

STAFF REPORT FOR CALENDAR ITEM NO.: 10.2
FOR THE MEETING OF: April 12, 2018

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a purchase agreement and software license agreement with eLock Technologies in an amount not to exceed \$376,738 for manufacture, delivery, and installation of secure electronic long-term bicycle lockers and associated software for the Salesforce Transit Center.

REPORT:

In preparation for the opening of the Salesforce Transit Center, staff expects certain demand from transit riders, the public, and other facility users for bicycle storage.

Based on the mixed planned uses of the transit center for public facility, retail, services, administrative office, and entertainment uses, San Francisco Planning Code section 155.2 calls for 100 Class 1 bicycle parking spaces at the transit center building site. The City Planning Code explains that Class 1 spaces must “protect the entire bicycle, its components and accessories against theft and inclement weather, including wind-driven rain.” The City Planning Code finds that “acceptable forms of Class 1 spaces include (A) Individual Lockers, (B) Attended Facilities, (C) Monitored Parking, (D) Restricted Access Parking, and (E) Stacked Parking”. Class 2 spaces are, on the other hand, “spaces located in a publicly-accessible, highly visible location intended for transient or short-term use by visitors, guests, and patrons to the building...”. Under the City Planning Code, the transit center should have 130 Class 2 bicycle parking spaces.

TJPA staff have reviewed the Federal Transit Administration (FTA) Manual on Pedestrian and Bicycle Connections to Transit. The FTA best practices outlined in the manual align with the San Francisco Planning Code requirements as well as with best practices and bicycle plans adopted by regional and local transit entities such as BART, SFMTA and Caltrain.

TJPA staff have identified the west end of the transit center site south of Natoma Street as a suitable location for the Class 1 bike facilities. Staff has coordinated and validated the layout of long term bicycle storage with planning, design, construction, future operations, and transit stakeholder requirements of the Transbay Program. The TJPA Program team have also coordinated with Motivate to plan for a future Ford GoBike station in close proximity to the Class 1 bike facilities. Bicycle racks for Class 2 spaces will be located at various sites around the building, as shown below.



For long term bicycle storage, a self-attended and secure electronic bicycle locker provides an optimal solution. Staff have researched bike facilities recommended by various local, state, and federal stakeholders and agencies. BART, SFMTA, City of Oakland, City of El Cerrito, Capital Corridor and PCJPB (Caltrain) currently use and recommend eLock Technologies for long term bicycle parking. Having one type of bicycle locker at the transit center is preferable to owning a variety of lockers, to keep licensing and maintenance costs lower.

eLock Technologies manufactures and provides annual software licensing (BikeLink[®]) for self-attended, electronic shared use, secure, long-term bicycle storage lockers. The electronic lockers supplied and maintained by eLock Technologies are durable, secure, and well-liked by users. There are compelling reasons for TJPA to procure this equipment from eLock Technologies: standardization product/operating system; consistent customer experience; no other equal/better product; and, locally built/maintained. eLock Technologies is a Bay Area company based in Berkeley. Product development, assembly and maintenance are all supplied by local staff and ownership. This type of Class 1 storage is preferable to other types of Class 1 storage identified in the City Planning Code primarily due to self-attendance, public accessibility, shared access and electronic monitoring.

Further, eLock Technologies provides a shared electronic lock technology through BikeLink[®]. The regional transit stakeholders that will be making connections at the transit center as well as national transit hub locations offer compatible shared access for the BikeLink[®] software. Benefits of BikeLink[®] include the following: operational flexibility, ease of use, interoperability, and low operating cost.

TJPA requested that eLock Technologies provide best pricing consistent with other local procurements such as SFMTA and BART. eLock Technologies provided a cost proposal for 100 bicycle parking spaces (25 Quad lockers) on December 1, 2017. TJPA staff have analyzed the pricing/terms; the initial capital cost of procurement totals \$376,738 including manufacturing, delivery, and installation. The procurement timeline is roughly 8-12 calendar weeks from time of deposit to delivery/installation.

TJPA staff have negotiated the attached form of quote, purchase agreement, with associated product warranty, and software license agreement, and acknowledge BikeLink[®]'s standard form of user agreement with customers. A separate service/operations agreement will be executed between TJPA's asset manager, Lincoln, and eLock Technologies for servicing of the facilities; the cost of that agreement includes 5 years of software license renewal.

RECOMMENDATION:

Authorize the Executive Director to execute a purchase agreement and software license agreement with eLock Technologies in an amount not to exceed \$376,738 for manufacture, delivery, and installation of electronic bicycle lockers and associated software for the Salesforce Transit Center.

ENCLOSURES:

1. Resolution
2. Quote
 - Purchase Agreement
 - Product Warranty
 - Software License Agreement
 - User Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has the authority to, among other things, make and enter into contracts and exercise all powers necessary and proper to carry out the provisions of the Joint Powers Agreement; and

WHEREAS, The TJPA expects certain demand from transit riders, the public, and other facility users for bicycle storage at the new transit center; and

WHEREAS, Based on the planned mix of uses at the transit center, the San Francisco Planning Code Section 155.2 recommends that the TJPA install 100 Class 1 bicycle storage spaces at the new transit center. This recommendation is consistent with Federal Transit Administration best practice guidelines as well as practices and plans of regional and local transit entities; and

WHEREAS, The TJPA requires the services of an entity to manufacture, deliver, and install Class 1 bicycle storage at the new transit center; and

WHEREAS, TJPA staff has coordinated and validated the layout of long term bicycle storage with planning, design, construction, future operations, and transit stakeholder requirements of the Transbay Program; and

WHEREAS, TJPA staff has received a proposal from a local small business, eLock Technologies, and has negotiated with eLock Technologies the terms and conditions of the attached quote, purchase agreement and associated product warranty, software license agreement, and standard form of user agreement; and

WHEREAS, There are compelling reasons for TJPA to procure this equipment from eLock Technologies; and

WHEREAS, TJPA staff has confirmed pricing for this procurement is commensurate with similar purchases by other local public agencies; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a purchase agreement and software license agreement with eLock Technologies in substantially the form attached for an amount not to exceed \$376,738 for manufacture, delivery, and installation of electronic bicycle lockers and associated software for the new transit center.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of April 12, 2018.

Secretary, Transbay Joint Powers Authority



eLock Technologies, LLC
 800 Heinz #11
 Berkeley, CA 94710

QUOTE

DATE	QUOTE #
12/1/2017	4362
Expiration Date	6/1/2018

BILL TO
Accounts Payable Transbay Joint Powers Authority 201 Mission Street Suite 2100 San Francisco, CA 94105

SHIP TO
Mark Zabaneh Transbay Joint Powers Authority 425 Mission Street San Francisco, CA 94105 ap@tjpa.org 415.597.4620

Item	Description	Qty	Rate	Amt
1.G5 SS Quad Blue Roof	eLocker -Finish: Stainless Steel -Graphic End Panel: Bicycle -Roof: Dome Blue	25	\$10,238.00	\$255,950.00
2.Software- Initial Software License	Initial BikeLink Software License (per controller)	50	\$1,000.00	\$50,000.00
3.Power- Solar, Alkaline	- Power Source: Solar Power with rechargeable battery and alkaline battery backup	50	\$50.00	\$2,500.00
4.Gateway- Gateway with Cell Ext. Assembly (freestanding/initial eLocker in a group)	Gateway with Cell Modem Extension Including Wiring and LAN Adapters (1st Locker in Group)	5	\$1,200.00	\$6,000.00
5.Gateway- Access to Gateway for Additional Lockers in Group	Wiring and LAN Adapters for Additional Lockers in Group (Up to 5 Additional Lockers)	20	\$500.00	\$10,000.00
6.EE Delivery	Delivery	1	\$3,500.00	\$3,500.00
7.EE Installation	Installation (per space)	100	\$200.00	\$20,000.00
8.Service Agreement	Annual Service and Operations Agreement -Includes Annual Software License Renewal \$120/space per year (5 Year Term) -5 Years of Software License and Service and Operations to be provided though TJPA designated Asset Manager.	5	\$0.00	\$0.00
9.BikeLink Card- Manager Card	BikeLink Manager Card Contact eLock for PIN	2	\$50.00	\$100.00

10.Service Access Key	Service Access Key	2	\$20.00	\$40.00
11.BikeLink Parking Sign	Supply BikeLink "How to Use" Signs and set-in-place on specific locker Pods.	4	\$175.00	\$700.00
			SUBTOTAL	\$348,790.00
			SHIPPING	\$0.00
			DISCOUNT	\$0.00
			TAX	\$27,947.15
			TOTAL	\$376,737.15

Tax Rate: 8.5%

Taxable Line Items: 1-6, 9, 10, 11.

Gateways will have zero ongoing cost if they can connect to secure WiFi provided by the TBJPA. If cell modems are needed for connectivity, the access charge is \$20/month per Gateway with cell modem. With the current layout provided by TBJPA there would be 5 Cell Modems, which would generate a monthly connectivity charge of \$100. This cost would be billed quarterly or annually.

Procurement costs for Gateways are subject to change on the groupings of the Quad eLockers. Only one Gateway needed for a group to connect to the network.

This quote is valid for 180 days.

BIKELINK® PURCHASE AGREEMENTS

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I. PURCHASING & DELIVERY TERMS AND CONDITIONS

1. GENERAL CONDITIONS

This agreement shall be governed by the Uniform Commercial Code as adopted in the State of California. There are no understandings, terms or conditions not fully expressed herein, and no terms and conditions in lieu of or in addition to the terms and conditions hereof shall be binding unless made in writing and signed by eLock. Failure of either party to enforce any of these conditions or to exercise any right shall not affect such party's rights nor shall any failure act as a waiver in respect of other or further occurrences.

2. TERMS OF PAYMENT

Payment is due as described in this Proposal and Acceptance. eLock may also, at its option defer further shipments until all payments are made or terminate this agreement.

3. WARRANTIES

See document attached, entitled "BikeLink® Equipment Limited Product Warranty".

4. TAXES

Prices quoted herein may include sales, use or other taxes imposed upon or in connection with the sale, transfer, transportation or storage of the materials or work covered by this proposal. To the extent that such taxes are included in the price quoted, only such taxes as are presently imposed upon eLock are included, and should there be any other such taxes imposed or any imposition, withdrawal, or change in rate of any such taxes applicable to this Agreement or to materials furnished hereunder, then the prices stated herein shall be adjusted accordingly.

5. TRANSPORT SCHEDULE

A valid Purchase Order and completed Installation Packet are required before transport is scheduled.

eLock will establish transport schedule as closely in accordance with Customer's requested delivery date as practicable. eLock will use its best efforts to ship within the time(s) scheduled, but eLock does not guarantee to do so and eLock assumes no liability for loss, general damages or special or consequential damages due to delays or failure to deliver. eLock may during any periods of shortage due to causes beyond the control of eLock or its suppliers, prorate its supply among all of its Customers in such manner as may be deemed equitable in the sole judgment of eLock.

eLock shall not incur any liability to Customer because of any proration hereunder. eLock reserves the rights to make shipment in lots, and to ship in advance of any Customer's estimated delivery schedule, except those dates stipulated not before. Should shipment be held beyond scheduled date for the convenience of the Customer, eLock reserves the right to charge Customer for all expenses incident to such delay and to charge Customer a reasonable amount for storage of such items whose shipment has been delayed.

6. CUSTOMER DELAYS

Notwithstanding any rights eLock may have to take other action, eLock shall not be held responsible for, nor deem to be in default on account of delays in the performance of this Agreement by Customer including, by way of example, the failure of Customer to deliver any designs, schematics, data or information required under this Agreement, or to respond in a prompt manner to any reasonable request for such material made by eLock. Any such delays by Customer resulting in additional expenses or increased costs of production incurred by such delay, shall be chargeable to Customer.

7. MANUFACTURE AND SPECIFICATION

Unless otherwise expressly agreed in writing, the products sold hereunder shall be subject to the eLock's standard manufacturing variations, tolerances, and classifications. All inspections or tests made by or on behalf of Customer to determine compliance with specifications shall be made at eLock's plant prior to shipment unless Customer secures eLock's written consent to make such tests at another location. All charges incident to such inspection or tests, wherever made, shall be paid for by Customer. eLock shall not be responsible for the suitability, performance, adequacy or accuracy of designs, engineering or specifications provided by the Customer for use in manufacturing the products sold hereunder.

8. TRANSPORTATION

Prepaid freight charges, if quoted herein, are based on delivery from eLock's plant to the Installation Location. eLock reserves the right to designate the common carrier and to ship in the manner it deems most economical. Added costs due to special routing requested by Customer shall be charged to Customer. Added costs due to special packing for Customer-arranged pick-up or transportation shall be charged to Customer. If after the date hereof and on or prior to dates of shipment there shall be any increase or decrease in the tariff freight rates used in determining prices, such increase or decrease on all unshipped goods shall be charged or credited to Customer.

9. NON-ASSIGNABILITY

This contract may not be assigned without eLock's or Customer's prior written consent.

10. LIMITATION OF LIABILITY

The remedies of the Customer set forth herein are exclusive. The liability of eLock for any claims, damages, or losses arising out of or related to its performance under this Agreement or the products supplied hereunder shall not exceed the price of the products on which such liability is based. In no event shall eLock be liable for special, indirect, consequential or incidental damages regardless of cause and whether founded upon negligence, breach of express or implied warranty, other tort or breach of contract, or otherwise.

11. TERMINATION

In the event that Customer terminates all or any portion of this order, eLock shall have the right to charge Customer for all costs already incurred by eLock including the price of any goods or services required to fill this order already committed to by eLock and a reasonable allowance for overhead and profit.

12. DISPUTE

Any controversy or claim arising out of or relating to a contract or purchase order executed by eLock and Customer for goods and/or services that are a subject of this proposal shall be settled by: a) Mediation. If mediation is unsuccessful; b) Arbitration. Mediation and arbitration proceedings shall be held in San Francisco, California and shall be administered by the American Arbitration Association under its Commercial Mediation or Arbitration Rules.

13. SEVERABILITY

If any provision in this Agreement is found to be invalid, illegal or otherwise unenforceable by any court or arbitral tribunal, that determination will not affect any other provision of this Agreement. The invalid provision will be severed from this Agreement and all remaining provisions will continue to be enforceable by its terms and of full force and effect.

14. PROJECT LOCATION(S)

Salesforce Transit Center, 425 Mission Street, San Francisco, CA 94105 (see attachment A for more details)

15. ELOCKER DELIVERY SITE REQUIREMENTS

- 1. Unloading area immediately adjacent to installation location. Additional charges will be incurred if product cannot be unloaded immediately adjacent to installation location.*
- 2. Concrete slab with slope less than 2.5%. If slope is between 2.5% and 4.5% Customer will incur additional charges for special extended thresholds. If slope exceeds 4.5% Customer will incur a relocation surcharge.*
- 3. Truck and trailer access and parking adjacent to installation location.*
- 4. Restroom access during delivery and installation.*

16. MATERIALS / PROCESS / FINISHES

eLock reserves the right to substitute superior materials, processes, and/or finishes if specified materials, processes, and/or finishes become unavailable during production.

17. ESTIMATED SCHEDULE

1. *Estimated schedule based on workload at the time of Proposal. Actual schedule may vary.*
2. *This product is fabricated for each order, starting when both purchase order and down payment are received.*
3. *Delivery shall be completed within 12 weeks from issue of Purchase Order and down payment by the customer.*

18. COMPLETION OF DELIVERY, ACCEPTANCE OF PRODUCT

1. *Before the start of Delivery, eLock will communicate to Customer the estimated date of Completion of Delivery. At the end of Delivery, eLock will notify Customer of Substantial Completion. Customer will make all reasonable efforts to visit the Delivery while eLock Delivery crew is still on-site, at a time mutually agreeable to Customer and eLock. If Customer cannot visit Delivery site at time mutually agreeable to Customer and eLock, eLock will send Customer a Notice of Substantial Completion of Delivery via email.*
2. *During this Delivery site visit or review of Notice of Substantial Completion of Delivery, Customer will assess the completion status of the Delivery and, if necessary, create a written Punch List of items requiring further attention, including documentation of what will constitute Clearance of each item on such a Punch List. Punch List will be dated as of the day of the visit or review.*
3. *If eLock is not notified within 3 business days that a Punch List will be sent, or if a Punch List is not received by eLock within 10 business days of Notice of Substantial Completion, then the Delivery is classified as Complete, Customer has Accepted Delivery, Customer waives all rights to dispute Delivery classification as Complete, and Customer will remit 100% of unpaid portion of Grand Total within 45 business days.*
4. *If a Punch List is created, eLock will make all reasonable efforts to clear all items on Punch List within 10 business days. Customer will withhold no more than 10% of Grand Total until clearance of all items on Punch List. Customer will remit payment of 100% of the balance due within 45 business days of clearing of all Punch List items.*

19. INSURANCE

eLock shall maintain the following insurance coverage during the term of the agreement. General liability policy shall name as additional insured the Transbay Joint Powers Authority (TJPA), its member agencies, and its officers, directors, agents, representatives, permitted assigns, and employees. eLock's policies are primary insurance to any other insurance available to the additional insureds, any insurance or self-insurance maintained by the additional insureds shall be excess of eLock's insurance and shall not contribute with it, and eLock's insurance applies severally and not collectively to each additional insured against whom claim is made or suit is brought. eLock grants to TJPA a waiver of any right to subrogation which any insurer of eLock may acquire against TJPA by virtue of the payment of any loss under such insurance. Additional coverage beyond what is specified herein may result in additional expense, to be added to the contract price.

<i>General Liability Aggregate</i>	<i>\$2,000,000</i>
<i>Products and Completed Operations Aggregate</i>	<i>\$2,000,000</i>
<i>Each Occurrence</i>	<i>\$1,000,000</i>
<i>Installation Floater</i>	<i>\$100,000</i>
<i>Auto Coverage</i>	<i>\$2,000,000</i>
<i>Workers Compensation</i>	<i>\$1,000,000</i>
<i>Umbrella ("Form Following" to General Liability) Aggregate</i>	<i>\$2,000,000</i>
<i>Each Occurrence</i>	<i>\$2,000,000</i>
<i>Cyber Security & Liability</i>	<i>\$1,000,000</i>
<i>Retention</i>	<i>\$10,000</i>

20. EXCLUSIONS

1. Post-Delivery On-Site Service unless specifically included.
2. Post-Delivery Maintenance unless specifically included.
3. Replacement Battery Packs, unless specifically included.
4. Replacement of Management Devices or Access Devices.
5. Replacement or repair of components damaged by vandalism, neglect, misuse, natural disasters or other conditions beyond eLock's control.
6. Replacement or repair of components damaged by actions of Customer or its agents in violation of written service procedures as documented in Owner's Manual, including but not limited to power washing.
7. Custom software or modifications written to Customer's specifications, unless specifically included.

21. CONTINGENCIES

1. eLock shall not be liable for any delay in the performance of or failure to perform under this agreement for any cause not reasonably within the control of eLock (including without limitation acts of God, fire, accidents to or breakdowns or mechanical failures of machinery or equipment, however caused, failure of delivery of materials from normal sources, strikes, lockouts or other labor troubles). In the event of eLock's inability to complete its work under this Agreement by reason of any such cause, eLock may cancel and terminate this Agreement in whole or delay performance hereunder for such reasonable period as may be necessary to permit eLock to complete its performance under this Agreement.

The parties agree to the foregoing and have executed this Purchase Agreement on the date indicated below

eLock Technologies

By: Steven Grover, President & CEO

Date: 3/15/18

Transbay Joint Powers Authority

By: Mark Zabaneh, Executive Director

Date: _____

II. BIKELINK® EQUIPMENT LIMITED PRODUCT WARRANTY

The following limited warranties provided by eLock Technologies LLC ("ELOCK") extend to the original facility owner ("OWNER") of the access control kiosk, vehicle presence sensing equipment and door sensors, or bicycle storage locker, electronic controller with software and latching mechanism ("PRODUCT") and are assignable or transferable to a subsequent Owner. Coverage is limited to BikeLink equipment, and does not extend to related components such as cabling installed by others.

1. COMMENCEMENT

This Limited Product Warranty commences upon OWNER acceptance of product installation.

2. ELECTRONICS

ELOCK warrants that the access control kiosk, vehicle presence sensing equipment and door sensors, locker controller, optional gateway, cables, latch assembly, and battery power supply system including electronic components and battery holder will, under normal use, be free from defects in materials and workmanship, and that eLocker equipment will perform substantially in compliance with the product documentation in the BikeLink® Gen 5 eLocker Product Manual relating to the electronics for a period of three (3) years from the date of Commencement.

3. LOCKER AND KIOSK ENCLOSURE

ELOCK warrants that kiosk enclosure, locker frame, locker door and roof of new lockers will, under normal use, be free from defects in materials and workmanship and will perform substantially in compliance with the product documentation in the Product Manual for a period of three (3) years from the date of Commencement.

4. EXTERIOR FINISHES

ELOCK warrants that kiosk enclosure, locker frame, electronics housings, roof and panel materials will not deteriorate or corrode beyond normal weathering under normal use for a period of three (3) years from the date of Commencement. Normal weathering for 304 stainless steel components includes small rust deposits that form when ferrous dust impurities in the air adhere to the surface. Normal weathering for galvanized components includes build-up of "white rust" deposits as well as rust that forms along and remains limited to cut or punched edges. Normal weathering for the FRP roof(s) includes a gradual reduction in glossiness and accumulation of oxidation. The roofs will become less shiny and more matte over time. Normal weathering may be substantially decelerated by adhering to care and cleaning recommendations in the BikeLink® Gen5 eLocker Product Manual.

5. REMEDIES

ELOCK'S sole obligation for a breach of the warranties set forth in paragraphs 2 through 5 above is, in ELOCK'S sole discretion, either (a) a refund of the purchase price paid for the defective component, excluding installation costs, or (b) repair or replacement with new or remanufactured component. Any replacement component will be warranted against defects in materials or workmanship for the remainder of the original warranty period or thirty (30) days, whichever is longer.

6. WARRANTY PROCEDURES

If a defect arises during the limited warranty period, OWNER shall provide written notification to ELOCK via certified mail and may also contact ELOCK via email at support@elocktech.com or at 510-549-2853. ELOCK will respond to service inquiries between 10:00 a.m. and 5:00 p.m. Pacific Time, excluding weekends and holidays. ELOCK represents and warrants that such response will not be unreasonably withheld or delayed. Service will be via a mailed exchange of parts.

Field service may be provided at OWNER'S request, however travel time and component replacement labor billed on an hourly basis plus travel expenses, including parking, directly associated with field service, are not covered in this limited warranty and must be requested in advance by OWNER.

In lieu of mailed exchange of parts, ELOCK may, at its sole discretion, elect to perform on-site service to replace a defective part and no charges for labor or travel expenses will be due to ELOCK.

In order to expedite a repair, ELOCK may choose to send a replacement component prior to receiving an original defective part. ELOCK will ship the replacement component to OWNER at the address provided by OWNER at ELOCK's expense. For Products shipped within the United States of America, ELOCK will use reasonable efforts to ensure delivery within ten (10) business days. Expedited service is available at additional cost to OWNER.

OWNER shall ship the product taken out of service, including cables and attachment hardware where applicable, to the address below, freight or postage prepaid and insured by OWNER.

If ELOCK determines that the defect is not eligible for warranty service (e.g. defects due to vandalism or power-washing), Out-of-Warranty service is available at OWNER's request.

When a product or part is exchanged, any replacement item becomes OWNER's property and the replaced item becomes ELOCK's property.

7. OUT OF WARRANTY SERVICE

Out of warranty service, replacement, and repair is available on a time and materials basis. Please contact ELOCK for current Out-of-Warranty repair rates and to request service.

8. LIMITATIONS

- a. ELOCK is not responsible for damage arising from failure to follow instructions in the BikeLink® Gen 5 eLocker Product Manual relating to the product's use. Any attempt to install, modify, or repair Product by OWNER may void all or portions of this Warranty. Determination of whether a failure has occurred as a result of OWNER's attempted repair, modification, or improper installation shall be made solely by ELOCK.*
- b. OWNER shall have no coverage or benefits under this Limited Product Warranty if the Product has been subject to abnormal use, abnormal conditions such as metal grinding operations near the equipment, improper storage, improper cleaning or maintenance, unauthorized modifications, disassembly, repair or alteration by any person other than ELOCK or a party authorized by ELOCK, misuse, neglect, abuse, accident, use on improper power supply, improper installation, installation of any third-party software, or other acts which are not within the control of ELOCK, including acts of nature and damage caused during shipping components for warranty service.*
- c. This Limited Product Warranty does not cover normal wear of parts or any use contrary to written operating instructions.*
- d. Because battery cells may be replaced by the OWNER, this Limited Product Warranty does not cover a defect of the device caused by leaking or otherwise defective battery cells.*
- e. Incorrect service attempts made by technicians other than ELOCK-authorized technicians will void this Limited Product Warranty. Service only by ELOCK technicians is strongly recommended due to the potential for security issues, disabling of user access devices, unintended environmental exposure of electronic components, or damage to electronics resulting from service by non-ELOCK technicians.*
- f. OWNER ACKNOWLEDGES THAT THIS LIMITED WARRANTY SETS FORTH ITS COMPLETE REMEDY WITH RESPECT TO THE PRODUCTS AND SOFTWARE AND THAT ELOCK'S LIABILITY FOR A WARRANTY CLAIM IS LIMITED TO THE REMEDIES SET FORTH IN PARAGRAPH 6 ABOVE. IN NO EVENT SHALL ELOCK BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT OWNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.*
- g. Except as noted in paragraph 5 above, this Limited Product Warranty does not cover defects in appearance of cosmetic, decorative or structural items, including framing, finishes, and any non-operative parts. ELOCK's limit of liability under the limited warranty shall be the actual cash value of the product at the time ELOCK receives written notice of a defect from the OWNER, determined by the price paid for the product less a reasonable amount for usage. ELOCK shall not be liable for any other losses or damages.*
- h. ELOCK provides no warranty for damage caused by third parties, such as graffiti or scratches, software hacking, software viruses, vandalism, neglect or abuse of the equipment.*

- i. *ELOCK provides no warranty for damage caused by conditions beyond its control including but not limited to flooding, earthquakes, or other acts of God.*
- j. *ELOCK provides no warranty for performance of existing locker components of other manufacturer lockers that are retrofitted with retrofit or upgrade products supplied by ELOCK.*
- k. *Any OWNER requested modifications to the software will void the warranty on software provided in paragraph 3 above.*
- l. *THIS LIMITED WARRANTY IS THE ONLY WARRANTY ELOCK MAKES FOR THE PRODUCT AND SOFTWARE. TO THE EXTENT ALLOWED BY LAW, NO OTHER WARRANTY APPLIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.*

9. EXCLUSIONS

- a. *Post-installation service.*
- b. *Post-installation maintenance.*
- c. *Battery cells.*
- d. *eLocker Administrative and Access Devices.*
- e. *Replacement or repair of components damaged by vandalism, including but not limited to finishes, electronic, software, and locker components.*
- f. *Replacement or repair of components damaged by actions of OWNER or its agents, including but not limited to power-washing.*
- g. *Custom software or modifications.*
- h. *Service of non-ELOCK components or replacement of non-ELOCK parts on existing lockers which have been retrofitted to use the eLocker electronic controller.*

10. JURISDICTION

This Limited Warranty will be covered by and construed in accordance with the laws of the State of California, United States (excluding conflicts of laws rules), and shall inure to the benefit of ELOCK and its successor, assignees and legal representatives.

11. SEVERABILITY

If any provision of this Limited Warranty is held by a court of competent jurisdiction to be invalid or unenforceable to any extent under applicable law, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Limited Warranty will remain in full force and effect.

12. ENTIRE AGREEMENT

This Limited Product Warranty contains the entire agreement of the parties with respect to the matters set forth herein.

13. NOTICES

Any notices or other communications to be sent to either party must be mailed by certified mail to the following address:

*eLock Technologies, LLC
800 Heinz Avenue, Suite 11
Berkeley, CA 94710
U.S.A*

*Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
U.S.A.*

III. BIKELINK® SOFTWARE LICENSE AGREEMENT

GRANT OF LICENSE AND RESTRICTIONS

Subject to the License Terms contained in this BikeLink® Software License Agreement and payment of all fees as provided in the PURCHASE AGREEMENT, ELOCK grants to OWNER a non-sub licensable, nonexclusive right to use the software loaded on BikeLink® equipment listed in Section 3 below along with all web-based software accessed through an OWNER login at www.bikelink.org (collectively the "SOFTWARE") strictly in accordance with the related user documentation including the Product Manual for Access Control Kiosk, or Gen 5 eLocker with BikeLink® Software (collectively the "Documentation") and any terms and procedures ELOCK may prescribe from time to time. The SOFTWARE shall be provided to OWNER as a term-based license for the term specified in Section 2 below. ELOCK retains complete ownership of all SOFTWARE. OWNER will maintain the copyright notice and any other notices that appear on the SOFTWARE and on any copies and any media. As further specified in Section 4 herein, OWNER will not (and will not allow any third party to) (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the SOFTWARE (except to the extent that applicable law prohibits reverse engineering restrictions), or (ii) provide, lease, lend, or use the SOFTWARE for time sharing purposes.

The features and functionality provided by the Software are described in the Documentation. Services associated with this BikeLink® Software License are described in sections 6, 7, and 8 below.

By using the BikeLink® Software, OWNER understands and agrees that OWNER is joining the BikeLink® inter-agency facility network, and is subject to the operational terms and conditions outlined herein which are designed to ensure continuing interoperability and access by USERS throughout the network.

This BikeLink® Software License, provided by ELOCK extends to the OWNER or agency with control over a BikeLink® facility or equipment. Rights and responsibilities are automatically transferred to any subsequent Owner or agency with control over a BikeLink® facility or equipment.

1. DEFINITIONS

"ELOCK" is the company eLock Technologies LLC, with principal place of business at 800 Heinz Avenue #11 Berkeley CA 94710. ELOCK also does business as "BikeLink®"

"BikeLink®" is the name of the bike parking and bike sharing system created by eLock Technologies LLC.

"OWNER" is the original purchaser and/or entity with control over a BikeLink® facility.

"ACCESS DEVICE" is any uniquely assigned ID and/or debit device, such as the BikeLink® Smart Card, issued to a particular USER and registered in the BikeLink® central database.

"USER" is an individual who has obtained one or more BikeLink® access devices and is registered in the BikeLink® database.

"ELOCKER" is a multi-SPACE electronically controlled enclosure.

"KIOSK" is an electronic control and user interface device that controls access to group parking facilities.

"SPACE" is an enclosure or docking device within an ELOCKER capable of securing one bicycle or other small vehicle.

"CONTROLLER" is an electronic control and user interface device that controls access to one or more SPACES.

"GATEWAY" is a device enabling remote communications with a group of CONTROLLERS at a specific location.

"ADMINISTRATIVE DEVICE" is a device which enables updating software, collection or viewing of CONTROLLER status, settings and data, modification of CONTROLLER settings or states, and ability to gain entry into a SPACE.

"PURCHASE AGREEMENT" is the agreement between ELOCK and the OWNER for equipment listed in Section 3.

2. TERM OF LICENSE

This License Agreement shall remain in effect as long as the equipment remains in operation and any software license renewal fees agreed to in the original PURCHASE AGREEMENT are paid in full, unless terminated by mutual agreement.

3. EQUIPMENT

This License is for use of the SOFTWARE loaded on equipment listed below, as noted in purchase agreement dated:

_____.

Location Name	Quantity	Product	Spaces	Controllers
Salesforce Transit Center	25	G5 Quad eLocker	100	50
		TOTAL	100	50

4. LICENSE TERMS AND CONDITIONS

By taking control of equipment using the BikeLink® system, you (the OWNER, or entity with control) agree to the following terms and conditions:

- 4.1. **SCOPE** This License grants OWNER the right to use the SOFTWARE installed on individual BikeLink® controllers or Kiosks; it is not a general site license. This License covers only the SOFTWARE.
- 4.2. **BIKELINK SYSTEM USER AGREEMENT** OWNER agrees to support and uphold the terms and conditions of the universal BikeLink® Cardholder and User Agreement, including the privacy policy regarding user information.
- 4.3. **INTER-AGENCY FACILITY NETWORK** OWNER agrees to support the BikeLink® inter-agency facility network. Specifically, OWNER agrees to permit ELOCK dba BikeLink® to:
 - a. Sell ACCESS DEVICES directly to users for BikeLink® equipment purchased by the OWNER,
 - b. Provide information and assistance directly to users,
 - c. Maintain a complete USER information database which allows any BikeLink® System Facility Owner to look up an individual USER's information,
 - d. Maintain the universal BikeLink® System User Agreement on behalf of all Facility Owners,
 - e. Track usage at the OWNER's facility and report, or publish it in an aggregated form,
 - f. Attach to each locker a small sign, sticker, label or other similar item, displaying ELOCK's name, address, BikeLink® logo, contact information, and product information such as model number,
 - g. Attach a sign at each location approximately 18" x 24" in size displaying the BikeLink® logo and information about how to use the BikeLink® system.
- 4.4. **ADMINISTRATIVE DEVICES** OWNER agrees to carefully safeguard BikeLink® ADMINISTRATIVE DEVICES, and to adhere to the following terms for security purposes:
 - 4.4.1. ADMINISTRATIVE DEVICES are non-transferable.
 - 4.4.2. ADMINISTRATIVE DEVICES require PINs (Personal Identification Numbers) for use.
 - 4.4.2.1 ADMINISTRATIVE DEVICES' PINs are to be personalized and unique. PINs cannot be a repeating number or a simple sequence. E.g. 1-2-3-4 or 4-4-4-4.
 - 4.4.2.2 ADMINISTRATIVE DEVICES' PINs are not to be written down on the devices or otherwise.
 - 4.4.3. If an ADMINISTRATIVE DEVICE is lost, please notify eLock immediately.
- 4.5. **ACCESS RESTRICTION** OWNER may restrict access to a BikeLink® facility under OWNER's control, by setting up restricted access zones. To permit access, OWNER must obtain from ELOCK a unique access code, associated with each individual user's standard BikeLink® access device to whom OWNER wishes to grant access. A nominal fee is charged for each access code generated by ELOCK. The access code permanently adds permissions for the specified access zone to the user's BikeLink® access device.

Information collected upon issuing an access code, beyond the standard information requested from every BikeLink® user upon access device activation, need not be shared with other facility owners via the BikeLink® database. However, neither restricting access to OWNER's BikeLink® Facility by implementing access zones, nor issuing access codes to vetted users, releases OWNER from obligations to the BikeLink® inter-agency facility network as described above.

USERS who have been issued access codes for a specific BikeLink® facility retain the ability to access other unrestricted BikeLink® facilities. Therefore, to protect the interests of other Facility Owners, all USERS' information must be included in the BikeLink® database even if the USER's primary BikeLink® location is one with restricted access.

- 4.6. **REVENUE AND RENTAL RATES** *The BikeLink® system relies on rental charges accruing in proportion with actual rental time in order to encourage turnover and effectively deter monopolization of the resource by some users. OWNER agrees that the base rental rate of its ELOCKERS will remain set at between \$0.05 and \$0.10 per hour and that the expired rental rate charged whenever a user allows their meter to expire will be set at least two times the base rental rate. OWNER agrees that the system-wide base rental rate may be periodically adjusted in accordance with changes in the U.S. Consumer Price Index. To compensate ELOCK for the services described in sections 5 and 6, which are provided for as long as the BikeLink® facility is in operation, OWNER agrees that all revenue up to \$0.12 per hour and 10% of revenue above \$0.12 per hour will be retained by eLock, and that any remaining revenue will be transferred to OWNER on an annual basis. Alternatively, if the base rental rate is set below \$0.05 per hour, OWNER agrees to compensate ELOCK for the difference between the actual rental rate and \$0.10 per hour.*
- 4.7. **PRIMARY CONTACT** *To facilitate ELOCK's provision of the services described in section 6, ELOCK shall be the primary contact for USERS. ELOCK's (dba "BikeLink") contact information shall be displayed prominently at BikeLink® locations so USERS know who to contact for assistance.*
- 4.8. **USE OF FACILITY-SPECIFIC USAGE DATA** *For research and marketing purposes, ELOCK retains the right to collect and publish facility-specific usage data. ELOCK shall report usage data only in aggregate and shall not publicly disclose any user-specific details.*
- 4.9. **TRANSFERABILITY** *Upon transfer of ownership or control of BikeLink® equipment by OWNER to another owner or entity, OWNER agrees to provide a copy of this License to that entity and the new owner or entity shall be bound by the terms herein.*
- 4.10. **LIMITATIONS ON TRANSFERABILITY** *The SOFTWARE may only be used in connection with the BikeLink® facility or equipment as provided under applicable quote and purchase order or in fulfillment of the specified PURCHASE AGREEMENT. OWNER may not use, copy or transfer the SOFTWARE except as permitted herein. OWNER may not sublicense, rent, lease, assign or transfer the SOFTWARE; provided, however that this License may be transferred to a third party who acquires the BikeLink® facility or equipment and who agrees in writing to be bound by the terms of this License.*
- 4.11. **EXCLUSIONS** *This License does not cover custom software that may in the past or future be developed for OWNER or other customers of ELOCK which custom software shall be governed by an independent license agreement issued by ELOCK to OWNER in connection with any such customization.*
- 4.12. **COPYRIGHT** *The SOFTWARE is protected by copyright laws and international copyright treaties. OWNER may NOT: remove, decompile, reverse engineer, disassemble, modify, adapt, translate, overwrite, reprogram, or create derivative works based upon the SOFTWARE or any part thereof.*
- 4.13. **UNAUTHORIZED REMOVAL** *Any unauthorized removal of the SOFTWARE, or the installation of any third-party software to be used in conjunction with the SOFTWARE, shall void the Limited Product Warranty, and result in immediate termination of this License.*
- 4.14. **LIMITED PRODUCT WARRANTY** *The Limited Product Warranty, incorporated herein by reference, contains the complete and exclusive warranty with respect to the SOFTWARE licensed hereunder.*
- 4.15. **INTELLECTUAL PROPERTY** *The SOFTWARE is the property and pre-existing work product of ELOCK. OWNER shall not acquire any rights, including intellectual property rights of any kind or nature, in the SOFTWARE other than the License set forth herein. This provision extends to new software or software improvements that may be created after this License takes effect. ELOCK will indemnify Transbay Joint Powers Authority from Intellectual Property claims related to ELOCK's infringement.*
- 4.16. **CONFIDENTIALITY** *The SOFTWARE is the proprietary information of ELOCK and constitutes the confidential information and trade secrets of ELOCK, and may not be disclosed by OWNER to any person without the express written consent of ELOCK except as required by law.*
- 4.17. **JURISDICTION** *This License will be governed by and construed in accordance with the laws of the State of California, United States (excluding conflicts of laws), and shall inure to the benefit of ELOCK and its successors and assigns. If any provision of this License is held by a court of competent jurisdiction to be invalid or unenforceable to any extent*

under applicable law, that provision will be enforced to the maximum extent permissible and the remaining provisions of this License will remain in full force and effect. Any notices or other communications to be sent to ELOCK must be mailed by certified mail to the following address:

eLock Technologies, LLC
800 Heinz Avenue Suite 11
Berkeley, CA 94710
U.S.A.
Attention: Steven Grover, President

5. ONGOING SERVICES COVERED BY RENTAL REVENUE

- 5.1. **ACCESS DEVICE PRODUCTION & PROGRAMMING** ELOCK shall produce and program ACCESS DEVICES that are compatible with the current version of BikeLink® SOFTWARE.
- 5.2. **ACCESS DEVICE DISTRIBUTION & ACTIVATION** ELOCK shall maintain an inventory of access devices, and shall provide the following related services:
- Distribution of ACCESS DEVICES to retail vendors.
 - 24-hour web and telephone sales and distribution of ACCESS DEVICES and add value codes to USERS.
 - 24-hour web and telephone ACCESS DEVICE activation.
 - Web-based FAQs and other instructional information.

Note: OWNER may elect to act as a vendor of ACCESS DEVICES. OWNER understands and agrees that ACCESS DEVICES it may choose to sell shall not be different from those sold by other vendors, that such ACCESS DEVICES are subject to the universal BikeLink® USER Agreement, that they may be used at any BikeLink® facility, and that USER information associated with all BikeLink® ACCESS DEVICES must be stored in the BikeLink® database and available to all BikeLink® facility owners.

- 5.3. **USER AGREEMENT** ELOCK shall maintain and periodically update the USER Agreement, also known as the "BikeLink® System Cardholder and User Agreement." ELOCK shall inform OWNERS and USERS of changes to the USER Agreement in accordance with notification obligations defined in the USER Agreement. ELOCK shall maintain the USER Agreement link at www.bikelink.org, and take reasonable measures to ensure USERS are informed of the USER Agreement before using the BikeLink® system.
- 5.4. **REMOTE USER SUPPORT** Upon receiving a query or problem report from a USER, ELOCK shall reply promptly with accurate information to all reasonable inquiries. Upon receiving a technical assistance request from a USER, ELOCK shall create an online problem report, and provide troubleshooting and telephone or email-based problem resolution during normal business hours. ELOCK shall maintain the following additional remote USER support benefits and services:
- 24-hour telephone support for USERS to report problems, request a free taxi ride, or to request single use access device in cases where USER has lost his or her ACCESS DEVICE.
 - Reimbursement of reasonable and necessary taxi ride costs actually incurred from BikeLink® facility up to \$20 in case USER is unable to retrieve a bicycle due to an equipment malfunction.
 - One-time use cards and ID-verification for lost cards and similar situations.
- 5.5. **USER DATABASE MAINTENANCE** ELOCK shall maintain a web-based database of USER information and provide OWNER with access to information stored on this database. ELOCK shall maintain an up-to-date off-site database backup.
- 5.6. **RENTAL TRANSACTION DATA** ELOCK shall maintain rental transaction data that has been uploaded to the BikeLink® web-based database. ELOCK shall maintain an up-to-date off-site rental transaction data backup. ELOCK shall provide online rental transaction data plotting and data download tools.

- 5.7. **SIGNAGE ELOCK** shall install, and **OWNER** shall permit, one sign at each location approximately 18" x 24" in size displaying the BikeLink® logo and information about the BikeLink® system. Additional signs may be requested by **OWNER** for an additional fee.

6. ONGOING SERVICES COVERED BY USER FEES

- 6.1. **ID CHECK AT GROUP-ACCESS FACILITIES** Use of group-access facilities requires an additional vetting step for **USERS**, referred to as the "ID Check." This ID Check may be performed by **ELOCK** and may include making a photographic record of a **USER**'s face and current photo ID such as a driver license upon their first use of the group-access facility. **ELOCK** shall not be obligated to ensure legibility of this photograph. **ELOCK** may, at its sole discretion, change the requirements and procedures for the ID Check. Once an ID Check has been performed successfully, a unique Access Code is generated for the **USER**'s access device, and automatically loaded onto it by the group-access facility's **CONTROLLER**. The nominal fee for this Access Code shall be deducted from the balance on the **USER**'s access device and retained by **ELOCK**.
- 6.2. **ON-SITE USER ASSISTANCE** In the event a **USER** requests on-site assistance in lieu of remote assistance to resolve a problem caused by an **ACCESS DEVICE** or equipment malfunction, **ELOCK** reserves the right to determine whether such on-site assistance is reasonably required and to charge a reasonable fee directly to the **USER** for this service.

7. ONGOING SERVICES COVERED BY ANNUAL SOFTWARE LICENSE FEE

- 7.1. **SOFTWARE MAINTENANCE FOR SYSTEM INTEROPERABILITY** To maintain interoperability for BikeLink® users throughout the BikeLink® network of facilities, as well as compatibility with evolving changes in **USER** Access Device technologies, technology security standards, communications networks technologies, and point of sale technologies, **ELOCK** shall release ongoing **SOFTWARE** improvements including:
- **SOFTWARE** upgrades
 - Security patches
 - Ongoing web-based software maintenance
- 7.2. **ON-CALL NETWORK AND WEB APPLICATION TECHNICIANS** **ELOCK** shall provide specialized technical support services as required in its sole and reasonable discretion to troubleshoot and resolve technical issues that may arise.
- 7.3. **FACILITY OWNER WEB PAGE** **ELOCK** shall provide password-protected **OWNER**'s web page customized for **OWNER**'s locations with up-to-date location information, ability to search **USER** database, ability to generate access codes, geo-coded cardholder location mapping, access to rental transaction data, outreach materials, promotional program tools, and equipment documentation. **ELOCK** shall provide reasonable and necessary training to **OWNER** on use of system at time of initial installation.
- 7.4. **LIMITATIONS ON USER DATABASE ACCESS BY OWNER** To help ensure the **USER** information privacy, **OWNER** access to database may be limited to individual queries, **USERS** in vicinity of **OWNER**'s facilities, and/or **USERS** who have previously accessed **OWNER**'s facilities.
- 7.5. **USER SUPPORT REPORTING** Problem reports prepared by **ELOCK** shall be available for review by **OWNER** upon request.. **USER** queries and associated responses prepared by **ELOCK** shall be available for review by **OWNER** upon request..
- 7.6. **SERVICE RECORDS** Service records for any service performed by **ELOCK** shall be maintained by **ELOCK**. Service records shall be available for review by **OWNER** upon request.
- 7.7. **EXCLUSIONS**
- (a) Testing, troubleshooting, upgrade, repair, or other services, including remote engineering support to on-site technicians, which require an on-site field technician;
 - (b) Hardware upgrades;
 - (c) Out-of-Warranty service or replacement for malfunctioning parts;
 - (d) Repairs needed due to damage caused by conditions beyond **ELOCK**'s control including but not limited to flooding, earthquakes, or other acts of God.

7.8. **PAYMENT** Any software license renewal fees agreed to in the PURCHASE AGREEMENT are payable annually upon the date of OWNER acceptance of product installation. If payment is not received within 60 days of the annual renewal date, services described in section 8 and all rights granted under this License Agreement may be suspended.

8. LIMITATION OF LIABILITY AND GOVERNING LAW

ANY LIABILITY OF ELOCK WITH RESPECT TO A PRODUCT OR THE PERFORMANCE THEREOF UNDER ANY WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY WILL BE LIMITED EXCLUSIVELY TO PRODUCT REPAIR OR REPLACEMENT OR, IF, IN COMPANY'S OPINION, REPAIR OR REPLACEMENT IS IMPRACTICAL, TO REFUND OF THE LICENSE FEE. EXCEPT FOR THE FOREGOING, ALL PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. FURTHER, ELOCK DOES NOT WARRANT RESULTS OF USE OF THAT THE PRODUCTS ARE BUG FREE OR THAT THEIR USE WILL BE UNINTERRUPTED.

NOTWITHSTANDING ANYTHING ELSE IN THIS LICENSE AGREEMENT OR OTHERWISE, AND EXCEPT FOR BODILY INJURY, ELOCK SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE LICENSE FEES PAID TO IT HEREUNDER WITH RESPECT TO THE APPLICABLE PRODUCT DURING THE SIX MONTH PERIOD PRIOR TO THE CAUSE OF ACTION; OR (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL.

eLock shall comply with applicable laws.

eLock shall maintain the following insurance coverage during the term of the agreement. General liability policy shall name as additional insured the Transbay Joint Powers Authority (TJPA), its member agencies, and its officers, directors, agents, representatives, permitted assigns, and employees. eLock's policies are primary insurance to any other insurance available to the additional insureds, any insurance or self-insurance maintained by the additional insureds shall be excess of eLock's insurance and shall not contribute with it, and eLock's insurance applies severally and not collectively to each additional insured against whom claim is made or suit is brought. eLock grants to TJPA a waiver of any right to subrogation which any insurer of eLock may acquire against TJPA by virtue of the payment of any loss under such insurance. Additional coverage beyond what is specified herein may result in additional expense, to be added to the contract price.

General Liability Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Installation Floater	\$100,000
Auto Coverage	\$2,000,000
Workers Compensation	\$1,000,000
Umbrella ("Form Following" to General Liability) Aggregate	\$2,000,000
Each Occurrence	\$2,000,000
Cyber Security & Liability	\$1,000,000
Retention	\$10,000

This License Agreement shall be construed pursuant to the laws of the State of California without regard to conflicts of laws provisions thereof. Any waivers or amendments shall be effective only if made in writing. This License Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this License Agreement. In the event of a conflict between this License Agreement and the terms of a PURCHASE AGREEMENT, the terms of this License

Agreement shall govern. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorney's fees and costs in connection with such action.

The parties agree to the foregoing and have executed this Software License Agreement on the date indicated below:

eLock Technologies


By: Steven Grover, President & CEO

Date: 3/15/18

Transbay Joint Powers Authority

By: Mark Zabaneh, Executive Director

Date: _____

IV. BIKELINK® SYSTEM USER AGREEMENT

This Agreement with eLock Technologies, LLC (also referred to as “eLock”) and Facility Owner (as defined below) allows the User of a BikeLink® Access Device (as defined below) to use the device to obtain share time in a BikeLink® facility. Your use of the Access Device constitutes your acknowledgment and consent to this Agreement – READ IT CAREFULLY.

1. DEFINITIONS

- 1.1 “Abandoned” is the state in which a particular unit of a BikeLink® Facility has been left in an “Expired” state long enough to be in violation of rental duration terms indicated on screens or signage at the Facility.
- 1.2 “Access Device” is any uniquely assigned ID and/or debit device, including the BikeLink® Smart Card, issued to a particular User and registered in the BikeLink® user database.
- 1.3 “Access Device Data” information on or about an Access Device, including usage data.
- 1.4 “Administrative Device” is a device which enables system administrators to update, modify, unlock, or access a BikeLink® Facility.
- 1.5 “Available” is the state in which any authorized Access Device may initiate a Rental of a unit of a BikeLink® Facility.
- 1.6 “BikeLink®” is an inter-agency network of shared, on-demand parking and vending facilities for bicycles and other small vehicles, and an administrative system for issuing and distributing Access Devices.
- 1.7 “BikeLink® Facility” is a facility or equipment accessed by use of Access Device.
- 1.8 “Card” or “Smart Card” is the BikeLink® Smart Card issued to the Cardholder.
- 1.9 “Cardholder” or “User” (“You”) is the bearer of the Access Device.
- 1.10 “Card Issuers” or “Vendors” are agencies or entities which sell or distribute Access Devices.
- 1.11 “Expired” is the state resulting when a Rental is not terminated before its scheduled ending date and time.
- 1.12 “Facility Owner” or “Owner” is the agency with ownership of a particular BikeLink® Facility, or the agency with control over a particular BikeLink® Facility.
- 1.13 “Held” or “Reserved” is the state in which a particular unit of a BikeLink® Facility is preemptively assigned for exclusive use by a particular User or set of Users.
- 1.14 “Inter-agency network” means that a User who has obtained a BikeLink® Access Device and who agrees to and complies with the terms of this Agreement could access any BikeLink® Facility. Some BikeLink® facilities may require additional access codes.
- 1.15 “Locker” or “eLocker” is a Bicycle Locker with compatible Access Device reader made or licensed by eLock Technologies LLC.
- 1.16 “Rental” is the result of securing a unit of a BikeLink® Facility, such as an on-demand locker, or bicycle share, for the sole use of a specific Access Device.
- 1.17 “Rented” is the state in which a particular unit of a BikeLink® Facility is assigned for exclusive use by a particular User.

2. RENTAL TRANSACTIONS

- 2.1. Rental terms may vary by location and are displayed on information screens or signage. Users are solely responsible for reading and complying with posted rental terms.
- 2.2. Only the renting Access Device or an authorized Administrative Device can unlock a Rented, or Expired unit of a BikeLink® Facility.
- 2.3. Only the renting Access Device or Administrative Device can terminate a Rental.

3. VEHICLE STORAGE FACILITY: USAGE & CONTENTS

- 3.1. *Initiation of a Rental at a BikeLink® storage facility entitles the User to access a storage space for immediate or future use. User may store their vehicle for the duration of the Rental is terminated or the Locker becomes Expired. BikeLink® storage facilities shall be used only for the purpose of storing a vehicle and related equipment (such as helmet, pump, or lock). The storage facility shall not be used in, or in connection with any activity prohibited by law, and shall be used only according to the terms of this Agreement and as directed by Facility Owner. A User's failure to comply with any terms of this Agreement or as directed by Facility Owner shall constitute a default by the User in the terms of this Agreement.*
- 3.2. *After a time period the Facility Owner deems in its sole discretion to be excessive, an Expired Rental shall be considered Abandoned. Abandoned Rentals constitute a default by the User of the terms of this Agreement.*
- 3.3. *Upon default, the Facility Owner and the Facility Owner's agent(s) have the right to empty the storage space of the contents stored therein, and dispose of such contents in its sole discretion. If the User has registered his or her correct and up to date contact information with BikeLink® (at the time of Access Device purchase or by contacting BikeLink®), the Facility Owner may in its discretion notify the User in writing, by email, and/or by phone before disposing of property. Facility Owner shall have no responsibility and shall not be held liable for any failure to so notify the User.*
- 3.4. *As a condition for using a BikeLink® Facility for the restricted purposes mentioned above, the User waives any claim to the right to privacy and expressly consents to allow the Facility Owner and the Facility Owner's agent(s), at any time in its or their sole and absolute discretion and without any obligation to notify the User or any third party, to open and inspect the storage space in order to:*
 - *inspect or relocate the contents thereof;*
 - *determine whether a health or safety hazard exists;*
 - *maintain the storage space, its door, or locking mechanism; or*
 - *determine whether any term of the Agreement is being violated.*
- 3.5. *You will be monetarily responsible for any and all damages beyond normal wear and tear to the BikeLink® Facility or adjacent structures caused by Your or Your agent's misuse of the storage space.*

4. ISSUANCE OF ACCESS DEVICES

- 4.1. *The Access Device is available for purchase through BikeLink®, and authorized Vendors.*
- 4.2. *Vendor Location information is provided at www.bikelink.org, by calling (888) 540-0546, or on information screens, and signage at a BikeLink® facility.*

5. ACCESS DEVICE VALUE

- 5.1. *The Access Device is not a charge, credit, or debit card.*
- 5.2. *The value the Access Device holds is neither cash nor the equivalent of cash. At a BikeLink® Facility which charges for use. You can exchange value on the Access Device for share time of the BikeLink® Facility or item; the Access Device value has no other use or value.*

6. ACCESS DEVICE LOSS AND DAMAGE

- 6.1. *You agree to take all reasonable care of the Access Device to prevent it from damage, defacement, destruction, or loss of any kind.*
- 6.2. *You agree not to alter or interfere with any graphic or Access Device Data and agree to take all reasonable measures and care to ensure that any graphic and Access Device Data are not interfered or tampered with.*
- 6.3. *No refund for lost or damaged Access Devices will be provided except at the sole and absolute discretion of eLock.*
- 6.4. *You shall report any lost, stolen, or irreparably damaged Access Devices to eLock in a timely manner; unless You report your lost or stolen Access Device. You may be held liable for its loss or damage.*

7. CONDITIONS FOR SERVICES AND FACILITIES

- 7.1. *While using the services and/or facilities of a Facility Owner, You shall observe, perform, and comply with the all terms and conditions, by-laws, rules, and regulations, including rental settings such as maximum rental duration and hourly rate, established by that Facility Owner in relation to such services and/or facilities.*
- 7.2. *At the request of a Facility Owner, authorized agents of eLock or the Facility Owner itself may electronically access, unlock, move or remove stored contents, and/or modify a facility owned by the Facility Owner, regardless of the facility's state or the state of any affected Access Device, and neither eLock nor the Facility Owner shall be liable for any loss or damage resulting therefrom.*
- 7.3. *A Facility Owner may deny access to, replace, or remove any facilities it owns at any time for any reason, and neither eLock nor the Facility Owner shall be liable for any loss or damage resulting therefrom.*

7.4. Neither eLock nor the Facility Owner are responsible for fire, theft, loss, or damage to any article left in a BikeLink® Facility. The User shall indemnify eLock and the Facility Owner and their directors, officers, agents, representatives, and employees from any liability of any nature arising out of the User's use of a BikeLink® Facility.

8. RESERVATIONS

- 8.1. eLock does not warrant that any particular service and/or BikeLink® Facility will be provided or made available by any Facility Owner at any time or place.
- 8.2. You may rent in advance, within the limits set by the Facility Owner, to reserve use of a BikeLink® Facility until a future time.
- 8.3. Where available, you may rent in advance using the on-line reservation system, within the limits set by eLock and the Facility Owner, to reserve use of a BikeLink® Facility at a future time.
- 8.4. A reservation which has Expired constitutes a default by the User in the terms of this Agreement, and may be terminated by the Facility Owner in its sole discretion pursuant to section 3.3.
- 8.5. Neither eLock nor the Facility Owner warrant that any particular BikeLink® Facility will function as expected at any time or place, nor shall eLock or the Facility Owner be liable for any loss or damage therefrom.
- 8.6. No warranty is given that operation of the Access Device or BikeLink® will be available with any Facility Owner at any time or place, and neither eLock nor the Facility Owner shall be liable for any loss or damage resulting therefrom.
- 8.7. Authorized agents of eLock and the Facility Owner shall have the right to inspect any Access Device and the Data therein at any time at their sole discretion.
- 8.8. eLock reserves the right to: Recover any cost, expenses, loss, and damages incurred or suffered by eLock as a result of the User altering or interfering with the Access Device Data.
- 8.9. eLock and the Facility Owner expressly reserve the right to waive these terms and conditions or any part thereof against any person in their sole discretion and any such waiver shall not constitute a waiver of any other terms and conditions of this Agreement.

9. TERMINATION

- 9.1. eLock may terminate this agreement at any time and for any reason. If eLock requests or if You wish to terminate this Agreement, you must return your Access Device in proper working condition to BikeLink®. No refund will be provided except at the sole and absolute discretion of eLock.

10. CHANGES TO THIS AGREEMENT

- 10.1. eLock reserves the right to change the terms of this Agreement and any associated policies at any time by providing written notice on the BikeLink® website at www.bikelink.org. You will be deemed to have received such notice fifteen (15) days after posting of that notice on the BikeLink® web site. You agree to all changes when You use your Access Device after that date.

11. RELEASE AND INDEMNITY

- 11.1. You hereby release eLock and the Facility Owner from any and all loss, damage, or injury whatsoever, known or unknown, arising out of or in any manner connected with the use or performance of the Access Device issued to You. eLock, and the Facility Owner along with their respective officers, directors, owners, operators, employees and agents, will have no obligation or liability with respect to Your use of or the performance of the Access Device. Your sole and exclusive recourse from eLock and the Facility Owner will be the replacement of any defective Access Device(s) by eLock. You agree to indemnify, protect, and hold harmless the Facility Owner, eLock, their officers, directors, owners, employees, and their agents from any and all liability for any loss, damage, or injury to persons or property arising from or related to the Access Device.
- 11.2. For and in consideration of permitting You to rent Facility Owner's property, You hereby voluntarily release, discharge, waive and relinquish any and all actions or causes of action for personal injury, property damage or wrongful death occurring to You or your agents arising as a result of Your or their use of or the performance of the Access Device issued to You, any BikeLink® Facility, or any activities incidental thereto, wherever or however the same may occur, and You do for yourself, your heirs, executors, administrators and assigns hereby release, waive, discharge and relinquish any action or causes of action, which may hereafter arise for Yourself or for your estates and agree that under no circumstances will You or your heirs, executors, administrators and assigns prosecute, present any claim for personal injury, property damage or wrongful death against eLock or the Facility Owner or any of its officers, owners, directors, agents, or employees for any of said causes of action whether the same shall arise by the negligence of any of said persons or otherwise. It is Your intention by this instrument to exempt and relieve eLock and the Facility Owner from liability for personal injury, property damage or wrongful death, whether or not the same is caused by negligence.
- 11.3. You further agree to indemnify and hold harmless eLock and the Facility Owner, its officers, directors, owners, agents, and employees from any liability or claim or action for damages which in any way arises out of your use of

or the performance of the Access Device or BikeLink® Facility, even though that liability may arise out of the negligence or carelessness on the part of the Facility Owner or eLock, their officers, directors, owners, agents or employees. Notwithstanding anything stated in the foregoing paragraphs, nothing in this document shall apply to exempt any person or entity from responsibility for his, her, or its own fraud, or willful injury to the person or property of another, or violation of law whether willful or negligent.

- 11.4. This Agreement shall be construed pursuant to the laws of the State of California without regard to conflicts of laws provisions thereof. User agrees that the venue for any action to enforce this Agreement shall be in the courts located in Alameda County, California. Any waivers or amendments shall be effective only if made in writing. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorney's fees and costs in connection with such action.

12. FAILURE TO COMPLY

- 12.1. Failure to comply with any portion of this agreement may result in eLock's or the Facility Owner's blocking the use of the Access Device. No refund will be provided except at the sole and absolute discretion of eLock and/or the Facility Owner.

13. ENTIRE AGREEMENT

- 13.1. This document represents the entire and integrated agreement between eLock and the User, and the entire and integrated agreement between the Facility Owner and the User. This document supersedes all prior negotiations, representations, or agreements, either written or oral.

14. COMMUNICATIONS

- 14.1. Please address all questions, notifications, and communications related to the bicycle parking facility to the Facility Owner using the contact information provided on the information screens. Please address all questions, notifications, and communications related to the BikeLink® Access Device to: info@bikelink.org

15. PRIVACY

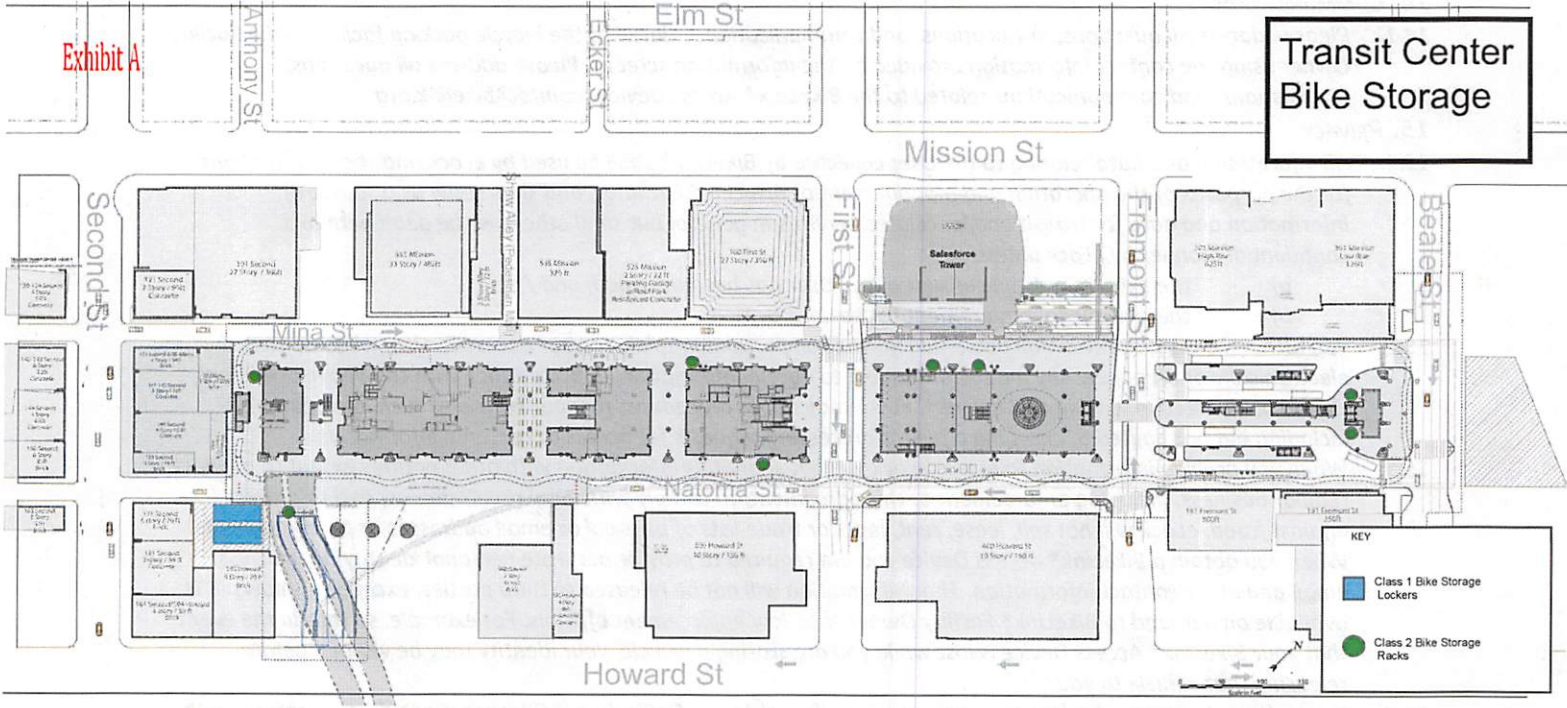
- 15.1. All information and data relating to the User collected by BikeLink® shall be used by eLock and the Facility Owner for the purposes of the operation and management of BikeLink® Facilities, and shall serve as a source of information and data for transit and/or related services in general but shall otherwise be dealt with in a confidential manner by eLock unless:
- a) the express written consent of the User has been obtained; and / or
 - b) there is a legal requirement to the contrary.
- 15.2. You retain the right to review all personal information pertaining solely to your Access Device, whether stored electronically or on paper. Any inquiry or request to obtain information, in accordance with the above provisions, should be directed in writing to BikeLink®. eLock may adopt procedures for your review of such information, including but not limited to charging a fee for processing requests for access to personal information.
- 15.3. When you provide information to eLock, eLock will not share this information with other entities except to conduct regular business, including enforcement of this agreement, to comply with legal requirements, and to protect against fraud. eLock will not sell, lease, rent, loan, or trade lists of physical or email addresses or phone numbers. When you obtain a BikeLink® Access Device you are required to provide accurate personal identifying, address, email and other contact information. That information will not be released to third parties, except as follows: it is available on demand to BikeLink® Facility Owners and law enforcement officials. For example, so that in the event that your BikeLink® Access Device is lost while you are storing a vehicle, your identity may be verified before releasing that vehicle to you.
- 15.4. Your information may also be used to contact You if your Access Device's rental transactions do not conform with the terms of this Agreement, or in the event of an emergency affecting your property, or to provide information about changes in BikeLink® terms or features, BikeLink® Facility status or stored property status.
- 15.5. **Usage Data.** eLock may provide aggregate statistics and usage reports to our customers or researchers, to assist them in assessing the BikeLink® system or in applying for funding to install new facilities. These statistics and usage reports shall not contain personally identifiable information.
- 15.6. **Website Statistics.** eLock's web server and rental devices collect information that details the traffic on our site and rental usage patterns. eLock may analyze this information and use aggregate statistics to improve the content and navigation on websites, and to improve the usefulness of products. eLock makes no attempt to link website statistics to the individuals who browse our site. eLock does not share server statistics with third parties.

16. EXCEPTIONS

- 16.1 The above policies or any other restrictions contained herein may be superseded by requirements or obligations imposed by statute, regulation, or legal process.

Exhibit A

Transit Center Bike Storage



KEY

- Class 1 Bike Storage Lockers
- Class 2 Bike Storage Racks