License Agreement with Gotcha Ride LLC to operate the North County Coastal Bike Share Pilot Program in the City of Encinitas.

RECOMMENDED ACTION:

1) Authorize the City Manager, in consultation with the City Attorney, to execute a license agreement with Gotcha Ride LLC (in substantial form as attached) to operate the North County Coastal Bike Share Pilot Program in the City of Encinitas (Attachment 5).

STRATEGIC PLAN:

This item is related to the following Strategic Plan focus areas:

- Environment—promotes the use of emissions-free bicycles as an alternative mode of transportation.
- Transportation—supports a transportation mode that accommodates more people with minimal impact on the community.
- Recreation—promotes active lifestyles and community health.
- Economic Development—addresses the “last mile” gap between public transit and local businesses and promotes tourism.

FISCAL CONSIDERATIONS:

There is no fiscal impact associated with the recommendation. Gotcha will bear the sole cost of deploying and operating the bike share program. Minimal City staff time will be needed to coordinate with Gotcha to ensure that the program operates in a manner beneficial to the City.

BACKGROUND:

Bike share is a service through which bicycles are made available for shared use to individuals on a very short-term basis, allowing them to rent a bicycle at one location and return it either at the same location or at a different location within a defined geographic boundary. Transportation, especially travel via single occupancy vehicle, is a major source of greenhouse gas emissions in Encinitas and the North County coastal region. Offering and promoting programs, such as bike share, that replace vehicle trips with bike trips, is one way Encinitas can help to reduce emissions. Bicycles are especially adapted to provide the “last mile” transportation from a rail or bus stop to a final destination. Bicycle transportation relieves parking congestion, providing better accessibility to our beaches, parks, businesses and tourist.
attractions and is beneficial to economic development. For these reasons, bike share programs are rapidly launching in many cities in our region and around the nation. The north coastal cities of San Diego County, with their large areas of level coastal terrain and large number of rail stops, is uniquely positioned to benefit from a coordinated single-provider regional bike share program, and to reap its benefits.

Interest in evaluating and pursuing bike share options for the City of Encinitas was initiated by the City’s Cultural Tourism Committee, which noted its benefits not only to the environment, but to tourism and economic development. Understanding the continuity of the coastal corridor and the advantages of selecting a single bike share service, the City of Encinitas approached neighboring cities to discern their interest. A group was formed to include Del Mar, Solana Beach, Encinitas, Carlsbad, Oceanside, NCTD, State Parks, Camp Pendleton and SANDAG. SANDAG has provided considerable assistance in helping to coordinate the project, and the City of Encinitas has been the lead agency in preparing a Memorandum of Understanding between the participating agencies, developing and processing the Request for Information, and negotiating a model License Agreement with Gotcha.

On January 17, 2018, City Council unanimously approved the final Climate Action Plan (CAP) update. The CAP establishes a number of strategies to achieve GHG emissions reduction goals and targets, which include facilitating safe, convenient and affordable alternative transportation options. Specifically, the CAP established the following supporting measure which aims to help achieve Goal 4.1, Reduce Vehicle Miles Traveled:

- Develop a program to support car sharing and bike sharing for the community.

On March 14, 2018, City Council approved Resolution 2018-030 approving a Memorandum of Understanding (MOU) to work towards establishing a pilot bike share program in partnership with the cities of Del Mar, Solana Beach, Carlsbad and Oceanside, the San Diego Association of Governments (SANDAG) and the North County Transit District (collectively known as Parties) (Attachment 2). Through this partnership the Parties agreed to seek a single bike share operator to operate within the north coastal San Diego region to achieve economies of scale, to reduce conflicts between competing operators, and to provide optimal convenience to users renting a bicycle in one jurisdiction and terminating the rental in another jurisdiction. Thus far, the Cities of Del Mar and Solana Beach have joined the City of Encinitas in entering into this MOU.

On April 5, 2018, a Request for information was issued seeking interested operators to operate a bike share program in the north county coastal area.

On April 23, 2018, the City of Encinitas held a public meeting soliciting input on a possible bikeshare program from the public. Members from Bike-Walk Encinitas, the mainstreet associations, and various bike retail stores were in attendance.

On May 4, 2018, the City received proposals from six (6) bike share operators with an interest to deploy and operate a bike share program in the north county coastal region. Proposals were received from the following operators: BCycle, DecoBike, CycloShare (operator of DecoBike), Gotcha, LimeBike, Spin, and Ofo. Each proposal was evaluated based on the following criteria:

1. Experience of the operator and proposed staff
2. Approach to the project
3. Availability and proposed use of technology and methodologies
4. Capability to perform
5. Relevant experience
6. Innovation
On March 13, 2019, Encinitas City Council adopted Ordinance 2019-02 “An Ordinance of the City Council of the City of Encinitas, California Adding Chapter 9.55 to the Encinitas Municipal Code Regarding Pilot Shared Mobility Program.” Ordinance 2019-02 was added to the Encinitas Municipal Code (EMC) on April 12, 2019 as Chapter 9.55. EMC Chapter 9.55 regulates shared mobility services and enables the City of Encinitas to implement a pilot bike share program to be operated by a single bike share licensee. The licensee is allowed to deploy unpowered bicycles and/or “Class 1” or “Class 2” electric powered bicycles within the City, subject to a negotiated license agreement approved by City Council. Being that shared mobility devices are still a new, evolving and untested mode of transportation within the City, the ordinance enables the City to more accurately gauge the scope and scale of their impact on City rights of way, public and businesses and potential benefit to shared mobility users.

**ANALYSIS:**

With EMC Chapter 9.55 in place and after thorough review of the bike share operator proposals, including in-person interviews, reference checks and follow-up conversations, staff from the partner cities selected Gotcha Ride LLC as the preferred operator for the North County Coastal Pilot Bike Share Program.

Gotcha will provide the City of Encinitas with 200 3-speed electric assist bikes and approximately 25-30 bike hubs. All Gotcha bikes are equipped with a GPS enabled smart lock, magnesium alloy wheels, solid inner tube tires, an adjustable seat, carbon fiber belt drive, automatic front and rear lights, and a front storage bucket.

Gotcha’s bike share program is unique compared to some of the other bike share programs operating in the San Diego County region. The main attribute that sets them apart is their focus on clutter-free operation. Their model includes designated hubs where bikes are picked up and returned and their bikes include lock-to technology. The system is managed using sophisticated software that knows the location and level of battery power of each bike at all times. Gotcha utilizes state-of-the-art GPS technology and geofencing capabilities to manage and promote proper bike parking. Using a smart phone app in real time, Gotcha communicates with users on appropriate parking and hub locations. Gotcha provides incentives for users who park in designated hub locations and disincentives for users who park improperly and/or outside of a hub location. The North County Coastal Pilot Bike Share Program will include a dedicated Gotcha support team that will rebalance, organize, maintain, and replace the batteries on the bikes daily. This combination of technology, features, and support will yield a predictable, organized, and reliable bike share experience (Attachment 2).

Gotcha funds its program through user fees and through sponsorships by companies which will receive advertising space on the bike hubs. City staff will ensure ads are consistent with the City’s advertising policy.

The license agreement negotiated with Gotcha will include the following terms to enhance the benefits of bike share while mitigating potential nuisance, risk, and City liability:

- A limit to the number of bikes deployed
- Required robust geofencing incentives to mitigate the potential that bikes could be misplaced on sidewalks, roads, or other places
- Required rapid response time from Gotcha if complaints are received or issues occur
- Sufficient staffing to support management of the bike fleet, including maintaining the bikes in good working order, replacing bike batteries in a timely manner, and rebalancing the distribution of the bikes as needed
- Bike share data to be provided to the City to help manage and assess the pilot program and plan future bike infrastructure based on riding patterns
- Liability for operation of the bike share program placed solely with Gotcha
• Requires the operator to establish clear rules for bike share use, including notification to users and marketing regarding bicycle laws, bike etiquette, and bike safety
• Requires selection of sponsors to be approved by the City in accordance with the City’s advertising policy
• Limited, 1-year agreement term to allow time to assess the success of the program and consider extension of the program if successful

Gotcha has indicated they can launch the pilot bike share program by the beginning of this summer with enough time factored in to conduct a robust community outreach program.

After the pilot period is complete, City staff will return to council to present the results of the pilot bike share program.

Through Gotcha’s proposal, City staff learned of a complimentary ride share program that is offered by Gotcha. Gotcha operates a fleet of Neighborhood Electric Vehicles that can be deployed to supplement a city’s traditional public transit system, picking up riders on-demand and driving them to their desired destination. Such a program would help to solve the “first/last mile” issue often associated with taking public transit. City staff is currently evaluating this opportunity and similar opportunities and will return to Council with a recommendation.

ENVIRONMENTAL CONSIDERATIONS:

The action being considered by the City Council is exempt from the California Environmental Quality Act (CEQA) because it is not a “project” under Section 15378(b)(5) of CEQA Guidelines. The action involves an organizational or administrative activity of government that will not result in the direct or indirect physical change in the environment.

The action being considered is related to the Climate Action Plan, supporting Goal 4.1: Reduce Vehicle Miles Traveled.

ATTACHMENTS:

1. License Agreement
2. Gotcha Bike Share Features
City of Encinitas Pilot Bike Share Program

Operator License Agreement

This Pilot Bike Share Program Operator License ("Agreement") is made this __th day of _____________ 2019, by and between the City of Encinitas ("City") and Gotcha Ride, LLC ("Operator").

RECITALS

1. A goal of City is to provide safe and affordable multi-modal transportation options to all residents, reduce traffic congestion, and maximize carbon free mobility.

2. Consistent with that goal, City has adopted Chapter 9.55, of Title 9 of the Encinitas Municipal Code for the implementation of a Pilot Bike Share Program, under the provisions contained therein.

3. Operator is in the business of constructing and providing shared mobility products ("Assets") and services for municipalities, colleges, and universities throughout the United States, and has developed a proprietary shared mobility platform with access to related proprietary software, hardware, ongoing maintenance services, and expansion assistance (the "Business").

4. Consistent with Chapter 9.55, City has selected Operator as the Operator under the Pilot Bike Share Program, to establish and maintain a shared mobility platform using Service Provider Assets ("Services") on the City premises (the “Premises”), and Operator is willing to perform and maintain the Services on the Premises, under the terms and conditions hereinafter set forth.

5. Operator will abide by all federal, state, local and City ordinances and rules governing the use of public space to efficiently and effectively provide Bike Share services.

6. Operator possesses GPS, 3G, and self-locking technology in its bike fleet such that Bikes, as defined by Chapter 9.55, may be locked and opened by users with a mobile application ("App") and tracked to provide for effective operations and maintenance.

AGREEMENT

1. Term. This Agreement is effective for one year from the date the first user ride is taken hereafter referred to as Launch Date ("Initial Term"). At the conclusion of the Pilot Bike Share Program Term, the Agreement may be extended by mutual written agreement of the parties for additional terms, as may be negotiated ("Renewal Term"), subject to any new terms agreed between the parties.

2. Exclusive Operator During Pilot Program Term. Consistent with Chapter 9.55, City designates Operator as the exclusive Operator of Bike Share services within its Public Areas and Public Right-of-Way. This designation is personal to Operator and may not be assigned or transferred, except as provided herein. This exclusivity provision shall expire and not be renewed past the Initial Term unless agreed in writing by the parties.
3. **Use of City Property.** City authorizes Operator to use City property, including, but not limited to, public right-of-way that is suitable for Bike Share parking and Public Areas and Public Right of Way (as defined in Chapter 9.55.020) (“City Property”) solely for the purposes set forth in this Agreement. This authorization is not a lease or an easement and is not intended and shall not be construed to transfer to Operator any real property interest in City Property.

4. **Licensed Use.** Operator customers may use City Property solely for parking of Bikes (as defined by Chapter 9.55.010) owned and maintained by Operator for use in the bike share program. Operator will work with City to deploy Bikes using a phased approach. Operator will place the approved volume of Bikes on City Property for its bike share services and throughout the term of the agreement and shall rebalance Bikes consistent with this Agreement. If at any time during the term of the Agreement Operator desires to place additional Bikes within the City limits, Operator must request and receive authorization from the City to do so in writing. The City has the sole discretion to expand the number of Bikes in operation by the Operator. During the Agreement term, Operator may request an increase or decrease in the number of Bikes, with explanation/justification. Within thirty (30) business days of such request, City will in good faith consider Operator’s request and advise, but sole discretion to accept, reject or select an increase remains with City. Operator shall not place or attach any personal property, fixtures, or structures to City Property without the prior written consent of City.

a. Operator’s use of City Property and Operator's operations within the City, shall, at a minimum: a) not constitute Prohibited Conduct under Chapter 9.55.040; b) not adversely affect City Property or the City's streets, or sidewalks; c) not adversely affect the property of any third parties; d) not inhibit pedestrian or vehicular movement, as applicable, within City Property or along other property or rights-of-way owned or controlled by the City; e) not create conditions which are a threat to public safety and security. Operator shall instruct its customers not to park or leave any bicycle on City Property where the Bikes would impede pedestrian or vehicular traffic, where only automobile parking is allowed, and where bicycle parking is prohibited.

b. Upon expiration of this Agreement or termination of this Agreement with or without cause, Operator shall, at its sole cost and expense, remove all Bikes from operation within seven (7) calendar days. Further, Operator shall restore all City Property, within sixty (60) days. Operator shall restore City Property to a condition which is visually and structurally indistinguishable from the immediately surrounding area. If the facility repair, replacement or restoration is not feasible to be completed in sixty (60) days, Operator will so advise City within thirty (30) days of Agreement termination or expiration of Agreement term and provide City with a written plan for restoration, not to exceed an additional thirty (30) days. Should Operator fail to collect Bikes, repair, replace or otherwise restore such real or personal City property within the time limitations set forth in this Paragraph, City shall have the right to collect and store all Bikes. If Operator does not take possession of its Bikes within thirty (30) days of the expiration of the Agreement term of termination, Bike ownership transfers to City, which may dispose of Bike in any manner, at its discretion. Operator expressly agrees to reimburse City for any Bike collection and disposal costs or in making facility repairs, replacements or restorations. All Operator contractual obligations, including indemnity and insurance obligations shall remain in effect and apply until all Bikes are removed.
and all City Property is restored.

5. **Bike Fleet.** At the time of system launch, Operator shall not deploy more than 200 Bikes in the City. Bike share fleet size to be assessed by City and Operator on a monthly basis prior to determining expansion or reduction. At least 50% of the Bikes must be electric/pedal-assist. Approximately 80% of the total bike share fleet, should be deployed/in service at all times. Operator and City shall have the ability to add additional Assets to this agreement as provided in paragraph 4, upon written mutual agreement.

6. **Bike Equipment.** The Operator shall ensure each operable bicycle is equipped with adjustable seats for riders of a wide range of heights, multiple gears that can handle coastal foothills, rechargeable battery (as applicable), a cargo basket, automatic front and rear lights that run day and night, and a real-time, recordable on-board Geographic Positioning System (GPS). The Operator shall feature the ability to reserve a bike in advance of the bike rental period. Operator Bikes shall meet the safety standards outlined in the International Standardization Organization (ISO) 43.150 - Cycles, as well as the standards outlined in Code of Federal Regulations Title 16, Chapter II, Subchapter C, Part 1512 - Requirements for Bikes. In addition, all Bikes shall meet the standards established in CVC section 21201, including for lighting during operation in darkness Electric-assist Bikes shall be "Class 1" or "Class 2" electric Bikes only, as defined in California Vehicle Code (CVC) Section 312.5.

7. **Bike Parking.** The Operator, in coordination with the City, shall establish preferred bike parking locations using Bike racks/hubs, geo-fencing technology, painting, decals, signage, and/or other City authorized methods.
   a. Bike racks/hubs are to be strategically distributed to support efficient and effective bicycle riding to residential and commercial destinations and other points of interest throughout the City.
   b. Bike parking may be located in City right-of-way at the discretion of the City and/or on private property at the discretion of the property owner and approval of the City.
   c. Operator shall encourage and incentivize Bikes to be parked in preferred parking areas, the location of which shall be determined by the City in coordination with Operator.
   d. Operator shall provide clear guidance for users regarding parking requirements and preferences.
   e. The City, at its own discretion, may support the Pilot Bike Share Program with the installation of Bike racks and/or painted Bike parking spots, and recommended Bike parking spots, without racks or painting, in the City to assist with the orderly parking of Bikes throughout the City.

8. **Condition of City Property.**
   a. City makes City Property, including, but not limited to City Public Areas and Public Right of Way (as defined in Chapter 9.55.020) available to Operator in an "as is" condition. City makes no representations or warranties concerning the condition of City Property or its suitability for use by Operator or its customers and assumes no duty to warn either Operator or its customers concerning conditions that exist now or may arise in the future.
   b. City assumes no liability for loss or damage to Operator's Bikes or other property.
Operator agrees that City is not responsible for providing security at any location where Operator's Bikes are stored or located, and Operator hereby waives any claim against City in the event Operator's Bikes or other property are lost or damaged.

9. Maintenance and Care of portion of City Property. Operator shall be solely responsible for: (i) maintaining City Property to the City standards applicable for use by the Operator as licensed under Section 3 and City Ordinance Chapter 9.55; and (ii) obtaining from the City any applicable business permits or approvals required by the City. Operator shall exercise due care in the use of City Property and shall be responsible for maintaining City Property in good condition and repair. Operator shall not act, or fail to act, in any way that result in excessive wear or damage to City Property. Operator expressly agrees to repair, replace or otherwise restore any part or item of real or personal City property that is damaged, lost or destroyed as a result of the Operator’s use of City Property. The obligations under this Section apply to all City facilities, infrastructure, or appurtenances located on City Property.

10. Operations and Maintenance. Operator will cover all operation and maintenance costs for the Bike fleet. Operation and maintenance shall be performed to the minimum level of service and reporting outlined in 10a-b. Operator shall retain local staff level sufficient to meet minimum levels of service required by this Agreement, including but not limited to, proper bike maintenance, e-bicycle charging, and rebalancing the distribution of Bikes, as needed. Operator is encouraged to seek and make agreements with local bicycle repair shops for repair and maintenance services, upon approval by the City, which approval shall not be unreasonably withheld.

a. Operator must be able to ensure that all devices deployed are in good working order, clean, and safe to operate. Operators must share their system maintenance strategy and process with the City both prior to operations, and upon further request by the City. Maintenance should include:
   • Regular device inspection for wear and tear, and stress-based damage that could lead to failure.
   • Maintenance and repair consistent with or exceeding manufacturer’s recommendations.
   • Immediate replacement of worn or damaged parts.
   • Maintaining adequate charge on all Bike electric batteries, both for daily use and a strategy for long-term battery replacement, as necessary.

b. Operator shall maintain a record of its inspection, maintenance, and repair efforts, and preventative maintenance schedule, which will be made available to the City upon request. Devices that are not operable must be removed from the system promptly, including inoperability due to battery or electrical system failure communications failure, or other systems and software failures. Inoperable devices, or any device that is not safe to operate, shall be removed or made unavailable to the public via device lock-down within two hours of notification.

11. Customer Service Requirements. Operator shall promptly respond to the reporting of improperly parked Bikes or other issues communicated to customer service or the City. Required response times are within two hours during business hours (8 a.m. to 8 p.m., Monday through Friday) except for State and Federal holidays. For any complaint outside
of business hours, Operator must respond within two hours of the start of business hours. A 24/7 direct method of contact (e.g., phone, email, text) must be provided to report emergencies.

12. **Bike share User Education and Outreach.** In cooperation and approval of the City, Operator must establish clear rules for safe Bike use, including in-App notification to users and marketing regarding California bicycle laws, Bike etiquette, Bike safety, proper Bike parking, and preferred Bike parking locations. Operator must collaborate with the City to conduct public outreach and education efforts to support Pilot Bike Share Program launch while promoting a strong partnership.

   a. Operator must incorporate Bike user education messaging at the time of service sign-up.
   b. Users must be notified of Bike Program etiquette at the start of every rental.
   c. Each Bike must clearly display safety information.
   d. Operator must regularly make available Bike etiquette and safety information updates to users including Bike parking rules, incentives, and designated Bike parking area through the App.

13. **Advertising Policies.** Operator shall have the right to provide commercial advertisement on the Bikes and equipment (“Advertisement”). If Operator advertises on the Bike and equipment, any Advertisement must be pre-approved by City Manager or his or her designee before they are installed, affixed or otherwise included on any Bike or equipment. At least fifteen (15) days before Operator intends to install, affix or include any Advertisement, Operator shall submit to City a photorealistic color mock-up in readable electronic format (.pdf preferred) depicting the entire intended advertisement design and content on the Operator bicycle and/or equipment (including, bike racks, signs and kiosks). In addition, Operator shall submit to City the name of advertiser, advertiser brand and advertiser trade. The City shall have thirty (30) days after submission to approve or disapprove of the Advertisement. If City does not approve or disapprove within the timeframes herein, the Advertisement as submitted shall be deemed approved for use. For the avoidance of doubt Gotcha branding on any Bike or equipment shall not be deemed advertising for the purposes of this section and shall be deemed approved upon execution of this Agreement. Nothing herein shall entitle the City to any revenue generated from any Advertisement.

14. **User Fees.** In consideration of the provision of the services by Operator, City shall permit Operator to directly bill and collect from users’ various fees to utilize the services, including but not limited to, reasonable monthly and annual membership fees, pay as you go fees and penalty fees (“User Fees”). Nothing herein shall entitle the City to any revenue generated from User Fees.

15. **Equity.** Operator must make every reasonable attempt to operate the Pilot Bike Share Program as equitably as possible, including when placing and rebalancing Bikes throughout the City, setting pricing and payment options for low-income users, and providing customer service/responding to complaints. Operator is to consider leveraging the local workforce as an equity component of the pilot. In addition to equitable Bike distribution, it is desirable that the Operator offers a means of accessing devices that do not require the use of a smartphone and/or access to a credit or debit card.

16. **Business License.** The Operator must register as a business operating within the City.
17. Indemnification. Operator shall immediately defend, pay, indemnify and hold harmless City, its officers, officials, employees, agents, invitees, and volunteers (collectively “City Parties”) from any and all claims, suits, actions, damages, demands, costs or expenses of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including without limitation court costs and reasonable attorneys' fees, resulting from or in connection with loss of life, bodily or personal injury or property damage arising directly or indirectly out of or from or on account of:

a. Operator’s services and obligations under this Agreement, including but not limited to, any occurrence upon, at or from City Property, including, but not limited to, Public Areas and Public Right of Way (as defined in Chapter 9.55.020) or occasioned wholly or in part by the entry, use or presence upon City Property by Operator, Bike user or by anyone making use of City Property under this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of City.

b. Use of Operator’s Bikes by any individual, regardless of whether such use was with or without the permission of Operator, including claims by users of the Bikes or third parties.

c. Any claims or suit brought under the American’s with Disabilities Act (ADA), Rehabilitation Act, Unruh Civil Right Act, or other asserted provisions of law or regulation related to disability rights and access.

18. Insurance. Operator shall procure and maintain for the duration of this agreement insurance against claims for which Operator has indemnified the City pursuant to Section 17 of this Agreement and otherwise arising from Operator services and obligations performed under this Agreement. Operator shall maintain general liability and automobile liability insurance policies with limits of no less than one million dollars ($1,000,000) per occurrence for bodily injury or death, personal injury and property damage, and two million dollars ($2,000,000) aggregate and a minimum per occurrence excess liability umbrella of $5,000,000. Each insurance policy shall name the City as an additional insured and it shall be endorsed to state that: (i) coverage shall not be suspended, voided, or cancelled by either party, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to City; and (ii) for any covered claims, the Operator's insurance coverage shall be primary insurance as respects the City and any insurance or self-insurance maintained by the City shall be in excess of the Operator's insurance and shall not contribute with it. All insurance required herein is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable by City, and must be authorized to conduct business in the state of California, or approved by the Surplus Lines Association to do business in California. Additionally, before Operator shall employ any person or persons in the performance of the Agreement, Operator shall procure a policy of workers’ compensation insurance as required by the Labor Code of the State of California or shall obtain a certificate of self-insurance from the Department of Industrial Relations.

19. User Agreement. Prior to use, Operator shall obtain an affirmative signature or box check from each Bike rider as a condition for Bike use, which shall release and relinquishes and
discharge the City and its elected and appointed officials, officers, employees, agents, contractors, and volunteers from any and all claims, demands, disputes, losses, liabilities, debts, liens, charges, penalties, proceedings, causes of action and damages including for personal injury, wrongful death, property damage, and injury to rider or to third parties (Collectively, “Claims”), including unknown or unanticipated claims, which arise from or are related directly or indirectly to this agreement or the rental, maintenance, design, placement, use and/or operation of the Operator’s equipment, including the Bikes, Bike hubs, Apps, or the Operator’s website, including any and all claims related to a condition of City property and adjacent property or the sole or partial negligence of the City, or any other party. Rider must expressly waive any claims against the City which rider does not know or suspect to exist in his or her favor at the time of renting a Bike, and expressly waives rider’s rights under any statutes that purport to preserve rider’s unknown claims.

20. Compliance with Law. Operator at its own cost and expense, shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities applicable to its use of City Property and the operation of the Pilot Bike Share Program, including but not limited to laws governing operation of Bikes. If any license, permit, or other governmental authorization is required for Operator’s lawful use or occupancy of City Property or any portion thereof, Operator shall procure and maintain such license, permit and/or governmental authorization throughout the term of this Agreement. City shall reasonably cooperate with Operator, at no additional cost to City, such that Operator can properly comply with this Section and be allowed to use City Property as specified in this Agreement and City Ordinance.

21. Data Sharing Requirements. Operator shall provide real-time and spatially enabled data to the City summarizing Bike fleet status and Bike trip patterns. Operator also shall cooperate with the City in the collection and analysis of any aggregated, historical data concerning its fleet, ridership, and operations. Provided data must be robust enough to inform planning and implementation of bikeways and supporting micromobility amenities. Operator must also provide accurate monthly reports to the City describing system operations and maintenance.

   a. Operator must provide a standardized dashboard interface to support the City in viewing, querying, and mapping data.

   b. Operator shall provide City with real-time data in compliance with San Diego Regional Micromobility Data Sharing Requirements 1 – 11 (version 3, dated 1/24/19) available at www.sandag.org/micromobility.

   c. Operator shall provide the City with the following aggregated summary of ridership and operations data monthly:

      i. Aggregated system usage data – including, but not limited to, total unique riders, total miles ridden, total number of rentals, average rental duration, and average reservation duration (if applicable). Operator shall provide rider demographic characteristics (e.g., gender, age group), if available.

      ii. Aggregated summary of Bike Share operations data – Operator shall keep detailed records of vehicle maintenance activities, including but not limited to: device identification number, maintenance performed, summary of theft/vandalism, instances of improper bike parking, and detail on when
devices are removed from/returned to service.

iii. Customer service data – Summary of customer service inquiries and resolutions including, but not limited to: average Operator response time to reports of improperly parked Bikes, number of devices reported to be an obstruction hazard, problems with Operator’s customer reporting system or response efforts, or other Bike Share violation issues reported to Operator's customer service channels.

iv. Collision/incident data – Summary of all incidents in which the Operator’s devices or personnel were involved in a collision, accident, injury, or property damage. Data shall include the location, collision details, number of riders, age, helmet use, property damage, and injury type. Operator must disclose any incident resulting in injury within 24 hours of receiving notice.

d. Operator shall provide the City with the following bike share data quarterly:

i. User survey data capturing travel choice and rider behavior information. Sample size, survey questions, and survey distribution method to be jointly determined with the City. If de-identified demographic data is not collected via the Bike Share system or mobile app then user surveys may be leveraged to collect gender and age cohort information, at minimum.

22. Data Security. Operator must protect user’s personal information. Finance transactions must be secure and PCI compliant. Operator should provide their most recent 3rd party PCI audits. Personal data should be protected using industry accepted encryption, and customer permission is sought before sharing data with a third party. Auto renewal procedures should comply with state and federal standards. Operator is required to follow all local, state, and federal laws and regulations with respect to personally identifiable information and credit card information. It is strongly preferred that Operator does not resell users’ personally identifiable information. If the Operator engages in such a practice, then it is preferred that a) this is communicated clearly and transparently to users, and b) users have a clear means of opting out if they do not want their data sold.

23. Public Record. This Agreement, related documentation and data submissions required by the Agreement are subject to the disclosure under the California Public Records Act (CPRA) unless a statutory exception applies. It shall be the obligation of Operator to assert any statutory exception in the event of a CPRA request. Operator assertion of a statutory exception from disclosure shall be at Operator’s sole expense. Operator shall fully reimburse City for all City attorney’s fees, costs or expenses of any kind related to or arising from Operator’s assertion of a statutory exception.

24. No Joint Venture. Nothing herein contained shall be in any way construed as expressing or implying that the parties hereto have joined together in any joint venture or liability company or in any manner have agreed to or are contemplating the sharing of profits and losses among themselves in relation to any matter relating to this Agreement.

25. Termination. This Agreement may be terminated prior to the expiration date set forth in Section 1, above, upon the occurrence of any of the following conditions:

a. Termination for No Cause. The City may, in its sole discretion, terminate this
Agreement for any reason, or for no reason (no cause). If City chooses to exercise this option, written notice shall be delivered to Operator, by giving at least ninety (90) calendar days' notice to the Operator of such no cause termination. Operator, at City's discretion, shall continue to operate its Bike share services during the ninety (90) day no cause termination period. The bike and facilities removal requirements set forth in Paragraph 4(b) shall apply.

b. Termination for Cause. The City shall also have the right to terminate this Agreement for Cause. "Cause" is defined as a material breach by Operator of any contract term or attempt by Operator to transfer or assign this Agreement inconsistent with Agreement terms. Before a termination for Cause, City shall transmit to Operator a Notice of Intended Termination for Cause, identifying with sufficient detail each material breach. Upon receipt, Operator shall have fourteen (14) calendar days to cure each material breach to City satisfaction. Operator's failure to cure each material breach within the fourteen (14) day cure period shall result in immediate termination of this Agreement for Cause. Upon a termination for Cause, the Bike and facilities removal requirements set forth in Paragraph 4(b) shall apply.

c. Operator shall not terminate this Agreement without first by giving at least sixty (60) calendar days' written notice of termination, including termination date. If Operator terminates the Agreement, the bike and facilities removal requirements set forth in Paragraph 4(b) shall apply.

26. Amendment. This Agreement may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated in written amendments to this agreement and executed by duly authorized representatives of the parties.

27. Applicable Law and Venue. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Any action to interpret or enforce the terms or conditions of this Agreement shall be brought in the Superior Court for the County of San Diego, or in the United States District Court for the Southern District of California. Operator hereby waives any right to remove any such action from San Diego County as is otherwise permitted under California Code of Civil Procedure Section 394.

28. Counterparts. This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

29. Assignment. Operator may assign this Agreement and its rights and obligations hereunder to a successor entity, in whole or in part, upon written notice and consent by City, which such City consent will not be unreasonably withheld. Operator shall notify City no later than thirty (30) days before such assignment occurs. Prior to City consent, Operator shall provide City with the successor entity name, principal place of business, point of contact and reasonable evidence that the successor entity is financially and organizationally able to meet the Agreement obligations. Prior to City consent, City shall receive a certificate of insurance of the successor entity consistent with the requirements of this Agreement and written assurances from the successor entity that it is aware of and accepts the obligations of the Agreement. Nothing herein shall be construed to prevent Operator from delegating its duties hereunder to its affiliates, provided that Operator in any event shall remain responsible for its obligations hereunder irrespective of any such
delegation. Operator shall notify City no later than thirty (30) days before such delegation occurs. In such notice, Operator shall provide City with the delegated affiliate name, duties delegated, delegate principal place of business, delegate point of contact and reasonable evidence that the delegate is financially and organizationally able to meet the duties delegated. Further, Operator is to provide City proof that the delegate is insured consistent with the terms of this agreement. Operators failure to meet the obligations under this paragraph is a material breach.

30. Entire Agreement. When signed by both Parties, this Agreement (and any attached exhibits) is the final and entire agreement. As the final and entire expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the Parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.

31. Notices. All notices or demands of any kind required or desired to be given by the Parties must be in writing and shall be deemed delivered upon depositing the notice or demand in the United States mail, certified or registered, postage prepaid, or by acknowledged e-mail or other verified receipt electronic communications, addressed to the respective Party at the addresses shown below:

a. City of Encinitas, Attn. Risk Management, 505 S. Vulcan Ave., Encinitas, CA 92024

b. Gotcha Ride, LLC, Attn: Brett C. Vigrass, 7 Radcliffe St, Charleston, SC 29403

IN WITNESS WHEREOF THE PARTIES HERETO have executed this Agreement on date first above written.

CITY OF ENCINITAS

________________________________
Karen Brust, City Manager

________________________________
Sean Flood, CEO

Date

Date

ATTEST:

________________________________
City Attorney
Exhibit A
Draft Gotcha Proposed Hub Locations

This map includes the proposed draft locations for bike share hubs in the City of Encinitas. The locations were identified by Gotcha site development staff, with input from City of Encinitas staff. The proposed locations are preliminary and may change prior to bike share launch based on staff input, public input, and Planning permit approval. Bike hubs are dynamic and can be moved based on City preference and usage data.

Proposed Locations:
- Encinitas Train Station
- Cardiff Park N Ride
- El Portal/101
- Swami’s Beach Access
- Encinitas Community Park
- Leucadia Post Office
- YMCA/Sports Park
- 101 Near Lumberyard
- E St / 101
- Moonlight Beach
- Cardiff Sports Park
- Scripps Hospital
- San Elio State Beach Access
- San Elijo Ave / Chesterfield
- Mira Costa College
- Restaurant Row - Cardiff
- Grandview Surf Beach
- Leucadia Oaks Park
- Beason’s Beach Access
- Leucadia Roadside Park
- Orpheus Park
- View Point Park/Library
- Cottonwood Creek Park
- Mildred Park/Bus Stop
- A St / 101
- Coastal Rail Trail – N. term.
- George Berkich Park
- San Diego Botanic Gardens
- El Camino Real - TBD
WHO IS GOTCHA

WE BELIEVE MOBILITY IS FREEDOM.

• Gotcha creates a world where people lead happier, more productive lives through the transformative power of sustainable, accessible transportation.

• Gotcha is a mobility-as-a-service company, offering customized first-mile/last-mile micro transit solutions for cities and universities through bike, ride, and scooter share systems.

• Mobility as a Service “MaaS” is a combination of transportation services within a given territory that provides holistic and optimal travel options.
GOTCHA’S STRATEGIC PARTNERSHIPS

With over 10 years of experience, our commitment and purpose of strategically partnering with cities and universities is to help solve fundamental transportation challenges through the utilization of sustainable and eco-friendly mobility.

- **50+ MOBILITY SYSTEMS**
- **5,000+ MOBILITY ASSETS**
- **1.5MM+ ANNUAL TRIPS**
CONVENIENCE AND CHOICE

Gotcha provides convenience and choice through multiple mobility assets all operated through a single use app.

E-BIKE

E-SCOOTER

E-RIDE

GOTCHA APP
BIKE SHARE OVERVIEW

GOTCHA’S BICYCLE IS DESIGNED TO PROVIDE ORGANIZATION PAIRED WITH FLEXIBILITY, TAILORED TO SPECIFIC COMMUNITY NEEDS.

Gotcha's electric, smart bicycle is unlike any other in the industry. Gotcha provides the next generation’s shared bicycle, with a proprietary smart lock and tailored features based on our partner and user feedback.

LOCK-TO TECHNOLOGY
• Gotcha’s bicycle model is still considered lock-to, with all bikes locking to and living in safe and predictable areas.

E-ASSIST
• Gotcha’s new proprietary bicycle is electric assist, providing even more options for users.

KEY FEATURES

100% ELECTRIC  CARBON FIBER BELT DRIVE  GPS ENABLED SMART LOCK
MAGNESIUM ALLOY WHEELS  3-SPEED  350-WATT MOTOR
SOLID INNER TUBE TIRES  AUTO-UP SEAT  AUTOMATIC LIGHTS
GOTCHA 3.0 BIKE

- Cup Holder
- Handlebar with integrated display unit & RFID tech.
- Integrated LED
- 36V / 14Ah removable battery rated for 37 mi at 100% charge
- Auto Up seat post
- Hardened Steel auto release bike lock
- 3-speed internally geared hub
- Powerful drum brake
- 26in 5-spoke magnesium alloy wheel
- Puncture proof solid inner tube
- Heavy duty tire with reflective sidewall
- Internal speed sensor
- Gates™ CDX belt system
Typically, a hub can be classified in three ways:

1. **Gotcha Hub:** racks and signage provided and installed by Gotcha
2. **City Hub:** reallocation of existing racks and signage
3. **Virtual Hub:** no racks; geofenced area in approved space out of public right-of-way, typically indicated via signage and/or painted area
PARKING MANAGEMENT TECHNOLOGY

Gotcha utilizes our state-of-the-art GPS technology and geofencing capabilities to manage and promote proper bike parking. We communicate with users in real time on appropriate parking and hub locations. We will provide incentives for users who park in designated hub/corral locations, and disincentives for users who park improperly and/or outside of a corral/hub location. Please see examples below of our parking management technology.

**HUB OPTIONS**
The closest hubs will be indicated on the map for users to promote proper parking in designated locations.

**OUT OF SERVICE AREA**
Users will be notified if they have left the designed service area and will be prohibited from ending their ride in that location.

**OUT OF HUB**
Users will be notified if they have parked out of hub and will be directed to the closest hub location.
Safety’s our top priority, plain and simple. Follow the guidelines below to make sure everyone has a good time and avoids any boo boos.

**PRE-RIDE SAFETY CHECK**

**BRAKE INSTRUCTIONS**

**AUTOMATIC LIGHTS**

**HELMET REMINDER**

**BASKET**

**LOCK**

**FOLLOW TRAFFIC LAWS**

**BE VIGILANT**
TURN-KEY OPERATION

Gotcha will interview, hire and train a local maintenance team. Assets will be inspected by Gotcha’s local fleet team daily. Primary maintenance for field inspections includes:

- battery swapping/charging
- tires
- brake checking and gear shifting
- visual assets that need to be addressed -such as scratches or dents, and replace and repair those features

When a device is reported broken by a user, Gotcha’s Rider Experience team will:

- contact the user to confirm the report
- provide a refund
- determine safe and reliable transportation to their destination.

Our fleet team will either immediately replace the asset for the user or cover the cost of a ride share service. Assets in the field that are marked as broken will be retrieved within 24 hours. After passing a comprehensive quality check, the bicycle will be redeployed into the fleet.
COMMUNITY ENGAGEMENT: EQUITY AND SAFETY

EQUITABLE ACCESS

Gotcha is dedicated to ensuring that the mobility solutions are available and accessible to all of those who need it, especially those who need it most. Our assets are able to be utilized and unlocked with **RFID card access**, should the user not have a smartphone or part of the unbanked community. Below we include our recommendation for LMI access memberships in the system area.

Some local agencies that could serve as partners include:
- Family Self-Sufficiency Service
- Interfaith Shelter Network
- North County Lifeline
- Local Food Banks

SAFETY PROGRAMS/ EDUCATIONAL EVENTS

Gotcha will use a variety of tools and communications channels to educate users about riding rules, helmet use, and appropriate parking. Gotcha’s exclusive partnership with Bern Unlimited will provide easy and affordable access to high-quality helmets to all riders.

Gotcha will look to the city partners, key stakeholders and community organizations to provide support and collaboration for hosting regularly scheduled educational events that engage with the members of the community. Gotcha staff will also utilize any and all local events to perform safety demos.

We can also provide an incentive to participate in safety events and seminars by providing credits for free rides to users who attend.
SPONSORSHIP OPPORTUNITIES

FULL SYSTEM MOBILITY HUB SPONSORSHIP

Full System Mobility Hub Sponsors receive maximum exposure through partnership with North County Bike Share. By participating as a sponsor, your organization brings an active, sustainable mode of transportation to your community.

Full system sponsors will receive the following:

• Logo on all station signage panels within the phase
• Advertisements on the system's social media accounts
• Logo within the app and on the system website
• Discounted membership pricing for employees

HUB SPONSORSHIP

Hub sponsorship allows your organization to partner with the bike share program and engage with our riders through physical and digital branding opportunities.

Hub sponsors will receive:

• Logo on their sponsored station
• Advertisements on the system's social media accounts
• Logo within the app and on the system website
• Discounted membership pricing for employees
*Discounted pricing available for multiple hubs

SAFETY SPONSORSHIP

The safety sponsor is tied to all of the system's safety messaging.

The safety sponsor will receive:

• Branded safety stickers on all bikes
• Discounted membership pricing for employees
RIDE ON!

SEAN FLOOD
Founder/CEO
sean@thegotchagroup.com
404.759.3929