

USE AGREEMENT

Bike Sharing Services

This Use Agreement (this "Agreement") is made this 17th day of January 2018, by and between the **Walnut Creek Chamber of Commerce**, a California nonprofit public benefit corporation ("Company"), and Neutron Holdings, Inc., a Delaware corporation DBA LimeBike ("LimeBike").

Recitals

WHEREAS, LimeBike is the operator of a bicycle sharing and rental program; and

WHEREAS, LimeBike desires to use certain real property located within the Shadelands Business Park in the City of Walnut Creek, California (the "Property") for its bicycle sharing program (the "Bike Sharing Services") and Company desires to authorize such use on the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

Agreement

1. Pilot Program Term. The term of this Agreement is for one (1) year from the date hereof. The term of this Agreement may be extended only by mutual written consent of the parties hereto and may be terminated earlier in accordance with Section 9 of this Agreement.

2. Use of the Property. Company authorizes LimeBike to use the Property solely for the purpose of a bicycle sharing program. This authorization is not a lease, easement or other conveyance, and is not intended and shall not be construed to transfer any real property or other interest in the Property to LimeBike or any third party or to grant LimeBike any access to or right of use in any public rights of way or other property controlled by the City of Walnut Creek. Any authorization granted hereunder is also subject to the private property rights and approval of the respective businesses, property owners or other third parties which own or operate within the Property or otherwise have any rights therein (the "Businesses").

3. Pricing and Payment. Company shall make a refundable prepayment of \$36,000 to LimeBike in exchange for a bike share service credit of \$39,130 (8% discount) (the "Service Credit"). This Service Credit may be used by certain eligible employees designated by Company in exchange for use of the Bike Sharing Services at a rate of \$1.00 per half hour of use for regular pedal bicycles and, to the extent their use is approved by the Company, \$1.00 to unlock and an additional \$1.00 per ten minutes of use for electric-assist bicycles and scooters. Company will provide LimeBike with a list of email domain names for all Businesses that are eligible to use the Service Credit to pay for Bike Sharing Services for their employees. If necessary, LimeBike will issue a promotion code to employees of Businesses who do not have email addresses so that such employees may also utilize the Service Credit. LimeBike shall take all commercially reasonable steps to ensure that only authorized persons have access to

the Service Credit. Upon termination or expiration of this Agreement for any reason, LimeBike shall immediately refund Company any unused portion of the prepaid fees.

4. Permitted Use. LimeBike may use the Property solely for parking of bicycles owned and maintained by LimeBike for use in LimeBike's bike share program. LimeBike shall not place or attach any personal property, fixtures, or structures to the Property without the prior written consent of Company. In connection with its use of the Property, LimeBike shall not undertake or cause or permit to be undertaken, any activity which (i) is illegal under any applicable laws, decrees, rules or regulations in effect or (ii) would have the effect of causing Company to be in violation of any applicable laws, decrees, rules or regulations.

5. Condition of the Property

a. Company makes the Property available to LimeBike in an "as is" condition. Company makes no representations or warranties concerning the condition of the Property or its suitability for use by LimeBike or its customers, and assumes no duty to warn either LimeBike or its customers concerning conditions that exist now or may arise in the future.

b. In making the Property available for use by LimeBike, Company and the Businesses assume no liability for loss or damage to LimeBike's bikes or other property or for injury to any person in connection with LimeBike or its use of the Property. LimeBike agrees that neither Company nor the Businesses are responsible for providing security at any location where LimeBike's bikes are stored or located. LimeBike hereby waives any claim and releases Company and the Businesses from and against any such liability, loss or damage to property and expressly assumes all liability for any such injuries.

6. Indemnification. LimeBike shall defend, pay, indemnify and hold harmless Company and the Businesses and their respective officers, directors, officials, employees, agents, representatives, invitees, and volunteers from and against, and will reimburse the foregoing for, any and all claims, suits, actions, causes of action, assessments, liabilities, losses, obligations, damages, demands, costs or expenses of any kind or nature (including, without limitation, court costs and reasonable attorneys' fees and expenses) by or in favor of anyone whomsoever resulting or in any way arising, directly or indirectly, out of or from or on account of any of the following:

a. Any occurrence upon, at or from the Property or occasioned wholly or in part by the entry, use or presence upon the Property by LimeBike or by anyone making use of the Property at the invitation or sufferance of or otherwise in connection with LimeBike, except to the extent such loss or damage which was caused solely by the gross negligence or willful misconduct of Company;

b. Use of LimeBike's bicycles by any individual, regardless of whether such use was with or without the permission of LimeBike, including claims by users of the bicycles or third parties; and

c. LimeBike's breach of any representation, obligation covenant or agreement hereunder.

In matters in which Company or the Businesses are not a party, LimeBike shall pay or reimburse Company or the respective Business, as the case may be, for all reasonable staff time, attorneys' fees and expenses the Company or the Businesses are required to incur in relation to subpoenas, depositions, discovery demands and other inquiries in connection with suits, proceedings, legislative or regulatory hearings, investigations or other civil or criminal proceedings in which a claim is made against LimeBike or in which Limebike is a subject or target.

7. Insurance. LimeBike shall procure insurance against all claims or potential claims for which LimeBike may be required to indemnify the Company or the Businesses pursuant to Section 5 of this Agreement. LimeBike shall maintain such insurance for the duration of this agreement and thereafter as necessary to insure against any claims which may arise or be submitted after the termination hereof. LimeBike shall maintain General Liability limits no less than One Million and no/100 Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage, and in the sum of One Million and no/100 Dollars (\$1,000,000.00) for injury to or death of more than one person for each occurrence. Each insurance policy shall name the Company 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 Company; and (ii) for any covered claims, LimeBike's insurance coverage shall be primary insurance as respects the Company and any insurance or self-insurance maintained by the Company shall be in excess of the LimeBike's insurance and shall not contribute with it.

8. No Joint Venture. Nothing herein contained shall be in any way construed as expressing or implying that the parties hereto have joined together to create a joint venture, partnership, agency, or other employment relationship. All persons retained by Limebike in connection with this Agreement shall be employees or subcontractors of LimeBike and shall not be deemed employees or agents of Company or any of the respective Businesses.

9. Term. Unless earlier terminated in accordance with Section 9, this Agreement shall commence on January 22, 2018 (the "Commencement Date") and shall terminate on the date that is one (1) year from the Commencement Date. The parties hereto may extend the term of this agreement by mutual written consent.

10. Termination. This Agreement may be terminated prior to the termination date set forth in Section 8 above, upon the occurrence of any of the following conditions:

- a. Upon delivery of written notice from Company to LimeBike terminating this Agreement for any reason, or for no reason, by giving at least thirty (30) days' notice to the LimeBike of such termination.
- b. Immediately by Company upon any attempt by LimeBike to transfer or assign this Agreement or its rights of obligations hereunder in violation hereof.
- c. Upon delivery of no less than 180 days' written notice from LimeBike to Company terminating this Agreement, along with LimeBike's written notice of plans for termination.

11. Amendment. This Agreement may be amended only 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.

12. Mediation. All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this agreement, including but not limited to breach thereof, shall be referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding, including arbitration. The parties agree that, if any dispute remains unsettled for thirty (30) days after receipt by a party of notice thereof, the parties shall submit the dispute at the earliest possible date to mediation conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association (AAA), and shall bear equally the costs of the mediation; provided, however, that each party

shall bear its own costs in connection with such mediation. The parties agree to participate in good faith in the mediation and negotiations for a period of thirty (30) days or such longer period as they may mutually agree following the initial mediation session. If any party files any arbitration claims or administrative or legal actions for disputes to which this clause applies without first having attempted to resolve the dispute through mediation, then that filing party shall not be entitled to collect attorneys' fees or procedural costs, even if such party would otherwise have been entitled to them (subject to the discretion of the arbitrator or court involved).

13. Applicable Law and Venue. The laws of the State of California shall govern the interpretation and enforcement of this Agreement without regarding to principles of conflicts of law. The parties hereby submit to the exclusive jurisdiction of the state courts located in the State of California, County of Contra Costa, and the federal courts located in the Northern District of California.

14. Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. LimeBikes shall not assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of Company.

15. 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. Any signature page delivered electronically or by facsimile (including without limitation transmission by .pdf or other fixed image form) will be binding to the same extent as an original signature page.

16. Captions and Headings. The captions and headings contained in this Agreement are for ease of reference only and shall not be used to interpret or modify any provisions of this Agreement.

17. Notices. All notices and other communications hereunder shall be in writing and shall be duly given when (i) delivered in person; (ii) sent by registered or certified mail (postage prepaid, return receipt requested); (iii) sent by prepaid overnight courier; or (iv) transmitted by e-mail to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to Company:

Walnut Creek Chamber of Commerce
Attention: Jay Hoyer
1280 Civic Drive, Suite 100
Walnut Creek, CA 94596
Email: jhoyer@walnut-creek.com

With a copy to (which shall not constitute notice):

De La Housaye & Associates, ALC
Attention: C. Angela De La Housaye
1655 N. Main Street, Suite 260
Walnut Creek, CA 94596
Email: angela@delahousayelaw.com

If to LimeBike:

LimeBike
Attention: Strategic Development Team
2121 S. El Camino Real, B-100
San Mateo, CA 94403
Email: city@limebike.com

18. Attorneys' Fees. In the event of any legal action between the parties hereto relating to or arising out of this Agreement or the enforcement thereof, the prevailing party in such action shall be entitled to recover from the losing party its reasonable attorneys' fees and costs incurred in that action.

19. Authority of Signatories. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement. Each party hereto represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding upon such party and enforceable in accordance with its terms.

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

Walnut Creek Chamber of Commerce:

By:  _____

Name: Jay Hoyer

Title: President/CEO

Neutron Holdings, Inc. DBA LimeBike:

By: _____

Name: Andrew Savage

Title: Vice President, Strategic Development

With a copy to (which shall not constitute notice):

De La Housaye & Associates, ALC
Attention: C. Angela De La Housaye
1655 N. Main Street, Suite 260
Walnut Creek, CA 94596
Email: angela@delahousayelaw.com

If to LimeBike:

LimeBike
Attention: Strategic Development Team
2121 S. El Camino Real, B-100
San Mateo, CA 94403
Email: city@limebike.com

18. Attorneys' Fees. In the event of any legal action between the parties hereto relating to or arising out of this Agreement or the enforcement thereof, the prevailing party in such action shall be entitled to recover from the losing party its reasonable attorneys' fees and costs incurred in that action.

19. Authority of Signatories. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement. Each party hereto represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding upon such party and enforceable in accordance with its terms.

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


Walnut Creek Chamber of Commerce:

By: _____

Name: Jay Hoyer

Title: President/CEO

Neutron Holdings, Inc. DBA LimeBike:

By:  _____

Name: Andrew Savage

Title: Vice President, Strategic Development