

## **Service Agreement MOU - Bike Sharing Services**

This Memorandum of Understanding (MOU) is made this \_\_\_\_ (day) of \_\_\_\_\_ (month) 2018, by and between the Town of Miami Lakes ("Town") and Neutron Holdings, Inc. DBA Lime ("Lime").

### **RECITALS**

1. A goal of the Town is to provide safe and affordable multi-modal transportation options to all residents, reduce traffic congestion, and maximize carbon free mobility.
2. Bike and scooter share and related services are a component to help the Town achieve its transportation goals and the Town desires to make bike share services available to residents and those who work in the Town.
3. Lime is a qualified provider of bike share and related mobility products and services and proposes to operate a bike share program within the Town.
4. Lime will abide by all Town ordinances and rules governing the use of public space to efficiently and effectively provide bike share services.
5. Lime possesses GPS, 3G, and self-locking technology in its bike fleet such that bikes may be locked and opened by users with an app and tracked to provide for operations and maintenance.

### **Agreement**

1. Use of Town Property. Town authorizes Lime to use the public way solely for the purposes set forth in Section 2 of this Agreement. This authorization is not a lease or an easement and is not intended and shall not be construed to transfer any real property interest in Town Property.
2. Permitted Use. Lime customers may use the public way solely for parking of bicycles owned and maintained by Lime for use in the bike share program. Lime shall not place or attach any personal property, fixtures, or structures within Town boundaries or to Town property without the prior written consent of Town.
  - a. Use of the public way, and Lime's operations within the Town, shall, at a minimum: a) not adversely affect Town Property or the Town's streets, or sidewalks; b) not adversely affect the property of any third parties; c) not inhibit pedestrian or vehicular movement within the public way or along other property or rights-of-way owned or controlled by the Town) not create conditions which are a threat to public safety and security.
  - b. Upon termination of this MOU by either party, Lime shall, at its sole cost and expense, immediately remove its property from the public way.
  - c. For the purposes of this Agreement, "bicycles" or "bikes" may refer to standard pedal bicycles, electric assist model bicycles, and/or related mobility products such as shared electric scooters.

3. Bike parking. The Town, at its own discretion, will support the bike sharing program with the installation of bike racks and/or painted bike parking spots, and recommended bike parking spots without racks or painting, in the Town to assist with the orderly parking of bikes throughout the Town.
4. Condition of Town Property
  - a. Town makes the public way available to Lime in an "as is" condition. Town makes no representations or warranties concerning the condition of the public way or its suitability for use by Lime or its customers and assumes no duty to warn either Lime or its customers concerning conditions that exist now or may arise in the future.
  - b. Town assumes no liability for loss or damage to Lime's bikes or other property. Lime agrees that Town is not responsible for providing security at any location where Lime's bikes are stored or located, and Lime hereby waives any claim against Town in the event Lime's bikes or other property are lost or damaged.
5. Maintenance and Care of portion of Town Property: Lime expressly agrees to repair, replace or otherwise restore any part or item of real or personal property that is damaged, lost or destroyed as a result of the Lime's use of Town Property. Should the Lime fail to repair, replace or otherwise restore such real or personal property, Lime expressly agrees to pay Town's costs in making such repairs, replacements or restorations.
6. Operations & Maintenance. Lime will cover all maintenance costs for the bike fleet and maintenance to minimum level of service and reporting outlined in Exhibit A.
7. Indemnification. Lime shall defend, pay, indemnify, and hold harmless Town , its elected or appointed officials, officers, officials, employees, agents, invitees, and volunteers (collectively "Town Parties") from all claims, suits, actions, damages, demands, costs, or expenses of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including without limitation court costs and reasonable attorneys' fees, resulting from or in connection with loss of life, bodily or personal injury, or property damage arising directly or indirectly out of or from or on account of:
  - a. Any occurrence upon, at, or from Town's Rights of Way or occasioned wholly or in part by the entry, use, or presence upon the Town's Rights of Way by Lime or by anyone making use of Town's Rights of Way at the invitation or sufferance of Lime, except such loss or damage which was caused by the sole negligence or willful misconduct of Town.
  - b. Use of Lime's bikes by any individual, regardless of whether such use was with or without the permission of Lime, including claims by users of the bikes or third parties.
  - c. Any failure of Lime to properly maintain the Bikes and Bike Fleet, and/or any manufacturer defect, caused in whole or in part by either (i) any willful, intentional, reckless, or negligent act or omission of Lime, any subconsultant, subcontractor or any person or organization directly or indirectly employed by any of them to perform or furnish any of the services or anyone for whose acts they may be liable regardless of whether or not it is caused in part by a party indemnified hereunder and regardless of the negligence of any such indemnified party, or (ii) any willful

intentional, reckless or negligent act or omission of any individual or entity not a party to this agreement.

- d. The Parties expressly agree that these provisions shall be construed broadly, and Lime's obligations to pay for the Town's legal defense hereunder shall arise and be fully enforceable when Lime (or any subconsultant or any person or organization directly or indirectly employed by Lime) is alleged to have acted willfully, intentionally, recklessly or negligently in the performance of the services required under this Agreement. For any matters in which Lime is obligated to pay for the Town's legal defense hereunder, Lime shall be permitted to retain counsel of its choosing for both Lime and the Town, provided that such legal counsel is reasonably acceptable to the Town, which consent shall not be unreasonably withheld.
  - e. Any failure of Lime to comply with the terms of these provisions shall be deemed a material breach of this Agreement and may subject Lime to debarment from consideration for future awards of Town Contracts pursuant to Section 17 of Ordinance 12-142 of the Town's Municipal Code of Ordinances. This provision shall survive termination of the Agreement.
8. Insurance. Lime shall procure and maintain for the duration of this agreement insurance against claims for which Lime has indemnified the Town pursuant to Section 5 of this Agreement. Lime shall maintain General Liability limits no less than One Million and no/100 Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage, and in the sum of One Million and no/100 Dollars (\$1,000,000.00) for injury to or death of more than one person for each occurrence. Each insurance policy shall name the Town as an additional insured and it shall be endorsed to state that: (i) coverage shall not be suspended, voided, or cancelled by either party, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to Town; and (ii) for any covered claims, the Lime's insurance coverage shall be primary insurance as respects the Town and any insurance or self-insurance maintained by the Town shall be in excess of the Lime's insurance and shall not contribute with it. The insurance required to be provided herein, shall be procured by an insurance company approved by Town, which approval shall not be unreasonably withheld.
9. Compliance with Law. Lime at its own cost and expense, shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities applicable to its use of Town Property and the operation of its bike share program, including but not limited to laws governing operation of bicycles. If any license, permit, or other governmental authorization is required for Lime's lawful use or occupancy of Town Property or any portion thereof, Lime shall procure and maintain such license, permit and/or governmental authorization throughout the term of this agreement. Town shall reasonably cooperate with Lime, at no additional cost to Town, such that Lime can properly comply with this Section and be allowed to use Town Property as specified in Section 3, above.
10. Required Reports. Lime shall provide reports to the Town concerning utilization of its bikes and bike route usage not less than monthly and shall cooperate with the Town in

the collection and analysis of aggregated data concerning its operations.

11. No Joint Venture. Nothing herein contained shall be in any way construed as expressing or implying that the parties hereto have joined together in any joint venture or liability company or in any manner have agreed to or are contemplating the sharing of profits and losses among themselves in relation to any matter relating to this MOU.
  12. Exclusive Operator. Town designates Lime as the exclusive provider of bike share services within its Town limits for the term of pilot. This designation is personal to Lime and may not be assigned or transferred to any party.
  13. Term. This agreement shall commence on \_\_\_\_\_, 20\_\_, (the "Commencement Date") and shall expire on the date that is one (1) year after the Commencement Date unless earlier terminated pursuant to Section 14, below. The Town, by action of the Town Manager, will have two (2) options to extend the Term for additional periods of one (1) year each, subject to continued satisfactory performance as determined by the Town Manager.
  14. Termination. This MOU may be terminated prior to the expiration date set forth in Section 13, above, upon the occurrence of any of the following conditions:
    - a. Upon delivery of written notice from Town to the Lime terminating this agreement for any reason, or for no reason, by giving at least sixty (60) days' notice to the Lime of such termination.
    - b. An attempt to transfer or assign this agreement.
- Lime shall not terminate this agreement without first by giving at least 180 days' written notice of plans for termination.
15. Amendment. This MOU may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated in written amendments to this agreement and executed by duly authorized representatives of the parties.
  16. Permits. The Town shall notify Lime of any local permits required, if any, of the company for its local operation.
  17. Applicable Law and Venue. The laws of the Florida shall govern the interpretation and enforcement of this MOU. Should any legal action be brought by the Town or Lime, for breach, enforcement or interpretation of this MOU, said legal action shall be brought in Circuit or Federal Court in Miami-Dade County.
  18. Counterparts. This agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
  19. Fleet Management. Bike shall be "smart bikes" which allow the bike itself to be tracked by GPS or other installed device in order to manage the fleet's operations.

20. Florida Public Records Law, Florida Statutes Chapter 119. Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Lime acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the Town in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the Town for such disclosure and/or production. Lime also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the Town. Furthermore, Lime agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.
21. Sovereign Immunity. Lime acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Lime against the Town other than claims arising out of this Agreement. Specifically, Lime acknowledges that it cannot and will not assert any claims against the Town, unless the claim is based upon a breach by the Town of this Agreement. Lime acknowledges that this Agreement in no way estops or affects the Town's exercise of its regulatory authority. In addition, the Town retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. Lime acknowledges that it has no right and will not make claim based upon any of the following:
- a. Claims based upon any alleged breach by the TOWN of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the TOWN. All obligations of the Tow are only as set forth in this Agreement;
  - b. Claims based upon negligence or any tort arising out of this Agreement;
  - c. Claims upon alleged acts or inaction by the Town, its commissioners, attorneys, administrators, consultants, agents, or any Town employee;
  - d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the Town and Lime.

Executed the day and year first above written, by the parties as follows:

Neutron Holdings, dba Lime:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Town of Miami Lakes:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit A

### Description of Lime's Service Level Agreement

The following performance indicators shall be met and reported to help the Town measure our success serving its citizens and improving the livability and mobility of Miami Lakes. Lime will maintain its bikes to be in an excellent state of cleanliness and repair, with a minimum of 90% of deployed bikes operable at any time.

<b>Performance Indicator</b>	<b>Description</b>	<b>Measurement Tool</b>	<b>Minimum Performance Standard</b>	<b>Reporting Frequency</b>
App & customer service support portal	Lime reservation system fully operational	Uptime reporting	99.5% uptime.	monthly
Bicycle distribution	Maps identifying trends in peak bike distribution	Maps showing aggregate usage patterns and ridership	Fleet will focus on serving Downtown Miami Lakes	monthly
Bicycles in service	Bikes in service	Daily uptime reports	Deploy and maintain 150 bicycles in service in any calendar month. Bicycles will be phased into deployment over a 6 week period and can be increased based on usage and demand with prior written consent from the Town.	monthly
Report-responsive	Response time to improper bike parking / other problems communicated to Customer Service	Time relative to report logs	Within two (2) hours during business hours between 8am to 8pm Monday through Friday except for State and Federal holidays.  For any complaint outside of business hours, within two hours (2) of start of business hours	monthly