



**CITY OF BURLINGTON, VERMONT
CITY COUNCIL TRANSPORTATION, ENERGY &
UTILITIES COMMITTEE**

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Transportation, Energy and Utilities Committee of the City Council

Thursday, May 23, 2019 7:30 PM

**Burlington Department of Public Works – Front Conference Room
645 Pine Street – Burlington, VT**

–AGENDA–

1. Agenda
2. Minutes of 05/07/2019
3. Public Forum
4. Shared Mobility
 - a. Chapin Spencer, DPW, Rob Goulding, DPW and Nicole Losch, DPW presenting
 - b. 20-minute duration
 - c. Action requested.
5. Set Future TEUC Meeting date
6. Councilor Updates
7. Adjourn

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 Agreement 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, .exls, 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, WHETHER 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.

DRAFT

ATTACHMENT D

South Burlington Location Specific Conditions

ATTACHMENT E

Winooski Location Specific Conditions

DRAFT

ATTACHMENT F

CATMA (UVM and CC) Specific Conditions

DRAFT

ATTACHMENT G

User Fees as of April 2019

DRAFT

ATTACHMENT I

Certificate of Insurance

DRAFT



City of Burlington
Department of Public Works
645 Pine St
Burlington, VT 05401
802-863-9094
Burlingtonvt.gov/dpw

Chapin Spencer
Director of Public Works

MEMORANDUM

TO: Transportation, Energy and Utilities Committee

FROM: Chapin Spencer, Director, Public Works
Robert Goulding, Public Information Manager, Public Works
Nicole Losch, Senior Planner, Public Works

DATE: May 20, 2019

CC: Cindi Wight, Director of Parks, Recreation & Waterfront
Nicholas Lopez, Assistant City Attorney
Elizabeth Gohringer, Associate Transportation Planner, Public Works

RE: Affordable, Sustainable Transportation Choice --
Transitioning Existing Bike-Share to Shared Electric Mobility

OVERVIEW

Burlington has a rich and ongoing legacy as a city committed to equity and sustainability. We believe that shared mobility aligns key consensus beliefs of our community. This consensus recognizes that all options must be on the table to build a sustainable city, and that expanded, equitable transportation choice is vital to economic success and environmental health. This said, City staff also recognize that it is important to deliberately manage and regulate new technologies to ensure that their positive benefits are maximized and that potential risks are minimized.

Growing Importance of Shared Mobility in a Transportation Network

According to Census data for Burlington, bicycle commuting increased from 4.7% to 5.7% from 2011 to 2016, a change of 21%. According to the National Association of City Transportation Officials, there were 25 million bike-share trips nationally in 2016, up from under 5M in 2010. With the addition of e-scooters in more recent years, this number increased to 84 million micro-mobility trips nationally in 2018; 36.5 million by bike and 38.5 million by scooter. In communities with both e-bikes and pedal bikes, e-bikes are used twice as frequently.

In one of the first comprehensive studies of e-scooter implementation, the City of Portland found that 71% of riders used e-scooters for transportation. In fact, 34% of Portland residents and 46% of visitors used an e-scooter as a replacement for a vehicle trip. As automobiles are far more likely to be the cause of serious or fatal injuries than any other mode of transportation, micro-mobility has the potential to be a safety improvement to a holistic transportation network.

We see a growing interest and desire in this transportation model.

Key tenets of this proposal

- Transition the current regional bikeshare system from 105 docked, manually powered bikes to 200 docked, electric bikes. These e-bikes do not have a throttle, are pedal assist only and the e-assist caps out at 20 MPH. Additional speed and location restrictions are possible through built-in technology.
- **If state regulations change and only when we issue a notice to proceed**, launch an e-scooter pilot. If this launches, the Operator will pay into a regional fund (based on scooters rented) to be disbursed to all contract participants. E-scooters can go up to 15MPH with additional speed or location restrictions possible through built-in technology. E-scooters will be kept at hubs adjacent to bikeshare racks and at virtual hubs - consisting of marked, organized locations.
- The encumbrance process for docks, stations and hubs will still be in effect, requiring License Committee and City Council approval.
- We will work with the Transportation, Energy and Utilities Committee to define the framework and conditions of any future pilot program.
- Working through a direct contract offers our city more control over how this transition is introduced to Burlington. This can directly inform future changes to ordinance, as needed.
- Due to a rapidly changing industry, the financial commitment of \$42K/year that we currently pay for participation in regional bikeshare will be removed if we transition to this all electric fleet.

Regulatory Framework for Usage

- Vermont law regulates e-bikes the same as bicycles, except that sidewalk riding is prohibited. This extends to the municipal level.
- Vermont law defines e-scooters as motor-driven cycles and requires registration and limits the use of these devices to roads and highways
- E-bikes are currently allowed on the Burlington Waterfront Greenway. We are proposing a 10MPH speed restriction (when relying on pedal assist) for e-bikes from this bikeshare system, regulated through built-in technology. This will also discourage the use of e-bikes for longer-term, longer distance usage.
- We propose allowing e-bikes on shared use paths

BACKGROUND

In April 2018, regional partners (CATMA, CCRPC, UVM, Champlain College), led the Phase 1 launch of Greenride bike-share with the transportation company Gotcha in three neighboring municipalities: Burlington, South Burlington, and Winooski. This phase introduced 17 stations and 105 bikes to these communities. Gotcha was chosen through an RFP process released by CATMA to find a qualified vendor to supply the equipment and business model to serve as a first mile and last mile option for shared bicycle transportation.

Some key statistics from the first two quarters (April - December 2018) of operation include:

- 587 active members
- 8,740 trips taken
- An average trip distance of 1.78 miles
- An average trip duration of 18 minutes.

Phase 1 of the program has been modestly successful, but greater demand for access has shifted our focus to providing shared electric mobility devices. While the original intent was to gradually increase the share

of e-bikes, due to rapidly changing technology and demand, conditions now support a more immediate shift to an all-electric fleet.

Now, shared electric mobility (e-bikes, e-scooters) presents an opportunity to provide residents and commuters more choice in the first mile and last mile of their commutes and better access around Burlington and the greater Chittenden County region. Burlington is home to hilly topography and users of all abilities, which require a predictable and convenient all electric fleet to provide all residents and visitors with access to shared mobility. Shared mobility also presents a unique opportunity to reduce congestion, reduce the demand for parking, and improve local air quality. In addition, shared mobility has the effect of lessening the financial burdens that exist with vehicle ownership, daily commuting, purchasing fuel, and parking.

Over the course of the last three months, we have worked diligently to better understand the needs of Burlington and the benefits that an electric shared mobility program can provide to our City. To that end, we have engaged public and private stakeholders within Burlington, we have created partnerships with other municipalities within Chittenden County, and we have worked with our legal team and the Mayor's Office to better understand how this program fits into existing structures. Most importantly, we have engaged in an extensive effort of public engagement to provide transparency and community participation. Our community outreach efforts include:

- We held a citywide public forum on February 12, 2019, presented the concept, and took questions. This was live streamed via Facebook Live and is currently hosted on DPW's Facebook page and website.
- We presented information and addressed questions at the Transportation, Energy and Utilities Committee ("TEUC") in February, March and May.
- We used Front Porch Forum and social media to promote some of these public engagement opportunities.
- We presented details of this proposal to the following NPAs in April: Wards 1 & 8, Wards 2 & 3, Wards 4 & 7 and Ward 6. Our partner at the Chittenden County Regional Planning Commission (CCRPC) discussed this on our behalf during public comment at the Ward 5 NPA.
- Our partner, CCRPC, has conducted a region-wide survey and hosted an online crowdsourcing map for the public to share thoughts on the first year of bikeshare and preferred locations. We supported this with social media to advise the community of these efforts.

We have listened carefully to our community and learned important lessons about their interests and concerns with shared mobility. Based on that feedback, we believe that our City is ready for electric shared mobility.

PROPOSAL

We considered numerous different formats for launching electric shared mobility, but after consultation with the City's legal team, the Mayor's Office, and our community partners, we have decided to contract directly with Gotcha and our partners in South Burlington, Winooski, the University of Vermont, Champlain College, and the Chittenden Area Transportation Management Association.

This approach will allow the City to transition and expand the region's existing bikeshare fleet to an all-electric bike fleet as early as this summer and potentially launch an electric scooter pilot, with fixed

docking locations and speed restrictions. The bike fleet will include 200 e-bikes and access to the fleet will be provided year-round. If a pilot of e-scooters is approved by the Burlington City Council, an agreed number of e-scooters will be distributed throughout the region and operated based on the conditions set by the City. E-scooters will be removed during winter months. However, the introduction of an electric scooter pilot program will be dependent upon clarification as to the use of these devices under state law, which currently defines these as motor-driven cycles.

During this program, the City will be able to maintain control over the use of Gotcha's electric shared mobility fleet by asserting conditions in the contract relating to safety, use, and speed restrictions, among others. We will continue to work with city officials, our legal counsel, and the TEUC to formalize these conditions. Furthermore, we believe that this method will allow the City to better understand what regulatory changes, if any, should be enacted in response to this new technology.

Many communities across the country have successfully introduced shared mobility, and others have had more mixed results. We have embarked on a careful approach to learn the right lessons to introduce shared mobility in a controlled, thoughtful way. Key tenets of our approach include:

- **Building on past work:** Regional bikeshare in Chittenden County has just turned one year old - thanks to an effort advanced by our regional partners. We have learned valuable lessons from this first year and our subsequent community engagement.
- **Direct contract:** To properly administer shared mobility in Burlington and the transition to an all-electric fleet, we are seeking to enter into a direct contract with the same vendor and our regional partners. This will allow us to introduce municipal specific conditions and facilitate direct coordination and communication on implementation.
- **Fixed Locations:** This proposal introduces fixed locations (versus dockless), with speed restricted capability on the fleet. Docking stations will be clearly defined by racks and/or marked and signed parking corrals and there will be a user fee for leaving an e-bike or e-scooter outside of a docking station. The use of fixed locations addresses many of the issues that other communities have experienced when introducing a dockless fleet. The City will have additional oversight for station locations in the right-of-way through the master encumbrance agreement and permits that will be required.
- **Meaningful access:** The current rideshare system includes a \$5 monthly and \$25 annual membership fee for low income qualified residents. We are committed to ensuring that qualified low-income residents, people without bank access, and individuals without mobile phones will have meaningful access to this program.
- **Local vendors:** We are stipulating that all sub-contracting include local vendors.

MOTIONS:

1. To recommend that City Council authorize the Director of Public Works to execute a one year contract with annual renewal options for two additional years with Gotcha, CATMA (as representatives of UVM and Champlain College) and its municipal partners—subject to approval by the City Attorney's Office—which allows Gotcha to launch an e-bike program in Burlington and explore the possibility of a future e-scooter pilot program to be approved by the City Council.

2. To recommend that City Council authorize the Director of Public Works to work with TEUC to define the scope and conditions of an e-scooter pilot program for future consideration by the City Council.

<u>Key Concern</u>	<u>How this is addressed</u>	<u>How this is Regulated</u>	<u>Notes</u>
Speed	E-bikes go up to 20MPH (no throttle) E-scooters go up to 15MPH	• Technology Limitations • Contract – 10 mph limit on Greenway	
Device Placement	Semi-docked system	• Master encumbrance • Contract	
Improper Device Placement		• User penalties -- min. \$3/incident • Contract: response time	
Equity -- Cost	Subsidized Services	Contract	Current system subsidy: \$5/month; \$25/annual
Equity -- Access	Fleet expansion, hub expansion	Contract Encumbrance Process	
Equity - Language	Multiple languages; others possible	Contract	

<u>Key Concern</u>	<u>How this is addressed</u>	<u>How this is Regulated</u>	<u>Notes</u>
Sidewalks -- Prohibited		Municipal Ordinance & State Law	
Waterfront Greenway	E-bikes and E-scooters will be limited to 10MPH	• Geo-fencing • Contract Stipulation • Parks Commission, <i>possible</i>	
Local bicycle shop rental concerns	Waterfront speed restriction; Gotcha transitioning to per minute pricing model	Contract (for speed restriction)	
Helmets	Education; System goal is for predictable 1st mile/last mile use	• Contract Stipulation requires safety briefing • Helmets are not required under state or municipal law for bikes or scooters	

<u>Key Concern</u>	<u>How this is addressed</u>	<u>How this is Regulated</u>	<u>Notes</u>
Community control	Direct contract with vendor that includes operational conditions	Contract	
Contract duration	1 year contract with up to two additional years	Contract	
Regulation of scooter pilot	Requires NTP from community and additional conditions can be added	Contract	

PRICING

 English

Quick Trip

\$2

FOR FIRST 30 MINUTES

\$5 EACH EXTRA 30 MINUTES
(PRORATED BY THE MINUTE)

Join Now

Monthly

\$15

PER MONTH

60 MINUTES OF FREE RIDE TIME
PER DAY

Join Now

Annual

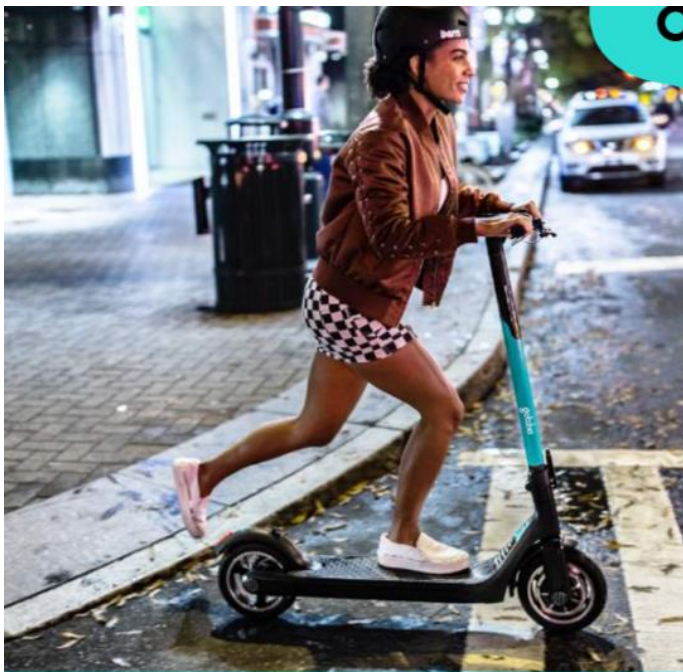
\$50

PER YEAR

60 MINUTES OF FREE RIDE TIME
PER DAY

Join Now



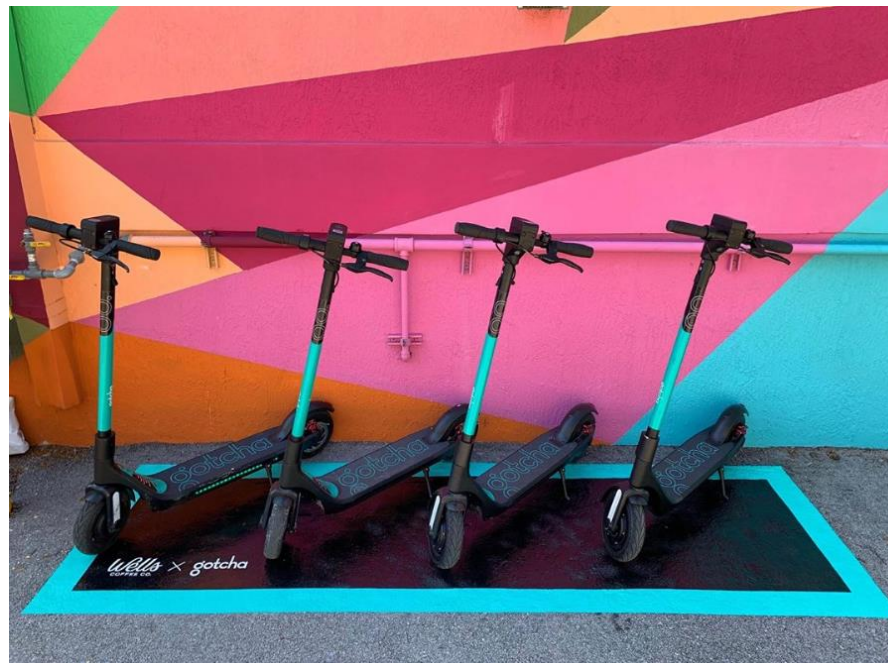


350-watt motor

**Rust resistant
frame**

**Front and rear
safety lights**

- **15 mph maximum
speed**
- **18-20 miles per
charge**
- **Weatherproof
battery**





CITY OF BURLINGTON, VERMONT
CITY COUNCIL TRANSPORTATION, ENERGY & UTILITIES COMMITTEE

c/o Department of Public Works
645 Pine Street, Suite A
Post Office Box 849
Burlington, VT 05402-0849

802.863.9094 VOX
802.863.0466 FAX
802.863.0450 TTY
www.burlingtonvt.gov

Councilor Maxwell Tracy, Chair *WARD 2*
Councilor Jack Hanson, *East District*
Councilor Franklin Paulino, *North District*

Inquiries:
Phillip Peterson
802.865.5832
ppeterson@burlingtonvt.gov

Transportation, Energy and Utilities Committee of the City Council

Thursday, May 23, 2019 7:30 PM

**Burlington Department of Public Works – Front Conference Room
645 Pine Street – Burlington, VT**

Chair Tracy called the meeting to order at 7:32 pm.

1. Agenda

Councilor Hanson moved to accept as written. Councilor Paulino second. All in favor.

2. Minutes of 05/07/2019

Councilor Paulino moved to accept. Councilor Hanson second. All in favor.

3. Public Forum

No members of the public spoke.

4. Shared Mobility

DPW Rob Goulding: offered to start by reviewing key concerns and how they will be addressed. See supplemental presentation.

Councilor Tracy: how does scooter pilot's removal from State's T-bill address this contract and process?

Goulding: no changes from contract; allows more deliberative time to develop pilot and conditions; when and if legal conditions change, pilot program can be launched; other contract partners remain interested in keeping scooters and future pilot in contract; more time for TEUC involvement.

City Attorney Nick Lopez: no express prohibition of scooters under state law but they are not regulated – falls under definition of motor driven cycle; remains in uncertain regulatory status; state will likely address this next year; keeping in contract gives flexibility for next year.

Tracy: confirming DPW's intent to move contract forward as-is.

Goulding resumed supplemental presentation.

Paulino: do local bike shops rent scooters? Will this impact their rentals? Will there be more scooters then?

Goulding: regulatory change would open up rental options

Paulino: how closely has staffed followed state process?

Goulding: followed language changes throughout process

Resident Barbara Headrick: cost of enforcement? Who is paying / receiving? \$1 revenue should be offset by any city enforcement expense? Residents may have to self-enforce

Goulding and Lopez: contract requires enforcement and failure for Gotcha to enforce would lead city to reconsider contract renewal; enforcement mechanism is built into contract; breach of contract and civil liability if terms are not enforced

Councilor Djieng: will BPD actively enforce e-bikes on sidewalks?

Goulding: DPW will be coordinating with BPD; certain level of comfort based on other community feedback

Djieng: when was Vision Zero adopted? No time spent to identify implementation. E-bikes will be helpful for students, visitors, others to navigate city. Key concerns for bikes and scooters: potholes, night riding, age limit – need to prioritize safety before contract. Are these details in contract?

DPW Director Spencer and Goulding: planBTV Walk Bike was adopted in 2017 and recommended Vision Zero – no adoption yet; share same goals for safety and expect operators of any vehicle to be mindful of safety; contract requires operator to have users complete safety briefing before use; lights are built into front and back of bikes and scooters; contract allows city to define scooter terms – maybe no scooter operation from March – April to repair frost damage

Lopez and Goulding: state e-bike age limit is 16, Greenride / Gotcha age limit is 18

Djieng: local ordinance or policies may be needed for general e-bike and scooter safety

Lopez: best practice in other cities includes pilot, similar to this 1-year pilot, to understand what ordinances are actually needed; difficult to predict; can come back in 1 year with DPW recommendations

Djieng: no lessons already learned from private e-bike use?

Goulding: no ability to collect data now; shared program will provide data

Hanson: pilot program regulates safety much more than current e-bike system and personal use e.g. higher speeds, no safety briefing; contract is stricter while local shops are selling e-bikes regularly

Paulino: clarifying what is being requested for approval tonight? Unworkable to strike scooters?

Lopez and Goulding: move for authority to advance to City Council and for DPW Director to sign contract; not legally unworkable but may have policy implications; from Gotcha's business and local partners perspective, most beneficial to keep paired; not apparent how contract could allow scooters in the future otherwise

Paulino: two concerns for scooters – Attachment A is unclear about how restrictions are included, Attachment C for scooters should have more, but unclear what that should be – potentially for bike path or certain hours, limited to downtown

Lopez and Spencer: contract requires NTP and Attachment C with specific conditions prior to launch – new additions can be added over time and will be required before NTP will be issued for scooter pilot launch; no expectation that Council will define conditions before staff will ask for NTP approval

Hanson: not moving until legislature does something? Or City Council? What exactly is the TEUC approving?

Lopez and Spencer: City Council would have to grant authority for scooters; would want more clarification about legal standing beforehand; looking for recommendation to bring this to full Council with any feedback or direction from TEUC; could go as early as June 3 but depends on TEUC direction

Headrick: any data from other cities on enforcement costs?

Goulding and Hanson: no known data; BPD would receive revenue from any tickets for enforcement

Tracy: Several contract questions:

5b references state statute or contract?

6f says they will maintain lights – any inspection provision?

Operations describes adequate personnel and staffing – who will that be? Who picks up scooters and bikes for maintenance and charging? Will staff be paid livable wage?

Are they interested in sponsorships? Any potential for revenue sharing of any sponsorships? Would prefer no advertising but should have a fee to city since cluttering ROW.

Subsidized services section is vague – what qualifies, how do people know where to go if they are unbanked – should be clearly identified. Scooter rental fee leaves un-rented scooters taking up space for free - \$1 per rented scooter as payment seems potentially low – how much of their revenue is required to be shared – should have clear requirements since this is a direct contract without RFP.

General Operating Conditions on Use section 10.b – would like to see provisions prior to signing contract, not just on request; subpoint a – how is that actually distributed – if in app, what happens for unbanked? Interested in a demonstration of the safety requirements and have that mirrored in contract. Subpoint c – how many and how often – will provide data of how many attend trainings, where, how often? Should be more specific in contract.

Clarifies that concerns are related to scooters, not e-bikes.

Section 12.d complaints about undocked devices – how will it work – where is phone number on devices for complaints? Should have clear provision for how to report complaints and how is it audited.

Section 12.3 – how will that be shared? Would like specificity.

Section 14 for exclusivity – why not RFP process?

General safety: relying on contract provisions to enforce provisions – there is still a need to have clarity to address e-bikes and new devices in general – would like to see ordinance process

Lopez, Goulding, Spencer, and DPW Nicole Losch: respond to contract questions:

5b is in contract;

Maintenance is in contract page 18 as KPI; local Gotcha GM and second FT staff with maintenance contract by Old Spokes; contract addition can be made for livable wage requirement – doesn't meet LWO standard as-is since payment isn't being made by city;

No indication for sponsorship interest on bikes, sign panels may have sponsor recognition – approvals through encumbrance;

Revenue share is through \$1 contribution now, system use last year was minimal so this is a learning process – can renegotiate in future;

Subsidized services for unbanked, without mobile phones, qualified low-income residents following thresholds in other programs (EBT, SSDI, Medicaid, Section 8, Reach Up, WIC, 3 Squares VT) – currently \$5 / month and \$25 / year – can access without phone at local businesses; data currently shows ride-based detail which will show revenue – can review at 1-year point; encumbrance permit will require fee; 13a could be amended to require fee collection or revenue be included; generally subsidized \$4 per ride last year at city's cost; app-required safety briefing, unsure about unbanked briefing; minimums for training schedule have not been defined;

Any scooter-related additions to contract can be added later through development of NTP conditions;

Complaints about improperly parked bikes – available phone line, DPW will re-route complaints or respond to emergencies – KPI requires reporting metrics – 13a requires reporting complaints, can add response times; sidewalk ban will be in safety briefing;

Initial bike share was RFP process, RFP showed Gotcha was willing to negotiate and has been responsive through this contract process, exclusive process allows clear control with one company, initial launch was always intended to be phased and Gotcha has already invested in community;

Paulino: consider revenue back to city after x% revenue obtained by Gotcha

Hanson: holistic review of costs and benefits from getting people out of cars, giving options to low-income residents, displacing ridesharing that is using our infrastructure; bike shops could be beneficial platform for safety briefings to reach more

Paulino: motion to move contract to City Council for approval. Hanson second. Discussion: clarify actual motions. Lopez referred to memo in packet. Hanson: move to amend motion to that listed as first in memo. Paulino second. All in favor of amendment. Discussion on motion: Tracy not supportive due to outstanding questions and need for specificity. Paulino and Hanson vote aye. Tracy nay.

Hanson: motion to approve second motion in memo. Paulino second. Discussion: Tracy – this motion is not specific to Gotcha? Goulding and Spencer: specific to process, intent for formal charge and define entity to develop and bring to full Council, intended to give TEUC comfort in final approval of conditions before launch. Tracy: supportive of general pilot and wants TEUC and Council to be involved. All in favor.

5. Set Future TEUC Meeting date

June 27 5pm at DPW

6. Councilor Updates

Hanson: Colchester Ave project at June 19 Commission.

Paulino: interested in exploring free parking for EV. Hanson supportive. Interested in waiving fee for EV rates. Suggest for next meeting. Include BED.

Tracy: general goals and workplan on next agenda.

7. Adjourn

Hanson moved to adjourn. Paulino second. All in favor.

Adjourned at 9:15.