

OPERATING AGREEMENT
Gotcha E-bike and E-scooter Program

This Operating Agreement (“Agreement”), is made by and between Gotcha Mobility, LLC, a Delaware limited liability company (“Operator”), the City of Burlington, Vermont (“Burlington”), the City of South Burlington, Vermont (“South Burlington”), the City of Winooski (“Winooski”), and the Chittenden Area Transportation Management Association (“CATMA”). The Parties agree to the terms and conditions of this Agreement.

1. RECITALS

- A. Authority.** Authority to enter into this Agreement exists in each Parties’ respective governing documents. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- B. Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.
- C. Operator.** Operator is in the business of constructing and providing electronic bicycles (“e-bikes”) and electronic scooters (“e-scooters”) with related branding for municipalities, colleges, universities, multi-purposed events and third party brands throughout the United States. Operator seeks to launch e-bikes and e-scooters in Chittenden County.
- D. Municipalities.** Burlington, South Burlington, and Winooski (collectively the “Municipalities”) are municipalities incorporated under the laws of Vermont having jurisdiction over the operations conducted within their municipal boundaries. In addition to compliance with State of Vermont law, the use of e-bikes, e-scooters, and related offerings in each jurisdiction must comply with the local ordinances and conditions of each Municipality.
- E. CATMA.** CATMA is a 501(c)(3) non-profit corporation incorporated to provide Chittenden County transportation strategies and solutions to connect commuters with attractive multi-modal options to improve commute time, reduce traffic congestion and support a healthy lifestyle. For purposes of this Agreement, CATMA represents the University of Vermont (“UVM”) and Champlain College (“CC”) and has been authorized to sign this Agreement on their behalf and to legally bind them to the terms of this Agreement. In addition to complying with municipal conditions, e-bikes, e-scooters, and related offerings must comply with applicable rules of UVM and CC as expressed in this Agreement through CATMA.
- F. Purpose.** The Municipalities and CATMA wish to enter into a shared mobility program that will allow the use of e-bikes and e-scooters in their jurisdictions. Operator has been identified to provide such devices and related services under this program. The purpose of this Agreement is to establish the terms and conditions relating to Operator’s operation of e-bikes and e-scooters in the jurisdictions that make up Chittenden County.

2. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “Effective Date”** means the date on which this Agreements is fully approved and executed, as shown by the final signature on the signature page of this Agreement.
- B. “Intellectual Property”** means Operator’s Shared Mobility Devices and other equipment, all materials and Marks prepared by Operator or its Affiliates in connection with this Agreement, copyrights, software, patents, patent applications and patent disclosures and inventions (whether patentable or not), all know-how, show-how and confidential information related to any of the foregoing, and together with all of the moral rights in and goodwill associated therewith, derivative works, corrections, enhancements, updates, modifications, tangible or intangible proprietary information, rights to apply for registration, except for any confidential information of the Partners.

- C. **“Marks”** means trademarks, service marks, trade secrets, trade dress, trade names, logos, taglines, corporate names and domain names, insignia, and symbols or decorative signs.
- D. **“Operating Area”** means the designated jurisdictional boundaries of the Municipalities where Shared Mobility Devices are authorized to be operated by users.
- E. **“Party”** means either Operator, or the Partners and **“Parties”** means Operator and the Partners collectively.
- F. **“Partner”** means either one of the Municipalities or CATMA and **“Partners”** means the Municipalities and CATMA collectively.
- G. **“Shared Mobility Devices”** means e-bikes, e-scooters, and additional related products and services approved by the Partners.

3. TERM AND RENEWAL

- A. **Initial Term.** This Agreement and the Parties respective performance shall commence on the Effective Date and continue for a period of 1 year from the Effective Date (“Initial Term”), unless sooner terminated as provided herein. Upon expiration of the Initial Term, this Agreement shall automatically renew for two additional 1 year periods (the “Renewal Term(s)”) unless either Party provides written notice to the other Party of its election not to renew no later than 120 days prior to the expiration of the Initial Term or a Renewal Term. The Initial Term and the Renewal Term, if any, are referred to collectively as the “Term”.
- B. **Pilot.** Subject to **§5.B**, during the term of this Agreement and after issuance of a Notice to Proceed, the Parties intend to establish a pilot program for e-scooters for up to one year. At the end of that pilot program the Parties shall evaluate the success of the pilot program. The Parties may agree to extend the e-scooter pilot program to continue for any portion of the Initial Term or Renewal Term of this Agreement upon mutual agreement by the Parties confirmed in writing. In addition to any conditions for e-scooters contained in this Agreement, each Municipality may issue any additional e-scooter specific conditions prior to the establishment of the pilot. Operator expressly agrees to abide by all such e-scooter conditions that now exist. Prior to issuing the Notice to Proceed set forth in **§5.B**, the Municipality issuing the Notice to Proceed shall provide such condition to Gotcha to allow for adequate time for Gotcha to comply.

4. USE OF PREMISES

Subject to the conditions of this Agreement, each Partner hereby grants Operator a non-exclusive license to operate and provide the services and products described herein within their respective jurisdictions and to access designated locations approved by the controlling local governing authority for the purpose of installing, establishing, and maintaining docking stations, e-bikes, and e-scooters. This license is subject to the following conditions:

- A. **Approvals.** Operator shall obtain and maintain in good standing all required federal, state, municipal and local licenses and permits necessary to perform the services. If any governmental restrictions are imposed on Operator that would necessitate alteration of the performance of the services offered by Operator under this Agreement, Operator shall immediately notify the applicable Partner and shall work with that Partner in good faith to modify the services in a way to comply with such restriction but also maintains the essence of this Agreement.
- B. **Municipal Authorization.** Operator acknowledges that it may be required to obtain additional approvals from each of the Municipalities to conduct certain aspects of its services, including establishing docking stations in the public right of way. The Municipalities agree to assist Operator, as appropriate, with navigating their respective approval procedures to obtain required licenses, permits, authorizations, approvals, licenses, or consents. Notwithstanding this commitment, the Municipalities cannot guarantee

approval of any application or request of Operator and nothing in this section shall be interpreted to do so.

- C. **State Law.** The Parties acknowledge that use of the Shared Mobility Devices is subject to the laws of the State of Vermont. To the extent legislative efforts are needed at the state level, Operator shall be solely responsible for all such efforts that may be necessary.

5. SERVICES

- A. **E-Bikes.** Within 90 days of the Effective Date, Operator shall deploy, establish, and maintain a minimum fleet of 200 e-bikes throughout the jurisdictions of the Partners, subject to the conditions contained in this Agreement
- B. **E-Scooters.** The Parties recognize that there is uncertainty about the current regulatory framework for the operation of e-scooters in the State of Vermont. To that end, further regulatory changes at the state level may be implemented before the Partners are comfortable proceeding with the operation of e-scooters within their jurisdictions. As a result, Operator shall not deploy or establish e-scooters within any Municipality until a Notice to Proceed (Attachment A) is executed and jurisdiction-specific conditions are provided by the Municipality. Upon execution of a Notice to Proceed, Operator shall work with the Municipality issuing the Notice to Proceed to deploy, establish, and maintain a fleet of e-scooters within the jurisdiction(s), subject to the conditions contained in this Agreement and the jurisdiction-specific conditions imposed by the Municipality.
- C. **Location of Fleet.** Operator shall decide how to distribute Shared Mobility Devices and docking stations between the Partners after consultation with CATMA to ensure reasonable distribution across each Municipality. However, Operator may only locate Shared Mobility Devices and docking stations in locations that have been approved by the applicable governing body in the jurisdiction in which the Shared Mobility Devices and docking stations are to be shared. In some cases, this may require additional approval from individual municipal committees, commissions, and/or obtaining encumbrance permits.
- D. **Hours.** Operator shall provide a safe, clean, and accessible system that allows public access and use of Shared Mobility Devices and docking stations 24 hours per day, 7 days a week, unless weather inhibits use of Operator's system for any period of time.
- E. **Tracking.** Operator shall designate operating areas and regulate and track electric assist functions for Shared Mobility Devices through geo-fencing or other available means, as agreed upon by the Parties.

6. EQUIPMENT

Operator shall provide the following equipment on or before the date on which the Shared Mobility Devices are deployed as required by this Agreement:

- A. **Shared Mobility Devices.** Operator shall supply, install, deploy, establish, and maintain the quantity of e-bikes, e-scooters, and docking stations required under this Agreement.
- B. **Application and Web Page.** Operator shall establish a downloadable mobile application where users can order services and obtain information. Operator shall make mobile application available for download in Apple iOS or Android so that customers may download the mobile application to their mobile devices and register for an account, subject to their acceptance of the end user license agreement and other legal notices related to the mobile application. Operator shall make the mobile application available for use in connection with use of the Shared Mobility Devices, including unlocking a Shared Mobility Device from a docking station.
- C. **Usage.** Operator shall have all necessary software and technology to be able to monitor customer usage of Operators equipment and to make adjustment to quantities of Shared Mobility Devices at particular docking stations.

- D. Maintenance.** Operator shall maintain its Shared Mobility Devices, docking stations, mobile application, web page, and all software and technology in good working order in accordance with the key performance indicators set forth in Attachment B, including routine and necessary maintenance and repairs.
- E. Standards.** All Shared Mobility Devices and docking stations shall comply with all safety standards established by the United States Consumer Product Safety Commission and any other standard established under federal, state, and local law.
- F. Lights.** Operator shall ensure that all Shared Mobility Devices shall contain fully functional front and rear lights operating at all times the Shared Mobility Device is in use. The lights shall be visible from 300 feet under normal conditions.
- G. Identification.** Operator shall ensure that each Shared Mobility Device shall contain a unique identification number clearly displayed on the device.
- H. Remote Access.** Operator shall have the ability to remotely lock or disable any Shared Mobility Device deemed unsafe.
- I. Ownership.** All Shared Mobility Devices, docking stations, and equipment used by Operator in connection with this Agreement, unless otherwise expressly set forth in this Agreement, shall remain the property of Operator, and shall at no time be deemed a fixture or property belonging to the Partners or any other party. Any equipment belonging to a Partner used in connection with this Agreement, unless otherwise expressly set forth in this Agreement, shall remain the property of that Partner. The Parties shall not directly or indirectly cause or create any mortgage, pledge, lien, charge, security interest, claim or other encumbrance on or with respect to such equipment.

7. OPERATIONS

- A. Support.** Operator shall provide ongoing support, training, parts, and other agreed upon services and actions for its local operational personnel to ensure continued access and enjoyment by users without interruption.
- B. Business Operation.** Operator shall be solely responsible for system operations, maintenance, collection of fees and revenues, and promotion of products. Any sub-contracts for e-bike maintenance shall be with locally-owned businesses.
- C. Customer Service.** Operator shall maintain a call center that can be accessed by the public by phone or electronically. Operator shall sufficiently staff such facilities and provide all tools, parts, training, supplies, and equipment to ensure the highest level of customer service with minimum response time waits. To that end, operator shall meet and maintain the service level terms set forth in Attachment B.
- D. Staffing.** Operator shall maintain qualified personnel and ensure adequate staffing to respond to customer demands, including staffing for expected large-scale community and college events. Operator shall employ sufficient staff, contractors, and vendors in number and skill to be capable of providing the services.
- E. Personnel.** Operator shall establish and maintain a contract manager who shall act as its authorized representative and serve as primary contact to the Partners with respect to all matters pertaining to this Agreement. If Operator makes a change to the contract manager, Operator shall promptly notify the Partners and appoint a replacement within a reasonable amount of time given the circumstances that caused the change.
- F. Expansion Goals.** Operator shall work with the Partners to assess and develop goals and plans for expanding services during the term of this Agreement.
- G. Languages.** Operator currently offers support in a number of foreign languages including Spanish, Cantonese, Mandarin, and French. Upon a request by a Partner, and where reasonably possible, Operator

shall provide access to Shared Mobility Devices in additional languages. The Parties understand that support response time for some languages may be longer than others.

- H. Public Outreach.** At the request of a Partner, Operator may have a designated representative attend Partner-led public events and meetings as decided at the sole discretion of Operator.
- I. Non-discrimination.** Operator, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, color, national origin, veteran status, gender, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of any of its services.
- J. Advertising Policies.** If Operator desires to advertise on its equipment, any advertisements must be pre-approved by the Partner having jurisdiction, and meet local, state and campus advertising regulations, before they are installed or otherwise displayed. Understanding that advertising may require approvals from Partner committees and commissions that the Partner has no control over, Partner shall make every effort to assist in moving such requests through the respective Partner's approval process as quickly as possible. If approval of advertising is a function left to the sole discretion of a Partner official with authority to approve such requests, the Partner shall either approve or deny the advertising request of Operator within seven (7) business days of any written request by Operator and, if Partner does not timely provide its decision, the advertisement shall be deemed approved for use unless and until Operator receives written notice otherwise from Partner. Operator agrees to abide by the Partners' advertising restrictions related to advertisements, and understands that the Partners shall have a right to review in advance, monitor and/or disallow any and all Advertising that Operator proposes to install or display, in their sole discretion. The Partner shall not be entitled to any revenue generated from Advertising under this Agreement.

8. USER FEES

In addition to any other fees required under this Agreement, Operator may establish, charge, and collect user fees from customers for use of Operator's e-bikes and e-scooters, subject to the following conditions:

- A. Types of Fees.** Operator may assess reasonable membership fees (shown in Attachment G), pay as you go fees, and penalty fees. Operator shall notify the Partners within 2 weeks of Operator intending to modify established fees.
- B. Subsidized Services.** Operator shall maintain a subsidized membership program for qualified low-income individuals, unbanked individuals, those without access to a smart phone, and other eligible programs. Operator shall expand promotion, enrollment, and participating locations in this program where possible and with the support of relevant stakeholders.
- C. Responsibility.** Operator shall be solely responsible for processing and handling all payments, fees, penalties, or other monetary transactions by users of the system.
- D. Direct Payment.** All revenues and fees collected by Operator shall be paid directly to Operator without a processing fee and not through a third party system or party without the expressed approval of the Partners.
- E. Payment Methods.** Operator's system shall be designed to automatically complete financial transactions entered with data input at their mobile application.

9. TRANSPORTATION FEE

Operator will create a CATMA Transportation Fund and will allocate one dollar (\$1) per day per e-scooter that has been successfully rented via a User, without a promo code to the CATMA Transportation Fund. Operator will audit and provide a distribution of payment into the CATMA Transportation Fund bi-annually.

CATMA will work together with the Partners and Operator in good faith to use the fund in a way that will directly impact the services.

10. GENERAL OPERATIONAL CONDITIONS ON USE

- A. Safety.** Operator shall require any user renting its Shared Mobility Devices to have read and acknowledged reading safety requirements and conditions of use. Operator and the Partners shall work together to identify such safety requirements and conditions of use, but at a minimum, such conditions shall include informing the user that a helmet should be used for the operation of Shared Mobility Devices, speed limitations for such devices, and location restrictions for such devices.
- B. Protocols.** Operator shall develop and maintain protocols that can be utilized for handling extreme weather events, emergency situations, special events, and maintenance activities. These protocols shall be made available to the Partners upon request.
- C. Training.** Operator shall develop and lead educational classes at each Municipality and College demonstrating how to access and use Shared Mobility Devices. Operator shall develop and implement a marketing and outreach plan for such classes in consultation with the Partners.
- D. Speeds.** Subject to further restrictions under §11, Operator shall ensure that the maximum operating speed for the electric function of Shared Mobility Devices does not exceed 20 miles per hour for e-bikes and 15 miles per hour for e-scooters.

11. JURISDICTION SPECIFIC CONDITIONS ON USE

Operator acknowledges that each Municipality and CATMA (on behalf of UVM and CC) establishes the conditions of operations within their respective jurisdiction, including speed limits, docking station locations, location limits, and geo-fencing. To that end, Operator shall meet the following jurisdiction specific conditions imposed by each Municipality and College:

- A. Burlington.** Operator shall ensure that all e-bikes and e-scooters follow the jurisdiction specific restrictions contained in Attachment C. Failure to abide by these restrictions shall constitute a breach of this Agreement.
- B. South Burlington.** Operator shall ensure that all e-bikes and e-scooters follow the jurisdiction specific restrictions contained in Attachment D. Failure to abide by these restrictions shall constitute a breach of this Agreement.
- C. Winooski.** Operator shall ensure that all e-bikes and e-scooters follow the jurisdiction specific restrictions contained in Attachment E. Failure to abide by these restrictions shall constitute a breach of this Agreement.
- D. CATMA.** Operator shall ensure that all e-bikes and e-scooters follow the jurisdiction specific restrictions contained in Attachment F. Failure to abide by these restrictions shall constitute a breach of this Agreement.

12. LOCATIONAL RESTRICTIONS

- A. Out of Hub Fee.** Operator shall charge a user a minimum fee of \$3 for failing to dock a Shared Mobility Device to a designated structural or virtual docking station approved under this Agreement.
- B. Out of Area Fee.** Operator shall charge a user an Operator-determined fee for leaving a Shared Mobility Device in a location outside the Operating Area.
- C. Restricted Usage.** Operator shall ensure that the electronic assist function of any Shared Mobility Device that operates outside the Operating Area is automatically disabled once the Shared Mobility Device leaves the Operating Area.

- D. Operator's Response.** If Operator receives a complaint that any Shared Mobility Device has been improperly parked or not docked to a designated structural or virtual docking station, Operator shall respond to the complaint, remove the Shared Mobility Device from its current location, and return the Shared Mobility Devices to an appropriate structural or virtual docking station within 4 hours of receiving the complaint if the complaint was received between 8:00 am and 8:00 pm, or within 12 hours of receiving the complaint if the complaint was received between 8:00 pm and 8:00 am.
- E. Sidewalks.** Operator shall work with the Partners to communicate to users that Shared Mobility Devices shall not be used on any sidewalk within the Operating Area.

13. DATA

- A. Collection.** Operator shall collect data related to the use of its Shared Mobility Devices. Such data shall include: number of users, number of trips, trip origin/destination and routes, trip time, trip mileage, docking station usage, devices in service, operable devices, and other data related to the key performance indicators set forth in Attachment B. Such data may also include: carbon impacts, calories burned, and money saved. Operator shall also collect real time data on the location of Shared Mobility Devices (determined at a frequency of no more than every 90 seconds when in use), maintenance status, customer complaints, aggregate system use, crashes, and damaged/lost vehicles. All data collected, including GPS tracking, shall be based upon information collected from the Shared Mobility Devices and not from a user's phone. Operator may provide users with opt-in user surveys and all survey questions shall be approved by the Partners prior to use.
- B. Sharing.** Operator shall provide the Partners with data collected pursuant to this section by the last day of each month during the term of this Agreement. Operator shall also supply share system data on request for special projects, as part of transportation and infrastructure planning, and any other reasonable requests. Data shall be provided in MDS format to the Partners and any other third party approved by the Partners. The Partners retain the right to request aggregated reports on system use, compliance, and operations in other available formats (.csv, .xls, or similar), as long as such request are deemed reasonable. Shared data shall be anonymized to be available to the public for use in applications not affiliated with the Operator or Partners.
- C. Privacy.** Operator shall keep all data collected anonymous and not collect personally identifiable information so that such data may be disseminated to the public and not for use in third-party applications. Operator shall provide each user with a clear, upfront description of data collected to users to ensure that the user fully understands and agrees to data collection. This shall include a clear identification of data collected while using Operator's website and mobile application. To protect the user's privacy interest, Operator shall not include any provision requiring a user to agree that personally identifiable information may be shared with third parties. Operator shall not include any provision requiring a user to agree to data sharing from a user's personal device to use Operator's services. Rather, Operator shall include an opt-in function for access and data collection from a user's personal device.

14. EXCLUSIVITY

The Partners agree that Operator shall be the exclusive partner for Shared Mobility Devices during the term of this Agreement. The Partners shall not enter into another agreement with a competing business to provide Shared Mobility Devices during the term of this Agreement. Operator understands that this right of exclusivity only applies to the Partners and nothing in this Agreement shall be interpreted to require the Partners to prohibit the use of Shared Mobility Devices by other persons or entities operating independently of the Partners within their jurisdictions.

15. TERMINATION

- A. Breach by Operator.** Any Partner may terminate their participation in this Agreement due to a material

breach of Operator by providing notice to Operator and giving Operator 30 days to correct the breach. If Operator fails to correct the breach to the satisfaction of the non-breaching Partner within 30 days, that Partner may terminate their participation in this Agreement immediately.

- B. Breach by a Partner.** If a Partner commits a material breach of this Agreement, the Operator may terminate its responsibilities to that Partner under this Agreement by providing notice to that Partner and giving that Partner 30 days to correct the breach. If that Partner fails to correct the breach to the satisfaction of the Operator within 30 days, the Operator may terminate its obligations to that Partner under this Agreement immediately. Operator's termination of its obligations to one Partner under this section does not impact its obligations to the remaining Partners under this Agreement and its obligations under this Agreement to the remaining Partners shall remain in full force and effect. Operator's remedies for breach of contract shall be limited to the Partner that caused the material breach. Operator shall not assert a claim for breach of contract against other Partners for the breach of a single Partner.
- C. Voluntary by Operator.** Operator may voluntarily terminate this Agreement by providing the Partners 90 days' notice prior to the desired termination date.
- D. Voluntary by a Partner.** Any Partner may terminate their participation in this Agreement by providing Operator with 90 days' notice prior to the desired termination date. The termination of participation by one Partner shall not affect the validity of the Agreement as it relates to the other Partners and the Agreement shall remain in full force and effect unless terminated by all Partners.

16. CONDITION ON TERMINATION

Upon expiration or termination of this Agreement, Operator shall remove all Shared Mobility Devices, docking stations, and any other equipment within 30 days and return the applicable premises to the same condition as it existed prior to this Agreement, unless otherwise agreed to in writing with a Partner.

17. INTELLECTUAL PROPERTY

All rights in Operator's Intellectual Property related to the services provided under this Agreement, are and shall be owned by Operator (or, in certain instances, by its Affiliates), and not by the Partners. Operator hereby grants the Partners a limited license to use all such Intellectual Property rights solely in connection with the services during the term, free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sub licensable, fully paid-up and royalty-free basis, to the extent necessary to enable the Partners to make reasonable use of the services. The Partners acknowledge and agree that other than as expressly provided herein, nothing in this Agreement shall be construed as Operator directly or indirectly, selling, leasing, licensing, pledging, sublicensing, lending, encumbering or otherwise transferring any of the foregoing Intellectual Property rights other than in connection with the services.

18. MARKS

No Party grants to the other Party any right in or license to use such Party's Marks, other than as expressly set forth in this Agreement. Any signage or communication containing a Party's Marks must be approved by that Party in advance.

19. REPRESENTATIONS AND WARRANTIES

- A. Operator.** Operator represents and warrants that (a) it is a duly authorized to do business by the State of Vermont; (b) it has the lawful power to engage in the business it presently conducts and contemplates conducting, and is not party to any investigation, proceeding or action by any governmental authority which may materially affect its ability to effectuate its obligations under this Agreement and, in the event that it becomes such a party, shall immediately notify the Partners of such investigation, proceeding or action; (c) it has the authority to execute and carry out this Agreement and to perform its obligations hereunder, and has obtained all necessary authorizations in connection therewith; (d) it has obtained and

shall obtain from time to time any and all licenses, permits or other approvals required under applicable law, which license, permits or other approvals shall be kept current at all times throughout the Term; (e) the execution, delivery and performance of under this Agreement shall not conflict with, result in the breach of, constitute a default under or accelerate performance required by its constituent documents or internal regulations, any applicable law or any material covenant, agreement, understanding, decree, judgment, indenture, instrument or order to which it is a party or by which it or any of its properties or assets is bound or affected; and (f) it will comply with all applicable law related to this Agreement and will cooperate fully with the Partners in complying with such applicable law.

- B. Partners.** The Partners represent and warrant that they are the governmental authority with jurisdiction over their respective premises, that they have obtained all necessary approval and possess the legal authority to enter into this Agreement, and have taken all actions required by their procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind themselves to its terms.

20. INSURANCE

Prior to the Effective Date of this Agreement, Operator shall obtain insurance coverage meeting each requirement and condition set forth herein.

- A. Carrier.** Operator shall obtain insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A- financial size category VIII or better by the latest *Best Insurance Report*, or has an analogous rating from a comparable rating service approved by the Partners.
- B. Certificate of Insurance.** Proof of insurance and compliance with all requirements in this section should be evidenced on a certificate of insurance acceptable to the Partners. The certificate shall, at a minimum, contain the following: (1) authorized agent information; (2) insured information; (3) insurance company information; (4) description of policies, including coverage types and amounts; (5) policy number(s) and period(s); (6) limits of liability; (7) Partners' information as additional insured and certificate holder; and (8) cancellation information. The certificate of insurance must be received by the Partners prior to the Effective Date of this Agreement.
- C. Additional Insured.** Each required insurance policy (with the exception of workers compensation) shall name each Partner as an additional insured and loss payee.
- D. Cancellation.** All certificates shall contain a provision stating that the coverages afforded under said policies will not be cancelled, materially changed or not renewed without at least thirty (30) days written prior notice to the Partners, or fifteen (15) days for non-payment. The policies shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives, and shall contain a clause to the effect that such policies and the coverage evidenced thereby shall be primary with respect to any policies carried by the Partners, and that any coverage carried by the Partners shall be excess insurance. In no event shall the limits of said policies be considered as limiting the liability of Operator under this Agreement.
- E. Insurance Coverages.** During the term of this Agreement, Operator agrees to purchase and maintain the following types of insurance coverages, consistent with the policies and requirements of the Partners, and provide evidence of continuing coverage to the Partners:
- (i) **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) Contractual liability; (5) Broad Form Property Damage; (6) Fire legal liability; and (7) Blasting and Explosion, Collapse of Structures and Underground Damage 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
3. Personal & Advertising Injury	\$1,000,000
4. Each Occurrence	\$2,000,000
5. Fire Damage (Any one fire)	\$ 250,000
6. Med. Expense (Any one person)	\$ 5,000

(ii) 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.

(iii) 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 each employee
3. Bodily Injury by Disease: \$500,000 policy limit

(iv) 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.

(v) 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.

G. Maintaining Coverage. The Partners may require certified 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.

21. INDEMNIFICATION

Operator shall—at its sole cost and expense—indemnify, defend, and hold harmless the Partners, their officers, agents, 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.

22. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, MORAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, OR FOR ANY LOSS OF USE, LOSS OF PRODUCTION, LOSS OF REVENUE OR PROFITS, COST OF CAPITAL, LOSS OF GOODWILL, OR LOSS OF OPPORTUNITY, ARISING OUT OF OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER THEORY AT LAW OR IN EQUITY, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF IT ESSENTIAL PURPOSES, AND EACH PARTY EXPRESSLY RELEASED THE OTHER PARTY FROM ANY SUCH LIABILITY. THE PARTIES FURTHER AGREE THAT THE LIABILITY FOR A PARTY UNDER THIS AGREEMENT, WHEATHER BASED ON A CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE FOR ALL EVENTS, ACTS OR OMISSIONS UNDER THIS AGREEMENT, SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000). THE LIMITATIONS ON LIABILITY IN THIS SECTION SHALL NOT APPLY, HOWEVER, TO: (I) A PARTY’S CRIMINAL OR FRAUDULENT CONDUCT; (II) OPERATOR’S OBLIGATIONS OF INDEMNIFICATION UNDER §21; (III) ANY APPLICABLE INSURANCE PROCEEDS; (IV) OR ANYTHING PROHIBITED BY APPLICABLE LAW GOVERNING THE RIGHTS AND DUTIES OF THE CLIENT IN ENTERING INTO CONTRACT LIKE THIS AGREEMENT.

Each Party assumes any and all risks of personal injury and property damage attributable to the acts or omissions of such Party or any of its affiliates, to the degree that such damage is attributable to such Party or its affiliate. Operator makes no warrant whatsoever with respect to the services (including, for clarification, the deliverables and the services), including any: (i) warranty of merchantability, (ii) warranty of fitness for a particular purpose, or (iii) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise.

23. RECORDS RETENTION

Operator agrees to retain in its files all data, documents, accounting records, and other information required under this Agreement for a period of at least one year after the expiration or termination of this Agreement.

24. DAMAGE TO PROPERTY

Operator shall be responsible for any and all damage to property belonging to the Partners to the extent

caused by an act or omission of the Operator, its agents, or employees. Operator shall be responsible for repairing any damaged property and shall pay the costs therefor.

25. TAXES

The Parties shall be solely responsible for their respective taxes, if any, and related interest or penalties, incurred by such Party in respect of this Agreement including, without limitation, any federal, state, or local income tax, and any withholding or employment taxes imposed upon such Party, including in respect of any advertising revenue to such Party.

26. 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 acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, 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.

27. NOTICES AND REPRESENTATIVES

All notices and communications related to this Agreement should be made to the following representatives for each Party. Each such notice, request, or other communication shall be effective 5 calendar days after depositing in the mail or 48 hours after the date on which an e-mail notice is verified as received.

Gotcha
Brett Vigrass
General Counsel
brett@ridegotcha.com

Burlington
Chapin Spencer
Director of Public Works
cspencer@burlingtonvt.gov

South Burlington
[REDACTED]

Winooski
[REDACTED]

CATMA
[REDACTED]

28. 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.** Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.
- 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. Third Party Beneficiaries.** Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the 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.

29. SIGNATURE PAGE

Persons signing for the Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect.

Gotcha Mobility, LLC
7 Radcliff St., Suite 200
Charleston, SC 29403

City of Burlington
645 Pine Street
Burlington, VT 05401

City of South Burlington
[REDACTED]

Sean Flood
Chief Executive Officer

Chapin Spencer
Director of Public Works

[REDACTED]

Date: _____

Date: _____

Date: _____

City of Winooski
[REDACTED]

**Chittenden Area Transportation
Management Association**
[REDACTED]

[REDACTED]

[REDACTED]

Date: _____

Date: _____

ATTACHMENT A

Notice to Proceed with E-scooters

DRAFT

NOTICE TO PROCEED

City of Burlington

To: Gotcha Mobility, LLC **Date:** _____

Contract: Operating Agreement for electric bikes and scooters in Chittenden County

Project: Electric Scooters Pilot

Authorization: You are notified that, in accordance with §3.B of the Operating Agreement, you are authorized by the City of Burlington, VT to establish and commence a one-year electric scooter pilot program in Burlington in accordance with the Operating Agreement, including §5.B.

By: _____
Chapin Spencer
Director of Public Works
City of Burlington, VT

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by:

Gotcha Mobility, LLC

Name/Title: _____

Signature: _____

ATTACHMENT B

Key Performance Indicators

DRAFT

Key Performance Indicators

Performance Indicator	Description	Measure Period	Measured Unit	Threshold
System Reporting	Monthly reports and limited Admin access provided.	Monthly/Annual	See below	See below
Device Availability	Number of devices available for use in a day relative to the number of bicycles in the system	Average monthly	E-bicycle	200
			E-scooter (if implemented)	200
Device Maintenance and Inspection	Number of devices receiving a weekly maintenance inspection	Monthly	% of devices in service	80%
Station Maintenance and Inspection	Stations receiving a cleaning and inspection	Twice per month, no more than 21 days between inspections	% of stations	80%
Device Response Time	Time to respond to reported deficient, damaged, or unclean station components of devices.	Any given point in time/monthly	Complaint response time.	12 hours
Website/Mobile App in Service	Percentage of time that the website and mobile app are in service	Any given point in time/ monthly	% of total minutes per month	99%
Customer Service Availability	Contractor will maintain a toll free customer service number from 8a-8p (live response), and a 24/7 after-hours service (message). Customer complaint and resolutions should be tracked through a system.	Any given point in time/monthly	Hours	95%
Customer Service Response Time	Response time between customer inquiry and complaint resolution plan	Any given point in time/monthly	Complaint acknowledgement response time. Resolution plan response time. Measured in hours.	24 hours or less
Device Distribution	See below	See below	See below	See below

Redistribution. CATMA will work with Gotcha to identify High Priority Areas based on station usage per day and peak times of usage. Distribution will be critically timed to increase the probability that each High Priority Area has sufficient bicycles available. Prior to the full launch, Respondent and the CATMA will agree to designate High Priority Areas. Additionally, Gotcha and the CATMA shall agree to allocate a set minimum of the total bicycle fleet to the various priority areas specified at peak days and hours.

ATTACHMENT C

Burlington Location Specific Conditions

DRAFT

Burlington Specific Conditions Use and Operation

1. Speed Limitations.

- A. Waterfront and Greenway.** Operator shall ensure that the speed limit for the electronic assistance function of all Shared Mobility Devices supplied under this Agreement shall be limited to no more than 10 miles per hour when a Shared Mobility Device is being used within the Burlington Waterfront or on the Burlington Greenway. For purposes of this Agreement, the Burlington Waterfront includes all portions shaded in red in Map A and the Burlington Greenway includes all portions shaded in green in Map A, including all portions of the Burlington bike path.
- B. Church Street Marketplace.** Operator shall ensure that the electronic assist function of any Shared Mobility Device operating on the Church Street Marketplace is automatically disabled once the Shared Mobility Device enters the Church Street Marketplace.

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ATTACHMENT D
South Burlington Location Specific Conditions

ATTACHMENT E

Winooski Location Specific Conditions

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ATTACHMENT F

CATMA (UVM and CC) Specific Conditions

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ATTACHMENT G

User Fees as of April 2019

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ATTACHMENT I

Certificate of Insurance

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