

**NON-PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
ELOCK TECHNOLOGIES LLC**

THIS AGREEMENT for purchasing eLockers is made by and between the City of San Leandro ("City") and eLock Technologies LLC ("Contractor") (together sometimes referred to as the "Parties") as of _____, 2015 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2015 and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Contractor's obligations hereunder.
- 1.5 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.

Section 2. COMPENSATION. City hereby agrees to pay Contractor a sum not to exceed \$91,697.73, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to

City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person. 5% of the total payment will be deducted and retained by City. At the expiration of 35 days from the date of recordation of the Notice of Completion by City, or within the time period specified in Public Contracts Code Section 7107, the amount deducted from the invoice and retained by the City will be paid to the Contractor, except such amounts as are required by law to be withheld by properly executed and filed notices to stop payment, or as may be authorized by the contract to be further retained.

Contractor and City acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Contractor shall submit at the completion of the work:

- Invoice shall include the Contractor's signature.

2.2 Not Used

2.3 Not Used

2.4 Total Payment. City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Not Used

2.6 Not Used

2.7 Payment of Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 Payment upon Termination. In the event that the City or Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor for all

outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination.

- 2.9 **Authorization to Perform Services.** The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.
- 2.10 **Liquidated Damages.** Time of completion and consequences for failure to meet the deadline are specified in Exhibit A.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. Contractor shall make a written request to City to use facilities or equipment not otherwise listed herein.

- 3.1 **Safety Requirements.** In accordance with generally accepted construction practices and state law, Contractor shall be solely and completely responsible for conditions on the jobsite, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours.

Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. Contractor shall provide protection for all persons including, but not limited to, its employees and employees of its subcontractors; members of the public; and employees, agents, and representatives of the City and regulatory agencies that may be on or about the work.

The services of the City in conducting review and inspection of Contractor's performance is not intended to include review of the adequacy of Contractor's work methods, equipment, bracing or scaffolding, or safety measures, in, on, or near any Contractor jobsite.

All work and materials shall be in strict accordance with all applicable state, city, county, and federal rules, regulations and codes, with specific attention to the United States Department of Labor Occupational Health and Safety Administration (OSHA) requirements. Contractor shall be solely responsible for compliance with all city, county, and state explosive transport, storage, and blasting requirements and for any damages caused by such operations.

Contractor is hereby informed that work on City property could be hazardous. Contractor shall carefully instruct all personnel working on City property that all conditions of the property are potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

In addition to complying with all other safety regulations, Contractor shall abide by any and all other City requirements contained in any specifications, special conditions or manuals, which shall be made available by City upon request.

Contractor shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards, and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill its obligations under this section. It is the intent of the City to provide a safe working environment under normal conditions. CONTRACTOR IS ADVISED THAT CITY'S OPERATIONS AND PROPERTY ARE INHERENTLY HAZARDOUS BECAUSE OF CONDITIONS SUCH AS CONFINED SPACES, POTENTIALLY EXPLOSIVE ATMOSPHERES, AND POSSIBLE EXPOSURE TO PATHOGENS.

Contractor shall maintain all portions of the jobsite in a neat, clean, and sanitary condition at all times. If required by the City, toilets shall be furnished by Contractor where needed for use of its employees and their use shall be strictly enforced. Contractor shall not use the City's existing sanitary facilities, unless previously authorized by the City.

Contractor shall keep adequate first aid facilities and supplies available and instruction in first aid for its employees shall be given.

City reserves the right to require that Contractor bring onto the project or engage the services of a licensed safety engineer at any time during the term of this Agreement. If Contractor does not have a licensed safety engineer on staff, then City may require that Contractor engage a subcontractor or subconsultant as the project's safety engineer. Contractor shall bear all costs in connection with meeting the requirements of this section.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Contractor, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's bid. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all

persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than 1,000,000 per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Contractor, its employees, agents, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Contractor shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$1,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single-limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor.
- c. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Contractor's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Contractor shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 All Policies Requirements.

4.3.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.3.2 Verification of Coverage. Prior to beginning any work under this Agreement, Contractor shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Contractor by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Contractor beginning work, it shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.3.3 Deductibles and Self-Insured Retentions. Contractor shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.3.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.3.5 Endorsement Requirements. Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.3.6 Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4 Remedies. In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

-
- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
 - Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
 - Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES. Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate Liability or because the Contractor evaluates Liability and determines that the

Contractor is not liable to the claimant. The Contractor must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Contractor to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONTRACTOR.

6.1 Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 Contractor Not an Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

- 7.2 Compliance with Applicable Laws.** Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity.** Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Contractor.

Contractor may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the City in connection with this Agreement.

- 8.2** **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.
- 8.3** **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4** **Assignment and Subcontracting.** City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5** **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.
- 8.6** **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
 - 8.6.3** Retain a different contractor to complete the work described in Exhibit A not finished by Contractor; or
 - 8.6.4** Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1** **Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that

Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Contractor agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

9.2 Contractor's Books and Records. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Subsection 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

10.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

10.6 Conflict of Interest. Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Contractor hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Contractor was an employee, agent, appointee, or official of the City in the previous 12 months, Contractor warrants that it did not participate in any manner in the forming of this Agreement. Contractor understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Contractor will be required to reimburse the City for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

10.7 Solicitation. Contractor agrees not to solicit business at any meeting, focus group, or interview-related to this Agreement, either orally or through any written materials.

10.8 Contract Administration. This Agreement shall be administered by Yin-Kuei Ingrid Lin ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.9 Notices. Any written notice to Contractor shall be sent to:

Hannah Peragine
eLock Technologies LLC
800 Heinz Avenue, Suite 11
Berkeley, CA 94710
Hannah@elocktech.com

Any written notice to City shall be sent to:

Yin-Kuei Ingrid Lin
City of San Leandro
Engineering & Transportation Department
835 East 14th Street
San Leandro, CA 94577
ilin@sanleandro.org

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Agent
835 East 14th Street
San Leandro, CA 94577

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	California Labor Code Section 1720 Information

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Contractor's signature below Contractor certifies that Contractor, and any parent entities, subsidiaries, successors or subunits of Contractor are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.


SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

CONTRACTOR

Chris Zapata, City Manager



Steven Grover, President

Attest:

Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

Account Number: 150-38-368-5240 and 144-39-023-5240

Approved as to Form:

Richard D. Pio Roda, City Attorney

1957063.1

EXHIBIT A
SCOPE OF SERVICES

Project Description:

This project involves the purchase and installation of 7 units of quad eLockers (28 spaces), and its electronic controller with software and latching mechanism at San Leandro BART Station. The City has secured funds from the Transportation Fund for Clean Air Program from Bay Area Air Quality Management District (BAAQMD) for the project. Upon completion of the installation, the 28 eLockers will be transferred to BART. From thereafter, BART will power and maintain the eLockers.

Scope of Services:

Furnish, deliver, and install 7 units of quad eLockers per Technical Specifications (Attachment 1) at San Leandro BART Station (1401 San Leandro Boulevard, San Leandro). The locker footprint will be marked on the ground by the City prior to delivery and installation.

Provide Limited Product Warranty and BikeLink Software per Attachment 2 and 3, respectively.

Technical Specifications	– Attachment 1
Limited Product Warranty	– Attachment 2
BikeLink Software License	– Attachment 3

Hours of Work

Monday- Friday, 8:00 am to 6:00 p.m. excluding City Holidays listed here
<http://www.sanleandro.org/contact/holidays.asp>.

Prosecution of Work

The Contractor shall not begin work until the Notice to Proceed is issued by the City. Contractor shall diligently prosecute the work to completion before the expiration of **70 working days**.

The City shall begin charging working days on the fifth working day following the date of issuance of the Notice to Proceed.

Liquidated Damages

By execution of the Agreement, the City and the Contractor agree that it will be difficult or impossible to determine the actual damage that the City will sustain in the event of the Contractor's failure to fully perform the work or to fully perform all of the Contractor's obligations that have accrued pursuant to the agreement by the time for completion.

Accordingly, the City and the Contractor agree in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the City liquidated damages in the sum of **\$250.00** per

day for each and every calendar day completion of the work or performance of all of the Contractor's obligations that have accrued pursuant to the agreement is delayed beyond the time for completion. The City and the Contractor further agree in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time the agreement was made, and that the City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor under the agreement.

Attachment 1
Technical Specifications

Specifications for Quad On-Demand Electronic Bike Lockers

High Level Locker Functions:

- Lockers shall provide access for one bike per point of entry into locker.
- Lockers shall be of adequate size to hold an adult-sized standard or mountain-style bike, as well as accessories such as a helmet or cycling shoes.
- Lockers shall be capable of storing a bike up to 50 pounds in weight without damage or failure due to bike leaning against the locker from the inside.
- Lockers shall be structurally sufficient to withstand abuses such as kicking, hitting, and being stood or jumped upon.
- Lockers shall have modular subassemblies and be repairable without replacing an entire locker should an accident or vandalism incident occur.
- Lockers shall provide stored contents shelter from debris and rain.
- Lockers shall be capable of withstanding exterior weather for the approximate 25-year life-cycle of the locker enclosure.
- Lockers shall minimize costs of power supply replacement and maintenance.
- Lockers shall provide flexibility by having electronics ready to accommodate alternative access technologies, including but not limited to phone, text/SMS, mag stripe credit cards, NFC cell phones, contactless regional transit cards, or other access devices.
- Lockers shall be capable of completely stand-alone functionality for normal rental transaction functions without any wired or wireless communication or power supply connections.
- Lockers shall provide high durability and vandalism resistance, and minimum maintenance of electronic interface hardware and components.

High Level Software and Electronics System Functions:

- The System shall enable 24-hour on-demand user access to secure bicycle parking and rental.
- The System shall log all rental transactions, and link access device transactions to a specific user and facility Owner.
- The System shall enable multiple location secure bicycle parking and rental, such that a single smartcard access device can be used at multiple locations and multiple facility owners.
- The System shall enable System Administrators to permanently disable a renting smartcard access device when that device's rental is in violation of the terms of service.
- The System shall be capable of upgrade to enable System Administrators to remotely monitor and manage Lockers via the internet.
- The Parking mode shall restrict access for each space to only one user at a time. When Locker space is occupied by a user, only the same user or a System Administrator shall be able to open the locker to retrieve its contents.
- The System shall permit rental of one bike or parking space at a time per access device.
- The Bike Share mode shall verify the specific bike rented is returned and secured before closing the rental transaction and releasing credit card deposit.
- The Bike Share mode shall permit return of a bike to a different locker or location from which it was rented.
- The System shall be capable of upgrade to wireless internet connectivity to allow users to check current parking space or rental bike availability online, make reservations, and find out where they are currently parked.
- The System shall provide a secured web-based central repository for usage, service, and monitoring records, as well as usage data plotting and analysis and user support tools.
- The System shall provide 24/7 email and telephone user support including daytime technical support, and round-the-clock basic and emergency support for registered users.
- The System shall provide 24/7 phone and web-based smartcard access device and add-value vending.
- The System shall provide universal User Agreement coverage to all system Owners.
- The System shall provide for access restriction so that Owners are able to limit access to their facilities to a subset of smartcard access device holders.
- The system shall be capable different rental rates by time of day, day of week, or holidays, as well as dynamic bike share pricing to facilitate redistribution of bicycles.

General:

- 4-space "Quad" rectangular locker configuration: Each locker shall provide individual storage for 4 bicycles in separate locked compartments.

- Each locker shall have at least one smart card reader per pair of adjacent doors.
- Each smart card reader shall have a dynamic display of real time rental status and usage rules.
- Lockers shall be of a modular design that allows for easy replacement of components such as doors, top and side panels, electronic controllers, and latching mechanisms.
- Locker battery power supplies shall use dual redundant battery packs, and advanced battery selection logic to allow run times over one year per pack under normal conditions. Packs shall utilize readily available Alkaline, Lithium, or NiMH cells that are easily replaced and cost-effective to maintain.
- Alternate power supply configurations shall include ~~[hard-wired 120VAC with alkaline battery backup]~~ ~~[hard-wired 277VAC with alkaline battery backup]~~ ~~[hard-wired 12VDC with alkaline battery backup]~~ ~~[dual-redundant alkaline battery packs with advanced pack selection logic to deplete the primary pack before switching to the reserve pack, warn users of a depleted pack, and refuse rentals when both packs have been depleted],~~ or ~~[Solar power with rechargeable low self-discharge NiMH and alkaline battery backup]~~.
- Lockers shall be capable of operation in temperatures ranging from 0-110°F.
- Lockers shall be capable of operating in exposed conditions and in coastal marine environments.
- Lockers shall restrict the entry of wind-blown debris around their full perimeter.
- Lockers shall have adjustable system for anchoring and leveling on site with adjustment range of up to 3.0% slope.
- Lockers shall provide access for easy removal or cut-off of installed anchors, to facilitate Locker relocation.
- Four-space Lockers shall be of an aspect ratio which resists lifting and tipping, and shall be capable of operating when unanchored.
- Lockers shall be capable of being installed on concrete substrates.
- Lockers shall provide standard externally mounted number plates made of a durable, weather resistant material, and shall include electronically coded controller, location, and Owner ID numbers which are logged on every transaction.
- Lockers shall have no exposed fasteners that would enable locker disassembly from the outside.
- Locker shall have external finishes which facilitate the removal of graffiti.

Locker Materials:

- Locker doors shall be fabricated from 16-gage 304 stainless steel fully perforated with a ¼-inch on 3/8-inch staggered, round-hole pattern. Doors shall have interior reinforcement to reduce warping increase out-of-plane stiffness. Doors shall be at least 1.5" thick to resist prying attacks.
- No portion of door shall displace more than 0.4" when subjected to prying at any location on the door using a 30 lb force on a 36" pry bar with a 1" fulcrum.
- Exterior Locker frame components shall be precision manufactured sheet steel of no less than 16-gage 304 stainless steel.
- Locker roofs shall be high-durability FRP with additives for fire resistance, and shall use a UV-resistant resin. Locker roofs shall have at least 20% translucency to aid in visibility of contents.
- Locker roofs shall be crowned to enable proper water run-off, and roof system shall be capable of resisting the dropping of a 200lb load from 12 inches without any permanent buckling, cracking, or deformation of the roof or other locker components.
- Locker sides and doors shall be capable of resisting the impact of a 100lb pendulum swinging from a height of 5 inches above the impact point without any permanent buckling, cracking, or deformation of the doors, side panels, or other locker components.
- The latching device shall be capable of resisting a 3000lb pull-out force, such as during an attempt to pry the door open.
- Locker interior divider panels shall be G90 hot-dipped galvanized material with 50-70% open area.
- Locker exterior side panels shall be ¼-inch on 3/8-inch staggered, round-hole, fully perforated panels of no less than 18-gauge 304 stainless steel.
- Locker materials shall allow maximum visual transparency for ease of locker inspection.
- User interface display and solar windows shall be protected by 1/4" thick polycarbonate with abrasion and UV resistance properties, "Makrolon 15" or equal.

Finish:

- External locker hardware (such as nuts, bolts, and latches) shall be 18-8 stainless steel, or better.

Contact us at (510) 549-2853 or sales@elocktech.com

Copyright © 2013 eLock Technologies LLC

- Internal locker hardware (such as nuts, bolts, and latches) shall be zinc plated steel, or better.
- The door hinge shall be a full height piano style hinge made from 304 stainless steel.
- Exterior Locker frame components shall be #4 finish 304 stainless steel.
- Interior Locker components shall be G90 hot-dipped galvanized steel or better.

Parking User Interface:

- Locker electronic controllers shall be equipped with an easily read, tamper-resistant user interface that provides users with vital locker information such as current rental state, rates, and where to obtain an access device.
- Provide authorized user access to bicycle or parking space within 15 seconds from initiation of transaction.
- User interface display shall be graphic LCD type, capable of operating in wide temperature range (-20°C/-4°F to 70°C/158°F).
- User interface display shall be readable in bright sunlight, and have a backlight for low light and full darkness readability.
- Locker electronic controllers shall be capable of displaying user-specific information such as value remaining on access device, access device rental state, and if an access device has been blocked.
- Interface shall include on-screen instructions, and in-context warnings.

Locking System and Smartcard Access:

- Lockers shall be equipped with electronic latch and controller systems. Locker controllers shall be ISO-7816 smartcard accessible, and ISO 14443 smart card, and/or magnetic stripe card upgradable. A clearly defined reader and web system upgrade path for integration with regional ISO-14443 compliant transit cards shall be provided.
- Any available locker space must be accessible by a valid smartcard.
- Locker spaces must remain secure while in the 'available' mode, meaning the locker is closed and cannot be opened by anyone except a holder of a valid smartcard.
- Locker spaces must remain dedicated while in a 'secured' mode, meaning the locker is closed, secure, and cannot be opened by any user except the authorized user who initially engaged the latch in the 'secured' mode.
- Smart cards shall be electronically tagged with their current renting status, and shall not be capable of renting more than one locker space or bicycle at the same time.
- Lockers shall be capable of being opened at any time, while in any mode, by a System Administrator.
- Lockers shall be capable of being field serviced and electronic components shall be easily removed by maintenance staff, with a mechanical key, from the outside of the locker without damaging the locker components, locker, or internal wiring.
- Locker shall be accessible to service personnel regardless of whether or not the locker has power or functioning electronics.
- The system shall be capable of being manually opened from the outside of the locker by maintenance staff should power be cut to the locker, or should the electronic system malfunction for any reason.
- Each locker space shall have a secure internal panic release which can be operated by an individual locked inside.

Attachment 2
Limited Product Warranty

BikeLink Gen5 eLocker Limited Product Warranty

Bicycle storage locker, electronic controller with software and latching mechanism (the "Product").

The following limited warranties provided by eLock Technologies LLC ("ELOCK") extend to the original facility owner ("OWNER") of the Product and are assignable or transferable to a subsequent Owner.

- 1) **Commencement.** This Limited Product Warranty commences upon OWNER acceptance of product installation.
- 2) **Electronics.** ELOCK warrants that the locker controller, 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 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.** ELOCK warrants that locker frame, 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) **Locker Frame Exterior Finishes.** ELOCK warrants that 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 the phone number at the top of this page. 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.
 - a) 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.
 - b) 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.
 - c) 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.
- d) 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.
 - e) 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.
 - f) 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.
 - b) OWNER shall have no coverage or benefits under this Limited Product Warranty if the Product has been subject to abnormal use, abnormal conditions, 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 for 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 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.

Attachment 3
BikeLink Software License

BIKELINK™ SOFTWARE LICENSE AGREEMENT

OVERVIEW

This License grants OWNER the right to use only the following programmable instructions for the duration of the term defined in section 3:

- a. Programmable instructions loaded on BikeLink™ equipment listed in section 4;
- b. Programmable instructions loaded on BikeLink™ equipment listed in section 4;
- c. Web-based software accessed with a facility owner login at bikelink.org;

The included components above will hereafter be referred to as "Software." The features and functionality provided by the Software are described in the Product Manual for Gen 5 eLocker with BikeLink Software 5.01. 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 Technologies LLC ("ELOCK") extends to the original purchaser ("OWNER") or agency with jurisdiction over a BikeLink™ facility or equipment. Rights and responsibilities are automatically transferred to any subsequent Owner or agency with jurisdiction 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 jurisdiction over a BikeLink™ facility. In this case, the owner of the software licenses will be Bay Area Rapid Transit District.

"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.

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 contract are paid in full, unless terminated by mutual agreement.

3. EQUIPMENT

This License is for use of BikeLink Software loaded on equipment listed below, as noted in purchase agreement dated: _____

Location Name	Quantity	Product	Spaces	Controllers
San Leandro BART	7	Quad	28	14
			TOTAL	14

4. TERMS AND CONDITIONS

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

- 4.1. SCOPE This License is 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 software installed on equipment specifically named in section 4, BikeLink™ access devices, and web-based software accessed with a facility owner login at bikelink.org.
- 4.2. CARDHOLDER AND 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, you agree to permit ELOCK dba BikeLink™ to:
 - a. Sell ACCESS DEVICES directly to users for BikeLink™ equipment you have purchased,
 - 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 User Agreement on behalf of all Facility Owners,
 - e. Track usage at your 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 report their loss to ELOCK immediately.
- 4.5. ACCESS RESTRICTION OWNER may restrict access to a BikeLink™ facility under OWNER's control, by setting up restrictive access zones. To permit access, OWNER obtains 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 section 6, which are provided for as long as the BikeLink™ facility is in operation, OWNER agrees that all revenue up to \$0.10 per hour and 10% of revenue above \$0.10 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 jurisdiction of BikeLink™ equipment by OWNER to another 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 contract. 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 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.
- 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 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.
- 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.
- 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.

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 USER Agreement, also known as the "BikeLink™ System Cardholder and User Agreement." ELOCK shall inform OWNERS and USERS of changes to USER Agreement in accordance with notification obligations defined in USER Agreement. ELOCK shall maintain USER Agreement link at www.bikelink.org, and take reasonable measures to ensure USERS are informed of 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 taxi ride costs from BikeLink™ facility up to \$20 in case USER is unable to retrieve 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 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 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 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, outreach materials, promotional program tools, access to rental transaction data, and equipment documentation. ELOCK shall provide 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 on a case-by-case basis. USER queries and associated responses prepared by ELOCK shall be available for review by OWNER upon request on a case-by-case basis.
- 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, on a case-by-case basis.
- 7.7. EXCLUSIONS
- a) Testing, troubleshooting, upgrade, repair, or other services 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 original purchase contract 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 may be suspended.
-

EXHIBIT B

COMPENSATION SCHEDULE

Description	Estimated Quantity	Unit of Measure	Item Unit Price	Item Price
eLocker Quad • Finish: Stainless Steel • Roof: Blue • Graphic End Panel: Bicycle	7	Each	\$9,750.00	\$68,250.00
Power Source: Solar Power with rechargeable NiMH battery and alkaline battery backup	14	Each	\$50.00	\$700.00
Adjustment for BAAQMD-funded projects 5%	1	LS	-\$3,447.50	-\$3,447.50
Taxable Subtotal				\$65,502.50
Tax (9%)				\$5,895.23
Initial BikeLink Software License	14	Each	\$1,000.00	\$14,000.00
Transportation and Installation	28	Space	\$220.00	\$6,160.00
BikeLink Manager Card	2	Each	\$50.00	\$100.00
Service Access Key	2	Each	\$20.00	\$40.00
Total				\$91,697.73

Any additional services beyond those detailed in Exhibit A shall be pre-approved in writing and shall be provided on a mutually agreed upon fee.

EXHIBIT C

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Contractor and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Contractor and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of

prevailing wages is not excusable if the Contractor or subcontractor had knowledge of their obligations under the California Labor Code. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefore unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:

1. The contract executed between the Contractor and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. The Contractor shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
4. Prior to making final payment to the subcontractor, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.
2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the

Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

- E. In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.