

## **MEMORANDUM OF AGREEMENT FOR BICYCLE SHARE PROGRAM**

**THIS MEMORANDUM OF AGREEMENT** is made and entered into as of the Effective Date by and between the CITY OF DETROIT, a Michigan municipal corporation acting through its Department of Transportation (the “City”) and DDP Bike Share Corporation, a Michigan nonprofit corporation (“DDP BIKE SHARE”). The City and the DDP BIKE SHARE are each referred to herein as a “party” or together as the “parties”, as applicable. Capitalized terms used herein shall have the meanings ascribed to them in Section 1.01 of this Agreement or as otherwise defined herein.

### **RECITALS**

**Whereas** a study was conducted in 2013 to determine the feasibility of implementing a public bicycle share program in the City of Detroit, and

**Whereas** the feasibility study recommended a first phase of 350 bicycles and 35 stations throughout greater downtown Detroit and a second phase of an additional 250 bicycles and 25 stations for a total of 600 bicycles and 60 stations, and

**Whereas** the Downtown Detroit Partnership (“DDP”) participated in the original grant application process along with the City and has now created a new separate but related entity, DDP BIKE SHARE, to manage and operate the Program.

**Whereas** the City’s Department of Transportation (“DDOT”) received a Transportation Alternatives Program grant (“TAP”) from SEMCOG to support the Program’s launch with respect to providing the Facilities for the Program, and

**Whereas** DDOT will administer the grant in accordance with the grant application, Federal Transit Administration Master Agreement, and all applicable local, state, and federal laws and regulations using sound management practices, and

**Whereas** the City of Detroit is the owner of certain easements, rights of way, sidewalks and streets in the City of Detroit in, on and over which permission to implement and operate the Program must be requested by DDP BIKE SHARE, and

**Whereas** the State of Michigan, in its own right and by and through MDOT, is the owner of certain easements, rights of way, sidewalks and streets in the City of Detroit in, on and over which the permission to implement and operate the Program must be requested by DDP BIKE SHARE, and

**Whereas** the City and DDP BIKE SHARE desire to reach certain agreement in connection with grant funding, procurement, launch, operation, management and maintenance of the Program.

**NOW, THEREFORE**, the City and the DDP BIKE SHARE agree as follows:

**ARTICLE I  
DEFINITIONS**

**Section 1.01 Definitions.** The following terms used in this Agreement shall have the meanings as indicated herein:

**“Agreement”** means this Memorandum of Agreement between the City and the DDP BIKE SHARE.

**“Associates”** means the officers, directors, employees or agents of the DDP BIKE SHARE.

**“Bicycles”** means the bicycles associated with the Program and purchased utilizing private funding secured by DDP BIKE SHARE.

**“City”** means the City of Detroit, a Michigan municipal corporation and the grantee of the TAP Grant and its elected and appointed officials and its employees.

**“DDP”** means the Downtown Detroit Partnership, a Michigan nonprofit corporation and project manager for the Program.

**“DDP BIKE SHARE”** means the DDP Bike Share Corporation, a Michigan non-profit corporation created by the DDP to operate and maintain the Program.

**“DDOT”** means the City of Detroit Department of Transportation, a division of a Michigan municipal corporation, and its authorized representatives thereof.

**“Effective Date”** means September 1, 2016, if the Agreement is approved by the Detroit City Council and signed by the City’s Director of the Office of Contracts and Procurement before that date, and the later of the dates that the Agreement is approved by the Detroit City Council and signed by the City’s Director of the Office of Contracts and Procurement if such approval and signature occur after September 1, 2016.

**“Facilities”** means the bicycle racks/storage/docking stations, rental and information kiosks, security devices, and other equipment associated with the Program and purchased utilizing FTA grant funds. Facilities do not include bicycles.

**“Federal”** means, in addition to the FTA, any other department or agency of the United States government to which the Program is subject.

**“FHWA”** means the Federal Highway Administration, a division of the U.S. Department of Transportation, its rules and regulations, and representatives thereof.

**“FTA”** means the Federal Transit Administration, a division of the U.S. Department of Transportation, its rules and regulations, and representatives thereof.

**“Grant Funds”** means the grant funds described in Section 2.02(c) of this Agreement.

**“Match Funds”** means all funds required to be provided by DDP BIKE SHARE as a local match to the Grant Funds.

**“MDOT”** means the State of Michigan Department of Transportation and its authorized representative thereof.

**“Program”** means the bicycle share system as described in greater detail in Article II of the Agreement.

**“SEMCOG”** means the Southeast Michigan Council of Governments, the region’s federally-designated Metropolitan Planning Organization, and grantor of the TAP Grant.

**“State”** means, in addition to the State of Michigan Department of Transportation and its authorized representative thereof, any other department or agency of the State of Michigan to which the Program is subject.

**“TAP Grant”** means the Transportation Alternatives Program grant.

## **ARTICLE II RESPONSIBILITIES AND OBLIGATIONS OF THE CITY**

**Section 2.01 Previous City Actions in Support of Program Development:** The City has supported the Program concept directly, as has the DDP during the grant application process both directly and indirectly. A summary of City actions and authorizations leading up to this Agreement is as follows:

- a) On April 21, 2014, the City’s Department of Public Works sponsored the DDP’s application to SEMCOG and MDOT for a TAP Grant to help launch a public bicycle share system in Detroit.
- b) DDOT, in collaboration with the DDP, received a Conditional Commitment for \$1,075,001 in TAP Grant funding from MDOT on November 5, 2014.
- c) DDOT worked with SEMCOG to have the TAP Grant placed in Southeastern Michigan’s FY16 Transportation Improvement Program.
- d) DDOT received notice of award from SEMCOG on July 2, 2015 following SEMCOG’s Regional Clearinghouse Review Committee formally approving the TAP Grant on June 30, 2015.

- e) In accordance with Section 104 of Title 23, U.S.C., on August 4, 2015, MDOT on behalf of DDOT requested that the TAP Grant funds be “flexed” from FHWA to DDOT’s existing FTA grant MI-95-X034.

**Section 2.02 City Financial Support for the Program:**

The City will provide up to two additional sources of grant-funded financial support for the Program, as available, after the Effective Date of this Agreement, as follows:

- a) FTA Section 5307 STP funds – The balance of funds in MI-95-X034 totaling \$264,503 have been combined with the TAP Grant under MI-95-X034 to purchase bike share stations and associated equipment.
- b) FTA Section 5307 Planning and Development funds – Planning funds available under MI-90-X605 will be used to support Program deployment activities, pending eligibility determination, at the sole discretion and approval of the City.
- c) The total not-to-exceed-amount of grant funding provided by the City for the Program is One Million, Six Hundred Eight Thousand, Two Hundred Fifty Four and 00/100 Dollars (\$1,608,254.00) (the “Grant Funds”); provided, however, that (i) the FTA does not terminate the Grant Funds in whole or in part at any time before close-out of the Grant Funds and that a part or all of the Grant Funds remain available for use by the Program as contemplated by this Agreement, and (ii) DDP BIKE SHARE is in compliance with this Agreement. In the event that the FTA terminates the Grant Funds before any Grant Funds are expended on the Program, either or both parties may terminate this Agreement upon giving ten (10) days advance notice without further obligation or liability hereunder. In the event that the FTA terminates part of the Grant Funds after some of the Grant Funds have been expended on the Program, this Agreement shall remain in full force and effect. Additional grant funding may be available for the Program in the future and in that case would be provided at the City’s sole discretion and would be subject to a written amendment to this Agreement, such amendment to be subject to approval by the Detroit City Council.

**Section 2.03 City Actions in Support of Program Development:** The City shall lead and manage all aspects of any grants provided by the City and used to provide funding for the Program. The City shall own and maintain continuing control over all Facilities funded fully or partially by such grants, and the FTA and any other grantor shall have a secured interest in the Facilities, subject to divestiture of the City and grantor interests in such Facilities pursuant to the laws, rules and regulations governing such grants. Any City approval required by this Agreement must be in writing.

**ARTICLE III  
RESPONSIBILITIES AND OBLIGATIONS OF DDP BIKE SHARE**

**Section 3.01 DDP BIKE SHARE Actions in Support of Program Development:** DDP BIKE SHARE (or the DDP as DDP BIKE SHARE’s predecessor) has completed and provided to the

City or will complete and provide to the City the following elements of the Program before or after the Effective Date of this Agreement:

- a) Preparation of a scope of work and specifications for a Request for Proposals for one or more vendors for equipment and for operations and maintenance services.
- b) Preparation of a marketing and outreach plan for the Program.
- c) Demonstration of DDP BIKE SHARE's capacity to provide property and commercial liability insurance coverage in compliance with this Agreement.
- d) Demonstration that DDP BIKE SHARE will comply with all applicable federal statutes and regulations, including but not limited to the FTA Master Agreement; FTA Circulars 5010.1D and 9030.1D; 49 CFR Parts 27, 37, and 38; implementing the Americans with Disabilities Act; Title VI of the Federal Civil Rights Act; 49 CFR Part 40 Drug and Alcohol Testing; the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321, et. seq.; the National Historic Preservation Act (NHPA), 54 U.S.C. Section 300101, et seq.; 49 U.S.C. Section 5307; and the 2015 FTA Triennial Review Workbook, as amended.
- e) Identification and accounting of private sources of funds, which may be funds derived from any source other than the City, required to satisfy capital and operating costs of the Program, and any Match Fund requirements of the TAP Grant, including provision to the City of evidence of deposit of such private sources of funds into the Program account maintained by DDP BIKE SHARE. Deposited funds that are to be used as Match Funds shall not be withdrawn from the Program account except to be used to pay or reimburse the Match Funds to the City. DDP BIKE SHARE shall also provide evidence of its disbursement of the private funds by providing to the City copies of deposited checks or other evidence of deposit to the Program account maintained by DDP BIKE SHARE. DDP BIKE SHARE shall also provide an accounting to the City demonstrating that all funds generated during the term of the Program are reinvested into the Program. In the event that the City requests in writing details of any of the above transactions, DDP BIKE SHARE shall comply with such request within thirty (30) days of receipt of such written request. All accounting shall comply with generally accepted accounting practices.
- f.) Provision to the City of evidence that DDP BIKE SHARE has entered into an Operations and Maintenance contract with a qualified and experienced vendor to oversee the day-to-day operations and maintenance of the system, including but not limited to, Bicycle redistribution, minor repairs, cleaning, and preventative maintenance of the Facilities and the Bicycles.
- g.) Identification and mapping of the location of the Facilities.
- h.) Identification of, and compliance with, the process for obtaining property interests on both public and private property for installing the Facilities.

- i.) Reporting to the City in accordance with all FTA and City requirements as requested by the City.

## **ARTICLE IV THE PROGRAM**

**Section 4.01 General Program Description:** The Program to be undertaken by the City will involve (a) the purchase of the Facilities and their installation using only available grant funding and a local match amount provided by DDP BIKE SHARE, and (b) the purchase of Bicycles using all private funding provided by DDP BIKE SHARE. The City and DDP BIKE SHARE understand that the Bicycles and the Facilities are normally purchased together for projects such as the Program, and although funded separately, will be purchased together pursuant to FTA guidelines applicable to the Program. DDP BIKE SHARE will (1) cooperate with the City on the purchase of the Bicycles and the Facilities; (2) provide project management support for installation of the Facilities; (3) obtain any authorization required by the applicable public and private landowner(s) to install the Facilities upon both public and private property to enable members of the public to rent and return the Bicycles to and from the Facilities; and (4) oversee ongoing operations and maintenance of the Program.

**Section 4.02 City Program Specifics:** The City shall be responsible for undertaking and completing three general elements of the Program: (a) purchase of the Facilities and the Bicycles; (b) grant administration and compliance; and (c) financial management of all applicable Grant Funds.

- a) **Purchase of Facilities and Bicycles:** The City shall manage the procurement of all Program Facilities and Bicycles in accordance with FTA guidelines as defined by the FTA Master Agreement, FTA Circular 4220.1F, and the City of Detroit Department of Transportation Procurement Manual. Grant Funds and Match Funds will be used to purchase the Facilities and private funds will be used to purchase the Bicycles. As such, the City will own all of the Facilities subject to the FTA interest for the duration of the Facilities' useful life, and DDP BIKE SHARE will own all Bicycles. DDP BIKE SHARE and/or its designees shall provide specifications and technical requirements for the Facilities and the Bicycles that do not conflict with FTA procurement requirements. Further, DDP BIKE SHARE shall participate in the evaluation and decision-making process for the procurement of the Facilities and the Bicycles. The City will assist with DDP BIKE SHARE's procurement for operations and maintenance services in order to maintain compliance with FTA rules and regulations, but shall not be a party to that contractual arrangement. DDP BIKE SHARE will be responsible for the cost and expense associated with all operating and maintenance costs required to support the Program.
- b) **Grant Administration and Compliance:** The City is responsible for grant administration in compliance with FTA guidelines as defined by the FTA Master Agreement and FTA

Circulars 5010.1D and 9030.1E. The City has or will enter into the necessary grant agreements with the FTA and MDOT for the Grant Funds identified as currently available in this Agreement. However, DDP BIKE SHARE will procure all Match Funds from private sources and all operating and maintenance costs as required as part of the Program financing, provided, however, that this Agreement is not terminated pursuant to Section 2.02(c). The City will retain continuing control over Program Facilities in accordance with this Agreement and FTA requirements. The City will submit quarterly Federal Financial Reports and Milestone Progress Reports as required by FTA and MDOT. DDP BIKE SHARE shall collect or ensure the collection of all information required for Federal and State reporting purposes, and shall provide such collected and compiled information to the City. The City shall provide DDP BIKE SHARE with report templates in order for DDP BIKE SHARE to complete and provide such information to the City within 15 days following the end of the federal fiscal quarter.

- c) Financial Management of Grant Funds: The City shall comply with Federal Financial Management regulations defined by the FTA Master Agreement and FTA Circular 5010.1D. The City shall utilize the Grant Funds and Match Funds solely to purchase Program Facilities, and not any Bicycles. DDP BIKE SHARE shall be obligated to pay for any and all costs associated with the Program that are not deemed eligible project costs or that exceed the amount of Grant Funds and Match Funds received by the City, including, but not limited to, the purchase of the Bicycles to support the Program; provided, however, that this Agreement is not terminated pursuant to Section 2.02(c). Eligible project costs are defined in accordance with FTA Circular 5010.1D, as amended, as project activities eligible for reimbursement by Grant Funds as determined by the City in accordance with the grant scope and FTA policies and procedures.
- d) The City will pay for all budgeted capital costs that are eligible project costs and will request reimbursement from FTA and DDP BIKE SHARE, as appropriate. Total expenditures will be separated by the source of payment (Grant Funds and DDP BIKE SHARE Match Funds and private funds). The City will process the ECHO (Electronic Clearing House Operation) draw down for the FTA portion and mail hard-copy invoices with supporting documents for the DDP BIKE SHARE portion.

**Section 4.03 DDP BIKE SHARE Program Specifics**: DDP BIKE SHARE shall be responsible for undertaking four general elements of the program: (a) Project Management; (b) Marketing and Outreach; (c) Operations and Maintenance; and (d) Asset Management.

- a) Project Management: DDP BIKE SHARE, including the Detroit Bike Share Executive Director and his/her designees, shall serve as Project Management staff for the Program's deployment. DDP BIKE SHARE will manage the completion of certain Program design and preliminary engineering services, as well as obtain, at its own expense, all necessary leases, licenses, permits or other authorizations from the applicable approving party for use of the real property upon which the Program will operate. DDP BIKE SHARE shall collect or ensure the collection of all information required for Federal and State reporting purposes, and shall provide collected and compiled information to the City as required by the City. DDP BIKE SHARE and the City will meet as provided in Section 4.04 below.

- b) Marketing and Outreach: DDP BIKE SHARE, or its subcontractor, will prepare all marketing materials and market the Program. DDP BIKE SHARE will also plan and implement a comprehensive community outreach program to build community support and membership.
- c) Operations and Maintenance: DDP BIKE SHARE, its contractor(s) or subcontractor(s), will maintain the Facilities and the Bicycles in good operating order in accordance with the terms of this Agreement and, to the best of its ability and knowledge, will comply with all local, state and federal laws and regulations as defined herein. DDP BIKE SHARE agrees to maintain the Facilities to the extent satisfactory to the City, and pursuant to FTA rules, regulations and guidelines. DDP BIKE SHARE understands and agrees that the FTA retains an interest in the Facilities for the duration of their useful life. All income generated as a result of Program operations shall be used to support Program capital and/or operating expenses as stipulated in FTA Circular 5010.1D. The City will assist with DDP BIKE SHARE's procurement of operations and maintenance services, but will not participate in the contractual arrangement.
- d) Asset Management:

(1) Because Facility locations proposed by DDP BIKE SHARE could conflict with current or future City plans, result in an adverse impact on historic resources under NHPA, or have a disparate impact on the basis of race, color or national origin in conflict with Title VI of the Civil Rights Act of 1964, DDP BIKE SHARE shall request from the City advance preliminary review ("Advance Preliminary Review") for planning purposes of all proposed locations for the Facilities. The City shall consult with, and obtain written concurrence from, FTA when Facility locations are initially proposed or a Facility may be moved. Such Advance Preliminary Reviews shall have no bearing on whether the City provides formal approval of any of the locations. The Advance Preliminary Review shall include feedback from the City on relevant development plans, future planning priorities, disallowed site locations, and any other information relative to site selection. In the event that the City does not provide the results of the Advance Preliminary Review for planning purposes, in writing, to DDP Bike Share within 14 days of DDP Bike Share's request for such Advance Preliminary Review, then DDP BIKE SHARE may proceed to request formal approval (notwithstanding the absence of a written Advance Preliminary Review from the City) of all locations from all applicable City departments and other property owners and interested parties (i.e. DPW, BSEED, PDD, MDOT, FTA, EPA, etc.) and commissions (i.e. zoning, historical, etc.).

(2) Once each of the Facilities is installed, DDP BIKE SHARE shall keep a record of the location of each of the installed Facilities and report that location to the City for its accounting records. DDP BIKE SHARE must maintain current records as to the Facilities in such a manner that such Facilities can be located for inspection or inventory purposes within seven (7) days of request for inspection by DDOT. There shall be no addition, reduction, removal (except in the event of an emergency), or relocation of any of the Facilities without written City approval. If any of the Facilities is damaged or

destroyed, DDP BIKE SHARE shall, with its private funds, either immediately reimburse the FTA (through the City) for the damaged or destroyed Facilities or properly repair or replace the damaged or destroyed Facilities. In the event of repair or replacement of Facilities, the FTA interest in the original Facilities shall continue unimpaired in the repaired or replaced Facilities. DDP BIKE SHARE shall follow the procedures set forth in this subsection (d) for relocation of any of the Facilities. The locations of all Facilities are subject to annual City review and approval before seasonal installation. The disposal of any Facilities subject to a FTA interest must be approved by the City and follow City policies and procedures, which adhere to FTA disposition requirements.

- 4.04 Meetings between the City and the DDP BIKE SHARE.** The City and DDP BIKE SHARE shall meet to discuss program metrics, including proposed Program service levels within six months after the effective date of this Agreement, and thereafter at least twice yearly to discuss the Program and any suggested modifications to such metrics. The City and DDP BIKE SHARE shall also meet as necessary to discuss any addition or relocation of the Facilities for reasons including compliance with Title VI.

## ARTICLE V MISCELLANEOUS TERMS AND CONDITIONS

### **Section 5.01 The following are additional terms and conditions of this Agreement.**

- a. Notices. All notices, consents, approvals, requests and other communications (herein collectively called "Notices") related to this Agreement shall be given in writing, signed by an authorized representative of the City or the DDP BIKE SHARE, and hand delivered or mailed by U.S. first class mail, postage prepaid or by reputable overnight carrier, and addressed as follows:

If to the City: Department of Transportation

Attn: Director  
City of Detroit Department of Transportation  
1301 E. Warren Ave  
Detroit, MI 48207

If to DDP BIKE SHARE:

DDP BIKE SHARE  
Attn: Executive Director  
600 Renaissance Center, Suite 1740  
Detroit, MI 48226

With a copy to: Dykema Gossett PLLC  
400 Renaissance Center

Detroit, Michigan 48243  
Attn: Laura A. Weingartner, Esq.

At any time during the term of this Agreement, either party may change its name of person to receive notices and/or address by providing written notice of a new name and/or address to the other party.

- b. Consideration. Both parties agree that the duties, benefits and obligations of the City and DDP BIKE SHARE as set forth in this Agreement shall constitute valid consideration for this Agreement.
- c. Independent Parties. DDP BIKE SHARE and the City are independent of each other and do not intend, as a result of this Agreement or otherwise, to become a joint venture, partners, employees, servants, agents, representatives, contractors or any type of related business entities to one another.
- d. Severability. In the event that any provision in this Agreement is found by a court to be impermissible or illegal, that provision shall be stricken from the Agreement and the remainder of the Agreement shall remain in full force and effect in accordance with its original overall intent.
- e. No Third-Party Rights. DDP BIKE SHARE and the City do not intend to create any legal or equitable rights or benefits in any third-party or any other person as a result of this Agreement.
- f. Choice of Law and Venue. This Agreement shall be governed by the laws of the State of Michigan, excluding its choice of laws rules. Any claim or cause of action related to this Agreement shall be initiated in a court of competent jurisdiction located in Wayne County, Michigan.
- g. Merger. This Agreement constitutes the entire agreement between the parties, and all prior discussions, agreements, communications, and understandings, whether written or verbal, are hereby merged into this Agreement.
- h. Modification. No amendment, change or modification to this Agreement, including any amendment, change or modification to this paragraph, shall be effective unless the same is in writing, references this Agreement, is executed by both parties and is approved by Detroit City Council.
- i. Transfer. Any transfer of interest in this Agreement must comply with applicable FTA laws, rules and regulations, as well as applicable state and local law, and where not prohibited by law, requires the written consent of the other party.
- j. Effective Date and Term. The Agreement shall become effective upon execution by both parties and approval by Detroit City Council. The Agreement shall expire ten (10) years after the effective date or earlier as set forth in this Agreement. The parties may extend the term of the Agreement by up to five (5) additional years by a formal, written amendment referencing this Agreement and approved by Detroit City Council.
- k. Indemnification. Except for claims arising solely and exclusively from the intentional, willful and wanton acts or omissions of the City with respect to the Facilities only, DDP BIKE SHARE agrees to indemnify, defend, and hold the City and the FTA harmless against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, fees and expenses for

attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by, or asserted against the City or its departments, officers, employees, or agents by reason of any of the following occurring during the term of this Agreement:

- (1) Any negligent or tortious act, error, or omission attributable in whole or in part to DDP BIKE SHARE or any of its Associates; and
- (2) Any failure by DDP BIKE SHARE or any of its Associates to perform its obligations, either express or implied, under this Agreement; and
- (3) Any and all bodily injury or personal injury (including death) to any person or property where such injury arises out of DDP BIKE SHARE's or any of its Associate's performance of this Agreement. DDP BIKE SHARE shall examine all places where it will perform the Program services in order to determine whether such places are safe for the performance of the Services. Except for claims arising solely and exclusively from the negligence or willful acts or omissions of the City, DDP BIKE SHARE undertakes and assumes all risk of dangerous conditions when not performing Services inside City offices.

In the event any action shall be brought against the City by reason of any claim covered under this Agreement, DDP BIKE SHARE, upon notice from the City, shall at its sole cost and expense defend the same.

DDP BIKE SHARE agrees that it is DDP BIKE SHARE's responsibility and not the responsibility of the City to safeguard the property that DDP BIKE SHARE or its Associates use while performing this Agreement. Further, except for claims arising solely and exclusively from the intentional, willful and wanton acts or omissions of the City, DDP BIKE SHARE agrees to hold the City harmless for any loss of such property used by any such person pursuant to DDP BIKE SHARE's performance under this Agreement.

The indemnification obligation under this subsection k. shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts or other employee benefit acts, except to the extent that any such loss arises solely and exclusively from the intentional, willful and wanton acts or omissions of the City.

DDP BIKE SHARE agrees that this subsection k. shall apply to all claims, whether litigated or not, that may occur or arise between DDP BIKE SHARE or its Associates and the City, except for claims arising solely and exclusively from the intentional, willful and wanton acts or omissions of the City.

1. Insurance. During the term of this Agreement, the DDP BIKE SHARE shall maintain and cause its contractors and subcontractors to maintain, the following insurance, except for the different commercial general liability insurance amounts each is required to maintain as set forth in subparagraphs (3) and (4) below, at a minimum and at their expense:

<u>TYPE</u>	<u>AMOUNT NOT LESS THAN</u>
(1) Workers' Compensation	Michigan Statutory minimum
(2) Employers' Liability	\$500,000.00 minimum each disease \$500,000.00 minimum each person \$500,000.00 minimum each accident
(3) Commercial General Liability Insurance (Broad Form Comprehensive) (Applicable to DDP BIKE SHARE only)	\$6,000,000.00 each occurrence \$6,000,000.00 aggregate
(4) Commercial General Liability Insurance (Broad Form Comprehensive) (Applicable to Contractors and Subcontractors only)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
(5) Automobile Liability Insurance (covering all owned, hired and non-owned vehicles with personal and property protection insurance, including residual liability insurance under Michigan no fault insurance law)	\$1,000,000.00 combined single limit for bodily injury and property damage

Each commercial general liability insurance policy shall include an endorsement naming the "City of Detroit" and the FTA as the only additional insureds. The additional insured endorsement shall provide coverage to the additional insureds with respect to liability arising out of the named insured's ongoing work or operations performed for the additional insured under the terms of this Agreement. Each commercial general liability policy shall state that the insurance is primary and not excess over any insurance already carried by the City of Detroit or the FTA and shall provide blanket contractual liability insurance for all written contracts.

Each such policy shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

All insurance required by this Agreement shall be written on an occurrence-based policy form.

Each Commercial General Liability policy shall be endorsed to have the general aggregate apply to the Program referred to in this Agreement only.

If during the term of this Agreement changed conditions or other pertinent factors should, in the reasonable judgment of the City, render inadequate the insurance limits, DDP BIKE SHARE shall furnish on demand such additional coverage or types of coverage as may reasonably be required under the circumstances. All such insurance shall be effected at the expense of DDP BIKE SHARE and its contractors and subcontractors under valid and enforceable policies, issued by insurers licensed to conduct business in Michigan and are otherwise acceptable to the City.

DDP BIKE SHARE, its contractors or subcontractors shall be named in each of their policies as the only insured. Certificates of insurance evidencing the coverage required by this subsection l. shall, in a form acceptable to the City, be submitted to the City prior to the effective date of the Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies. In the event either DDP BIKE SHARE, its contractors or subcontractors receives notice of policy cancellation, it shall immediately notify the City in writing.

If any work is contracted or subcontracted in connection with this Agreement, DDP BIKE SHARE shall require each contractor and subcontractor to effect and maintain the types and limits of insurance set forth in this Agreement and shall require documentation of same, copies of which documentation shall be promptly furnished to the City before the DDP BIKE SHARE enters into a contractual arrangement with each Contractor or Subcontractor.

The DDP BIKE SHARE, and its contractors and subcontractors shall each be responsible for payment of all deductibles for their policies contained in any insurance required under this Agreement. The provisions requiring DDP BIKE SHARE, and its contractors and subcontractors, as applicable, to carry the insurance required under this subsection l. shall not be construed in any manner as waiving or restricting the liability of DDP BIKE SHARE, or its contractors or subcontractors, as applicable, under this Agreement.

- m. Force Majeure. No failure or delay in performance of this Agreement, by either party, shall be deemed to be a breach thereof when such failure or delay is caused by a force majeure event including, but not limited to, any Act of God, strikes, lockouts, wars, acts of terrorism, riots, epidemics, explosions, sabotage, breakage or accident to equipment, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of a party.
- n. Compliance. Except as otherwise provided in Section 4.02 above, DDP BIKE SHARE shall be responsible for ensuring compliance with all applicable federal, state, and local laws, rules, regulations, and orders. Any violation of the applicable laws, rules, regulations, and orders; or breach of the terms contained within this Agreement may be considered grounds for termination of this Agreement.
- o. Default and Termination. In the event of any default under this Agreement, or any material failure in the performance of any covenant, agreement or provision hereof, the party not in default shall notify the defaulting party in writing. The defaulting party shall have thirty (30) calendar days after delivery of said written notice to cure said default (or

such additional time as necessary in the event of a default that is not capable of being cured within the 30-day cure period, so long as the defaulting party has commenced the cure within such 30-day cure period and diligently pursues the cure to completion). Failure to cure said default as provided above shall be considered a material breach of this Agreement. Upon the occurrence of a material breach of this Agreement by DDP BIKE SHARE, The City may not terminate this Agreement, but rather the City's remedies shall be to: (a) seek specific performance of the applicable obligation that is the subject of a material breach; (b) elect to cure or perform the applicable obligation that is the subject of the material breach and to receive reimbursement for all reasonable costs and expenses associated with such cure or performance as set forth in the Agreement; and/or (c) to seek compensatory damages for such material breach; provided, in no event shall DDP BIKE SHARE be liable for punitive, exemplary, consequential or other indirect damages.

**Section 5.02 Disposition of Facilities after Expiration of Agreement.**

- a.) After the expiration of the term of this Agreement, the City and DDP BIKE SHARE agree that DDP BIKE SHARE may purchase the Program Facilities from the City for the good and valuable consideration of One and 00/100 Dollar (\$1.00) after the City completes its asset retirement process in accordance with FTA guidelines. Thereafter, the City shall have no obligations or liabilities whatsoever with respect to the Program Facilities.
- b.) If DDP BIKE SHARE desires to purchase the Facilities outright before the ten year term of the Agreement expires, then DDP BIKE SHARE shall pay to the City, which shall in turn, pay or reimburse the FTA or other Grantor agency, the Federal interest for the Facilities as determined by the City in accordance with FTA rules, regulations, and guidelines. In accordance with FTA Circular 5010.1D, as amended, the Federal interest is determined by calculating the fair market value of the project property immediately before the occurrence prompting the withdrawal of the project property from appropriate use. According to FTA Circular 5010.1D, fair market value is the greater of the unamortized value of the remaining service life based on straight line depreciation of the original purchase price or the Federal share of the sales proceeds.
- c.) Notwithstanding subsections a.) and b.) above, after the expiration of the term, DDP BIKE SHARE will still be required to perform the Services and comply with all federal, state and local laws, rules and regulations as set forth herein as long as the Program Facilities are in operation and located on public property and/or right-of-way.

IN WITNESS WHEREOF, the City and the DDP BIKE SHARE, by and through their duly authorized officers and representatives, have executed this Agreement.

WITNESSES:

1. [Signature]  
(signature)

RENÉE B. DANAHA  
(print name)

2. [Signature]  
(signature)

Lisa Nuszowski  
(print name)

DDP BIKE SHARE:

BY: [Signature]  
(signature)

ERIC B. LARSON  
(print name)

ITS: PRESIDENT  
(title)

WITNESSES:

1. \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print name)

2. \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print name)

CITY OF DETROIT TRANSPORTATION DEPARTMENT:

BY: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print name)

ITS: \_\_\_\_\_  
(title)

APPROVED BY CITY COUNCIL ON:

\_\_\_\_\_

OFFICE OF CONTRACTS AND PROCUREMENT:

\_\_\_\_\_

APPROVED BY THE LAW DEPT. PURSUANT TO §7.5-206 OF THE CHARTER OF THE CITY OF DETROIT:

\_\_\_\_\_  
CORPORATION COUNSEL Date

**This Agreement is not valid or binding until approved by the Detroit City Council and signed by the City's Office of Contracting and Procurement.**

