

Service Agreement MOU - Bike Sharing Services

This Memorandum of Understanding (MOU) is made this 18th of January 2018, by and between the City of El Cerrito ("City") and Neutron Holdings, Inc. DBA Limebike ("LimeBike").

RECITALS

1. A goal of City is to provide safe and affordable multi-modal transportation options to all residents, reduce traffic congestion, and maximize carbon free mobility.
2. Bike share services are a component to help the City achieve its transportation goals and the City desires to make bike share services available to residents and those who work in or visit the City.
3. LimeBike proposes to operate a bike share program within the City.
4. LimeBike will abide by all city ordinances and rules governing the use of public space to efficiently and effectively provide bike share services.
5. LimeBike possesses GPS, 3G, and self-locking technology in its bike fleet such that bikes may be locked and opened by users with an app and tracked to provide for operations and maintenance.
6. LimeBike's dockless bikeshare model means no docking stations are installed or required to unlock and rent or return a bike.
7. In accordance with the mutual goals established in this MOU, City and LimeBike agree to launch a 6-month pilot Bike Share program as stated in this MOU.

Agreement

1. Pilot Program Term: The term of this MOU is for 6 months from the date of Agreement execution as stated above. Agreement extension will be granted under mutual consent and could be terminated earlier per Section 14 of this MOU.
2. Use of City Property. City authorizes LimeBike to use city property and the public right-of-way solely for the purposes set forth in Section 3 of this MOU. This authorization is not a lease or an easement, and is not intended and shall not be construed to transfer any real property interest in City Property.
3. Permitted Use. LimeBike customers may use city property and the public right-of-way solely for parking of bicycles owned and maintained by LimeBike for use in the bike share program. LimeBike shall not place or attach any personal property, fixtures, or structures to City Property without the prior written consent of City other than as noted in this agreement.
 - a. Use of city property and the public right-of-way, and LimeBike's operations within the City, shall, at a minimum: a) not adversely affect City Property or the

- City's streets, or sidewalks; b) not adversely affect the property of any third parties;
 - c) not inhibit pedestrians, people with disabilities, or vehicular movement within city property and the public right-of-way or along other property or rights-of-way owned or controlled by the City d) not create conditions which are a threat to public safety and security.
 - b. Upon termination of this MOU by either party, LimeBike shall, at its sole cost and expense, immediately remove its property from city property and the public right-of-way and restore the right-of-way or City property to its original condition.
4. Bike parking. LimeBike and the City will collaboratively identify pre-existing bicycle racks and appropriate parking locations to be designated as such in the LimeBike app. These will be locations where the LimeBike local operations team will rebalance bikes.
- a. Bicycles shall be parked in the furniture zone of the sidewalk (i.e., not blocking the pedestrian travelway or frontage zone of buildings), or within 4 ft. of a public bicycle rack, or at another City-owned location with prior approval of the City.
 - b. Bicycles parked on private property will be allowed at the discretion of the private property owner.
 - c. Bicycles shall stand upright when parked.
 - d. Users shall be encouraged to park adjacent to bike racks while not blocking other users from locking their bicycles to existing racks.
 - e. With the advance approval of the City, LimeBike may indicate virtual bicycle racks, such as with paint or decals, and/or use signage where appropriate to guide riders to these preferred, though not required, parking zones in order to assist with orderly parking of bicycles throughout the City. The City, at its own discretion, may choose to support the bike sharing program with the installation of additional bicycle racks and/or designated bicycle parking zones.
 - f. During the bike share program, LimeBike and the City can add and/or remove designated bicycle parking locations upon mutual agreement.
 - g. LimeBike will actively manage the Bicycle Fleet to ensure orderly parking and the free and unobstructed use of the public right-of-way. Any bicycle that is parked improperly shall be re-parked in a correct manner or shall be removed by LimeBike within the timeframe indicated in Exhibit A.
5. Condition of City Property
- a. City makes city property and the public right-of-way available to LimeBike in an "as is" condition. City makes no representations or warranties concerning the condition of the city property and the public right-of-way or its suitability for use by LimeBike or its customers, and assumes no duty to warn either LimeBike or its customers concerning conditions that exist now or may arise in the future.
 - b. City assumes no liability for loss or damage to LimeBike's bikes or other property. LimeBike agrees that City is not responsible for providing security at any location where LimeBike's bikes are stored or located, and LimeBike hereby waives any claim against City in the event LimeBike's bikes or other property are lost or damaged.
 - c. In the event that City, in its sole discretion, which it shall not exercise unreasonably , determines that any of LimeBike's bikes are interfering with safe and accessible use of the public right-of-way or City property, City may immediately remove LimeBike's bikes to another location. City shall provide LimeBike with prompt notification of the relocation of LimeBike's bikes and make them available to LimeBike to collect during normal City business hours.
 - d. In the event that LimeBike ceases operation of its business and fails to remove its bikes from City's public right-of-way or property, after reasonable notice from City, City may treat LimeBike bike's still on City right-of-way or public property as abandoned property consistent with the El Cerrito Municipal Code.

6. Maintenance and Care of portion of City Property: LimeBike expressly agrees to repair, replace or otherwise restore any part or item of real or personal property that is damaged, lost or destroyed as a result of the LimeBike's use of City Property. Should the LimeBike fail to repair, replace or otherwise restore such real or personal property, LimeBike expressly agrees to pay City's costs in making such repairs, replacements or restorations.
7. Operations & Maintenance. LimeBike will cover all maintenance costs for the bike fleet and maintenance to minimum level of service and reporting outlined in Exhibit A.
8. Indemnification. To the fullest extent permitted by law, LimeBike shall defend, pay, indemnify and hold harmless City, its officers, officials, employees, agents, invitees, and volunteers (collectively "City Parties") from all claims, suits, actions, damages, demands, costs or expenses of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including without limitation court costs and reasonable attorneys' fees, resulting from or in connection with loss of life, bodily or personal injury or property damage arising directly or indirectly out of or from or on account of:
 - a. Any occurrence upon, at or from City Property or occasioned wholly or in part by the entry, use or presence upon City Property by LimeBike or by anyone making use of City Property at the invitation or sufferance of LimeBike, except such loss or damage which was caused by the sole negligence or willful misconduct of City.
 - b. Use of LimeBike's bikes by any individual, regardless of whether such use was with or without the permission of LimeBike, including claims by users of the bikes or third parties.
9. Insurance. LimeBike shall procure and maintain for the duration of this MOU insurance against claims for which LimeBike has indemnified the City pursuant to Section 7 of this MOU. LimeBike shall maintain General Liability limits no less than One Million and no/100 Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage, and in the sum of One Million and no/100 Dollars (\$1,000,000.00) for injury to or death of more than one person for each occurrence. Each insurance policy shall name the City as an additional insured and it shall be endorsed to state that: (i) coverage shall not be suspended, voided, or cancelled by either party, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to City; and (ii) for any covered claims, the LimeBike's insurance coverage shall be primary insurance as respects the City and any insurance or self-insurance maintained by the City shall be in excess of the LimeBike's insurance and shall not contribute with it. The insurance required to be provided herein, shall be procured by an insurance company approved by City, which approval shall not be unreasonably withheld.
10. Compliance with Law. LimeBike at its own cost and expense, shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities applicable to its use of City Property and the operation of its bike share program, including but not limited to laws governing operation of bicycles. If any license, permit, or other governmental authorization is required for LimeBike's lawful use or occupancy of City Property or any portion thereof, LimeBike shall procure and maintain such license, permit and/or governmental authorization throughout the term of this MOU. City shall reasonably cooperate with LimeBike, at no additional cost to City, such that LimeBike can properly comply with this Section and be allowed to use City Property as specified in Section 3, above.
11. Required Reports. LimeBike shall provide reports to the City concerning utilization of its bikes and bike route usage not less than quarterly, and shall cooperate with the City in the collection and analysis of aggregated data concerning its operations.

12. No Joint Venture. Nothing herein contained shall be in any way construed as expressing or implying that the parties hereto have joined together in any joint venture or liability company or in any manner have agreed to or are contemplating the sharing of profits and losses among themselves in relation to any matter relating to this MOU.
13. Term. This MOU shall commence on January 18, 2018, (the "Commencement Date") and shall expire on the date that is ten (10) months after the Commencement Date unless earlier terminated pursuant to Section 14, below.
14. Termination. This MOU may be terminated prior to the expiration date set forth in Section 13, above, upon the occurrence of any of the following conditions:
- a. Upon delivery of written notice from City to LimeBike terminating this MOU for any reason, or for no reason, by giving at least thirty (30) days' notice to the LimeBike of such termination.
 - b. An attempt to transfer or assign this MOU.
 - c. Upon delivery of no less than 180 days' written notice from LimeBike to City terminating this MOU, along with LimeBike's written notice of plans for termination.

Following agreement of termination, LimeBike will remove all bikes from the public right-of-way, at its sole cost and expense, within the final thirty (30) days.

15. Amendment. This MOU may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated in written amendments to this agreement and executed by duly authorized representatives of the parties.
16. Permits or Licenses. The City shall notify LimeBike of any local permits or licenses required, if any, of the company for its local operation.
17. Applicable Law and Venue. The laws of the State of California shall govern the interpretation and enforcement of this MOU.
18. Counterparts. This MOU may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Executed the day and year first above written, by the parties as follows:

LimeBike:

By: _____

Name: Andrew Savage

Title: Vice President

City of El Cerrito:

By: _____

Name: Yvetteh Ortiz

Title: City Engineer / Public Works Director

Exhibit A

Description of LimeBike's Service Level Agreement

The following performance indicators shall be met and reported to help the City measure our success serving its citizens and improving the livability and mobility of El Cerrito. LimeBike will maintain its bikes to be in an excellent state of cleanliness and repair, with a minimum of 90% of deployed bikes operable at any time.

Performance Indicator	Description	Measurement Tool	Minimum Performance Standard	Reporting Frequency
App & customer service support portal	LimeBike reservation system fully operational	Uptime reporting	99.5% uptime.	Quarterly; Monthly during Pilot Program
Bicycle distribution	Maps identifying trends in peak bike distribution	Maps showing aggregate usage patterns	Fleet will focus on serving the City of El Cerrito.	Quarterly; Monthly during Pilot Program
Bicycles in service	Bikes in service	Daily uptime reports	Deploy and maintain a minimum of 100 bicycles in service in any calendar month, with increases to be determined by and based on mutual written agreement by LimeBike and the City of El Cerrito.	Quarterly; Monthly during Pilot Program
Report-responsive	Response time to improper bike parking / other problems communicated to Customer Service	Time relative to report logs	Within two (2) hours during business hours between 8am to 8pm Monday through Friday except for State and Federal holidays. For any complaint outside of business hours, within two hours (2) of start of business hours	Quarterly; Monthly during Pilot Program
Bicycle education events	Events or workshops to educate the public on how to properly operate and park LimeBikes	Number of events	Participate in or host at minimum one event per quarter, which LimeBike attends or organizes itself, for the first year of the program	Quarterly; Monthly during Pilot Program