

Attachment A

Motivate-MTC Proposed Term Sheet

This term sheet is intended to be used to facilitate discussions between the Metropolitan Transportation Commission (“MTC”) and Motivate International Inc. (“Motivate”) in order to develop a contract for the acquisition, launch and operation of a bike share system in the Bay Area.

Contract Topic	Contract Terms
Equipment Ownership	<p>If required by the FHWA, Motivate will be obligated to purchase the equipment initially acquired with federal funds according to the terms of the FHWA agreement.</p> <p>As currently outlined in the FHWA agreement, any item with a current per-unit FMV of less than \$5,000 will be transferred to Motivate at no cost. For items with a current per-unit FMV of more than \$5,000, the purchase price will be based on the share of federal funding for the project multiplied by the equipment’s FMV, as established by past sales of comparable equipment.</p>
System Size	<p>7000 bikes total</p> <ul style="list-style-type: none"> ● 4,500 in SF ● 1,000 in San Jose ● 1,400 in East Bay (850 in Oakland, 100 in Emeryville, 400 in Berkeley, 50 TBD based on additional system planning analysis) ● 100 to be determined during site planning
Launch Dates	<p>Sites representing 25% of the total bikes for San Jose, East Bay and San Francisco should be approved and permitted by December 30, 2015. Motivate will install these bikes by June 1, 2016.</p> <p>Sites representing an additional 15% of bikes for San Jose, East Bay and SF should be approved and permitted by April 30, 2016. Motivate will install these bikes by October 1, 2016.</p> <p>Sites representing an additional 30% of bikes for San Jose, East Bay and SF should be approved and permitted by November 30, 2016. Motivate will install these bikes by April 1, 2017.</p> <p>Sites for the remaining bikes in San Jose, Easy Bay and SF should be approved and permitted by May 31, 2017. The remainder of bikes shall be installed no later than November1, 2017.</p>

Contract Topic	Contract Terms
Launch Dates (continued)	<p>Delays in receiving permitted and approved sites by specified dates will result in extension of the installation dates in an amount equal to the delay.</p> <p>The above dates are based on completion of the contract with the MTC by July 31, 2015. If Motivate is negotiating in good faith and the contract signing occurs after July 31, 2015, the above dates will be extended by a duration equal to the difference between the contract signing date and July 31, 2015.</p>
Term	<p>10 year term, reduced to 5 years if Motivate does not achieve the aggregate bike target numbers described above (includes provisions for force majeure and siting issues) or if Motivate is in persistent and material breach of its contractual obligations as of the time renewal is considered in the fourth year.</p> <p>The contract may be extended for two additional five-year terms upon mutual agreement of the MTC and Motivate. If Motivate is in substantial compliance with the terms of the contract, MTC will engage in good faith negotiations to renew the contract on substantially equivalent terms one year prior to the expiration of the current term.</p> <p>MTC will provide notification of non-renewal no later than six months prior to the end of the term. If neither party provides no notice of non-renewal by six months, the contract should be extended for five years on the same terms.</p>
Non-Motivate Sources of Funding	<p>San Jose, San Francisco, Berkeley, Emeryville, and Oakland and any other municipality in the nine-county MTC region may contribute public funding for additional bikes and stations that are interoperable with the existing system.</p> <p>Existing pilot cities other than San Francisco and San Jose that want to continue and/or expand existing system operations after the expiration of the BAAQMD contract can engage in negotiations with Motivate after term sheet signing to develop a new service agreement using public funds.</p> <p>After expression of interest from a municipality within the MTC jurisdiction, Motivate will enter into good faith negotiations with the MTC and municipality to provide equipment and operations services at a to-be-negotiated per dock fee.</p> <p>In addition, Motivate has the right to contract with private entities that want to provide funding for stations and bikes that are situated on privately-owned property.</p>

Contract Topic	Contract Terms
Pricing	<p>\$149 annual pass that can be increased no more than CPI + 2% annually.</p> <p>Annual pass can be paid in 12-monthly installments of no more than \$15.00</p> <p>All other pricing can be set at Motivate’s discretion.</p> <p>Motivate will offer a discounted pass set at 40% of the annual price. The discount will be available to customers who are eligible and enrolled in Bay Area utility lifeline programs. If participation in the discounted program is below expectations, Motivate and MTC may mutually agree on other eligibility criteria so long as the eligibility is determined by a third-party.</p>
Revenue Share	<p>User Revenue: 5% of user revenue above \$18,000,000 earned by Motivate (in accordance with GAAP) in any year will be paid to MTC. Amounts owed will be paid within 120 days of the end of the calendar year.</p> <p>Sponsorship Revenue: 5% of sponsorship revenue in excess of \$7,000,000 earned by Motivate (in accordance with GAAP) in any year will be paid to MTC. Amounts owed under the sponsorship revenue share agreement in years 1-5 will be deferred and paid in equal installments in years 6-10. For years 6-10, amounts owed under the sponsorship revenue share agreement will be paid within 120 days of the end of the calendar year.</p> <p>The revenue share hurdle will be adjusted for CPI starting in year 2.</p>
Brand Development and Sponsorship	<p>Motivate is responsible for identifying sponsors and developing system name, color, logo and placement of system assets. MTC, in consultation with the cities, will have approval rights over title sponsorship and branding.</p> <p>Motivate will abide by cities’ existing guidelines and restrictions with regards to outdoor advertising. Motivate will not choose sponsors that are in age-restricted categories (alcohol, tobacco or firearms), products banned by the local government, or deemed offensive to the general public. Rejection of proposed sponsors by municipalities are limited to the grounds above.</p>

Contract Topic	Contract Terms
Advertising	<p>Motivate will have the right to sell advertising on physical and digital assets. Advertising on physical assets are subject to local restrictions on outdoor advertising.</p>
Siting	<p>Motivate to develop site locations, which will be prioritized based on demand. Motivate will also use city analyses and recommendations already developed where possible.</p> <p>If a city does not approve a proposed site location, they must provide an alternative within one-block.</p> <p>Motivate to provide a 20% minimum placement in communities of concern system-wide.</p> <p>Motivate will work together with cities on community engagement and outreach as part of the station siting process, including necessary business associations and city meetings.</p> <p>Motivate can relocate or resize underperforming stations while maintaining minimum placements in communities of concern.</p> <p>Motivate will hire planning and engineering firms to minimize the cities' costs and resources related to planning. Motivate will discuss staff time requirements with each city and determine ways to reduce demands on staff. If staff time exceeds estimates due to errors or omissions or by Motivate or its contractors, Motivate will reimburse cities for reasonable and documented direct staff time related to these issues.</p> <p>Cities to provide estimates on costs of permits within seven days of signing term sheet. If costs of permits are significant, Motivate will seek a waiver on permit costs given the public benefits of the project. If Motivate and Cities cannot reach agreement on a waiver, Motivate may consider reimbursing actual direct costs incurred by the city to provide the permit (e.g, a field visit by an inspector).</p>
Security Fund	<p>Motivate will provide \$250,000 into a Security Fund account controlled by MTC prior to the installation of the first new station. The Security Fund shall serve as security for the faithful performance by Motivate of all obligations under the contract.</p>

Contract Topic	Contract Terms
Security Fund (continued)	<p>MTC may make withdrawals from the Security Fund of such amounts as necessary to satisfy (to the degree possible) Motivate's obligations under this Agreement that are not otherwise satisfied and to reimburse the MTC or cities for costs, losses or damages incurred as the result of Motivate's failure to satisfy its obligations.</p> <p>MTC shall not make any withdrawals by reason of any breach for which Motivate has not been given notice and an opportunity to cure in accordance with the Agreement.</p> <p>If funds are withdrawn from the Security Fund, Motivate will be required to replenish the Security Fund to an amount equal to \$250,000 on a quarterly basis.</p> <p>Interest in account accrues to Motivate.</p> <p>90 days after the end of the term, any remaining funds will be returned to Motivate.</p>
Liability	<p>Motivate shall defend, indemnify and hold MTC and its officers and employees harmless, to the fullest extent permitted by law, etc. Similar indemnities for cities.</p>
Default	<p>Termination and default clauses include the option to require Motivate to remove equipment, assign or transfer equipment and IP to a third party. IP assignment is limited to the extent needed for a third-party to maintain and operate the system.</p>
Data	<p>All data owned by Motivate. Cities granted a non-exclusive, royalty free, perpetual license to use all non-personal data.</p> <p>Monthly Reports shall be provided for each of the above KPIs and other system data, to be determined.</p>
Responsibilities of Motivate	<p>Brand development, station siting, design, permitting, purchase of equipment and software, installation of bikes and stations, station relocation, equipment replacement, bike share safety training, monthly operating meetings with MTC and cities, marketing, sales and sponsorship, operations and maintenance of system including customer service.</p>

Contract Topic	Contract Terms
Responsibilities of Motivate (continued)	<p>Station relocation by public agencies will require reimbursement of costs incurred by Motivate. However, if a newly installed station is found to be unsuitable by a city for its location, the city may request within 30 days of installation the relocation of a station at Motivate's cost. The number of available free station moves is equal to 10% of the installed station base less any prior moves. For example, if a city has 100 stations installed, they have a total of 10 free station moves less any free station moves used to date. If the system grows to 200 stations, they then have 20 station moves less any station moves used to date.</p>
Site Design and Planning	<p>Motivate will hire a planning and engineering firm with experience in the specific locality to do surveying, site design and permit submission. Motivate will solicit input from each city to help determine its planning and engineering partners.</p> <p>Motivate will hire a community relations firm to assist with organizing and hosting community meetings and to conduct outreach to local residents and businesses.</p> <p>Motivate will use commercially reasonable efforts to subcontract the work to DBEs where possible.</p> <p>Each municipality should provide a point of contact to coordinate the community engagement efforts and the permitting process.</p>
Marketing	<p>MTC, in consultation with the cities, has final approval of marketing plans and activities.</p> <p>MTC, in consultation with the cities has approval over marketing and outreach plans for low-income communities, non-native English speaking populations, and disadvantaged communities. Motivate must do outreach and marketing in Spanish, Chinese and Vietnamese. MTC retains the ability to conduct outreach and program support in low-income and Limited English Proficiency neighborhoods.</p> <p>Motivate's other marketing activities must comply with MTC and local standards for decency and not offend the general public. Motivate will not advertise or promote any products in prohibited categories (tobacco, alcohol, etc.).</p>

Contract Topic	Contract Terms
Parking Meter Revenue	<p>Motivate must make best effort to avoid taking metered parking spaces. If a city requires reimbursement of lost parking meter revenue for a given site, the city must also provide an alternative site location within one city block that is not sited in metered parking areas. Motivate can choose to locate in either site.</p>
KPIs	<p>Key Performance Indicators:</p> <ol style="list-style-type: none"> 1. Rebalancing: no station will remain full or empty for more than 3 consecutive hours between 6AM and 10PM. 2. Bicycle Availability: the number of bikes available for rent on an average, monthly basis shall be at least 90% of all bikes in service. 3. Station Deactivation, Removal, Relocation, and Reinstallation: as notified by MTC, perform the necessary action within the number of days in the established schedule for each task. 4. Station/Bike Maintenance, Inspection & Cleaning: check each bike and station at least once per month and resolve each issue within a given time frame. 5. Program, Website, and Call Center Functionality: the system, website, and call center shall each be operational and responsive 24/7, 365 days a year. <p>Liquidated damages related to KPIs may not exceed 4% of annual user revenue for the year.</p>
Transition of Project from Bay Air Quality Management District (BAAQMD) to MTC	<p>Subject to Air District Board approval, BAAQMD, MTC and Motivate will cooperatively develop a plan to effectuate the transfer of the project from the BAAQMD to MTC. The plan will provide for the implementation of new pricing, the continuation of existing memberships, the transfer of system data, the transfer of assets, and any other provision to ensure a seamless transfer and provide Motivate with the ability to operate the system under the MTC contract.</p>
Resolution of Terms with BAAQMD	<p>Resolution includes:</p> <ul style="list-style-type: none"> • Motivate will settle all outstanding claims with the Air District for the amount of \$150,000. • Air District agrees to release funds withheld for billed expenses and to pay all legitimate past and documented unbilled expenses totaling \$582,872 less the \$150,000 settlement amount. • On a go-forward basis, Motivate will be paid for all eligible reimbursable costs per month to the maximum amount of one twelfth of the Annual Operations Fee, or \$136,638.67 per month. Cost caps within categories will not be relevant.

Contract Topic	Contract Terms
Resolution of Terms with BAAQMD (continued)	<ul style="list-style-type: none"><li data-bbox="587 351 1353 454">• This agreement will resolve prior SLA claims and any other prior potential claims that could be asserted through the date of Settlement.

