



ZAGSTER BIKE SHARE PROGRAM AGREEMENT

This bike share program agreement (the **Agreement**), effective as of 12/20, 2017 (the **Effective Date**), is entered into by City of Noblesville, with a principal place of business at 16540 St. Noblesville (Municipality), and Zagster, Inc., with a place of business at 25 First Street, Suite 104, Cambridge, MA 02141 (**Zagster**). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Municipality and Zagster agree as follows:

1. **Program Details.** Zagster provides a bike sharing service that allows users to access and use bicycles provided by Zagster (**Zagster Service**). Zagster will provide a bike sharing program in Noblesville, IN (**Program**) with the number of bikes set forth in an order signed by the parties, including any orders for expansions or renewals of the Program (each, an **Order**). The Zagster Service includes any software provided by Zagster, including Zagster's bicycle rental management software and any user information provided in connection with such software.
2. **Fees.** Municipality will pay the annual fees set forth in Order in accordance with the payment terms set forth in this Agreement and each Order (**Fees**). Municipality is responsible for and shall pay any applicable sales, use or other taxes or duties, tariffs or the like applicable to an Order (except for taxes on Zagster's income). If Municipality is tax exempt, Municipality will provide evidence of such exempt status to Zagster. All payments shall be made without deduction for withholding taxes. Late payments may be subject to fees at the rate of 1.5% per month or, if lower, the maximum rate allowed by law. Zagster may also suspend provision of some or all of the Zagster Service if Municipality is more than 30 days past due in its payment of the Fees. If Zagster pursues collection efforts against Municipality due to Municipality's failure to pay the Fees due under this Agreement, Municipality shall pay Zagster's reasonable costs of collection, including any attorneys' fees related thereto.
3. **Location(s).** Municipality grants Zagster a license to certain Municipality-owned or licensed property (**Property**) in connection with the Program as follows: **(a) Access.** Zagster may access the Property at agreed upon dates and times to perform a site survey, take pictures and otherwise review and inspect the Property to determine an agreed upon area within the Property for installation of Zagster signage, bicycles and bicycle rack(s) (**Stations**). **(b) Shipments.** Municipality agrees to receive shipments of the Zagster bicycles and related installation materials and will store the Zagster bicycles and related installation materials in a secure, clean, and debris-free location until Zagster personnel arrive for installation. Municipality will permit Zagster to dispose of shipping materials at the Property and provide access to Municipality's trash facilities in connection with the same. **(c) Station Installation.** Municipality grants to Zagster the right to access and use the Property to install the Stations. The parties will agree upon the location of all Stations and the parties will work together on any necessary permitting required for approval and installation of Stations. **(d) Maintenance.** Zagster may access the Licensed Area during normal business hours Monday-Friday, or as may otherwise be required, to perform maintenance on the Zagster Bicycles. **(e) Users.** Municipality further grants to Zagster and its users the right to access Stations installed on Municipality-owned property for the provision and utilization of the Program, including for the purpose of accessing and renting Zagster bicycles. **(f) Images of Property.** Zagster may display images of the bicycle rack to the public, which Municipality agrees may include incidental images of Municipality's name, logos and/or the Property. **(g) Third party sponsors.** The parties acknowledge that certain Stations located on the Property may be sponsored by Municipality and other Stations on the proper may be sponsored by other third parties. Advertisements for third party sponsors and Zagster may be included on the bicycles (such as on the fender or basket) as well as on signage for Stations.
4. **Maintenance.** Zagster will inspect each bicycle on a regular basis at reasonable intervals to perform general maintenance, inspection, cleaning, and replacement thereof. Zagster will, at Zagster's sole option and expense, either replace or fully refurbish the Zagster Bicycles no less frequently than every three years from the Launch Date. The parties agree that the Program may be scaled down during weather that is unfavorable for bicycle use (including hibernation periods, if applicable).
5. **Exclusivity.** During the Term, Municipality agrees that Zagster shall be the only bicycle sharing and/or bicycle rental service with the right to use any Municipality-owned property or promoted by Municipality.
6. **Marketing.** Zagster may, from time to time, provide Licensor with advertising, publicity, or marketing materials (collectively, **Marketing Materials**) to be used for promotion of the Program. Use of any Marketing Materials by Licensor is not required, but if used, such use is subject to any terms and conditions as Zagster may specify in writing. Municipality agrees to assign an appropriate Municipality contact who will (i) have responsibility for all interactions with Zagster regarding matters



covered by this Agreement, (ii) be reasonably accessible to Zagster during normal business hours, and (iii) use the Zagster Marketing Materials to promote the Program and/or work with Zagster to create relevant materials. Municipality may create custom email communications or other marketing materials to promote the Program, subject to Zagster's prior review and approval, which will not be unreasonably withheld or delayed.

7. **Press Release.** Zagster may issue a press release announcing the parties' relationship hereunder. Zagster will provide Municipality with a copy of any proposed press release prior to issuance and Municipality shall have the right to provide any comments or feedback related thereto.

8. **Marks.** Municipality grants to Zagster a nonexclusive, nontransferable (except pursuant to the assignment provision below), royalty-free license to reproduce, display and otherwise use the Municipality Marks solely (i) to promote the Program, (ii) on Zagster's customer lists, including on its website, and (iii) in connection with the name of the Program. All use of Municipality Marks and any resulting goodwill shall accrue solely to the benefit of Municipality.

9. **Title.** (a) **Zagster.** As between the parties, Zagster owns all right, title, and interest in and to the Zagster Service, the Marketing Materials, the Zagster Software and its name, trademarks, service marks and logos (collectively, **Zagster Marks**). This Agreement does not convey to Municipality any rights or proprietary interest in or to the Zagster Service, the Marketing Materials, the Zagster Software or the Zagster Marks other than as set forth in this Agreement and Zagster reserves all rights not expressly granted hereunder. Except as expressly permitted by Zagster, Municipality shall not: (i) sublicense, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Zagster Service or any part thereof in any way; (ii) modify or make derivative works based upon the Zagster Service or reverse engineer, decompile or disassemble the Zagster Service or (iii) interfere with or disrupt the integrity or performance of the Zagster Service. (b) **Municipality.** As between the parties, Municipality owns all right, title, and interest in and to the Municipality Marks and the Municipality-owned property. This Agreement does not convey to Zagster any rights or proprietary interest in or to the Municipality Marks or the Municipality-owned property other than as set forth in this Agreement and Municipality reserves all rights not expressly granted hereunder.

10. **Term.** (a) **Term of Agreement.** This Agreement commences as of the Effective Date and shall remain in effect until all of Company's Orders have expired or been terminated in accordance with the terms of this Agreement (**Term**). (b) **Term of Order.** Each Order commences as of effective date specified therein and continues for 3 years from the date the Program launches, following which it automatically renews for additional 1 year terms unless either party has given notice of non-renewal at least 60 days before the start of the next renewal term.

11. **Termination.** Unless otherwise prohibited by law, either party may terminate this Agreement, including any outstanding Orders (i) if the other party is adjudicated bankrupt or otherwise seeks to avoid its performance obligations under applicable bankruptcy or insolvency laws or (ii) upon the occurrence of a material breach of this Agreement by the other party if such breach is not cured within 30 days after written notice identifying the matter constituting the material breach. Upon termination or expiration of this Agreement, all Confidential Information of the other party should be destroyed, or at the other party's request, returned to such party.

12. **Feedback.** Municipality grants Zagster an unlimited, irrevocable, perpetual, transferable, royalty-free worldwide license to use and/or incorporate into the Zagster Service any feedback, suggestions and/or recommendations related thereto that Municipality provides to Zagster.

13. **Piggybacking Contracts.** Any other municipality shall be allowed to participate in this agreement, even if not initially listed as a signatory. While nothing herein commits any other municipality to license bike sharing services from Zagster or commits Zagster to license bike sharing services to any other municipality, it does allow any municipality, at its discretion, to make use of Municipality's competitive process to the extent such process satisfies its own procurement guidelines and license directly from Zagster as the awarded contractor. All licenses made by other municipalities shall be understood to be transactions between that municipality and Zagster and Municipality shall not be responsible for any such licenses, including any fees that may be related thereto.



14. **Confidentiality.** *Confidential Information* means all non-public information disclosed by one party to the other party, whether or not identified as confidential at the time of disclosure. Each party agrees not to disclose the other party's Confidential Information without its prior written consent or use such Confidential Information for any reason except to further this Agreement. If Municipality is subject to any public records laws and receives a request for disclosure of any Confidential Information, Municipality will provide notice of such request to Zagster prior disclosure and will work with Zagster to limit, if possible, disclosure of any such Confidential Information.

15. **Representations and Warranties.** (a) *General.* Each party represents and warrants that: (i) It has full power and authority to enter into and execute this Agreement; (ii) this Agreement is valid, binding and enforceable in accordance with its terms; and (iii) the execution, delivery and performance of this Agreement does not result in a violation or breach of and does not contravene, violate or conflict with any provision of applicable law, regulations or obligations to which it is a party. (b) *Zagster Service.* Zagster represents and warrants that the Zagster Service will be provided in accordance with the terms of this Agreement. As Company's sole and exclusive remedy, and Zagster's sole liability, for any breach of the foregoing warranty, Zagster will reperform the Zagster Service so that it conforms to the requirements of this Agreement.

14. **DISCLAIMER.** To the maximum extent permitted by law, except as otherwise set forth in this Agreement, neither party makes any representations or warranties to the other, including with respect to its products and services or the subject matter of this agreement, and each party hereby disclaims any express, implied or statutory warranties, including the implied warranties of fitness for a particular purpose, title, merchantability, and noninfringement. No warranty is made that the Zagster Service will meet Municipality's requirements.

15. **Indemnification.** Zagster agrees to defend Municipality and its respective officers, directors, employees, agents, affiliates, subsidiaries, successors and assigns from any and all claims asserted against Company by a third party ("Claims") alleging the gross negligence or willful misconduct of Zagster or its employees in the performance of the Zagster Service hereunder; and Zagster shall indemnify and hold Company harmless from and against all damages finally awarded by a court of competent jurisdiction or agreed to by Zagster in settlement with respect to such Claims; provided, that (a) Municipality shall provide Zagster with written notice within 30 days of its receipt of a Claim, provided, however, that failure by Municipality to provide notice to Zagster shall not relieve Zagster of its obligations under this Section unless such failure prejudices Zagster's defense or settlement of the Claims and (b) Zagster may elect to control the defense and settlement of the Claim, provided, however, that Zagster may not settle the Claim in a manner adverse to Municipality or which would impose liability on Municipality without Municipality's prior written consent. Municipality may (at its own cost) engage its own counsel to participate in the defense and settlement of the Claim, but Municipality will not settle any Claim without Zagster's prior written consent.

16. **LIMITATION OF LIABILITY.** To the maximum extent permitted by law (i) in no event will either party be liable to the other party for any indirect, incidental, special, exemplary or consequential damages, including lost profits or loss of goodwill, even if such party has been advised of the possibility of such loss and (ii) each party's entire liability hereunder from any cause whatsoever will be limited to direct, proven damages in an amount not to exceed the amounts paid or payable to Zagster by Municipality in the 12 months immediately preceding the date under the Order in which the applicable cause of action arose. For the avoidance of doubt, the foregoing limitation of liability is not intended to limit either party's liability for gross negligence or willful misconduct.

17. **Insurance.** Zagster will maintain business and liability insurance protection covering its activities hereunder, including (i) General Liability Insurance with coverage limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate; (ii) Worker's Compensation Insurance in accordance with statutory requirements; and (iii) Umbrella coverage in the amount of at least \$2,000,000. Coverage will be placed with insurance carriers with an A.M. Best Rating of not less than A- and financial rating of not less than VII.

18. **General Provisions.** (a) *Independent Contractor.* Notwithstanding any provision hereof, Zagster and Municipality are independent contractors under this Agreement and nothing herein shall be construed to create a partnership, joint venture or agency relationship. Each party is solely responsible for all applicable taxes, withholdings, and other statutory or contractual



obligations, including, but not limited to, Workers' Compensation Insurance. **(b) Notice.** Any notice required or permitted to be given hereunder will be effective upon receipt and shall be given in writing, in English and delivered in person, via established express courier service (with confirmation of receipt), or registered or certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses given herein, with a cc to Zagster's general counsel, or at such other address designated by written notice. **(c) Assignment.** Neither party may assign performance of this Agreement or any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other, except that Zagster may assign this Agreement without Municipality's prior written consent in the case of a merger, acquisition or other change of control, and in such event this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. **(d) Purchase Orders.** Any Instruments, including purchase orders, work orders, acknowledgments and vendor registration forms not signed by both parties (*Instruments*) shall not add to, supersede or modify, the terms of this Agreement and in the event any term of an Instrument purports to add to, supersede or modify any term of this Agreement, such term of the Instrument shall be void and without effect. **(e) Counterparts.** This Agreement may be executed in one or more counterparts, each of which is an original, but taken together constituting one and the same Instrument. **(f) No Third Party Beneficiary.** This Agreement is for the sole benefit of the parties hereto and their permitted successors and assigns and is not for the benefit of any third party. **(g) Force Majeure.** Neither party shall be liable for failure or delay in the performance of any of its obligations under this Agreement, if such failure or delay is caused by catastrophic circumstances beyond its control, including without limitation, earthquake, severe weather and other acts of God, riot, war, or terrorism. **(h) Waivers.** No change, consent or waiver to this Agreement will be effective unless in writing and signed by the party against which enforcement is sought. The failure of a party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights. Unless expressly provided otherwise, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. **(i) Survival.** All terms of this Agreement which by their nature extend beyond the termination of this Agreement, remain in effect until fulfilled and apply to respective successors and assigns. **(j) Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. **(k) Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties concerning the subject matter of this Agreement. Headings are for convenience of reference only and shall in no way affect interpretation of the Agreement.

ZAGSTER, INC.

By: 

Name: Rebecca Castaldi

Title: General Counsel

Date: December 20, 2017

MUNICIPALITY: City of Noblesville

By: 

Name: John Ditslear

Title: Mayor

Date: 12-19-2017





Zagster, Inc
25 First Street Suite 104
Cambridge, Massachusetts 02141
United States
844-ZAGSTER

ORDER for City of Noblesville, IN
Order: SO-0002791
Date: 12/13/2017
Prepared by: Dan Petkanas

Order

Company Information

Bill To:
Noblesville, IN
701 Cicero Road
Noblesville, Indiana 46060
United States

Billing Contact: Mike Hoffmeister
Billing Email: mhoffmeister@noblesville.in.us
Billing Phone: (317) 776-6350

Payment Terms

Payment Terms: Net 30 Days

Product & One Time Fee Lines

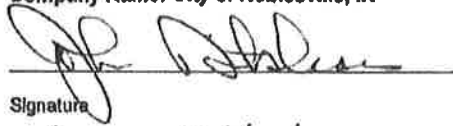
Product & One Time Fee	Quantity	Unit Price	Total
.Bicycle - Zagster 8 (A)	5.00	\$0.00	\$0.00
Included Parking Dock	5.00	\$0.00	\$0.00
.K2 Station	1.00	\$0.00	\$0.00
Extra Bike Parking Space	5.00	\$0.00	\$0.00
Location Implementation/Setup Fee	1.00	\$0.00	\$0.00

Service Lines

Service	Date Start - Date End	Quantity	Term	Unit Price	Total
Bicycle - Zagster 8 Annual Subscription Fee (A)	3/26/2018 - 3/25/2020	5.00	2 Yr	\$1,800.00/Yr	\$18,000.00
Theft Fee per Bike - Annual	3/26/2018 - 3/25/2020	5.00	2 Yr	\$0.00/Yr	\$0.00

Products and Services Total: \$18,000.00 Net
Amount: \$18,000.00
Total Applied Payments: \$0.00
Balance Due Amount Year 1: \$9,000.00
Balance Due Amount Year 2: \$9,000.00

Company Name: City of Noblesville, IN


Signature

John Ditslear

Name (Please Print)


Mayor

Title

12-19-2017

Date

Zagstar, Inc


Signature

Rebecca Castoldi

Name (Please Print)

General Counsel

Title

December 20, 2017

Date

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Zagster, Inc
25 First Street Suite 104
Cambridge, Massachusetts 02141
United States
844-ZAGSTER

ORDER for City of Noblesville, IN
Order: SO-0002762
Date: 11/28/2017
Prepared by: Dan Pelkanas

Order

Company Information

Bill To:
Noblesville, IN
16 S. 10th Street
Noblesville, Indiana 46060
United States

Billing Contact: Aaron Head
Billing Email: ahead@noblesville.in.us
Billing Phone: (317) 776-6345

Payment Terms

Payment Terms: Net 30 Days

Product & One Time Fee Lines

Product & One Time Fee	Quantity	Unit Price	Total
Bicycle - Zagster 8 (A)	5.00	\$0.00	\$0.00
Included Parking Dock	5.00	\$0.00	\$0.00
K2 Station	1.00	\$0.00	\$0.00
Extra Bike Parking Space	5.00	\$0.00	\$0.00
Location Implementation/Setup Fee	1.00	\$0.00	\$0.00

Service Lines

Service	Date Start - Date End	Quantity	Term	Unit Price	Total
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Theft Fee per Bike - Annual	3/26/2018 - 3/25/2020	5.00	2 Yr	\$0.00/Yr	\$0.00

Products and Services Total: \$18,000.00


Net Amount: \$18,000.00

Total Applied Payments: \$0.00

Balance Due Amount Year 1: \$9,000.00

Balance Due Amount Year 2: \$9,000.00

Company Name: City of Noblesville, IN


Signature

Name (Please Print)

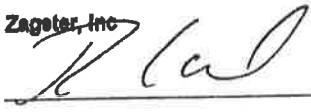
Mayor

Title

12-19-2017

Date

Zagster, Inc


Signature

Name (Please Print)

General Counsel

Title

December 20, 2017

Date

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