



Public Safety & Transportation Committee Agenda

City of Newton In City Council

Wednesday, APRIL 7, 2021

7:00 PM

The Public Safety & Transportation Committee will hold this meeting as a virtual meeting on Wednesday, April 7, 2021 at 7:00 pm. To view this meeting using Zoom use this link: <https://us02web.zoom.us/j/89236342764> or call 1-646-558-8656 and use the following Meeting ID: **892 3634 2764**

Items Scheduled for Discussion:

#107-21 Resolution for the Council to send to General Court the matter of MBTA service cuts COUNCILOR DOWNS, LIPOF, HUMPHREY, KALIS, KELLEY, BOWMAN, KRINTZMAN, DANBERG, NOEL AND RYAN submitting a resolution for the Council to send to the General Court on the matter of MBTA service cuts.

Referred to Public Safety & Transportation and Finance Committees

#119-21 **Acceptance of grants funds from MassDOT's Shared Winter Streets and Spaces** HER HONOR THE MAYOR requesting authorization to accept and expend the sum of one hundred ninety-nine thousand, nine hundred and nineteen dollars and ninety-two cents (\$199,919.92) in grant funding from MassDOT's Shared Winter Streets and Spaces grant to purchase and install four Blue Bikes Stations with bicycles.

It is the Chair's intention to entertain a motion to vote No Action Necessary on the following four (4) items:

Referred to Public Safety & Transportation and Finance Committees

#296-20 **Discussion regarding MGL Chapter 150E** COUNCILORS NORTON, ALBRIGHT, BOWMAN, DOWNS, KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, NOEL, WRIGHT and KALIS requesting a discussion regarding MGL Chapter 150E and the limitations it places on the City of Newton to unilaterally make changes to the Newton Police Department functions without having to negotiate them with the police unions.

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

- #280-20** **Discussion with Police regarding department policies**
COUNCILORS ALBRIGHT, BOWMAN, DOWNS, GREENBERG, LEARY, KELLEY, WRIGHT, KALIS, HUMPHREY, MALAKIE, GROSSMAN, DANBERG, NOEL, LIPOF requesting a discussion with Chief MacDonald and appropriate members of the Police Department regarding policies and procedures around the use of force and measures to combat racism. One possible outcome to augment departmental community policing might be a citizens' oversight body that reflects the demographics and values of Newton.
Public Safety & Transportation Held 8-0 on 06/17/20
- #279-20** **Resolution on Newton Police Policy and Training**
COUNCILORS NOEL, ALBRIGHT, BOWMAN, NORTON, DOWNS, LEARY, LIPOF, WRIGHT, KALIS, KRINTZMAN, HUMPHREY, CROSSLEY, GROSSMAN, GREENBERG, RYAN, DANBERG, AUCHINCLOSS AND MARKIEWICZ submit a resolution to ensure Newton Police policy and training reflects the values and commitment of our community, reducing police violence, facilitating citizens' First Amendment Right to peacefully protest, and actively engaging in non-biased community policing.
Public Safety & Transportation Held 8-0 on 06/17/20
- #275-20** **Discussion with the Police and Human Resources about Newton practices**
COUNCILORS NORTON, DOWNS, GROSSMAN, LAREDO, MALAKIE, AUCHINCLOSS, NOEL AND BOWMAN requesting a discussion with the Newton Police Chief and Human Resources Director about Newton practices regarding recruitment, screening, training, advancement, and removal of police officers, including plans to increase the number of black and minority officers.
Public Safety & Transportation Held 8-0 on 06/17/20

Respectfully submitted,

Andreae Downs, Chair

CITY OF NEWTON

DOCKET REQUEST FORM

DEADLINE NOTICE: Council Rules require items to be docketed with the Clerk of the Council NO LATER THAN 7:45 P.M. ON THE MONDAY PRIOR TO A FULL COUNCIL MEETING.

To: Clerk of the City Council

Date: 03/19/21

From (Docketer): Councilor Downs, lipof, humphrey, Kalis

Address: 854 Chestnut St., Waban 02468

kelley, bowman
krintzman

Phone: 617-969-7123

danberg Noel
E-mail: adowns@newtonma.gov

Additional sponsors: see below

+ Ryan

1. Please docket the following item (it will be edited for length if necessary):

COUNCILORS DOWNS.....submitting a resolution for the Council to send to the General Court on the matter of MBTA service cuts

2. The purpose and intended outcome of this item is:

- Fact-finding & discussion
- Appropriation, transfer,
- Expenditure, or bond authorization
- Special permit, site plan approval,
- Zone change (public hearing required)
- Ordinance change
- Resolution
- License or renewal
- Appointment confirmation
- Other: _____

3. I recommend that this item be assigned to the following committees:

- Programs & Services
- Zoning & Planning
- Public Facilities
- Finance
- Public Safety
- Land Use
- Real Property
- Special Committee
- No Opinion

4. This item should be taken up in committee:

Immediately (Emergency only, please). Please state nature of emergency:

Cuts are already in effect and legislative action needed quickly

- As soon as possible, preferably within a month
- In due course, at discretion of Committee Chair
- When certain materials are made available, as noted in 7 & 8 on reverse
- Following public hearing

5. I estimate that consideration of this item will require approximately:

- One half hour or less
- More than one hour
- More than one meeting
- Up to one hour
- An entire meeting
- Extended deliberation by subcommittee

6. The following people should be notified and asked to attend deliberations on this item. (Please check those with whom you have already discussed the issue, especially relevant Department Heads):

City personnel

Citizens (include telephone numbers/email please)

- _____
- _____
- _____
- _____
- _____

- _____
- _____
- _____
- _____
- _____

7. The following background materials and/or drafts should be obtained or prepared by the Clerk's office prior to scheduling this item for discussion:

8. I have or intend to provide additional materials and/or undertake the following research independently prior to scheduling the item for discussion. *

(*Note to docketer: Please provide any additional materials beyond the foregoing to the Clerk's office by 2 p.m. on Friday before the upcoming Committee meeting when the item is scheduled to be discussed so that Councilors have a chance to review all relevant materials before a scheduled discussion.)

Please check the following:

- 9. I would like to discuss this item with the Chairman before any decision is made on how and when to proceed.
- 10. I would like the Clerk's office to contact me to confirm that this item has been docketed. My daytime phone number is:
- 11. I would like the Clerk's office to notify me when the Chairman has scheduled the item for discussion.

Thank you.

Andreae Downs
Signature of person docketing the item

[Please retain a copy for your own records]

Resolution

To our Members of the Massachusetts General Court,
Governor Baker

RE: MBTA service cuts, aka “Forging Ahead”

Whereas...

- The MBTA has cut service frequency temporarily for many bus and rail routes, citing low ridership during the pandemic;
- The MBTA simultaneously suspended service on at least nine bus routes, leaving some underserved areas without good transit alternatives;
- The MBTA has a history of never reinstating suspended routes;
- Expected savings from MBTA service cuts made during the pandemic total only about \$21M in the current fiscal year
- Federal pandemic assistance for the MBTA totals nearly \$2 billion within the last twelve months;
- To date, the MBTA has put most of its federal pandemic-related funds into its capital budget or held funds for post-pandemic operating costs
- Members of the Massachusetts congressional delegation have expressed significant concern that federal funding has not been allocated to reversing these cuts¹
- Commuter rail conductors are subject to permanent furloughs in a precarious economy exacerbating same;
- Overcrowding on some extant routes has already been documented since the service reductions, which as it continues will discourage ridership worried about COVID transmission;
- These cuts affect thousands of lower-income residents, who depend on public transit, including a disproportionate number of people of color, non-English speakers, and people with disabilities—precisely those most impacted by the pandemic and resulting recession
- Unreliable or infrequent transit pushes users to seek alternatives, many of which have greater impacts on our environment, on our public budgets, and on household expenses;
- The Metropolitan Area Planning Council (MAPC) noted in its comments to the MBTA that these cuts have a direct impact on the Commonwealth’s need to produce more housing, and without transit, new housing will increase sprawl;
- Congestion is already increasing on highways into Boston as the region slowly returns to work;
- To fight climate change and recover from the pandemic, access to public transit must be increased, not decreased

Therefore:

¹ https://edition.pagesuite.com/popovers/dynamic_article_popover.aspx?artguid=8f3389e6-147c-4c7f-b0af-2704dca774ae&appid=1165

We ask our representatives and senators in the General Court to join us in demanding the MBTA reverse the “Forging Ahead” cuts and restore service to pre-pandemic levels as soon as possible

NEWS > POLITICS

Massachusetts congressional delegation wants justification for MBTA service cuts, or reversal





BOSTON, MA. MARCH 13, 2021: Signage at the Park Street MBTA Station in Boston, Massachusetts. (Staff photo by Nicolaus Czarnecki/MediaNews Group/Boston Herald)

By [LISA KASHINSKY](#) | lkashinsky@bostonherald.com |
March 17, 2021 at 8:13 p.m.

Federal lawmakers want to know why the MBTA is cutting service with the state's transit systems on track to receive \$1 billion in new aid.

The entire Massachusetts congressional delegation fired off a letter on Wednesday calling for the T to either provide information justifying the cuts or reverse them.

"We urge you to provide evidence that justifies decreased service despite this robust federal relief, as we previously requested, or immediately reverse the recent service cuts, which disproportionately harm essential workers and low-income communities who rely on the MBTA for commutes and access to critical services," lawmakers wrote in their letter to MBTA General Manager Steve Poftak.

Since the lawmakers' first letter pushing back against service cuts in December, Congress has secured more than \$250 million in funding for the MBTA, and the state is expected to receive \$1 billion under President Biden's "American Rescue Plan" for its transit systems.



#107-21

But the T instituted cuts despite what lawmakers called “significant federal assistance,” in the [letter](#) released by U.S. Rep. Ayanna Pressley’s office.

“We hope you can reassure us that the federal assistance Congress has provided will be used to completely restore any and all service cuts as soon as possible,” lawmakers wrote.

Fenway residents and City Councilor Kenzie Bok [protested the suspension of the 55 bus route](#) as the MBTA’s new bus schedules took effect Sunday. Some bus routes are operating less often and frequency was reduced by 20% on the Red, Orange and Green Lines, and by up to 5% on the Blue Line.

U.S. Rep. Stephen Lynch, who signed onto the letter, [blasted the cuts](#) earlier this week as an “anathema” to the will of Congress.

“We take money from the taxpayer and then the MBTA cuts service?” Lynch said. “That doesn’t work for me.”

Tags: [Ayanna Pressley](#), [MBTA](#), [Politics](#), [Stephen Lynch](#), [transportation](#)



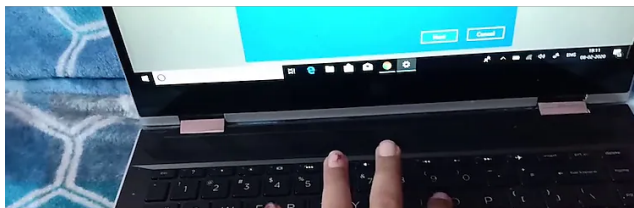
Lisa Kashinsky

Lisa Kashinsky is a multimedia journalist covering politics and more for The Boston Herald. A graduate of Boston University, she previously covered the Merrimack Valley for The Eagle-Tribune and the South Shore for Wicked Local, winning awards for her work at

both newspapers.

lkashinsky@bostonherald.com

Follow Lisa Kashinsky @lisakashinsky



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REC
2021 MAR 22 PM 5:02
Ruthanne Fuller
Mayor
CITY CLERK
NEWTON, MA. 02459

City of Newton, Massachusetts

Office of the Mayor

119-21

Telephone
(617) 796-1100

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(617) 796-1113
TDD/TTY

(617) 796-1089

Email
rfuller@newtonma.gov

March 22, 2021

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

RECEIVED
2021 MAR 22 PM 5:02
CITY CLERK
NEWTON, MA. 02459

Honorable City Councilors:

I respectfully submit this docket item to this Honorable Council requesting the authorization to accept and expend \$199,919.92 in grant funding from MassDOT's Shared Winter Streets and Spaces grant to purchase and install four Blue Bikes Stations with bicycles.

This is the second of two Shared Streets grants we have received from MassDOT. We have fully completed the first project, which installed two Blue Bikes stations by the deadline of October 9, 2020. The City will not be responsible for the operating costs for the project.

The grant requires quick implementation of the four additional stations with a deadline of May 31, 2021. We are contracted with Motivate as our operations partner and they have assured us they have the inventory and staffing to complete this project with us.

The City used state grants in 2020 to put BlueBikes stations at several locations:

- 2 in Newton Centre
- 2 in Newton Corner
- Nonantum at former library
- Washington St. & Crafts St. (near Whole Foods)
- West Newton Square
- West Newton – Armory Building (this will be moved to Watertown/Albemarle intersection for better usage)

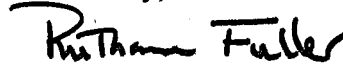
In 2021 we will use be using state grant programs and private funding for additional locations near these areas:

- Newton Highlands
- Needham Street
- Eliot T Station
- Beacon St. & Walnut St.
- California/Bridge/Chapel St. Area
- Auburndale
- Boston College T Station
- Newtonville – Washington St. & Walnut St.

The guiding principles in placing stations include maximizing ridership by choosing the most promising anchor locations based on Lime Bike data and addressing BlueBikes operations and rebalancing issues. Stations with continued low ridership will be moved to better locations if needed.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Ruthanne Fuller". The signature is written in a cursive style with a large initial 'R'.

Mayor Ruthanne Fuller



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

MEMORANDUM

Date: March 2, 2021
To: Mauren Lemiux, Chief Financial Officer
From: Nicole Freedman, Director of Transportation Planning
Cc: Jonathan Yeo, Chief Financial Officer Barney Heath, Director of Planning
Subject: Request to Docket Item to Accept MassDOT Shared Streets and Spaces Grant

We request approval to accept and expend \$199,919.92 in grant funding from MassDOT's Shared Winter Streets and Spaces grant for the following project: Purchase and installation of 4 Blue Bikes Stations with bicycles. (Please note, this is the second of two Shared Streets grants we have received from MassDOT. We have fully completed the first project, which installed 2 Bluebikes stations by the deadline of October 9, 2020). The City will not be responsible for operating costs for the project

The grant requires quick implementation, with a deadline of May 31, 2020 unless in extenuating circumstances. We are already contracted with Motivate as our operations partner and they have assured us they have the inventory and staffing to complete this project with us.

Attached:

- Award Letter
- Motivate Contract



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, MassDOT Secretary & CEO



March 1, 2021

Nicole Freedman
Planning Department
1000 Commonwealth Avenue
Newton, MA 02459
nfreedman@newtonma.gov

Dear Nicole Freedman:

Thank you for submitting a project application to the MassDOT Shared Winter Streets and Spaces Program. Your project application has been reviewed, and we are pleased to notify you that your "Shared Mobility" project has been approved for funding. We received many applications and had a competitive applicant pool from which to select, and your application stood out. Newton's Shared Mobility project will be funded at \$199,919.92 under Chapter 90 Contract Number/ MMARS #50910. Ongoing maintenance, operational, and enforcement costs associated with a project are not eligible uses of this funding.

The Shared Winter Streets and Spaces Program is intended to support projects that promote public health, safe mobility, and renewed commerce by quickly providing new or repurposed space for socially-distanced walking, bicycling, dining, retail, and bus travel. Because of the urgency of this effort, the Newton project will need to be fully implemented by Monday, May 31, 2021. Please note that any pavement markings or signage included in your project that are not compliant with the Manual on Uniform Traffic Control Devices should be used with caution, and only on a temporary basis. Please feel free to contact the Shared Streets Team to discuss this issue in more detail, if needed.

By June 30, 2021, a report detailing lessons learned from the project must be submitted to MassDOT. We also ask that you document the project's progress by taking before, during and after photos of your Shared Winter Streets & Spaces installation. Grant recipients may also be invited to participate in a learning exchange with other municipalities to share experiences. MassDOT will work directly with you to determine the best evaluation process for your particular project.

We are excited to work with you and the full Newton team as this project advances.

Sincerely,

Jamey Tesler

Acting Secretary and CEO

BIKE SHARE AGREEMENT

This agreement (“**Agreement**”), effective as of the Effective Date (as defined below), is entered by and between Motivate Massachusetts, LLC, a Delaware limited liability company with a principal place of business at 185 Berry Street, Suite 5000, San Francisco, CA 94107 (“**Motivate**”) and the City of Newton acting by and through its Director of Planning and Development or his designee, but without personal liability to him, with a principal place of business at 1000 Commonwealth Avenue, Newton, MA 02459 (the “**City**”). The City and Motivate may be referred to herein individually as a “**Party**” or jointly as the “**Parties**.”

RECITALS

WHEREAS, the City endeavors to create a reliable, sustainable, accessible bicycle transportation system and believes a robust bicycling culture is related to the long-term health and economic success of its residents and businesses; and

WHEREAS, on or about August 15, 2016, the Metropolitan Area Planning Council (“**MAPC**”) an independent public body of the Commonwealth, on behalf of the City of Boston, the City of Cambridge, the City of Somerville, and the Town of Brookline, and pursuant to G.L. c. 7, § 22A, issued a Request for Proposals to operate a regional bicycle sharing system (“**RFP**”) and Motivate was selected on October 19, 2016 as offering the most advantageous proposal; and

WHEREAS, the City, as an MAPC region municipality, is eligible to contract with Motivate, as the successful respondent to the RFP, to join the System (as defined below);

NOW THEREFORE, in consideration of the respective covenants and promises contained herein, the Parties agree as follows:

1. DEFINITIONS

Defined Terms. As used herein, the terms below have the following meanings. Any of such terms, unless the context otherwise requires, may be used in the singular or plural, depending upon the reference.

“**Bicycle**” means a bicycle that is part of the Newton System.

“**Bike Share System**” means the System and any other program offering a fleet of ten (10) or more bicycles to users on a self-service basis for point-to-point rentals which involves use of property under jurisdiction or ownership of the City.

“**Boston Area Regional Bike Share Governance Council**” or “**Council**” means the assembly of Participating Municipalities to govern and coordinate the activities of the Regional Bike Share System and make decisions regarding its overall operation.

“**Dock**” means each locking mechanism contained on each Station designed to receive a Bicycle for locked storage.

“**Effective Date**” means the date this Agreement is signed by the Mayor of the City of Newton which shall occur only after this Agreement has been signed by Motivate’s authorized representative.

“**Intellectual Property**” means (a) trade dress, trademarks, trade names, service marks, copyrights, logos, taglines, patents, slogans, color schemes, designs or other valuable marks, whether common law or registered, state or federal or other jurisdiction, (b) patents, patent rights or applications, trade secrets, all forms of protection applicable to inventions, conceptions, methods, procedures, processes, designs, works

of authorship, derivative works, algorithms, and utility models or (c) other forms of intellectual or industrial property under the laws of any jurisdiction.

“Participating Municipalities” or “PMs” means the municipalities participating in the System.

“Station” means a designated area in which users of the Newton System may end a ride, and which may include equipment to which bicycles are able to be locked.

2. SERVICES

2.1. **Services.** Motivate agrees to perform the services set forth in Exhibit A attached hereto, (collectively, the **“Work”**) for the City’s portion of the System (as defined below) (the **“Newton System”**), subject to the terms and conditions of this Agreement. Except as otherwise set forth herein, including in Section ERROR! REFERENCE SOURCE NOT FOUND., Motivate shall be responsible for all costs of performing the Work.

2.2. **Regional Nature of System.** The metro-Boston bike share system (**“System”**), also known as the “Bluebikes System,” is a pre-existing system that operates in municipalities outside the jurisdiction of the City of Newton, namely in the municipalities of Boston, Brookline, Cambridge, Everett and Somerville (the **“Existing Municipalities”**). The operation of the Newton System will be subject to the terms of a Memorandum of Agreement among Motivate and the Existing Municipalities, among others, when fully executed. Nothing contained in this Agreement shall alter the rights or obligations of Motivate or the Existing Municipalities under any of the city-specific Program Agreements with each Existing Municipality.

2.3. **Exclusivity.** City hereby grants to Motivate an exclusive license to operate a Bike Share System within the boundaries of the City of Newton during the Term (**“License”**). City covenants and agrees that in furtherance of the License, it will not license, authorize or permit another entity to operate a Bike Share System during the Term, and further covenants and agrees to take all reasonable steps, including enforcing any applicable laws, to protect the exclusivity of Motivate’s License.

3. FEES; EQUIPMENT; REVENUES

3.1. **Start-Up Fee.** On the Effective Date, Motivate will invoice City for a start-up fee of one hundred thousand dollars (\$100,000) (the **“Start-Up Fee”**). Invoices shall be paid by the City within forty-five (45) days of the date on which the system becomes available for customer usage.

3.2. **Equipment Deployment.** As part of this Agreement the City hereby enters into a no-cost lease with Motivate for the use of and operational responsibility for six (6) Stations with eleven (11) Docks each and thirty-eight (38) Bicycles (**“Start-Up Equipment”**), valued at two hundred twenty-four thousand two hundred fifty-seven dollars and sixty cents (\$224,257.60), owned by the City for the exclusive use of the City’s bikeshare system. Consideration for the no-cost lease of the Start-Up Equipment with a purchase option shall be the value to Motivate to operate an exclusive bikeshare system within the City, and the value to the City for Motivate’s operational responsibilities for the exclusive bikeshare system. Nothing in this Agreement shall limit Motivate’s right to upgrade the Start-Up Equipment with additional equipment of the same type offered under this Agreement throughout the Term. Upon the expiration or termination of this Agreement, the lease between Motivate and the City shall be automatically terminated. Upon such expiration or termination, Motivate shall have the option to purchase the Start-Up Equipment so owned by the City for the purchase price of \$1.00 per Station and Bicycle. City may fund the deployment of additional Stations and Bicycles for the costs set forth in the Pricing Schedule to the Boston Program Agreement, a current copy of which is attached hereto as Exhibit C, subject to Section 4.1 below.

3.3. **System Revenues.** Motivate will collect and retain all revenues generated by the Newton System, including user revenue and sponsorship revenue.

3.4. **Sponsorship.** The City hereby grants Motivate the exclusive right throughout the Term to (i) sell and place sponsorships and advertising, including title sponsorship, on all physical and digital assets of the Newton System, including Bicycles, Stations, vehicles, uniforms, website, mobile app, and subscriber communications; and (ii) collect all revenues generated by such sponsorship and advertising. All advertising will comply with the requirements of MassDOT Office of Outdoor Advertising and all local ordinances and regulations.

4. OWNERSHIP; INTELLECTUAL PROPERTY

4.1. **Ownership.** Subject to Section 3.2, the City is the sole owner of, and holds title to, the Start-Up Equipment. Motivate is the sole owner of, and holds title to, any additional components of the Newton System, including any bicycle share equipment, spare parts, tools and other materials, except that any such components shall be owned by the City if purchased with the City's funds.

4.2. **Intellectual Property Rights.** All right, title, and interest in and to any Intellectual Property developed under this Agreement by Motivate will be the exclusive property of Motivate. Motivate does not convey to City, nor does City obtain, any right to any Intellectual Property owned by Motivate.

5. TERM AND TERMINATION; DEFAULT

5.1. **Term.** The Work hereunder will commence on the date on which the system becomes available for customer usage (the "**Start Date**") and shall remain in effect, unless extended or earlier terminated in accordance with the terms of this Agreement, until the earlier of (i) the second anniversary of the Start Date and (ii) the expiration or earlier termination of the agreement (the "**Boston Program Agreement**") between Motivate and the City of Boston for operation of Boston's share of the System ("**Term**").

5.2. **Extension of Term.** If average monthly trips in Newton over the Term, as measured sixty (60) days before the second anniversary of the Start Date, is at least 1,750 trips, then the Term shall, upon approval of the City's authorized governing body, extend until the earlier of (i) the fourth anniversary of the Start Date and (ii) the expiration or earlier termination of the Boston Program Agreement. For the purposes of this section, the number of trips in Newton shall be calculated as one half of the sum of the number of trips starting at stations in Newton and the number of trips ending at stations in Newton.

5.3. **Termination.**

5.3.1. **Material Breach.** If either Party materially breaches this Agreement, then the non-breaching Party will give the breaching Party written notice of such breach and 90 days to cure such breach. If the breaching Party fails to cure such breach by the expiration of such 90-day period, then the non-breaching Party will have the right to give the breaching Party a written notice of termination, including the date when the termination will be effective, which date shall be at least 30 days after the date of such notice.

5.3.2. **Sole Remedies.** Notwithstanding anything to the contrary herein, the sole remedy of the City against Motivate for breach of this Agreement, excluding a breach of Article VIII, or for failure to provide the Services satisfactorily, is to terminate this Agreement in accordance with Section 5.3.1. In no

event will Motivate be liable for damages of any kind for breach of this Agreement, other than a breach of Article VIII, or for failure to provide the Services satisfactorily.

5.3.3. Equipment Removal. Motivate shall remove all components of the Newton System owned by Motivate within 90 days after expiration or termination of this Agreement.

6. REPRESENTATIONS AND WARRANTIES

6.1. **The City's Representations and Warranties.** The City hereby warrants and represents to Motivate as of the Effective Date:

6.1.1. The City has the legal power, right, and authority to enter into this Agreement, and the persons executing this Agreement on the City's behalf have the legal power, right, and authority to bind the City to the terms and conditions of this Agreement.

6.1.2. This Agreement is a valid, legally binding obligation of and enforceable against the City in accordance with its terms and execution of this Agreement by the City will not cause a breach of any other agreement to which the City is a party.

6.1.3. The City is self-insured for all of its liability and employee injury losses, and is self-insured for all of its property losses, subject to any limitation of the City's liability pursuant to Mass. G.L. ch. 258 s. 1 et. Seq. The City has sufficient financial reserves to cover its self-insured costs, including its obligations and liabilities in connection with this Agreement.

6.2. **Motivate's Representations and Warranties.** Motivate hereby warrants and represents to the City as of the Effective Date:

6.2.1. Motivate has the legal power, right, and authority to enter into this Agreement, and the persons executing this Agreement on Motivate's behalf have the legal power, right, and authority to bind Motivate to the terms and conditions of this Agreement.

6.2.2. This Agreement is a valid, legally binding obligation of and enforceable against Motivate in accordance with its terms and execution of this Agreement by Motivate will not cause a breach of any other agreement to which Motivate is a party.

6.2.3. Motivate shall perform its obligations hereunder in a good and workmanlike manner, in conformance with this Agreement, and in accordance with customary professional and/or industry standards.

6.2.4. Motivate warrants that each of Motivate's employees assigned to perform the Work have the proper skill, training, and background to be able to perform the Work in a competent, timely, and professional manner and that all Work shall be so performed.

7. INSURANCE

7.1. **Insurance Coverage.** Motivate will, at its own expense, obtain and maintain in effect at all times during the Term at least the following insurance coverages:

7.1.1. Worker's Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 for each accident, and any and all other coverage of Motivate's employees as may be required by applicable law.

7.1.2. Commercial General Liability, including but not limited to, product and completed

operations, personal and advertising injury and contractual liability coverage with minimum limits of \$1,000,000 each occurrence; \$2,000,000 general aggregate.

7.1.3. Commercial Automobile Liability Insurance with limits of \$1,000,000 for each accident for third party bodily injury and property damage, including Uninsured/Underinsured motorist coverage with limits in accordance with local regulations.

7.2. **Certificates of Insurance.** On the Effective Date, Motivate will deliver to the City certificates of insurance verifying the aforementioned coverages.

8. INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1. **Hold Harmless and Indemnification.** Motivate agrees to defend, indemnify and hold harmless the City, its officers, agencies, departments, agents, and employees (each, an “**Indemnified Party**”; and collectively, “**Indemnified Parties**”) from and against any and all claims, demands, causes of action, or suits brought by third parties (“**Claims**”), and all losses, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including cost of defense and attorneys’ fees) (collectively, with Claims, “**Liabilities**”), resulting from or arising out of the negligence or willful misconduct of Motivate, Motivate’s officers, employees, agents, servants, subcontractors, or any other person acting for or on behalf of Motivate in performance of this Agreement.

8.2. **Exclusions.** Notwithstanding the foregoing, the following shall be excluded from Motivate’s indemnification and defense obligations contained in the preceding paragraph: any Liabilities to the exact extent resulting from, or arising out of, (i) the negligence or willful misconduct of any Indemnified Party; (ii) Motivate’s complying with the written directives or written requirements of the City or the Council, if Motivate has previously objected to such written directives or requirements; or (iii) the condition of any public property outside of the perimeter of a Station and not otherwise controlled by Motivate. If any Claim against Motivate includes claims that are covered by clauses (ii) or (iii) of the preceding sentence or claims contesting the City’s authority to issue a permit for a Station, then each Party shall be responsible for its own defense against such claims. To whatever extent that any liability results or arises out of the condition of any public property outside of the perimeter of a Station, any liability attributable to the City shall be governed by the provisions of Massachusetts General Laws ch. 84 s. 15 and/or Massachusetts G.L. ch. 21 s. 17C as applicable.

8.3. **Indemnification Procedure.** The indemnification obligation under this section shall not be limited by the existence of any insurance policy and shall survive the termination of this Agreement. The City agrees to give Motivate written notice of any claim of indemnity under this section. Additionally, Motivate shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the City is required in connection with the settlement. Monies due or to become due to Motivate under this Agreement may be retained by the City as necessary to satisfy any outstanding claim which the City may have against Motivate.

8.4. **Limitation of Liability.** To the maximum extent permitted by any applicable law, in no event will any Party be liable to the other Party in any manner whatsoever for any special, indirect, incidental, exemplary, punitive, aggravated or consequential damages, losses or liabilities (including without limitation lost profits or savings or goodwill) howsoever caused arising out of the obligations hereunder or otherwise relating to or in connection with this Agreement, whether in contract, tort (including negligence) or any other statutory or common law basis, notwithstanding that such Party has, or its directors, officers, employees, subcontractors, suppliers or agents have, been advised of the possibility of such damages, losses or liabilities.

9. MISCELLANEOUS

9.1. **Confidentiality.** Subject to the terms and conditions herein and all laws, each Party (a "Receiving Party") agrees that it shall not, directly or indirectly, use, make available, sell, disclose, disseminate, or otherwise communicate to any person, in whole or in part, other than in the course of such Party's performance of its obligations hereunder, either during the Term or any time thereafter, any Confidential Information. The foregoing shall not apply to any information that: (i) was known to the public prior to its disclosure by the Receiving Party; or (ii) the Receiving Party is required to disclose by law, regulation or legal process. As used herein, "Confidential Information" means with respect to each Party, the finances, agreements, business operations, trade secrets, plans, proceedings, market strategies, media and promotional activities or other non-public information of the Party disclosing such information (the "Disclosing Party"), whether disclosed orally, in writing, or through another medium, by the Disclosing Party's officers, employees, agents or other persons. Where the City is of the understanding that release of Confidential Information is required by law, the City shall give Motivate notice of its intent to release such Confidential Information and at least ten (10) business days to seek appropriate relief, including but not limited to seeking and obtaining an order issued by a Court of competent jurisdiction to prevent or restrain such release. If legal action is filed against the City for failing, delaying, or refusing to turn over Confidential Information requested by a third party under the Massachusetts Public Records Law (G.L. ch. 66, s. 10), Motivate agrees to defend, indemnify and hold harmless the City, its officers, agencies, department, agents, and employees from and against any and all claims, demands, causes of action, or suits brought by third parties, including all losses, liabilities, penalties, fines, forfeitures, costs, expenses and attorneys' fees resulting from said legal action, provided that City has first consulted Motivate and allowed Motivate the opportunity to direct the City to act in such a way as to avoid any such liability.

9.2. **Governing Law.** This Agreement shall be governed exclusively by the internal laws of the United States and of the Commonwealth of Massachusetts applicable to contracts made, accepted and performed wholly within said Commonwealth, without regard to application of principles of conflict of laws.

9.3. **Survival.** In addition to any payment obligation hereunder, all provisions of this Agreement that by their terms survive the expiration or any termination of this Agreement, together with all other provisions of this Agreement that may be reasonably construed as surviving the expiration or any termination of this Agreement, shall survive the expiration or any termination of this Agreement.

9.4. **Notices.** Except as otherwise provided herein, all notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to:

If to Motivate: Motivate Massachusetts, LLC
c/o Lyft, Inc.
185 Berry Street, Suite 5000
San Francisco, CA 94107
Attn: LBS Legal

If to the City: City of Newton
1000 Commonwealth Avenue
NEWTON, MA 024590
Attn: Director of Planning and Development

Copy to: City Solicitor

or to such other place and with such other copies as any Party may designate as to itself by written notice to the others.

9.5. Entire Agreement; Amendments and Waivers. This Agreement, together with the exhibits hereto, constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. Any information set forth herein or in any exhibit hereto shall be considered set forth on each other exhibit for purposes of this Agreement. No waiver of the provisions of this Agreement, or any breach thereof, shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, or shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

9.6. Counterparts; Severability. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument and the remaining provisions shall remain in full force and effect. To the extent permitted by applicable law, any such provision will be restricted in applicability or reformed to the minimum extent required for such provision to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

9.7. Construction; Incorporation. The headings of the articles, sections, and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof. All sections and article references are to this Agreement, unless otherwise expressly provided. As used in this Agreement, (a) "hereof", "hereunder", "herein" and words of like import shall be deemed to refer to this Agreement in its entirety and not just a particular section of this Agreement, and (b) unless the context otherwise requires, words in the singular number or in the plural number shall each include the singular number or the plural number, words of the masculine gender shall include the feminine and neuter, and, when the sense so indicates, words of the neuter gender shall refer to any gender. The Parties acknowledge and agree that: (i) this Agreement is the result of negotiations between the Parties and shall not be deemed or construed as having been drafted by any one Party, (ii) each Party and its counsel have reviewed and negotiated the terms and provisions of this Agreement (including, without limitation, any exhibits attached hereto) and have contributed to its revision, (iii) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and (iv) the terms and provisions of this Agreement shall be construed fairly as to all Parties and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

9.8. Relationship of the Parties. Motivate is an independent contractor and neither Motivate nor its employees shall, under any circumstances, be considered employees, servants, or agents of the City, nor shall the City or its agents or employees be considered employees, servants, or agents of Motivate. At no time during the performance of the Work or otherwise, shall Motivate, its employees, or agents, represent to any person or entity that Motivate and its employees are acting on behalf of, or as agents of, the City or any of its employees. The City will not withhold payments to Motivate for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Motivate. The City will not provide to Motivate any insurance coverage or other benefits, including Workers' Compensation, normally provided by the City for its employees. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between the Parties.

9.9. **Cooperation.** The Parties agree to execute such further instruments and to take such further action as may reasonably be necessary or helpful to carry out the intent of this Agreement.

9.10. **Failure or Delay in Performance; Force Majeure.** Neither Party shall be held responsible for failure to perform its duties and responsibilities hereunder if such failure is due to a “**Force Majeure Event**,” which means a strike, fire, riot, rebellion, or other force or event beyond the control of such Party, that make performance impossible or illegal, unless otherwise specified in this Agreement; provided, however, that such Party (in order to not be held responsible for failure to perform) notifies the other Party of such event within forty-eight (48) hours of its commencement.

9.11. **Non-Discrimination.** Motivate agrees that in its operations/implementation of the System it will not discriminate against any employee or applicant for employment on the basis of race, color, sex, gender identity or expression, sexual preference, disability, marital status, family status, military status, age, religion, national origin, or source of income.

9.12. **Ethics in Public Contracting.** This Agreement incorporates all local, state, and federal law, regulations and rules related to ethics, conflicts of interest, or bribery. Motivate certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

9.13. **Remedies.** The remedies available to the Parties in various sections of this Agreement shall be deemed to be in addition to, and not in limitation of, any other remedies either Party has or may have under applicable law or in equity arising out of or relating to this Agreement.

9.14. **Assignment.** Motivate may assign this Agreement to an affiliate of Motivate that is registered with the Secretary of State, without the consent of the City.

9.15. **News Releases and Public Announcements.** Subject to the terms hereof, the Parties shall work together (and with the Council, if applicable) to issue press releases, written public statements, and respond in writing to media inquiries regarding this Agreement and the System.

9.16. **Precedence.** The terms and conditions set forth in this Agreement shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, any attachment to this Agreement, or like document.

[Signatures on following page]

IN WITNESS WHEREOF, Motivate and the City have executed this Agreement as of the Effective Date.

MOTIVATE:

MOTIVATE MASSACHUSETTS, LLC

DocuSigned by:
Dor Levi
By: AS6795EDE28541A
Name: Dor Levi
Title: Head of Lyft Bikes & Scooters

Date: 8/3/2020

CITY:

CITY OF NEWTON

Digitally signed by Barney S. Heath
By: Barney S. Heath
Name: Barney Heath
Title: Director of Planning and Development

Date: _____

I certify that funds are available within
Account No. 0111475 527500 in the amount of \$20,000
for this AGREEMENT.

Susan Dzikowski
Comptroller of Accounts

Date: 9/10/20

APPROVED AS TO LEGAL FORM AND CHARACTER:

Digitally signed by Andrew Lee
By: Andrew Lee
Assistant City Solicitor

Date: _____

CONTRACT APPROVED

Digitally signed by Mayor Ruthanne Fuller
Mayor Ruthanne Fuller
Ruthanne Fuller, Mayor

EXHIBIT A: SERVICES

1. Description of Services. Motivate will operate the Newton System according to the description of services set forth in this Exhibit A.
2. Equipment Deployment.
 - 2.1. Motivate will inspect and store all new equipment prior to deployment.
 - 2.2. Motivate will be responsible for deployment of all equipment.
 - 2.3. Motivate shall obtain all necessary permits and approvals prior to undertaking the services set forth herein. The City shall pay all application and permit fees associated with approvals and permits from the City.
 - 2.4. All Bicycles and all Stations shall comply with the applicable requirements of local ordinance.
3. Operations.
 - 3.1. Continuous Operation and Management. Except as otherwise stated herein, and subject to scheduled downtime, the Newton System will commence operating within six (6) months of the Effective Date, but no earlier than June 1st, 2020, and will remain in operation 24 hours per day, 365 days per year.
 - 3.2. Inspection and Maintenance.
 - 3.2.1. Motivate will, at all times, follow and comply with the manufacturer's requirements, warranties, and recommendations for assembly, maintenance (including the provision of spare parts), storage and repair of all Newton System equipment.
 - 3.2.2. Motivate will perform regular maintenance checks for each Bicycle, with deficient elements repaired or replaced as necessary.
 - 3.2.3. Motivate will clean each Station as necessary.
 - 3.2.4. Motivate will remove conspicuous graffiti promptly after notification by the City.
 - 3.2.5. Motivate will remove conspicuous accumulations of litter from Stations promptly after notification by the City.
 - 3.3. Distribution of Bicycles. Motivate will re-distribute Bicycles within the Newton System service area throughout the day during each day of operation. All Bicycles placed in service will be in good operating condition.
 - 3.4. Customer Service. Motivate will provide to all subscribers, and the public at large, contact information for Motivate's customer service center.
 - 3.4.1. Motivate will provide the City a .jpeg image of the Bluebikes program mark, subject to any approvals required by the owner(s) of such mark, for the City's promotion of the Newton System on Newton's 311 Facebook and Twitter Page and the City's website.

3.5. Comments and Complaints. Motivate will establish and maintain during the Term prompt and efficient procedures for handling complaints from the public for which Motivate receives a notification. Such procedures will be consistent with all applicable laws, rules and regulations and the provisions of this section.

3.6. Reporting. Motivate will provide the City access to the same System ridership reporting tools it provides to the city of Boston. The City will also be included in the System GBFS feed.

3.7. Marketing. The City will be included in all System marketing campaign discussions.

3.8. Data Privacy. Motivate will adhere to the same data privacy practices for the Newton System as it does for the Bluebikes system in the city of Boston.

3.9. System Website. Motivate will maintain a System website.

3.10. Motivate Staffing Levels. Motivate, at all times, will provide sufficient staff to efficiently and promptly provide the services set forth in this Agreement.

3.11. Station Siting. Unless Motivate agrees otherwise, the Parties shall ensure that Stations are placed no more than one-third of a mile apart, and no more than one-third of a mile from an existing Bluebikes station. Motivate and the City shall mutually agree on exact Station locations that meet these criteria and serve dense, mixed use areas. The exact locations of the Stations are subject to the written approval of the City's Commissioner of Public Works and Commissioner of Parks and Recreation, which approval will not be unreasonably withheld.

3.12. Relocation, Resizing, and/or Reconfiguration of Stations.

3.12.1. By Motivate. In the event that Motivate wishes to remove, relocate, resize, and/or reconfigure any Station, other than those Stations whose locations are fixed pursuant to the terms of a grant or sponsorship agreement, due to under-utilization or lack of profitability, Motivate may remove, relocate, resize, and/or reconfigure the Station provided, however, that Motivate provides the City with written evidence to support the change and a plan to implement such change, including the time such change will be implemented and the locations involved; the City shall not unreasonably withhold its approval of such relocation plan. Such change as described in this paragraph, if approved, shall be at no cost to the City.

3.12.2. By City. If City requires that a Station or parts thereof be relocated to accommodate unexpected commuting patterns, construction or other reasons, then at the request of City, Motivate will adjust the placement or configuration of a Station. City will compensate Motivate as set forth in Exhibit B to this Agreement.

3.12.3. By Private Property Owner. Private property owners or contractors doing private construction on public or private property may request that a Station or parts thereof be relocated to accommodate such construction or other reasons. At the request of the property owner, Motivate will adjust the placement or configuration of a Station. The property owner will compensate Motivate as set forth in Exhibit B to this Agreement. Motivate will invoice and collect payment from a private property owner prior to any such moves.

3.13. Interruption of Service.

3.13.1. Intentional Interruption of Service. If, at any time, Motivate intends, or is required, to temporarily interrupt all or a portion of the service, for any reason beyond Motivate's reasonable control, including, without limitation, weather, safety, or other event or circumstance where continued service

would be unsafe, unavailable, impractical, or impossible, then Motivate will notify City at least 24 hours before the interruption of service.

3.13.2. Unintentional Interruption of Service. If, at any time, a System malfunction or an event or circumstance occurs where continuous service would be unsafe or unavailable for reasons beyond Motivate's reasonable control, and this causes or will cause a temporary interruption of service, then Motivate will immediately notify City.

3.13.3. Operations in Inclement Weather. In coordination with the City, Motivate may remove Bicycles in anticipation of a Major Snow Event that may result in damage to the Bicycles or other accessory equipment. Motivate will remove Bicycles at the reasonable request of the City and make reasonable efforts to remove bicycles from locations requested by the City, but in no case will Motivate be obligated to remove more than 25% of Bicycles. A "Major Snow Event" means any event that is the subject of a winter storm warning issued by the National Weather Service. The determination to remove bicycles or accessories based on inclement weather will be based on collaboration between the City and Motivate. In addition, in the event of snowfall of more than six (6) inches, Motivate shall remove such snow within seventy-two (72) hours, provided that, in the event that Motivate is unable to meet this timeline, Motivate shall promptly propose an alternative timeline for snow removal.

EXHIBIT B: STATION RELATED FEES

Service	Unit	Price
Station relocation requiring crane and/or flatbed truck	Per Station	\$2000.00
Station relocation not requiring crane or flatbed truck	Per Station	\$500.00
Station reconfiguration	Per Station	\$500.00
New Station installation	Per Station	\$2500.00

EXHIBIT C: PRICING SHEET

If bulk prices are available to the City for its purchases, such prices are indicated below.

1. **Capital Equipment Cost Table.** The City may purchase new Stations or Bicycles at the prices set forth in the table immediately below.

NEW EQUIPMENT			
Item	Unit Price	Annual Quantity Needed for Bulk Price	Bulk Price
<i>Complete Station (not including bicycles)</i>			
Complete Station with 9 docks	\$26,604.72	25	\$24,186.60
Complete Station with 11 docks	\$29,688.12	25	\$26,989.20
Complete Station with 14 docks	\$33,026.40	25	\$30,024.00
Complete Station with 15 docks	\$34,606.44	25	\$31,460.40
Complete Station with 18 docks	\$38,782.26	25	\$35,256.60
Complete Station with 19 docks	\$40,362.30	25	\$36,693.00
Complete Station with 25 docks	\$48,987.18	25	\$44,533.80
Platform for kiosk and cable(s)	\$434.16	50	\$388.80
Dock with associated cable(s)	\$1,215.00	300	\$1,069.20
Map frame (static display)	\$2,268.00	50	\$2,052.00
Map frame (solar-powered lighting, static display)	\$3,240.00	25	\$2,916.00
Solar-powered kiosk (basic)	\$10,038.60	25	\$9,126.00
Solar-powered kiosk with printer	\$10,632.60	25	\$9,666.00
Solar-powered kiosk with customer key dispenser	\$10,839.96	25	\$9,855.00
<i>Bicycle</i>			
Bicycle (Motivate)	\$1,213.92	1,000	\$1,161.00