

**AMENDMENT  
TO THE  
CITY OF HAMILTON - SOCIAL BICYCLES  
OPERATING AGREEMENT**

THIS AMENDMENT (the "**Amendment**") is effective as of 28 February 2020 (the "**Amendment Effective Date**") and is between **The City of Hamilton (Ontario Canada)**, % Public Works Department, Transportation Division, 77 James Street North, Suite 400, Hamilton, Ontario, L8R 2K3, Canada (the "**City**") and **Social Bicycles, LLC (successor-in-interest to Social Bicycles, Inc.)**, 55 Prospect Street, #410, Brooklyn, New York, 11201, USA (the "**Contractor**"). The City and the Contractor are referred to collectively herein as the "**Parties**" and individually as a "**Party**."

**RECITALS**

WHEREAS, on 19 March 2014 the City and the Contractor entered into an Operating Agreement (the "**Contract**") for certain products and services for use in a bicycle sharing program in the City of Hamilton, Ontario (Canada) and certain of the Contractor's obligations were subcontracted to Hamilton Bike Share Inc. (the "**Subcontractor**"); and

WHEREAS, on or around April 2018 Social Bicycles, LLC was acquired by, and became a wholly-owned subsidiary of Uber Technologies, Inc.; and

WHEREAS, on or around November 2018, the Parties exchanged correspondence intending to amend the terms of the Contract for a certain period; and

WHEREAS, on or around May 2019, Jump Technologies Canada Inc. ("**Jump Canada**") acquired certain assets of the Subcontractor; and

WHEREAS, the Contractor subcontracts certain of its obligations to Jump Canada; and

WHEREAS, the Parties have now agreed to a renewal period and revised terms and conditions for such period.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree to amend the Contract as follows:

1. Capitalized terms not otherwise defined in this Amendment will have the meanings assigned to them in the Contract.
2. **Section 7** is deleted in its entirety and is replaced with the following:

"Therefore the term of this Contract is five (5) years. The Parties mutually consent and agree this Contract renewed for one two-year renewal on February 19, 2019 and, unless otherwise specified herein, will terminate on February 19, 2021. Notwithstanding any other Contractor obligations in this Contract, the Contractor's transfer service obligations in Section 8 will not apply after February 19, 2021 nor after any permitted assignment under this Contract. At the mutual consent of each of the Parties, and as otherwise described in Section 2. (Term of the Contract) in the Special Provisions to the Request for Proposals, this Contract may be renewed for additional two-year terms after February 19, 2021, as many times as mutually agreed upon by the parties in writing. There is no obligation on either of the Parties to extend the Contract or any portion of the Contract beyond the first two-year renewal term. Should the Parties decide to extend the Contract for any particular time period, any such extension shall be on the same terms and conditions of the original Contract (excepting for necessary updates and changes)."

3. **Section 16** is amended to remove the word "sponsorships" such that the second sentence reads as follows:

"Revenues from user fees and memberships are expected to compensate the Contractor to operate, maintain, and promote the Bicycle Sharing System."

The Parties agree that the profit sharing formula for the first renewal period, as referred to in section 18 is (a) the Contractor retains 100% of user revenues and (b) the City retains 100% of sponsorship revenues.

- 4. **Section 20** is deleted in its entirety and is replaced with the following:

“During the first two-year renewal term after the first five-year initial term: (a) funds will be distributed according to the profit sharing formula in Section 18 (Compensation); and (b) the Contractor will have a right-of-first-refusal for all Bicycle Sharing System sponsorships that City is considering during the first renewal term. The City will submit the name(s) of the proposed sponsor(s) to the Contractor and the Contractor will have ten (10) business days to reject or approve the City’s proposed sponsor.”

- 5. **Section 25(a)(ii)** is deleted in its entirety and is replaced with the following:

In the case of the Contractor:

Social Bicycles, LLC  
 1455 Market Street, Suite 400,  
 San Francisco, California, 94103, USA,  
 Attn: NeMo - Legal  
 Email - [nemolegal@uber.com](mailto:nemolegal@uber.com) / Phone - (866)-576-1039

- 6. **Section 31(j)** is deleted in its entirety and replaced with the following:

“Neither party shall have any liability to the other party or any other person for any claims, demands, actions, causes of action, interest, costs, damages, expenses, fines, penalties, loss, suits or other proceedings for loss, damage, injury or death resulting from the exercise of a party’s rights under this section except as may be caused by a party’s negligence or willful misconduct.”

- 7. Except as specifically modified or amended by this Amendment, the Contract will remain in full force and effect and, as so modified or amended, is hereby ratified, confirmed and approved. This Amendment will be deemed a part of, and construed in accordance with, the Contract. In the event of any inconsistencies between this Amendment and the Contract, the terms of this Amendment will control.
- 8. This Amendment may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement. Facsimile and digital signatures will be deemed original signatures for all purposes under this Amendment. When properly signed, this Amendment may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.

In witness whereof, the Parties hereto have executed this Amendment as of the Amendment Effective Date written above.

**Social Bicycles, LLC**

**City of Hamilton**

By: *Avra van der Zee*

By: **Jason Thorne**

Name: Avra van der Zee

Name: Jason Thorne

Title: Director, Market Entry

Title: General Mgr., Planning & Economic Development

Date: March 15, 2020

Date: March 14, 2020

Approval Authority granted by City Council on May 9, 2019, Public Works Committee Report PED18223(a), dated April 29, 2019, Item 14.2

**Approved As To Form:**

**Approved As To Content:**

*P. D'Souza*

*Brian Hollingworth*

Patricia D’Souza  
 Solicitor  
 Legal Services  
 March 12, 2020

Brian Hollingworth  
 Director, Transportation, Planning & Parking  
 March 13, 2020