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MEMORANDUM OF UNDERSTANDING
BETWEEN
CHITTENDEN AREA TRANSPORTATION MANAGEMENT ASSOCIATION (CATMA), AND
CITY OF BURLINGTON VERMONT

This Memorandum of Understanding (MOU) is entered into and effective on **February**, 2023 between the Chittenden Area Transportation Management Association, hereinafter called "CATMA," and the City of Burlington, herein after called "City," sometimes collectively known as "the Parties." The agreement is entered into by the above Parties to clarify the responsibilities for the Parties moving forward regarding the Electric Assist Bikeshare System in Burlington. This MOU shall be a living document that can be revised or updated as needed based on a consensus by the Parties that it needs to be amended. It may be amended as described in the "MOU Amendment" section.

WHEREAS, CATMA is a non-profit, membership based, transportation management association serving Chittenden County, that acts as the contract holder for the Electric Assist Bikeshare System in Burlington, South Burlington, and Winooski; and

WHEREAS, The City of Burlington is the largest municipality in Chittenden County and all of Vermont.

WHEREAS, an Electric Assist Bikeshare System will be a hybrid system, with bike parking and storage controlled by geofenced hubs establishing drop-off and pickup zones.

WHEREAS, the goal of the bikeshare system is to provide a low-barrier transportation option for the Burlington Community. The bikeshare system is not intended to serve recreational uses in the region.

WHEREAS, CATMA and the City agree to a mutual commitment to bring about and maintain an Electric Assist Bikeshare System to the residents and visitors of Burlington on the following terms.

NOW THEREFORE, it is mutually agreed as follows:

1. **Exclusive Operation.** The Electric Assist Bikeshare System shall operate as the lone bike share operation in the City of Burlington, with CATMA as the contract holder with **INSERT OPERATING COMPANY HERE ("Operator")**. CATMA will act as the primary program manager, working with Operator to ensure the needs of the City of Burlington are met.
2. **License Required.** The process for hubs to be located on the property of the City of Burlington is the following:
 - a. **Encumbrance Permit.** The operator of the Electric Assist Bikeshare System ("Operator") shall obtain an Encumbrance Permit through the Burlington Department of Public Works for each hub location in the City's right-of-way if required. Such placement of hubs may require the recommendation and/or approval of the City Council License Committee and full City Council.

- b. **Municipal Approvals Required.** For hubs located within City-owned parcels or parks, the Operator shall obtain a license agreement through Burlington Parks, Recreation & Waterfront. For any hubs on private property, the Operator shall obtain any necessary private agreements. The Operator assumes all responsibility to gain the necessary permits, licenses, or agreements to locate their hubs. CATMA agrees to work with operator to ensure all necessary approvals are secured prior to hub placement. Notwithstanding this agreement, CATMA understands that City cannot guarantee approval or any application or request of Operator and nothing in this MOU shall be interpreted to do so.
3. **Equipment.** CATMA shall ensure that Operator provides and maintains and all equipment as necessary to conduct Bikeshare Operations.
 - a. **Maintenance by Operator.** CATMA shall ensure that Operator maintains its equipment used in furtherance of Bikeshare Operations in good working in accordance with general safety and industry standards. Such maintenance shall include routine and necessary repairs, upgrades, and preventative maintenance.
 - b. **Duty to Remove.** Any equipment following below industry standard for safety and/or operational reliability shall be promptly removed from circulation until such time as it has been restored to acceptable functionality. If City and/or CATMA becomes aware that unsafe equipment is in circulation, it shall notify operator, unless such equipment poses an immediate safety risk to users and/or the public. City shall have the right to remove such equipment in that instance and to notify Operator and/or CATMA as soon as practicable thereafter.
4. **Burlington Specific Conditions.** The following Burlington Specific Conditions for use and operation shall apply:
 - a. **No Ride Zones.** The Operator shall ensure that the following areas in or adjacent to the City of Burlington are No Ride Zones:
 - Church Street Marketplace
 - North of the bridge over the Winooski River along the Waterfront Path
 - b. **Slow Zones.** The Operator shall ensure that in at least the following locations are Slow Zones:
 - Waterfront Park
 - Waterfront Path / Burlington Greenway
 - c. **Limitation of Waterfront hub locations.** No more than two bikeshare hubs shall be located within 600 feet of Waterfront Park. No more than four bikes shall be at these hub at the start of any given day.

- d. Data Reporting and Targets. In addition to overall system-wide reporting, the Operator shall provide the City with data showing the total number and characteristics of trips that begin and end at any station within 600 feet of the Waterfront Park on a monthly basis.

Operator understands that the shared mobility system is designed for transportation and not recreation. To that end, a goal of this system is that 80% or more of trips need to be other than roundtrip waterfront trips. A roundtrip waterfront trip is defined as a trip that begins and ends at the same waterfront station. The Operator agrees to gather and synthesize this data through September 30 by October 15, and, if requested by the City of Burlington, present this data public meeting in October or November 2023.

- e. Signage. Operator shall provide signs, either physical or digital in the app, at any hub locations within 600 feet of the Waterfront Greenway that say, at a minimum, "The motor on these bikes will cease to operate prior to the Causeway. For long recreational rides, please contact one of Burlington's terrific bike rental shops."
- f. Escalating Pricing. The Operator shall integrate escalating pricing into its fee structure to discourage uninterrupted recreational trips.
- g. System Mapping. Prior to launching the bikeshare system, a proposed map of hub locations shall be provided to the City.
- h. Equity and Employer Pricing. Operator agrees to create discounted employer-based membership options to non-City employers within the City of Burlington. This will be advertised on the Operator's website and through other direct employer marketing efforts.

- 5. Insurance Coverages. CATMA that it shall ensure that Operator purchases and maintains the following types of insurance coverages, consistent with the policies and requirements of the Partners, and provide evidence of continuing coverage to the Partners. CATMA further agrees that it shall require Operator to produce a certificate of insurance that lists City as having additional insured status prior to commencing operation.

- a. Commercial General Liability Insurance. Operator shall procure Commercial General Liability Insurance, on an occurrence form, providing all major divisions of coverage, including but not limited to: (1) Premises Operations; (2) Products and Completed Operations; (3) Personal Injury and Advertising liability; (4) Fire legal liability. The Commercial General Liability Insurance shall provide the following minimum limits:

- 1. General Aggregate: \$2,000,000
- 2. Products-Completed Operations Aggregate \$2,000,000

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| 3. Personal & Advertising Injury | \$1,000,000 |
| 4. Each Occurrence | \$1,000,000 |
| 5. Damage to Rented Premises | \$ 250,000 |
| 6. Med. Expense (Any one person) | \$ 5,000 |
- b. Workers Compensation. Operator shall provide Workers' Compensation coverage in accordance with the statutory limits as established by the State of Vermont and with a minimum limit for employer's liability no lower than the following: Bodily Injury by Accident - \$500,000 each accident; Bodily Injury by Disease - \$500,000 each employee. Operator shall require all contractors and subcontractors performing work on its behalf under this Agreement to obtain an insurance certificate showing proof of Workers' Compensation coverages and Operator shall require that all subcontractors submit certificates of such insurance to the Partners prior to performing.
- c. Employers' Liability Insurance. Operator shall also maintain Employers' Liability Insurance Coverage with limits of at least:
- | | |
|-------------------------------|--|
| 1. Bodily Injury by Accident: | \$500,000 each accident |
| 2. Bodily Injury by Disease: | \$500,000 policy limit,
\$500,000 each employee |
- d. Commercial Business Automobile Liability Insurance. Operator shall provide Commercial Business Automobile Liability Insurance, which shall include coverage for bodily injury and property damage liability arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each accident.
- e. Commercial Umbrella Liability Insurance. Operator shall provide a Commercial Umbrella Liability Insurance Policy to provide excess coverage above the Commercial General Liability, the Commercial Business Automobile Liability, and Employers' Liability on a follow form basis in addition to the minimum limits set forth herein. The minimum amount of Umbrella limits required above the coverages and minimum limits stated above shall be \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
- f. Application to Others. Operator shall require all contractors, subcontractors, agents, or workers performing work or services on its behalf in furtherance of this Agreement to obtain an insurance coverage meeting the requirements of this section as evidence on a certificate of insurance. Operator shall require that all such persons submit certificates of such insurance to the Partners prior to performing work or services.



DRAFT

- g. **Maintaining Coverage.** The Partners may require copies of any insurance policies entered into by Operator, and Operator is responsible for annually verifying and confirming in writing to the City that all sub-contractors, agents, operators or workers meet the minimum coverage and limits plus maintain current certificates of coverage, and that all work activities related to this Agreement shall meet minimum coverage and limits, with any sub-contractors, agents, operators or workers complying with the same insurance requirements as Operator.
 - h. **Continuing Obligation.** Unless otherwise expressly provided herein, the obligation to insure as provided herein continues throughout term of this Agreement and shall not terminate until this Agreement has expired or been terminated, and the right to occupy the premises is returned to the Partners.
 6. **Compliance with City Ordinances.**
 - a. **Livable Wage.** Operator shall pay every employee a livable wage under the Burlington Livable Wage Ordinance and shall comply with all portions of the Livable Wage Ordinance, including submitting a written certification (Attachment I) during each year of the term of the Operator's Agreement with CATMA demonstrating compliance with the Livable Wage Ordinance.
 - b. **Union Deterrence.** Operator shall submit written certification during each year of the term of the Operator's Agreement with CATMA demonstrating compliance with the Union Deterrence Ordinance.
7. **Term and Termination.** The term of this MOU shall commence upon the Effective Date and continue through **ENTER DATE** (the "Term"), unless earlier terminated as set forth in this MOU. Either Party may terminate this MOU, upon ninety days prior written notice without cause or immediately upon written notice to the other Party if the other Party materially breaches this MOU, and such breach is incapable of cure or, being capable of cure, remains uncured for thirty (30) days after the non-breaching Party provides the breaching Party with written notice thereof.
8. **MOU Amendment.** Any of the parties may propose changes to this agreement. Changes that are mutually agreed upon shall be incorporated as written amendments to this MOU. No variation or alteration of the terms of this MOU will be valid unless made in writing and signed by the authorized representatives of the Parties.
9. **Indemnification.** CATMA shall—at its sole cost and expense—indemnify, defend, and hold harmless the City, its officers, agents, trustees and employees, their successors and assigns, individually or collectively, from and against all liability and any claims, suits, expenses, losses, judgments, proceedings, damages, expenses, demands, suits, costs (including costs of defense, reasonable attorney fees, and reasonable professional fees incurred in defense or incurred in enforcement of

this indemnity), and causes of action of every kind or character whatsoever, directly or indirectly arising from, related to, or connected with, in whole or in part, Operator's services under this Agreement, including but not limited to claims directly or indirectly arising from, related to or connected with, in whole or in part: any act, omission, fraud, wrongful or reckless conduct, fault or negligence by Operator, or its officers, directors, agents, employees, subcontractors or suppliers of any tier, or by any of their employees, agents, or persons under their direction or control.

10. Records Retention.

- a. Access. CATMA agrees to, and ensure Operator's compliance with, retaining, in its files, and to produce to the City to the extent available and ensure—within a reasonable time—all books, documents, Electronic Data Media (EDM), and other records related to accounting under this Agreement with the City ("Records"), at any time during this Agreement and for a period of at least three (3) years after its completion or termination. In addition, if any audit, claim, or litigation is commenced before the expiration of that three (3) year period, the Records shall be retained until all related audits, claims, or litigation are resolved.
- b. Audit. CATMA further agrees that the City shall have access to the Records for the purpose of reviewing and audit during the Agreement period and anytime within the aforementioned retention period. Copies of all Records shall be provided to the City if requested in the format in which the records were obtained, created, or maintained, such that their original use and purpose can be achieved. CATMA agrees that Operator, sub-contractors, or any representatives performing work related to the Agreement, are responsible to insure that all Records created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage.

11. Damage to Property. CATMA agrees that it and/or Operator shall be responsible for any and all damage to property belonging to City to the extent caused by an act or omission of the Operator, its agents, or employees. CATMA and/or Operator shall be responsible for repairing any damaged property and shall pay the costs therefor.

12. Force Majeure. Neither Party shall be deemed to have breached this Agreement if it is prevented from performing any of its obligations hereunder by reason of COVID-19, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, pandemic or any other circumstances for which it is not responsible or which is not under its control, and the Party experiencing force majeure gives written notice to the other Party identifying the nature of such force majeure, and when it began. The Party experiencing force majeure shall take immediate action to attempt to remove such causes of force majeure as may occur from time to time and its operations under this Agreement shall be resumed immediately after such cause has been removed, provided that neither Party shall be required to settle any labor dispute except upon terms that the Party deems acceptable. The suspension of any obligations under this section shall not cause the term of this Agreement to be extended

and shall not affect any rights accrued under this Agreement prior to the occurrence of the force majeure. The Party giving notice of the force majeure shall also give notice of its cessation.

13. General Provisions.

- A. **Assignment.** Operator shall not assign this Agreement, transfer, or otherwise sublet any part of the services without the expressed written consent of the Partners. Assignment shall not be deemed to have occurred if there is as a transfer of substantially all the assets or change of control of Operator.
- B. **Binding Effect.** All provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties respective heirs, legal representatives, successors, and assigns.
- C. **Caption.** The captions and headings in this Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.
- D. **Counterparts.** This Agreement may be executed in multiple identical counterparts, all of which shall constitute one agreement.
- E. **Entire Understanding.** This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings—oral or written—are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.
- F. **Extinguishment and Replacement.** This Agreement extinguishes and replaces any prior agreements between the Parties related to the services described herein upon the Effective Date hereof.
- G. **Modification.** Modifications of this Agreement shall not be effective unless agreed to in writing by the Parties in a formal written amendment to this Agreement, properly executed and approved by all the Parties.
- H. **Independent Counsel—Costs.** The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely and fairly negotiated. Each Party acknowledges that in executing this Agreement it has relied solely on its own judgment, belief and knowledge, and such advice as it may have received from its own counsel, and that it has not been influenced by any representation or statement made by the other Party or such Party's Affiliates, including its counsel. Each Party shall pay its own fees and expenses incurred in connection with the negotiation, drafting and execution of this Agreement, and in respect of the transactions contemplated by this Agreement (including, without limitation, attorney's fees and costs).
- I. **Interpretation.** The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly construed against any Party. This Agreement shall be construed and performance thereof shall be determined in accordance with the laws of the State of

Vermont.

- J. Waiver. No waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Party making such waiver, and any such waiver shall apply only to the specific occasion which is the subject of such waiver or consent and shall not apply to the occurrence of the same or any similar event on any future occasion. No delay express waiver of any provision of this Agreement shall be deemed to be or shall constitute a waiver of any other provision whether or not similar, and no waiver shall constitute a continuing waiver. Any delay in enforcement of any provision hereof shall not constitute a waiver thereof.
- K. Registration. During the term of this Agreement, Operator shall be registered as a business in good standing with the State of Vermont and be a recognized business entity authorized to transact business in the State.
- L. Severability. The invalidity or unenforceability of any provision of this Agreement or the agreement documents shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement
- M. Survival of Certain Terms. Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after expiration or termination shall survive such expiration or termination and shall be enforceable by the Partners if Operator fails to perform or comply as required.
- N. No Third Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties, UVM and CC. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.
- O. Public Records. All records submitted to the Partners, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act. The determination of how those records must be handled is solely within the purview of the Partners. All records considered to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, shall be identified by Operator, as shall all other records considered to be exempt under the Act. It is not sufficient to merely state generally that a document or record is proprietary, a trade secret, or otherwise exempt. Particular records, pages or sections that are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.
- P. Relationship. The Parties agree that the Operator is an independent contractor. To that end, the Operator shall determine the method, details, and means of performing the work, but will comply with all

legal requirements in doing so. The Operator shall provide its own tools, materials or equipment. The Parties agree that neither the Operator nor its principal is an employee of the Partners or any of their departments, agencies, or related entities. The Parties also agree that neither the Operator nor its principal is entitled to any employee benefits from the Partners. Operator understands and agrees that it and its principal have no right to claim any benefits under a Partner's employee retirement system, a Partner's worker's compensation benefits, health insurance, dental insurance, life insurance, or any other employee benefit plan offered by the Partners.

Q. Accessibility. Operator shall comply with applicable federal and state disability laws by using commercially reasonable efforts to adhere to the Web Content Accessibility Guidelines 2.0 AA Standards published by the World Wide Web Consortium's Web Accessibility Initiative. In the event that the mobile application or web site is not in conformance with federal and state disability laws, policies, and regulations, then at Operator's sole expense Operator shall cooperate to (i) make modifications so as to be in conformance therewith and (ii) address the provision of equally effective access to the mobile application or web site for users with specific disability-related access needs.

14. Counterparts; Signature Pages. This Agreement may be executed and delivered in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered with separate signature pages with the same effect as though all parties had executed and delivered the same signature page.



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15. Signature. The parties hereby agree to the obligations and responsibilities outlined above.

Chapin Spencer, Director, Department of Public Works

Date

Sandy Thibault, Executive Director, CATMA

Date