-Bike Share Program would provide a mobility alternative for Berkeley residents. The station-less (free-floating) nature of the proposed program would allow these shared mobility devices to reach neighborhoods not currently serviced by the City's station-based Bike Share network. Not all Berkeley residents are physically able to ride a manually powered bicycle, so the electric assist motor of the E-Bikes could provide a viable transportation alternative for some residents.

ALTERNATIVE ACTIONS CONSIDERED

The City of Berkeley could opt not to expand the existing station-based Bike Share program, which would potentially position the City behind the region in terms of offering alternative modes of transportation to its residents and in terms of meeting the City's Climate Action Plan targets.

CONTACT PERSON

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Beth Thomas, Principal Planner, Public Works, (510) 981-7068

Attachments:

1: Ordinance

Exhibit A: DRAFT Franchise Agreement between Bay Area Motivate, LLC, a subsidiary of Lyft, Inc., and the City of Berkeley

2: Service Area Map

3: Public Hearing Notice

ORDINANCE NO. ##,###-N.S.

AUTHORIZING THE CITY MANAGER TO EXECUTE A FRANCHISE AGREEMENT AMENDMENT BETWEEN BAY AREA MOTIVATE, LLC, A SUBSIDIARY OF LYFT INCORPORATED, AND THE CITY TO PROVIDE SHARED ELECTRIC BICYCLES TO THE BERKELEY PUBLIC

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Council finds as follows:

- a. Pursuant to Chapter 9.60 of the Berkeley Municipal Code (BMC), the City of Berkeley and Bay Area Motivate, LLC (“Motivate”) have entered into a Franchise Agreement (“Franchise Agreement”) dated April 7, 2016, for operation of a bicycle sharing program (“Bike Share”) using manually operated bicycles parked in docks at stations, which Agreement was authorized by the Berkeley City Council by Resolution No. 67,326- N.S.
- b. The Franchise Agreement incorporates by reference the terms in the Bay Area Bike Share Program Coordination Agreement (“Coordination Agreement”), with Contract No. 10165, which Agreement was authorized by the Berkeley City Council by Resolution No. 67,326- N.S. and entered into as of December 31, 2015 by and between the Metropolitan Transportation Commission (“MTC”), Motivate, the City of Berkeley and the other Participating Cities (Oakland, Emeryville, San Francisco, and San Jose).
- c. Section 32.3 of the Coordination Agreement stipulates that Motivate has Right of First Offer to operate a Bike Share program with electric-assist or electric bikes (“E-Bike Share Program”) in Berkeley.
- d. Pursuant to Section 32.3 of the Coordination Agreement, City of Berkeley staff has negotiated with Motivate to develop proposed terms for an E-Bike Share Program;
- e. Council adopted a resolution on February 11, 2020, declaring the Council’s intention to consider at a public hearing, set for March 10, 2020 at 6:00 p.m., whether to grant a Franchise Agreement Amendment to Motivate to provide shared electric bicycles to the Berkeley public.
- f. The City’s Climate Action Plan has set a target of reducing transportation emissions 33% below 2000 levels by 2020, and 80% below 2000 levels by 2050. The Plan states that transportation modes, such as public transit, walking, and cycling, must become primary means of fulfilling the City’s mobility needs to achieve these targets.
- g. The E-Bike Share Program is to last four (4) years, with the opportunity, but no guarantee, to renew.

- h. Motivate will launch the E-Bike Share Program with a minimum of 200 electric bicycles, with the minimum number of electric bicycles rising to 850 by the end of calendar year 2020.
- i. Motivate will pay a fee of \$75 per electric bicycle (E-Bike) to the City to spend on bicycle parking racks. The fee would result in a total revenue amount of \$63,750 for bicycle parking racks, paid in quarterly installments.
- j. Motivate will be required to inform their Customers on how to properly park E-Bikes.
- k. Motivate will be required to address legitimate reports of improper or unsafe parking submitted through the City's 311 system within 3 hours during business hours (Monday-Friday, 9:00 AM – 6:00 PM) and within 12 hours during non-business hours and on weekends.
- l. Motivate will be required extend their existing Bike Share low-income pricing program to the E-Bike Share Program.

Section 2. The City Manager is hereby authorized to enter into a franchise agreement amendment with Bay Area Motivate, LLC to provide shared electric bicycles to the Berkeley public for a term of four (4) years, which may be extended upon mutual consent. The required fee of \$75 per E-Bike will be deposited in revenue account code 137-54-622-668-0000-000-000-425910-A. Contract terms are further described in the franchise agreement set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibits

A: DRAFT Franchise Agreement Amendment between Bay Area Motivate, LLC, a subsidiary of Lyft, Inc., and the City of Berkeley

AMENDMENT TO BIKE SHARE FRANCHISE AGREEMENT

THIS Agreement Amendment is made and entered into this _____ day of _____, 2020 by and between the City of Berkeley, a municipal corporation ("City"), and Bay Area Motivate, LLC ("Motivate" or "Grantee"), a subsidiary of Lyft, Inc. ("Lyft").

WHEREAS, pursuant to Chapter 9.60 of the Berkeley Municipal Code (BMC), City previously granted a Bike Share Franchise ("Franchise") to Grantee; and

WHEREAS, City and Grantee entered into a Franchise Agreement dated April 7, 2016, which Agreement was authorized by the Berkeley City Council by Resolution No. 67,326- N.S.; and

WHEREAS, Section 32.3 of the Coordination Agreement for the Bay Area Bike Share Program ("Coordination Agreement"), entered into as of December 31, 2015 by and between the Metropolitan Transportation Commission ("MTC"), Bay Area Motivate, LLC, the City of Berkeley and the other Participating Cities (as defined in the Coordination Agreement), stipulates that Grantee has Right of First Offer to operate a bike share program with electric-assist or electric bikes ("E-Bikes"); and

WHEREAS, on January 31, 2020, the City Council held a public hearing for the purpose of hearing persons in favor of or in opposition to the granting of an amendment to the Franchise ("Franchise Amendment") to allow Grantee to operate a bike share program with E-Bikes; and

WHEREAS, the City Council has determined that the grant of such Franchise Amendment to Grantee is in the public interest; and

WHEREAS, City and Grantee desire to enter into a Bike Share Franchise Agreement Amendment ("Agreement Amendment") in order that Grantee may provide bike share transportation services in the City of Berkeley;

NOW, THEREFORE, City and Grantee do hereby agree as follows:

A. Term

The term of the Agreement Amendment shall begin on ____ and extend four years. At the end of four years, the term of the Agreement Amendment may be extended upon mutual agreement of the parties.

B. Scope

The Agreement Amendment will apply to all E-Bikes that are deployed pursuant to Section J of the Agreement Amendment. It will not cover bicycles deployed pursuant to the Coordination Agreement or the Program Agreement ("Program Agreement") entered into as

of December 31, 2015 by and between Motivate and MTC, or any bicycles that are propelled only through manual pedaling without electric assistance.

C. Definitions

- (1) “E-Bike”: a bicycle with pedals powered by electric-propulsion assistance.
- (2) “Hybrid Bike”: A bicycle capable of docking into a Station or locking to itself, a city rack or other permanent structure.
- (3) “Service Area”: The area in the City of Berkeley in which E-Bikes are to be made available to the public. The Service Area includes all of the area of Berkeley that is west of the University of California, Berkeley Memorial Stadium; the Rose Garden; and Indian Rock Park. To the north of Solano Avenue, the service area is west of Colusa Avenue. The Service Area is shown on the map in Attachment A and includes the streets along its border.
- (4) “Peak Hours”: 6:00 AM to 10:00 PM seven days per week.

All other terms are as defined in Section 1.0 of the Coordination Agreement.

D. Pricing

Pricing will be as prescribed in Section 9 of the Program Agreement, which was entered into concurrently with the Coordination Agreement.

E. Advertising

Outdoor advertising shall be subject to the terms in the Program Agreement and Coordination Agreement.

F. Indemnification

The indemnification requirements in Section 6 of the City of Berkeley-Motivate Franchise Agreement shall apply to E-Bike operations.

G. Insurance

The insurance requirements in Section 7 of the City of Berkeley-Motivate Franchise Agreement and Coordination Agreement shall be extended to cover E-Bikes except that Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Grantee and Grantee’s officers, agents, and employees, shall have limits of liability of not less than \$2,000,000 combined single limit per occurrence and \$4,000,000 general aggregate liability. Such policy shall name the City of Berkeley and its

commissioners, directors, officers, representatives, agents and employees as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Grantee's operations.

H. E-Bike Equipment Safety, Maintenance, and Disposal

- (1) E-Bikes must be equipped with a device for locking them to a bike rack or other allowable fixed object.
- (2) Customers using E-Bikes must be provided with an easily accessible, user-friendly method, within the Grantee's mobile application, to notify Grantee of any safety or maintenance issue with the E-Bike. In addition, a phone number for reporting safety or maintenance issues must be conspicuously printed on every E-Bike. Bikes reported as damaged or inoperable must be taken out of service immediately and remain out of service until repaired.
- (3) Before E-Bikes are deployed in Berkeley, Grantee shall report to the City on how damaged E-Bikes are repaired or recycled, and what efforts will be made to reduce landfill waste. All batteries and other potentially toxic materials must be disposed of or recycled in accordance with State law.

I. Parking and Illegal Dumping

- (1) Grantee shall pay a fee to the City of \$75 per E-Bike deployed under this Agreement Amendment, which fees the City shall spend on the installation of new bicycle parking racks. Payment of this fee may be made in installments in accordance with the phasing plan described in Section J(2).
- (2) Grantee shall not deploy or rebalance their E-Bikes in a way that impedes the regular flow of travel in the public right of way, or in any way impedes the clearance on sidewalks needed for Americans with Disabilities Act (ADA) compliance. In Commercial Zones, as defined in Title 23, Chapter 23A.16, Grantee shall only deploy or rebalance their E-Bikes attached to a bicycle rack or Station. Outside Commercial Zones, Grantee shall only deploy or rebalance their E-Bikes attached to a Station or in the Furnishings Zone of the sidewalk, as defined in the City of Berkeley Pedestrian Master Plan, Appendix B (2010), preferably attached to a bicycle rack. Improperly parked E-Bikes are subject to fines.
- (3) Grantee shall inform Customers on how to properly park E-Bikes. Grantee shall report to the City, on a quarterly basis, the effectiveness of efforts to enforce proper parking within their mobile application.
- (4) E-Bikes shall be upright when parked.

- (5) E-Bikes shall not be parked adjacent to or within:
- (a) Disabled parking zones, or any other accessible routes that would otherwise create a barrier to accessibility;
 - (b) Curb ramps;
 - (c) The Through Passage Zone of the sidewalk, as defined in the City of Berkeley Pedestrian Master Plan, Appendix B (2010);
 - (d) Red curb zones;
 - (e) Loading zones;
 - (f) Transit zones, including within 30 feet of bus stops, shelters, passenger waiting areas and bus layover and staging zones, as measured from the bus stop sign in the direction counter to traffic flow, except at existing bicycle racks;
 - (g) Street furniture that requires pedestrian access (for example: benches, parking pay stations, bus shelters, transit information signs, etc.);
 - (h) Entryways; or Driveways.
- (6) Any E-Bike that is parked in one location for more than 7 consecutive days without moving may be removed and taken to a City facility for storage at the expense of the Grantee.
- (7) Grantee shall institute geo-fencing around designated bike parking areas and implement in-app technology to require their use in high-density areas.
- (8) Grantee shall be responsible for removing from the public right-of-way E-Bikes that have a dead battery or are damaged.
- (9) Grantee shall implement “No Parking” zones in all areas where the City has prohibited bike parking within 72 hours of being notified by the City of the parking restriction. “No Parking” zones should have a minimum radius of 50 feet to account for limitations in GPS accuracy.
- (10) E-Bikes shall include locking mechanisms that attach to fixed objects, subject to the following restrictions:
- (a) E-Bikes may not be attached to prohibited objects, including but not limited to, bus stop signs, trees, fire hydrants, private property, or on other objects defined by the City upon written notice to Grantee
 - (b) E-Bikes locked to bike racks shall be positioned parallel to inverted U or circle bike rack or perpendicular to a wave style rack.
 - (c) E-Bikes locked in a way that violates this section are subject to fines and

impoundment. For legitimate reports of improper or unsafe parking submitted through the City's 311 system or public call-center system, Grantee must:

- (i) Address complaints within 3 hours during business hours (Monday-Friday, 9:00 AM – 6:00 PM) and within 12 hours during non-business hours and on weekends;
 - (ii) Notify the City via email when a complaint has been addressed and is considered closed, and attach a photograph of the subject location to the email message to the City as evidence that the complaint was addressed.
- (11) Grantee may be charged a citation per Berkeley Municipal Code Section 14.64.010 if any of Grantee's E-Bikes are found to be improperly parked and not removed within the time period specified in Section I(10)(c)(i).
- (12) Grantee shall provide a plan satisfactory to the City prior to deployment of Ebikes to prevent E-Bikes from being misplaced in bodies of water. In addition, Grantee shall provide for approval their Standard Operating Procedures (SOPs) for retrieval of Bicycles from bodies of water prior to deployment of Ebikes.

J. Service Area and Bicycle Availability

- (1) All E-Bikes must be available for hire through the Bay Wheels (or equivalent) website or Lyft application ("app"), and shall not require use of the Lyft app to register for an account or access any system function.
- (2) Grantee shall provide 850 E-Bikes in the City of Berkeley, in accordance with the following phasing plan, provided, however, that if this Agreement Amendment is executed after February 29, 2020, then the deadlines in this Section J(2) and Section J(4) will be automatically extended by the number of days from February 29, 2020 to the date that such execution occurs. This planned expansion is in addition to any bicycles required to be deployed in Berkeley pursuant to the Coordination Agreement.
 - (a) End of 2020 Q1: 212 total E-Bikes
 - (b) End of 2020 Q2: 425 total E-Bikes
 - (c) End of 2020 Q3: 638 total E-Bikes
 - (d) End of 2020 Q4: 850 total E-Bikes.
- (3) Grantee is permitted to expand the Service Area in accordance with the following phasing plan:

| City | Current Service Area (square miles)¹ | Service Area Expansion (square miles) | 25% (end of Q2 2019) | 50% (end of Q3 2019) | 75% (end of 2019) | 100% total (square miles) |
|-----------------|--|--|-----------------------------|-----------------------------|--------------------------|----------------------------------|
| Berkeley | 4 | 8 | 5 | 6 | 7 | 8 ² |

- (1) The following table identifies minimum numbers of E- Bikes, as a subset of E-Bikes deployed under this Agreement Amendment, to be made available for use in specific Service Subareas that have been identified by the City as historically underserved neighborhoods. Service Subarea boundaries are shown on the map in Attachment A. The minimum number of E-Bikes to be made available in each Service Subarea is proportionate with the residential population in the respective Service Subarea. Grantee shall ensure that the minimum number of E-Bikes listed below is consistently available within each identified Service Subarea. The required minimum number of E-Bikes for each Service Subarea may be amended upon mutual agreement by the City and Grantee. The total area covered by a 400 meter radius around each available bike within each Service Subarea shall not drop below 75% of the total Service Subarea for 75% of the time during the Peak Hours.

| Service Subarea | Required Minimum E-Bike Availability* | | | |
|------------------|---------------------------------------|------------|------------|-------------|
| | By 3/31/20 | By 6/30/20 | By 9/30/20 | By 12/31/20 |
| South Berkeley | 43 | 87 | 130 | 173 |
| Central Berkeley | 19 | 37 | 56 | 75 |
| West Berkeley | 12 | 25 | 37 | 49 |
| Oceanview | 4 | 8 | 12 | 16 |

* Minimum number of E-Bikes required to be consistently available for use by customers

- (2) Permission to provide service under this Agreement Amendment outside the public right of way shall require approval from the appropriate department, agency, or property owner(s).
- (3) Grantee shall have a means of communicating with the User when an E-Bike has been parked in a non-permitted area. The communication to the User shall be

¹ The current Service Area is the area within 1/4 mile of an existing station, rounded to the nearest square mile.

² The service area is an estimate.

sent electronically at the end of the ride.

- (4) The Key Performance Indicators (KPIs) for bike availability shall be according to the terms in Section M.

K. Data Reporting

- (1) One month after beginning service, Grantee will provide data reporting on E-Bike trip origins and trip destinations to the City of Berkeley on a monthly basis.
- (2) One month after beginning service, Grantee will provide a monthly report on prior-month performance of Key Performance Indicators (KPIs), as described in the Program Agreement, and as further detailed in Section M.
- (3) Data reporting shall be in compliance with the Mobility Data Specification Standard developed by the Los Angeles Department of Transportation, subject to modifications in order to comply with applicable law, including the California Consumer Privacy Act.

L. Community Engagement

- (1) Grantee must provide a plan for community engagement, including a list of planned presentations, activities, and events with community based organizations, Business Improvement Districts, and other key stakeholders in the Service Area.

M. Key Performance Indicators (KPIs)

- (1) This Section provides new rebalancing KPIs with established Liquidated Damages and associated data reporting requirements to address operational specifics for E-Bikes. When calculating these new rebalancing KPIs, bikes deployed under the Program Agreement will also be counted as contributing to coverage.
 - a. Service Area Coverage: The total area covered by a 400 meter radius around each available bike in the Service Area shall not drop below 75% of the Total Service Area for 75% of the time during Peak Hours.
 - Liquidated Damages: \$294 for every 1% under 75% of the time when Service Area coverage minimums are not met, measured monthly. For example, if Service Area coverage is only met 50% over the course of a month, the Liquidated Damage amount will be \$7,350 for that month.
 - b. Customer Coverage: At least 85% of Trip Intents must have at least 2 available bikes within 400 meters during the Peak Hours from 6:00 AM to 10:00 PM.
 - Liquidated Damages: \$147 for each 1% under 85% of Trip

Intents for which Customer Coverage are not met, measured monthly. For example, if Customer Coverage is only met for 60% of Trip Intents, the Liquidated Damage amount will be \$3,675.

- “Trip Intent” is defined as each time a customer:
 - indicates demand for a bike by opening either the Bay Wheels website or Lyft app,
 - is located within the Service Area, and
 - meets any the following requirements:
 - clicks on an individual station or bike,
 - spends 5 seconds or more in the “Bikes & Scooters” section of the Lyft app, or
 - takes a trip less than 15 seconds after opening either the Bay Wheels website or Lyft app. This definition is subject to modification based on changes to Bay Wheels or Lyft app experiences.
- (2) All of the KPIs listed in Appendix A to the Program Agreement, including the Dock Availability KPI in #12, and associated Liquidated Damages apply to the E-Bike fleet, but will not go into effect for E-Bikes until 90 days after the effective date of this Agreement Amendment. The new rebalancing KPIs and corresponding Liquidated Damages in this Section will not go into effect until 90 days after the effective date of this Agreement Amendment.
- (3) The City and Motivate agree to negotiate additional amendments to KPI targets and Liquidated Damage amounts up to 180 days after the effective date of this Agreement Amendment which shall go into effect upon mutual written agreement between the parties.

N. System Redundancy

- (1) Redundancy Requirements: Motivate shall demonstrate sufficient redundancy in the system to withstand a technological or mechanical failure or safety issue without significant service disruption including:
- a. Within 6 months after execution of this Agreement Amendment, no more than 85% of the bikes in the fleet shall be of the same bike make and model. At least 15% of the bike program fleet provided by Motivate shall have an alternative bike design (e.g., make, model, specific components, etc.).
 - b. Within one year after execution of the Agreement Amendment, no more than 70% of the bikes in the fleet shall be of the same bike make and model. At least 30% of the bike program fleet provided by Motivate shall have an alternative bike design.

- c. Motivate shall provide the City with a plan within 15 days to address mechanical or technological problems that affect availability of E-Bikes on the street in the event that the current system or model is unable to perform as set forth under this Agreement Amendment, which shall include bi-weekly updates to the City on the status of resolving any mechanical or technological problems.
- (2) Service Reliability requirements: The E-Bike program fleet permitted under this Agreement Amendment shall not drop below 70% of the applicable minimum fleet size as set forth in the phasing plan in Section J for 15 out of any 30 consecutive days (calculated on a rolling basis). Fleet size (measured as the cumulative number of bikes in rental and bikes available for rental) will be measured at 4 AM Pacific Time each day. The service reliability requirements for each calendar-year quarter listed in Section J(2) will go into effect 30 days after the beginning of the respective quarter and shall continue for 29 days past the beginning of the following quarter.

O. Liquidated Damages/Default

- (1) Cap on Liquidated Damages / Ability to Obtain Redress through a Second Operator

Liquidated damages for KPIs for Service Area Coverage and Customer Coverage are set forth in the KPI section above. Liquidated damages for E-Bikes that are subject to this Agreement Amendment have a limitation of [8%] of the City's portion of regional Ridership Revenues as defined below.

"Ridership Revenues", as defined in Section 8.1.2 of the Program Agreement and for purposes of this Agreement Amendment, are calculated to include all revenues collected for all types of bikes including E-Bikes, Hybrid E-Bikes and manually operated pedal bikes including those that dock in Stations as defined in the Program Agreement. The City's portion of Ridership Revenues will be defined by the percentage of total Bay Wheels trips taken in Berkeley during the 12 months immediately preceding such calculation.

For the purposes of assessing Liquidated Damages, the City's portion of Ridership Revenues for the calendar year 2020 will be calculated monthly by multiplying the Ridership Revenues collected beginning on January 1, 2020 by the ratio 366 bears to the number of days from January 1 to the measurement date. Starting on January 1, 2021, the City's portion of Ridership Revenues will be measured quarterly over the 12 months immediately preceding any given date of measurement.

Motivate shall provide all data necessary for calculating KPIs, Liquidated Damages, and the City's portion of Ridership Revenues to the City on a monthly basis no later than the 25th day of the subsequent month (for example, all data for the month of April 2020 must be provided by May 25, 2020); except that for all financial information, the data shall reflect all relevant facts as they existed with respect to the calendar month

that immediately precedes the immediately preceding calendar month (e.g., the June report would reflect the financial data for April).

In the event that, beginning on April 1, 2020 and for the term of this Agreement Amendment, (1)(a) Motivate's total liquidated damages for KPIs for Service Area Coverage and Customer Coverage over the period of any two consecutive months exceed [8%] of the City's portion of Ridership Revenues (as defined above) and (1)(b) Motivate fails to cure such failure(s) within the two monthly reporting periods following written notice by the City of such failure(s), or (2)(a) Motivate fails to meet either the Redundancy Requirements or Service Reliability Requirements set forth above and (2)(b) Motivate fails to cure such failure(s) within 30 days following written notice by the City of such failure(s), then Motivate agrees that the City has the right to immediately solicit and enter into a franchise agreement with no more than one additional E-Bike operator to provide stationless E-Bike service for no longer than the duration of this Agreement Amendment.

The bike fleet for any such additional operator shall be a maximum of 200 E-Bikes. However, if the difference between the number of E-Bikes Motivate is required to provide pursuant to this Agreement Amendment and the number of E-Bikes actually in service exceeds 200 E-Bikes (calculated based on the average deployment during the applicable cure period), then the additional operator's E-Bike fleet may consist of 200 E-Bikes plus 50 percent of the difference between the number of E-Bikes Motivate is required to provide and the number of E-Bikes actually in service.

If, at the end of such second operator's franchise term, Motivate has achieved three consecutive two-month periods of KPI performance below the liquidated damages cap, then the City will consider such performance by Motivate in determining whether to extend the second operator's franchise and/or adjust the second operator's permitted fleet size (subject to the above limitations) subject to the City's absolute sole discretion. Motivate agrees to this as an alternative remedy, notwithstanding any contractual right by Motivate to exclusivity under either the Program or Coordination Agreements or the default provisions provided by this Agreement Amendment.

(2) Default Provisions

Each of the following shall constitute an immediate event of default (Event of Default) under this Agreement Amendment:

(a) (1) Motivate fails to meet any of the service reliability requirements as set forth in the System Redundancy section, and fails to cure such failure within 180 days of written notice of such failure;

(2) Motivate's liquidated damages for KPIs for Service Area Coverage and Customer Coverage exceed [10%] of the City's portion of regional Ridership Revenues (as that term is used herein) for the quarter starting on April 1, 2020 or any quarter thereafter, and Motivate fails to cure such failure within 180 days of written notice of such failure;
or

(3) Motivate fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement Amendment, including any material obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within 45 days after written notice thereof from the City to Motivate, or in the case of any term, covenant or condition which cannot reasonably be cured within such 45 day period, such longer period not to exceed 120 days after the City's written notice as is necessary to effect a cure of the failure to perform, so long as Motivate diligently attempts to effect a cure throughout such period.

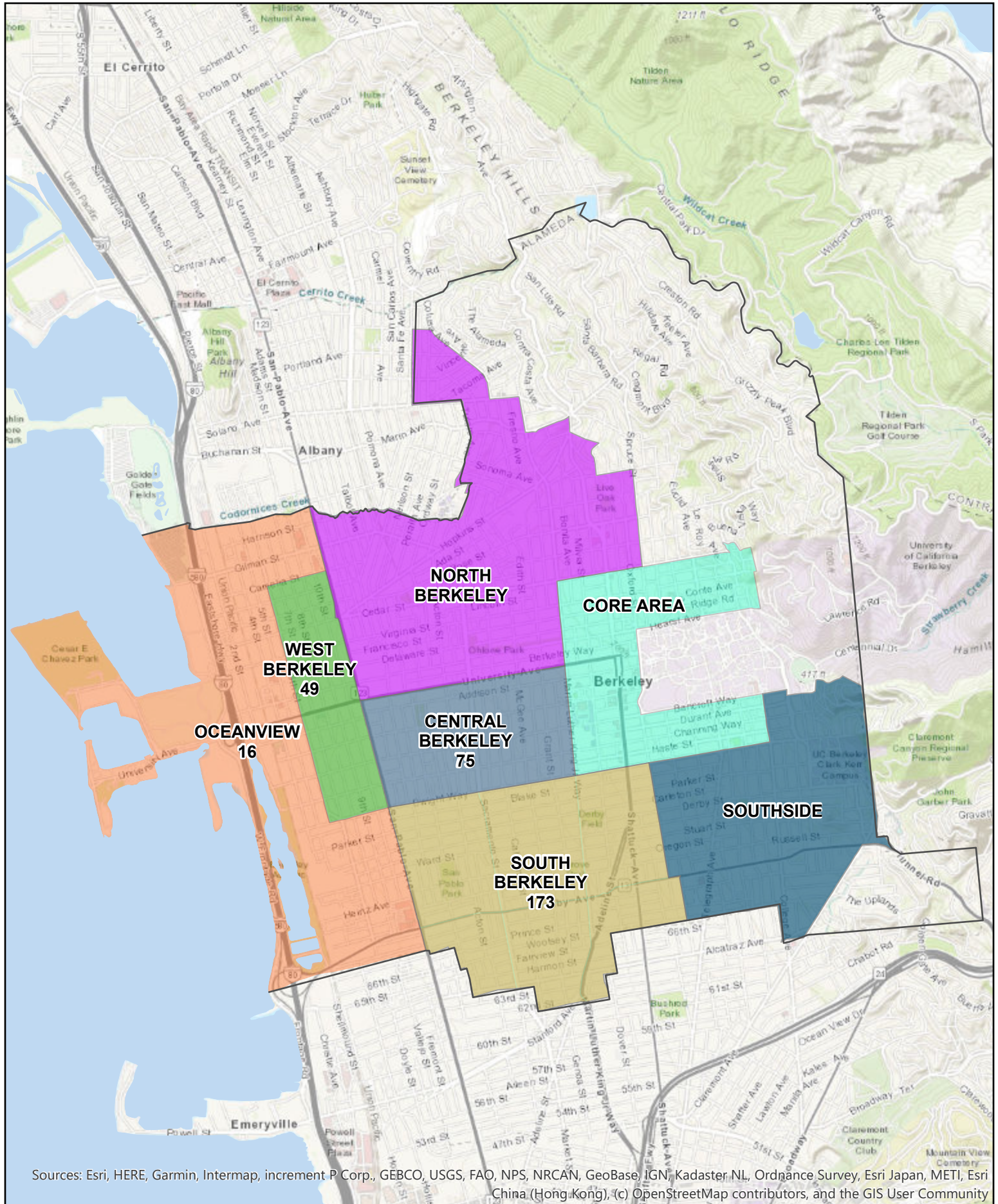
(b) On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement Amendment, to seek specific performance of all or any part of this Agreement Amendment, and/or solicit, if necessary, and enter into a franchise agreement with another operator to provide stationless E-Bike service in Berkeley. City shall have the right to offset from any amounts due to Motivate under this Agreement Amendment or any other agreement between City and Motivate: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Motivate pursuant to the terms of this Agreement Amendment; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement Amendment by reference, or into any other agreement with the City.

(c) All remedies provided for in this Agreement Amendment 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. Nothing in this Agreement Amendment shall constitute a waiver or limitation of any rights that City may have under applicable law.

(d) 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.

Notwithstanding anything to the contrary herein, this Agreement Amendment shall include the following sections from the Program Agreement: Motivate's right to reduce the fleet size for emergencies or upgrades, Section 18.3 regarding Motivate's right to contest any finding by the City of an Event of Default; and Events of Force Majeure.

Attachment 2: Service Area and Service Subarea Map with Minimum E-Bike Availability Requirements by December 31, 2020 (Where Applicable)



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**SHARED ELECTRIC BICYCLE FRANCHISE AGREEMENT
AMENDMENT HEARING**

The Department of Public Works is proposing to grant an amendment to the existing franchise agreement with Bay Area Motivate, LLC (“Motivate”), a subsidiary of Lyft Incorporated, in order to provide shared electric bicycles to the Berkeley public for a duration of no less than four years. Motivate would provide 850 shared electric bicycles within Berkeley by the end of calendar year 2020.

The hearing will be held on May 26, 2020 at 6:00 p.m. in the Berkeley Unified School District Board Room, 1231 Addison Street, Berkeley.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **May 14, 2020**.

For further information, please contact Beth Thomas, Principal Planner, Department of Public Works at 510-981-7068.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on May 14, 2020.

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Mark Numainville, City Clerk