

LICENSE AGREEMENT – DROPBIKE BIKESHARE PROGRAM

THIS AGREEMENT dated for reference the _____ day of _____, 2018 is

BETWEEN:

CITY OF KELOWNA, 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(the “City”)

AND:

DROPBIKE INC. (Corporation Number 1015427-0), 55 Scenic Mill Way, Toronto,
Ontario, M2L 1S8

(“Dropbike”)

WHEREAS the City wishes to have a public bike share service operate within its municipal boundaries to encourage cycling as a viable transportation option in order reduce the need for personal vehicle trips and the associated burden on City roads;

WHEREAS Dropbike wishes to operate a temporary bike sharing pilot program on City property, including sidewalks, at approved locations and, in exchange for its commitment to operate such a program, the City wishes to grant Dropbike a license to enter on and use those approved City locations on the terms and conditions set out in this Agreement;

NOW THEREFORE THIS AGREEMENT is evidence that, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which each party hereby acknowledges), the parties covenant and agree as follows:

1. Definitions – In this Agreement:

- (a) “Bike” means a bikeshare bicycle owned by Dropbike for use in connection with its bikeshare program in the City of Kelowna;
- (b) “Haven” means a portion of City-owned property designated by mutual agreement of Dropbike and the City for the parking of Bikes and listed in Schedule A, as amended from time to time;
- (c) “Service Area” means that area within the City of Kelowna shown outlined on the map attached as Schedule B, as amended from time to time, where customers may bring and ride Bikes;
- (d) “Term” means the term of this Agreement, commencing on the first day on which the Bikes are enabled for rental within the City of Kelowna and expiring on the date that is eighteen (18) months thereafter, subject to earlier termination pursuant to the terms of this Agreement.



2. **Grant of License** – The City hereby grants Dropbike a license (the “License”) to enter upon, use, and occupy the Havens for the Term for the purpose of allowing its customers to park Bikes, all on the terms and conditions of this Agreement. The License granted hereby includes a non-exclusive license to enter upon and cross over such portions of City-owned property as may be reasonably necessary for the purpose of accessing the Havens.
3. **Designation of Havens** – The City and Dropbike shall work together to identify the location of each Haven, following which that Haven shall be included in Schedule A of this Agreement. The City will provide Dropbike with siting criteria to assist with the process of reviewing and approving additional Havens from time to time. Only those locations approved by mutual agreement of the parties shall be included in this Agreement as Havens. All Havens shall be highlighted in Dropbike’s smartphone application, may be physically marked or unmarked, and may include identified infrastructure such as bike racks or bike posts. The City’s Transit and Programs Manager is authorized on behalf of the City to approve additional Havens and remove existing Havens from time to time and to amend Schedule A as required.
4. **Designation of Service Area** – The Service Area may be amended from time to time by mutual agreement of the parties. The City’s Transit and Programs Manager is authorized on behalf of the City to approve changes to the map attached as Schedule B from time to time and to amend or replace Schedule B as required.
5. **No Interest in Land** – Dropbike acknowledges and agrees that this Agreement creates a non-exclusive contractual license only and Dropbike acquires no interest in the Havens or the surrounding City-owned lands but only the non-exclusive right to access and use the Havens in accordance with the terms and conditions of this Agreement.
6. **City May Grant Further Interests** – The City may, from time to time, grant licenses, rights of way, easements and other rights and privileges to third parties on, over, under, through, above and across the Havens and the surrounding City-owned lands, provided that such privileges do not substantially impair Dropbike’s rights under this Agreement, and Dropbike shall execute such further instruments as may be necessary to give such rights and privileges priority over this Agreement.
7. **Dropbike’s Covenants** – Dropbike covenants and agrees with the City to:
 - (a) promptly pay, when due, the License Fee and any other amounts required to be paid by it under this Agreement;
 - (b) deploy not less than 500 and not more than 1500 Bikes into use during the Term, notwithstanding which Dropbike may deploy additional Bikes into use with the prior written consent of the City’s Transit and Programs Manager;
 - (c) demark the location of all Havens using the Dropbike smartphone application;
 - (d) where a Haven does not include a bike rack, bike post, or other infrastructure, the Haven may be marked by placing a painted or taped full or partial box around the Haven, with the prior written consent of the City’s Transit and Programs Manager;



- (e) maintain all Bikes in a safe and functional state of operation and promptly remove any damaged, unsafe or non-functional Bikes from City property;
- (f) inspect all Havens at regular intervals and not less than once per day in order to ensure they are kept in a safe, tidy, and sanitary condition;
- (g) inspect the entire Service Area at regular intervals and not less than once per day in order to rebalance Bike locations, remove Bikes from inappropriate locations and move all Bikes back to Havens;
- (h) remove any Bikes that are in need of repair or replacement each day;
- (i) ensure that all Bikes are marked with clear, visible contact information for Dropbike service and inquiries;
- (j) ensure that all Dropbike user interface or point-of-sale applications and promotional materials include clear, visible contact information for Dropbike service and inquiries;
- (k) respond to inquiries, complaints or requests made by customers, members of the public, and city officials in a timely and businesslike manner;
- (l) provide incentives to customers who return Bikes to Havens;
- (m) operate its bikeshare program and ensure the Havens are only used in a manner that does not restrict access to, through, or from any portion of a municipal right of way and, in particular, any City sidewalks, and especially with respect to access by persons with disabilities;
- (n) operate its bikeshare program in a manner that does not create any hazard or nuisance to users of any municipal right of way;
- (o) promote the Dropbike pilot program to the entire community and its visitors and coordinate communication of the Dropbike pilot program with the City as follows:
 - (i) neither the City nor Dropbike shall give or make any representation, or otherwise hold themselves out as being agents or representatives of the other, or as having the right to bind the other or any of the other's assets or property, except as set out herein, without the prior written consent of the other;
 - (ii) Dropbike shall not imply the City's ownership or operation of the pilot bikeshare program without the prior written consent of the City;
 - (iii) the City and Dropbike shall make all reasonable efforts to coordinate the communication and promotion of the pilot bikeshare program with each other so that each is aware of the other's intentions with regard to issuing press releases, responding to media inquiries, and printed or electronic advertising or social media campaigns;



- (p) collect the following usage data and financial information at regular intervals and make such data and financial information available to the City upon request:
 - (i) number of members;
 - (ii) GPS locations at the beginning and end of every trip as well as points in between, delivering an anonymized user ID, trip ID, date, and time for each point; and
 - (iii) revenue generated and expenses incurred from Bike rentals within the previous calendar month (or such other period of time as may be specified by the City in its request);
 - (q) if applicable, refund any customer deposits collected in a timely manner and in accordance with any terms of use agreements that Dropbike may have with its customers;
 - (r) require all customers of Dropbike, as a term and condition of using any Bike, to release the City from all claims, actions, damages, liabilities, losses, costs and expenses whatsoever as may be suffered by any customer arising from or related to the use of Bikes within the City of Kelowna, and provide the City with proof of acceptance of such term and condition by each customer upon request;
 - (s) carry on and conduct its activities within the City of Kelowna in compliance with any and all laws, statutes, enactments, bylaws, regulations and orders from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on, or from the City of Kelowna in contravention thereof; and
 - (t) effectively communicate British Columbia's mandatory helmet laws to its customers through all communication channels and take all reasonable precautions to ensure the safety of all persons using the Bikes.
8. **Alterations to City Property** – Dropbike shall not make any improvements or alterations, including the installation of new bike racks, to the Havens or any other City property without the prior written consent of the City, which consent may be withheld at the City's sole discretion. If the City approves any improvements to the Havens from time to time, such improvements shall be removed and Dropbike shall repair the surface of the Haven to the City's required standard at the end of the Term, unless otherwise agreed by the City.
9. **Security Deposit** – Dropbike shall provide the City with a refundable security deposit in the amount of \$2,500.00, in the form of a certified check or bank draft, all or some of which the City may use at its sole discretion to rectify any matter of non-compliance under this Agreement including, but not limited to, the gathering up and disposal of Bikes from City property. The City shall refund to Dropbike any remaining portion of the security provided hereunder, without interest, upon expiry or earlier termination of the Term.



10. **Release** – Dropbike releases the City from and against all liabilities, claims, demands, damages, costs, expenses, suits and actions which Dropbike may at any time have against the City in respect of this Agreement and the License granted herein.
11. **Indemnity** – Dropbike shall indemnify and save harmless the City from and against all claims, demands, loss, costs, damages, actions, suits, adjuster's fees, or other proceedings by whomsoever made, sustained, brought or prosecuted in any manner, based upon, occasioned by, or attributable to any injury or damage arising or resulting from any action or omission of Dropbike, its invitees, servants or agents, in connection with Dropbike's bikeshare program and the use or occupation of the Bikes, the Havens, or any other City property. Further, Dropbike shall indemnify and save harmless the City from any costs, charges or damages to which the City may be put or suffer by reason of any breach of this Agreement or any by-law, statute, rule or regulation.
12. **Survival of Indemnities** – The obligations of Dropbike under sections 10 and 11 survive the expiry or earlier termination of this Agreement.
13. **Insurance** – Dropbike shall at its own expense maintain during the term general liability insurance of not less than \$5,000,000.00, naming the City as an additional insured. This insurance shall not relieve the City from any liability for its own negligence, or that of its servants or agents except as provided herein, and shall not relieve the City from the obligation to maintain insurance on its own property as any owner would in the normal course of prudent business affairs. Upon the signing of this Agreement, Dropbike shall provide a certificate of insurance verifying the coverage and confirming the City is shown as additional insured on the policy that is effective for the Term.
14. **Dropbike's Acknowledgment and Agreements** – Dropbike acknowledges and agrees that:
 - (a) the City has given no representations or warranties with respect to the Havens or the surrounding lands including, without limitation, with respect to the suitability of those locations for the Dropbike's intended use; and
 - (b) Dropbike accepts and uses the Havens on an "as is" basis and the City has not made any representations, warranties or agreements as to the condition of the Havens or the surrounding lands.
15. **No Assignment** – Dropbike shall not assign its rights or interest in this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole discretion.
16. **Termination Due to Default** – If and whenever
 - (a) Dropbike is in default in the payment any amount payable under this Agreement and the default continues for seven (7) days after written notice by the City to Dropbike;
 - (b) Dropbike does not fully observe, perform and keep each and every term, covenant, agreement, stipulation, obligation, condition and provision of this Agreement to be observed, performed and kept by Dropbike, and persists in such default for fourteen



(14) days after written notice by the City;

- (c) Dropbike makes any assignment for the benefit of creditors or becomes insolvent or bankrupt; or
- (d) proceedings are begun to wind up Dropbike,

then the City may, at its option, terminate this Agreement and the Term then becomes immediately forfeited and void and Dropbike must immediately cease all use and occupation of the Havens and must remove the Havens from its smartphone application.

- 17. **Termination Without Default** – Either party may terminate this Agreement without cause upon giving the other party thirty (30) days written notice of such termination.
- 18. **Notice** – Any notice required or permitted to be given by one party to the other pursuant to the terms of this Agreement may be given:

- (a) to the City at: City of Kelowna
 1435 Water Street
 Kelowna BC, V1Y 1J4

 Attention: Transit and Programs Manager

- (b) to Dropbike at: Dropbike Inc.
 Suite 4, 325 Front St W
 Toronto, ON CANADA M5V2Y1

 Attention: VP Business Development

The above addresses may be changed at any time by giving ten (10) days written notice. Any notice given by one party to the other in accordance with the provisions of this Agreement shall be deemed conclusively to have been received on the date delivered if the notice is served personally or three (3) business days after mailing if the notice is mailed.

- 19. **No Joint Venture** – Nothing contained in this Agreement creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the parties or gives Dropbike any power or authority to bind the City in any way.
- 20. **No Effect on Laws or Powers** – Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the Premises, all of which may be fully and effectively exercised in relation to the Premises as if this Agreement had not been fully executed and delivered.
- 21. **Binding on Successors** – This Agreement enures to the benefit of and is binding upon the parties and their respective successors and permitted assigns, notwithstanding any rule of law or equity to the contrary.



- 22. **Law of British Columbia** – This Agreement must be construed according to the laws of the Province of British Columbia.
- 23. **Entire Agreement** – The provisions in this Agreement constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of the Agreement.
- 24. **Waiver or Non-Action** – Waiver by the City of any breach of any term, covenant or condition of this Agreement by Dropbike must not be deemed to be a waiver of any subsequent default by Dropbike. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by Dropbike must not be deemed to be a waiver of such term, covenant or condition.

As evidence of their agreement to be bound by the above terms, the City and Dropbike have each executed this Agreement on the respective dates written below:

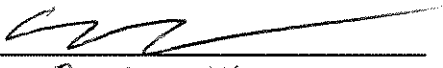
CITY OF KELOWNA by its authorized signatories:

Mayor

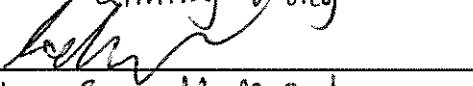
City Clerk

Date: _____

DROPBIKE INC. by its authorized signatories:

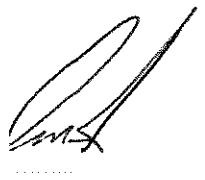


Name: Qiming Weng



Name: Emmett McEachern

Date: Feb 07, 2018



SCHEDULE A

LIST OF HAVENS

[List to be included and updated throughout the Term by mutual agreement of the parties]



A handwritten signature in black ink, located in the bottom left corner of the page. The signature is stylized and appears to consist of two main parts, possibly initials or a name.

SCHEDULE B

SERVICE AREA

[Map to be included and updated throughout the Term by mutual agreement of the parties]

