

BICYCLE SHARING PROGRAM AGREEMENT

THIS AGREEMENT is entered into by and between the Greater Dayton Regional Transit Authority (“GDRTA”) and Bike Miami Valley, Ohio, an Ohio non-profit corporation (“BMV”; collectively, with GDRTA, the “Parties”).

RECITALS

WHEREAS the GDRTA wishes to assist and participate in the operation of a community bicycle sharing program initiated and owned by BMV in and around the City of Dayton (the “Program”);

WHEREAS GDRTA has acquired or will acquire at least 200 specially-designed, bike-sharing bicycles (the “Bicycles”) and other equipment necessary for operation of the Program, including approximately 22 stations, solar kits, docks, bases, advertising/map modules, software, software updates, and miscellaneous ancillary items (collectively, the “Equipment”); and

WHEREAS the Parties each find that providing the bicycle sharing services contemplated by this Agreement is for the benefit of the public and that the costs of each party and the mutual promises contained herein constitute adequate consideration for the obligations set forth in this Agreement;

NOW, THEREFORE, in exchange for the mutual promises and covenants set forth in this Agreement, the Parties hereby agree as follows:

AGREEMENT

Article I: Purpose, Term.

A. The purpose of this Agreement is to outline the roles and responsibilities of GDRTA and BMV in the launch and implementation of a bicycle sharing program in Dayton, Ohio.

B. The term of this Agreement is three years. Upon expiration of the term of this Agreement, this Agreement shall automatically renew for one year and shall automatically renew each year thereafter for a period of one year unless one of the Parties provides the other written notice of termination no less than 60 days prior to any such renewal.

Article II: Operations

A. The Joint Operations Plan (“Operations Plan”).

I. The Operations Plan for the day to day operations of the Program shall include (but not be limited to) protocols for:

- a. Maintenance (as that term is hereinafter defined) schedule for the bicycles and equipment;
- b. Station locations;
- c. Bicycle redistribution schedule;
- d. Reimbursements due to GDRTA for replacement parts software licensing fees as set forth in Article II.B.2 of this Agreement; and
- e. Customer management and relations.

2. The parties shall formulate an initial Operations Plan to be effective as of the date of the Parties' execution of an addendum to this Agreement. Such Operations Plan shall be incorporated as a part of this Agreement. The Operations Plan shall automatically renew every 180 days unless, prior to renewal, the Parties have agreed in writing upon a revised Operations Plan. The Parties may, by mutual written agreement, modify the Operations Plan at any time and specify a new date for its review or automatic renewal.

B. Party-specific Program Responsibilities

1. GDRTA will:

- a. Procure, own, install and make available to BMV (at no charge to BMV) the Equipment and Bicycles for operation of the Program in accordance with the Operations Plan. Procurement costs are estimated to be One Million Thirty Six Thousand Forty and No/100 Dollars (\$1,036,040). In the event the procurement costs are more than 10% greater than this estimate, GDRTA shall have the unilateral ability to terminate this Agreement so long as it exercises such right within thirty (30) days of its receipt of the actual costs of procurement.
- b. During the term of this Agreement, apply insurance proceeds attributable to damage or loss of the Bicycles and/or Equipment to the replacement of same;
- c. Perform Maintenance of the Equipment and Bicycles as outlined in the Operations Plan. "Maintenance" consists of:
 - i. Performing preventive maintenance inspections in accordance with original equipment manufacturer instructions;
 - ii. Performing minor maintenance such as repairing flats, replacing chains and brakes, tightening nuts, bolts, and screws, and other general bicycle and station maintenance;
 - iii. Cleaning of all rental equipment, including bicycles and stations; and
 - iv. Balancing the distribution of bicycles across the station network
- d. Store the Equipment and Bicycles when not in use; and
- e. Provide a call center for customers of the Program as defined in the Operations Plan.

2. BMV will:

- a. Recruit customers for the Program as contemplate by the Operations Plan;
- b. Promote the Program and solicit Program sponsors as contemplated by the Operations Plan;
- c. Arrange for third party vendor servicing for all Bicycles and Equipment beyond the Maintenance responsibilities of GDRTA; and
- d. Reimburse GDRTA for replacement parts for the Bicycles and Equipment acquired by GDRTA as needed and as provided in the Operations Plan;
- e. Reimburse GDRTA for the annual software licensing fees due to Program station provider(s); and
- f. Collect, and shall be entitled to retain for the purposes set forth herein, all revenues arising from operation of the Program.
- g. Be responsible for all revenue management functions including but not limited to collection of delinquent accounts, dispute resolution and proper accounting for same.

3. Each Party is solely responsible for the direction and control of its own employees.

Article III: Responsibilities for Program-related Property and Liabilities

A. Insurance

1. GDRTA and BMV shall each have or obtain as of the effective date of this Agreement the following minimal insurance policies and coverage, with BMV and GDRTA listed as an additional insureds on the other's policies:

- a. Commercial General Liability with \$1,000,000 combined single limit coverage for each occurrence for bodily injury and property damage related to any aspect of the performance of the Agreement; and
- b. Umbrella Excess Coverage of \$1,000,000.

2. Proof of insurance shall be furnished to any Party upon the other Party's request within a reasonable time.

B. Mutual Indemnity. Each Party (the "Indemnifying Party") hereby agrees to defend, indemnify and hold harmless the other for any actions, demands, lawsuits, claims and damages (collectively, "Claims") whatsoever arising from the Indemnifying Party's performance or non-performance of the responsibilities under this Agreement and in connection with the operation of the Program to the extent prior certified funds have been identified as the maximum amount of exposure by RTA for all claims under this section. To the extent any Claims arise against one or both of the Parties and the Parties cannot agree which Party's responsibilities or operations gave rise to such Claim, each Party shall bear its own costs and liabilities and shall not be entitled to be defended and indemnified by the other. To the extent a Claim arises in which, pursuant to this section, one Party is obligated to defend, indemnify and hold harmless the other, such Party shall be obligated to pay all costs of litigation, attorney fees, expert witness fees and the like only to the extent such costs are not covered by insurance or would not have been covered by insurance had that Party maintained the insurance coverage required by this Agreement.

C. Immunity. Neither the terms nor the existence of this Agreement shall operate as a waiver of any immunity to which GDRTA may be entitled, provided, however, that no claim of immunity may be used in any proceeding over the enforcement of this Agreement.

Article IV: Miscellaneous Provisions.

A. Severability. If any of the terms, provisions or covenants of this Agreement are for any reason deemed to be invalid or unenforceable, such invalidity or unenforceability of such terms, provisions or covenants shall not operate to make the remaining terms, provisions or covenants unenforceable, and this Agreement shall be read to the maximum extent possible to include only those terms, provisions and covenants that are valid and enforceable.

B. Venue and Choice of Law. This Agreement shall be construed under the laws of the State of Ohio without regard to its conflicts of law principles. Any suit brought to enforce this Agreement or any claims

brought thereunder may be brought in the Court of Common Pleas, Montgomery County, Ohio, each Party hereby consenting to the propriety of such venue.

C. Enforceable Agreement. Each Party represents and warrants that the individual executing this Agreement on such Party's behalf has obtained all proper authorization for such execution to the extent required to create a binding and enforceable obligation to perform the covenants of this Agreement.

D. Limitation on Liability. In any action relating to this Agreement or the operation of the Program, neither Party shall be liable to the other for the other's indirect or consequential damages.

WHEREFORE this Agreement is executed and deemed effective upon the date of the Parties' execution.

**GREATER DAYTON REGIONAL TRANSIT
AUTHORITY**

BIKE MIAMI VALLEY, OHIO

By:



Its:

Eyob. Solomon

Date:

11/2/14

By:



Its:

President

Date:

11/2/14