

AGREEMENT FOR BICYCLE SHARING SERVICES

City of Salem and Ride Salem

This agreement (“Agreement”) is made and entered into by and between Ride Salem (“Ride Salem”) and the City of Salem (“City”).

RECITALS

The City of Salem is a public body that owns or controls certain real property located within its municipal jurisdiction.

Ride Salem is a nonprofit organization engaged in providing bicycle sharing services to residents and visitors of Salem.

Ride Salem desires to operate a bike sharing program in the City that includes placing and operating self-service kiosks within property owned or controlled by the City.

The City desires to allow Ride Salem to place its Bikeshare Amenities (defined below) on City property so as to promote the health, welfare, and public safety of its residents and to protect the public facilities of the City;

The purpose of this Agreement is to establish the parameters and procedures for the location, installation, maintenance, and operation of Bikeshare Amenities within City property by Ride Salem. The scope of this Agreement is limited to the installation, maintenance, and operation of Bikeshare Amenities on City property.

In consideration of the mutual promises herein and other valuable consideration both parties agree as follows:

SPECIFIC PROVISIONS:

Section 1: Agreement Summary

- A. Bikeshare Amenities. The term “Bikeshare Amenities” includes kiosks, bicycles, signs, or other bicycle sharing-oriented improvements ordinarily and customarily installed by Ride Salem.
- B. Equipment Ownership. City and Ride Salem agree that Ride Salem shall own all right, title, and interest in bikes, stations, signs, and any other equipment related to the bike sharing program.
- C. Service and Maintenance. Ride Salem agrees that it shall bear all costs associated with the service, security, and maintenance of bikes, stations, signs, and any other equipment related to the bike sharing program.
- D. Requirements for Operating
 - 1. Use. Ride Salem shall use the locations solely for bikeshare and will not use them for any other purpose whatsoever without first obtaining written license from the City in the form of a revocable license, including appropriate property descriptions for each location.
 - 2. Location. Any change in location of an existing station or installation of a new station must first be approved in writing by the City. City authorizes Ride Salem to operate

stations at the following locations, subject to securing revocable licenses for each location (See Attachment 1):

Station	Location	Coordinates
South Riverfront Park	South of Riverfront Park Playground	44.940114, -123.043552
Bush Park	Parking Lot south of intersection of Winter St. SE & Mission St. SE	44.931196, -123.035968
Cherriots Station	SW Corner of Chemeketa St. SE & Church Street NE	44.941280, -123.034727
Union Street Bridge	Near the east entrance of the Union Street Bridge	44.946585, -123.039755

Ride Oregon may apply to the Public Works department for additional revocable licenses on City property. Discretion to issue such additional licenses lies solely with the City.

3. Installation. The timing and manner of installation shall be done in compliance with the City's requirements. Ride Salem shall be responsible for all costs associated with construction of Bicycle Sharing Amenities on City property. Prior to installation, it shall be Ride Salem's responsibility to:
 - a. Provide a mockup of installation for inspection by City Park Operations and City Engineering staff; and
 - b. Call utility location services and determine any underground installations of any type.
4. Reporting. Each bicycle placed in service by Ride Salem, regardless of where it is initially placed (on City property or elsewhere) shall have a unique number assigned to it and permanently affixed to the bicycle. Ride Salem shall report on a quarterly basis the status of each bicycle. (Status to be described as: In service; Out of Service; Lost; and Newly Placed in Service if the bicycle has been added to the inventory since the last quarterly report.)
5. Information Sharing. Should information regarding rental of a particular bicycle become necessary as part of a criminal investigation, code enforcement investigation, or to implement or enforce this agreement, Ride Salem shall, upon written request, provide the information without the necessity of subpoena or warrant.
6. Signage. Signage placed at City locations shall contain at least following:
 - a. Hours of operation compatible with park location hours.
 - b. Phone number for persons to contact Ride Salem to report damaged or found bikes. The phone number shall also be placed on each of the bicycles.
 - c. Safety information, including but not limited to: statements regarding traffic and pedestrian safety; compliance with Oregon Revised Statute (ORS)

814.485; and necessary safety equipment including equipment needed for safe nighttime operation.

d. Park rules regarding speed limit within parks.

7. Maintenance. Maintenance of all Bikeshare Amenities will be performed by Ride Salem. Maintenance of bikes shall occur as needed. Inspection of bikes shall occur no less than on a monthly basis. Bicycles that are in disrepair shall be taken out of service, repaired, and replaced.
8. Safety of Bikeshare Amenities. Ride Salem shall install and maintain the bikeshare stations and bikes of such material, and in a manner that will not at any time be a source of danger to, or interfere with the City's present or future use of City property, or the use of City property by any utility presently franchised by the City, or interfere with its use as a public way, nor unreasonably impede traffic adjacent to the location.
9. Emergencies. If any Bikeshare Amenity causes an emergency condition, and the City determines that the situation makes it unreasonable to notify Ride Salem or await action by Ride Salem, the City may take whatever actions it deems necessary to remedy the emergency situation at the sole expense of Ride Salem which will reimburse the City within thirty (30) days for the reasonable costs of such actions.
10. Fees. For a period of one (1) year after the effective date of this agreement the City will waive any fees placed upon Ride Salem related to placing a station in City-owned right-of-way, City parks, or any other City-owned property. Ride Salem shall report on a quarterly basis the number of rentals executed; gross revenues for that quarter. At the end of one (1) year the City and Ride Salem will revisit the issue of fees related to placing stations in City-owned property.
11. Lost Bicycles. Bicycles not placed at a Ride Salem kiosk and not in the immediate control of the renter shall be considered lost. Retrieval of such bicycles is the responsibility of Ride Salem. Should City employees discover bicycles not housed at a kiosk, the City employee shall call the phone number listed on the bicycle to arrange retrieval. Should the bicycle not be retrieved before the end of the next business day (5:00 PM) following the notice of discovery, City personnel may impound the bike and a \$25 fee will be charged to Ride Salem for release of the bicycle. A bicycle is "not in the immediate control of the renter" if it is left on the property of another without the consent of the party controlling property or if it is left in any location where it creates a risk of public nuisance.
12. Point of Contact. The parties will assign a point of contact who will be responsible for interacting with the other party regarding matters covered by this Agreement. The points of contact will be reasonably accessible during normal business hours.

Section 2: Breach and Termination

- A. If either party breaches any of the provisions hereof or is in default in the performance of any obligation imposed hereunder, the other party may give no less than thirty (30) days written notice of the breach (the "Notice Period") and if the breach or default is not cured before the end of the notice period, then this Agreement will terminate. Upon termination of this Agreement,

Ride Salem shall abandon the use of City property, and shall remove the bikeshare stations and bikes.

- B. If, after termination and within thirty (30) days after being directed to do so by the City, Ride Salem fails to remove the bikeshare stations and bikes, City may perform the work and Ride Salem shall reimburse the City within thirty (30) days after City submits a bill to Ride Salem for the reasonable costs of such work.
- C. Termination of this Agreement for any reason shall not release Ride Salem from any liability or obligation relating to the installation, operation, maintenance, or removal of the bikeshare stations, bikes, or any other term of this Agreement.
- D. Waiver of any breach of any provision of this Agreement by either party shall not operate as a waiver of any subsequent breach of this same or any other provision of this Agreement.
- E. Unless otherwise provided in this Agreement, all claims, counterclaims, disputes, and other matters in question between Ride Salem and City arising out of, or relating to this Agreement or the default or breach of it will be decided, if the parties agree, by mediation, or if they fail to agree, by arbitration. Arbitration will be conducted according to rules and procedures set out by a mutually agreed upon arbitrator. The award of the arbitrators shall be accompanied by a reasoned opinion.
- F. This agreement may be terminated by either party with 30 days written notice.

Section 3: Amendments

Any amendment to this Agreement shall be in writing and signed by the authorized representatives of both parties. There are no understandings, agreements, or representations, oral or written, regarding this Agreement except as specified or reference herein.

Section 4: Insurance

- A. During the term of this Agreement, Ride Salem will maintain the following insurance:
 - 1. General Liability Insurance with coverage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate;
 - 2. Worker's Compensation Insurance in accordance with statutory requirements; and
 - 3. Umbrella coverage in the amount of at least \$2,000,000.00.
- B. Any cancellation provision must provide that if the policy is cancelled prior to the expiration date of this Agreement, materially changed or not renewed, the issuing company will mail thirty (30) days written notice to the City.
- C. A certificate of insurance in compliance with the above must be furnished to the City with the execution of this Agreement and prior to commencement of construction.

Section 5: Indemnity/Liability

Subject to the limitations and conditions of the Oregon Tort Claims Act ORS 30.260 to 30.300 and the Oregon Constitution, Article XI, Section 7, Ride Salem agrees to defend, indemnify, and hold harmless City and its affiliates, its officers, directors, shareholders, members, employees, or agents from all liabilities, claims, suits, damages, losses, actions, or expenses, including reasonable attorney's fees and costs for bodily injury or personal injury including death, or loss or damage to property to the extent caused by the negligent or willful acts or omissions of Ride Salem, its officers, contractors, employees, or agents, arising out of or related to the activities of Ride Salem, its officers, contractors, employees, or agents under this Agreement. It is the specific intention of the parties that City shall, in all instances, except for claims arising from the negligent or willful acts, criminal acts, or omissions of City, its officers, board members, employees, and agents be indemnified by Ride Salem from and against all such claims provided above.

Section 6: Entire Agreement

This Agreement contains the entire agreement of the parties regarding Ride Salem and the Bikeshare Amenities and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

Section 7: Binding Effects and Assignment

- A. This Agreement is binding upon signature of both parties and inures to the benefit of the successors and/or assigns of the parties.
- B. This Agreement is for the exclusive benefits of the parties hereto. It shall not be assigned, transferred, or pledged by either party without the prior consent of all the remaining parties.

Section 8: Severability

If any part of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement will remain valid and enforceable if the remainder of the Agreement is reasonably capable of completion.

Section 9. Notice

Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery; by sending via a reputable commercial overnight courier; or by mailing using registered or certified United States mail, return receipt requested and postage prepaid, at the addresses set forth below:

If to the City:	City of Salem Attn: Steve Powers, City Manager 555 Liberty Street SE, Room #220 Salem, OR 97301-3503
If to Ride Salem:	Ride Salem Attn: Evan Osborne, President, CEO 4742 Liberty Road S Salem, OR 97302

Notice delivered by personal delivery shall be deemed to be given upon actual receipt. Notice sent by overnight courier shall be deemed to be given five (5) days after dispatch. Notice sent by United States mail shall be deemed to be given five (5) days after mailing.

Section 10. Term of the Agreement.

____ Unless terminated as herein provided, this Agreement shall be effective from the date of the last signature set forth below through and including June 30, 2023. This agreement can be extended by mutual agreement for one additional period of 3 years.

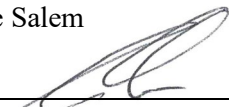
Section 10. Effective Date and Signatures

This Agreement shall be effective on the latest date of signature. The City and Ride Salem, by their signatures, acknowledge having read this Agreement, understand it, and agree to be bound by its terms and conditions. The individual signing this Agreement on behalf of his or her respective party hereby certifies that such signature has been authorized by his or her party and that the individual has the authority to act on behalf of and to bind his or her party.

IN WITNESS WHEREOF, Ride Salem and the City hereto have caused this Agreement to be executed in their respective names by their authorized representatives as of the dates set forth below:

Ride Salem

City of Salem, Oregon (City)



Evan Osborne
President, CEO

Steven D. Powers
City Manager

Date: 2/27/2020

Date: _____

APPROVED

Peter Fernandez, PE
Public Works Director

Date

Legal Counsel for City

Date