

BEFORE THE SEATTLE ETHICS AND ELECTIONS COMMISSION

In the matter of)	No. 16-1-0217-1
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)	
Scott Kubly)	SETTLEMENT AGREEMENT
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This settlement is made between Scott Kubly and the Acting Executive Director of the Seattle Ethics and Elections Commission (the “Director”). Upon approval by the Seattle Ethics and Elections Commission (the “Commission”), the following findings, conclusions and agreements shall be binding upon Kubly, the Director, and the Commission (the “Parties”), and their successors, heirs and assigns, and shall constitute the complete agreement between the Parties.

Kubly and the Director agree to the following:

FINDINGS OF FACT

Background

1. On July 28, 2014, Kubly began employment as the Director of the City of Seattle (“City”) Department of Transportation (“SDOT”).
2. Prior to becoming a City employee, Kubly was President of Alta Bicycle Share (“Alta”), from January 6, 2014 to June 30, 2014. Alta was at the time a provider of bike share services to various U.S. and international cities, including Seattle.
3. Prior to Kubly’s employment with Alta, he served as a deputy in the Washington D.C. and Chicago transportation departments. In his official capacity, at both municipalities, Kubly worked closely with Alta on bike share contracts.
4. On July 11, 2014, Kubly received an email from then Mayoral Counsel, Lorena Gonzales regarding the Ethics Code requirement of either pursuing a waiver allowing Kubly to participate in City matters involving his prior employer or recusing himself from participating in City matters involving that employer. The e-mail included a sample waiver prepared for another mayoral appointee. The e-mail in its entirety was forward to Kubly’s personal e-mail.(Attachment A)

5. Later on July 11, 2014 Kubly drafted an e-mail response, with interlineated answers to the questions posed by Ms. Gonzales, regarding potential conflicts of interest which he sent from his personal e-mail to his official e-mail address at the City. (Attachment B)
6. Shortly after July 28, 2014, Kubly received training in a private meeting with Wayne Barnett, Executive Director of the Seattle Ethics and Elections Commission (SEEC) and SEEC Strategic Advisor Gary Keese. The discussion focused on Kubly's adherence to Seattle's Ethics Code. No notes of the conversation were taken, though Barnett recalled he was "practically certain that [Kubly's] past work at Alta came up," and the need for "a waiver to participate during the first year and, after that year expired, a simple disclosure ..." were discussed. (Attachment C)
7. On May 14, 2015, Keese, wrote to an SDOT employee with a copy to Kubly. This email gave detailed and precise information regarding the Ethics Code requirements of a Mayoral waiver or recusal by Kubly and, the possible need for a future disclosure. Keese wrote in response to a request by the SDOT employee who was involved in the day to day management of the City's bike share program and had asked for Ethics Code guidance. (Attachment D)
8. On June 8, 2015 another SDOT employee involved in the day to day management of bike share, sent Kubly a completed draft waiver for his consideration and submittal. The employee also included a completed draft disclosure statement. (Attachment E)
9. On August 21, 2015, Keese again emailed the Mayor's office "looping back" about the "prior advice about disclosure and/or waiver requirement." Kubly was again copied (Attachment F)
10. Between July 28, 2014 and December 31, 2014, Kubly did not submit a waiver request for the consideration of the Mayor's Office.
11. Between January 1, 2015 and August 31, 2015, Kubly did not submit a disclosure form for the consideration of the Mayor's Office.
12. On September 1, 2015, Kubly signed a disclosure form which was approved by the Mayor and provided to the SEEC. (Attachment G)

**VIOLATION I – PARTICIPATING IN A CITY MATTER IN WHICH A PRIOR
EMPLOYER HAS A FINANCIAL INTEREST - SMC 4.16.070.A.2**

July 28, 2014 –October 28, 2014: Participating in the City matters in which Alta Bicycle Share, a prior employer, had a direct financial interest.

13. Prior to Kubly’s employment, the City and the Puget Sound Bike Share (“PSBS”),¹ had developed an operational structure for a Seattle bike share program. The program was to run through a non-profit, Puget Sound Bike Share (“PSBS”) program called PRONTO. While Kubly was President of Alta, PSBS had on-going discussion about the terms of Alta’s 2013 contract to provide equipment for Seattle’s PRONTO launch in fall 2014 and for post-launch operational support. (Attachment H)
14. As SDOT Director, Kubly rapidly became involved in City bike share matters (Attachment H):
 - In August and September during station siting discussions, Kubly participated in discussions regarding the bike share use of the City’s right-of-way a key component in placement of bike share stations; (Interview with SDOT employee)
 - Kubly participated in discussion and decisions regarding the critical need that the bike share operator be able to provide bicycle helmets per state law;
 - Kubly spoke with Alta to assess their interest in e-bike application for bikesharing in Seattle
 - Kubly had interactions with PSBS and Alta regarding the testing of equipment in the lead up to the PRONTO launch and,
 - Kubly sent an SDOT employee to the Brooklyn Naval Yard to check on the progress being made by Alta’s new bicycle vendor. (Interview with SDOT employee). Though this task had been completed by PSBS, Kubly sought assurances that the company would be delivering to Alta on time.²
15. PRONTO launched in October 2014.
16. On October 28, 2014, Alta announced Jay Walder as their new president. (Attachment I).
17. Edward Inlow, was a General Manager of Alta Bicycle Share’s Divvy in Chicago from March 2013-November 2013 and then became Chief Operating Officer of Alta/Motivate

¹ The non-profit model resulted from a consultant contract between Alta Planning and Design, a planning subsidiary of Alta, and PSBS, for the purpose of proposing the structure for Seattle’s bike share program. PRONTO entered into an agreement with Alta to provide initial bike share services after soliciting and evaluating competing bids.

² This resulted from Alta’s prior contracted vendor’s inability to provide equipment on time.

Bicycle Share in the Chicago area from November 2013 –September 2015. Inlow went on to become Vice President of Operations for Alta (Attachment J) Kubly knew and worked closely with Inlow during this time frame and later relied on Inlow for information related to issues that arose during bike share planning efforts in Seattle. (Attachment K)

18. On December 2, 2014, Walder met Kubly while visiting Seattle and other cities to talk with “clients and stakeholders” and later, in 2015, Walder reached out personally to Kubly during negotiations between Motivate and SDOT (Attachment L)
19. In mid-January 2015, a team of private investors finalized their purchase of Alta and renamed the company, Motivate. Walder remained CEO and Inlow remained Chief Operations Officer. Motivate issued a press release stating,, “...Motivate recently launched Pronto Cycle Share in Seattle, ...” The company’s press release outlines Motivate’s retention of financial interests in several systems launched and managed by Alta Bicycle Share, including Seattle’s.³

VIOLATION 2 – FAILURE TO FILE A DISCLOSURE - SMC 4.16.070.A.3

January 1, 2015 to August 31, 2015: As part of his official duties seeking Mayoral approval to expand, fund and take ownership of PRONTO specifically including the renegotiation of terms with Motivate, seeking federal funding for the City’s expansion of PRONTO, and, directly participating in negotiations with Motivate regarding the terms of the modification and expansion of bikeshare.

20. In January of 2015, Kubly and SDOT staff began to discuss financial challenges they perceived to be facing PRONTO. Between January and mid-March 2015, Kubly participated in frequent discussions with staff and Motivate (nee Alta) representatives about the possibility of a City take-over of the PRONTO bike share system. (Interviews with SDOT employees) Alta’s CEO Walder recalls discussions with Kubly regarding funding Seattle bike share expansion, transfer of PRONTO assets and possible use of federal funding. (Interview with Walder) Discussions also included plans for the addition of electric bikes to the City bike share system. The culmination of these and other conversations led SDOT to formally propose taking over the bike share system.

³ Motivate Press release, dated January 14, 2015. (See, <http://www.motivateco.com/news/id/91>)

21. Kubly and his SDOT staff developed a plan for the City to acquire and control the bike share system. This proposal dated March 30, 2015 was presented to the Mayor.

(Attachment M) The expansion proposal was suggested as a means to:

- Simplify Governance – Make bike share a city program
- Ensure more City control; Reduce overhead costs; Reduce FTA grant management risk
- Reduce Cost – Renegotiate contract with vendor (Motivate).
- Fund Expansion/Ensure Financial Sustainability – Change funding and operations strategy (funding the system expansion in part through the federal TIGER grant).

22. The Mayor's Office approved the SDOT proposal.

23. Between April 1 and August 31, 2015, Kubly was actively involved and managing the City's plan to take control of PRONTO by participating in the following activities:

- Strategic decision making regarding how best to meet the goals of the Mayoral approved proposal;
- Participating in developing the agreement leading to the termination of the 2013 PSBS Agreement and the February 2014 PRONTO agreement, including the terms of PRONTO asset transfer, debt assumption and payment of severance pay to PSBS employees.
- Participating in developing contract negotiation strategies and participating in discussions with Motivate about a planned sole source contract to operate the City owned system.
- Participating in negotiating the sole source Motivate term sheet with other SDOT personnel.

24. Though advised by Keese to file a waiver and disclosure in May 2015, no waiver or disclosure was filed.

25. Kubly continued to participate in all major decisions regarding the inclusion of the bike share expansion into the City's TIGER grant application and he ratified the SODT application submitted on June 5, 2015.

26. Kubly participated in SDOT matters regarding City acquisition of PRONTO:

- Solicited Motivate to offer a letter in support of SDOT's TIGER grant application; (Attachment N)
- Actively participated in discussions regarding Motivate's participation in the expansion of the system including the provision of electric bicycles. (Attachment O)
- Actively involved in developing terms and conditions for Motivate's participation in the expanded City bike share program; (Attachments P-Q) and,
- Participated in preparation of the bike share component of the 2016 budget proposal to be submitted to the City Council. (Interviews)

CONCLUSIONS OF LAW

27. Scott Kubly is a City Employee and therefore a Covered Individual.

28. Scott Kubly was employed by Alta Bike Share from January 2014 to June 30, 2014.

Violation 1

29. SMC 4.16.070.A.2. states that a Covered Individual may not participate in a matter in which a person that employed the covered individual in the preceding 12 months has a financial interest absent a waiver from the employee's appointing authority which contains a plan to insure the City's interest that has been approved by the SEEC Executive Director.

30. The Seattle's bike share program, known as PRONTO, was a City matter in which Alta Bike Share had a financial interest until January 1, 2015, when the company was purchased by investors and renamed Motivate.

31. When between July 28, 2014, and October 28, 2014, Kubly participated in City matters involving his prior employer, Alta Bike Share, without submitting a waiver to his appointing authority for approval by the SEEC Director, Kubly violated SMC 4.16.070.A.2.

Violation 2

32. SMC 4.16.070.A.3 states that a Covered Individual cannot perform any official duties when it could appear to a reasonable person, having knowledge of the relevant circumstances, that the covered individual's judgment is impaired because of a personal or business relationship, absent filing of a public disclosure as to the personal or business relationship that may give the appearance of impaired judgment.

33. Between the dates of January 1, 2015 and August 31, 2015, Kubly performed official duties in City matters involving Motivate (nee Alta), including proposing and presenting a plan to modify and expand the bikeshare system through a contractual partnership with Motivate, seeking funding to finance the expanded bikeshare contract with Motivate (nee Alta) and participating in the dissolution of the City contract with PSBS.

34. It could appear to a reasonable person, knowing the circumstances surrounding Kubly's relationships, both personal and professional, that his judgement was impaired while officially participating in planning to acquire PRONTO bikeshare from PSBS, negotiating terms with Motivate (nee Alta) to accomplish a modification and expansion of the contract to operate PRONTO and seeking funding to finance the expanded contract with Motivate (nee Alta).

35. Kubly violated SMC 4.16.070.A.3.

36. Kubly filed a disclosure of his prior relationships on September 1, 2015 and his participation in all official acts performed after this date do not constitute a violation of the Ethics Code.

AGREEMENT

37. Kubly acknowledges that he violated the Seattle Ethics Code when he participated in City matters in which his prior employer, Alta Bike Share, had a financial interest and did so within one year of leaving their employ. (Violation 1).

38. Kubly acknowledges that he violated the Seattle Ethics Code by undertaking official actions in which his judgement could be seen by a reasonable person as being impaired due to personal or business relationships not covered by waiver or recusal provisions of the Ethics Code. (Violation 2).

39. The Director states that investigation of these violations produced no evidence that Kubly sought or received any personal financial gain in connection with the acknowledged violations.

40. Kubly agrees to pay the City of Seattle \$10,000 for the violations described above. The Director and Commission agree to suspend \$5000 of the penalty so long as Kubly does not commit another material violation of the Ethics Code for a period of two years from the date this agreement is executed.

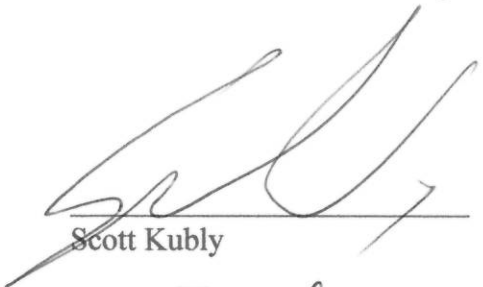
41. The Parties agree that this settlement agreement, upon the Commission's approval, will constitute, insofar as is legally possible, a full and final settlement between the Parties, as to any violation of the Seattle Code of Ethics related to the findings of facts cited above. The Parties,

release, acquit and discharge each party, its present or former officials, employees, agents, representatives, heirs and assigns from all present claims, demands, damages, costs (specifically including attorney's fees and costs), actions or causes of action which arise out of the specific facts outlined in this violation of the Ethics Code, and the acts or omissions of the Commission, its members, agents or employees in handling the matter filed under Ethics and Elections Commission Case No. 16-1-0217-1. This release by the Acting Director and the Commission does not preclude actions by other parts of the City of Seattle, including the employee's appointing authority or any law enforcement agency.


42. The Parties agree that the Commission's review of this settlement agreement does not preclude the Commission from hearing this case in the event that the Commission rejects this agreement and calls for a hearing, or in the event that Kubly rejects any Commission modification of this agreement and requests a hearing.

43. The Parties agree that if Kubly breaches this agreement, in any respect, the Commission will be entitled to hold a special meeting or a regular meeting to issue a determination that Kubly has violated the Seattle Ethics Code. Under the municipal code, the Commission may impose a fine of up to \$5,000 per violation, and may require costs that do not exceed the amount of any monetary fine.

44. The Parties agree that this settlement incorporates and supersedes any and all other oral and written agreements and assurances of any and all kinds between the parties, and that there are no other written or oral agreements that alter or modify this agreement.



Scott Kubly
Date: JUNE 21, 2016



Marilyn B Brenneman,
Acting Executive Director
Date: June 21, 2016