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PURCHASE AGREEMENT FOR EQUIPMENT AND SERVICES

THIS PURCHASE AGREEMENT FOR EQUIPMENT AND SERVICES (this “Agreement”) is made this [Day] day of May, 2017 (the “Effective Date”), by and between B-CYCLE, LLC, a Delaware limited liability company, with its principal offices at 801 West Madison Street, Waterloo, Wisconsin 53594 (“Seller”), and CITY OF WEST ALLIS, Wisconsin, a municipal corporation with its principal offices located at 7525 West Greenfield Avenue, West Allis, WI 53214 (“Buyer”).

RECITALS

WHEREAS, Buyer has been duly authorized by City of West Allis, WI, to install and operate a bike share system in the City of West Allis, WI on behalf of the City of West Allis, WI;

WHEREAS, Seller and Buyer desire for Seller to provide and sell certain goods and to provide certain installation services to Buyer and for Buyer to pay for such goods and services;

WHEREAS, Seller and Buyer have contemporaneously herewith entered into that certain Intellectual Property License Agreement attached hereto and incorporated herein as **Exhibit A** (“IP Agreement”); together with that certain Digital Platform Services Agreement, attached hereto and incorporated herein as **Exhibit B** (the “Digital Services Agreement”); and

WHEREAS, in order to more fully delineate the agreements between Seller and Buyer with respect to such goods and services, the parties desire to execute this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings contained herein, the parties hereto agree as follows:

AGREEMENTS

1. Definitions. As used herein, the term:
 - (a) “Standard Bicycle” means Seller’s standard bicycle to be purchased by Buyer from Seller pursuant to this Agreement and meeting the specifications set forth in Schedule A, attached hereto and incorporated herein.
 - (b) “Smart Bicycle” means Seller’s smart bicycle, which includes integrated electrical checkout components, to be purchased by Buyer from Seller pursuant to this Agreement and meeting the specifications set forth in Schedule A, attached hereto and incorporated herein.
 - (c) Bicycle means a Standard Bicycle and/or a Smart Bicycle collectively.
 - (d) “Standard Station” refers collectively to one (1) kiosk, if applicable, and its associated docks, bases, and map/ad module(s), if applicable, that are designed specifically for the Standard Bicycle as set forth in Schedule B.
 - (e) “Smart Station” refers collectively to one (1) smart kiosk, if applicable, and its associated docks, bases, and map/ad module(s), if applicable, that are designed specifically for the Smart Bicycle as set forth in Schedule B.
 - (f) Station means a Standard Station and/or a Smart Station collectively.

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- (g) "Equipment" shall mean any and all Bicycles, docks, kiosks, bases, map/ad modules, components, spare parts, goods, equipment or materials of any kind which are supplied, modified, repaired or overhauled by Seller.
- (h) "Loss" shall mean any and all losses, claims, damages, liabilities, expenses, including without limitation special, consequential, loss of profit, incidental, resultant or indirect damages (including without limitation, loss of use, revenue, profit and good will), future or exemplary damages.
- (i) "Site" means the specific physical location where a Station is or will be installed.

2. Sale of Goods and Services.

- (a) Seller shall sell to Buyer and Buyer shall purchase from Seller 210 Standard 2.0 Bicycles, together with 25 Standard 1.0 Stations, at the prices listed in Schedule C, attached hereto and incorporated herein.
- (b) Seller shall install, or cause its contractor ("Contractor") to install, the Stations referenced in Subsection 2(a) hereof, at the prices listed in Schedule C. Seller and/or Contractor may use subcontractors for the installation described in this subparagraph (b); provided, however, Seller and Contractor each remains liable for all of its work obligations to Buyer and installation services provided to Buyer under this Agreement, notwithstanding that some obligations have been subcontracted to a subcontractor.
- (c) During the Term of this Agreement (as defined in Section 12), (i) subsequent sales of Equipment from Seller to Buyer shall be subject to the terms and conditions of this Agreement; and (ii) the parties shall agree in writing to the cost of all subsequently sold Equipment.
- (d) Seller agrees that during the Term, Seller will sell to Buyer, any and all parts to repair or replace Equipment as needed by the Buyer.
- (e) Delivery and installation of Seller's Bicycles and Stations specified herein shall be made to the locations specified by Seller in accordance on or about **[Date to be installed by]**.
- (f) If proper Tender (as defined herein) of Equipment is made and completion of delivery is prevented through no fault of Seller, Seller may specify a reasonable alternative place of delivery. Buyer agrees that all costs of storage and transport incurred following an initial attempt at delivery are hereby allocated to and imposed upon Buyer, and shall be added by Seller to the sale price. For purposes of this Agreement, "Tender" shall mean the delivery, or offer of delivery, by Seller to Buyer of all Equipment, in the quantities set forth in this Agreement, and which materially conforms to quality standards and specifications as set forth in Schedules A and B hereto.

3. Payment.

- (a) Buyer shall make a deposit payment equal to fifty percent (50%) of the total initial costs as provided in Schedule C on or before the date that this contract is signed. Payment in full shall be made immediately on delivery, installation and inspection of the Stations.

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- (b) All prices exclude state and local use, sales, or similar taxes, any direct or excise tax, and any import or customs exactions. Buyer is responsible for reporting such costs, taxes and exactions.
- (c) In the event Buyer fails to make a payment when due under this Agreement, Seller may, upon thirty (30) days prior written notice to Buyer, either:
 - i. exercise Seller's rights pursuant to the security agreement granted in Section 9 and/or withhold delivery of further Equipment or suspend the software service or planned maintenance due to be performed on Equipment without liability for any Loss to Buyer until such overdue sum, together with any interest as may be due thereon, is paid; or
 - ii. exercise Seller's rights pursuant to the security agreement granted in Section 9 and/or terminate this Agreement without liability for any Loss to Buyer, and Buyer shall immediately pay such overdue sum, together with any interest as may be due thereon, to Seller.
- (d) Notwithstanding the foregoing, if Buyer pays to Seller such overdue sum, together with any interest as may be due thereon, on or before the expiration of said thirty (30) day period, this Agreement, including Seller's delivery obligations hereunder, shall remain in full force and effect.
- (e) If Buyer is in default of any payment obligation, Seller is, without reminder and prejudice to any other rights, entitled to (1) charge interest at a rate equal to the lesser of one-and-one-half percent (1.5%) per month or the legal maximum rate that may be imposed according to Wisconsin law for similar debts, from the date on which payment was due until such overdue sum, together with any interest as may be due thereon, is paid; and (2) exercise all rights and remedies granted to Seller pursuant to the Security Interest in Equipment granted herein.
- (f) Buyer shall reimburse Seller for reasonable costs (including attorneys' fees) relating to collection of past due amounts.

4. Installation.

- (a) Seller shall install, or cause Contractor to install, Stations at Sites selected by Buyer in accordance with the terms and conditions set forth herein. Seller's installation services shall include the following (collectively, the "Installation Services"):
 - i. Pre-site inspection,
 - ii. Transport and delivery of the Bicycles, kiosks, docks, and other Equipment needed for the installation of the Stations,
 - iii. Installation of the Stations by no less than two (2) field technicians, to be provided by Seller,
 - iv. On-site training and questions and answers at the time of installation,
 - v. Installation of Seller's Bicycles with associated Seller's Stations, and
 - vi. Clean-up of Sites.

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- (b) Seller's Installation Services shall be performed in accordance with Seller's guidelines and criteria for installation of Stations, attached hereto and incorporated herein as Schedule D ("Installation Criteria"), and any project and site-specific plans mutually agreed to by the parties.
5. Buyer's Responsibilities. Buyer shall perform the following:
- (a) Provide Station Sites at its own cost and expense and obtain all necessary permits or other approvals required for each of the Sites;
 - (b) Ensure that each Site satisfies the site requirements set forth in the Installation Criteria in Schedule D;
 - (c) Notwithstanding any obligation of Seller in this Agreement or as set forth in the Digital Services Agreement, Buyer shall provide, at its sole cost, all maintenance to Bicycles and Stations.
 - (d) Ensure satisfactory on Site power access, quality and grounding for all Equipment.
 - (e) Ensure prompt and unencumbered access for Seller to the Sites and to network cabling and communication equipment as may be necessary for Seller to perform the Installation Services and any delivery, redelivery, manufacture, maintenance, repair, overhaul, servicing, or replacement of Equipment. This access includes providing and maintaining connectivity to any modem line, internet connection, vpn persistent access, broadband internet connection, or other secure access reasonably requested by Seller (as applicable) to enable Seller to perform support services and meet service levels, including diagnostic, monitoring and repair services. Seller may separately charge Buyer for a scheduled service call where Buyer does not provide such access and Seller is therefore required to schedule an additional service call.
 - (f) Promptly place service calls in accordance with any reasonable Seller protocols provided to Buyer and designate a Buyer representative and alternate with the necessary skills to assist Seller in the diagnosis of service problems.
 - (g) Unless expressly provided otherwise, Buyer is separately responsible for: (i) the repair, replacement or removal of any disposables, consumables, supplies, accessories or collateral equipment; (ii) the provision of or payment for any power, cellular service, cellular cards, internet connectivity, communication, rigging or facility cost; and (iii) any additional service necessitated by (1) Buyer's or its representatives' designs, specifications, or instructions, (2) anything external to Equipment, including any causes or events beyond Seller's reasonable control, (3) product misuse, abuse or neglect (4) combining any component of Equipment with any incompatible or unauthorized parts or software or (5) losses or expenses related to Buyer's relocation, additions, or changes to Equipment.
 - (h) Shakeout Period. For a period of ninety (90) days following Installation Services, Buyer and Seller acknowledge that issues may arise related to the normal operation of the Equipment. Buyer and Seller agree to work cooperatively to address any operational issues during this period.
6. Warranties and Limitations of Liability.

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- (a) Seller warrants that all Equipment sold hereunder shall be of merchantable quality, free from defects in materials and workmanship (whether the work was performed by Seller or by its approved subcontractor), and fit for their intended use; that all Equipment will be manufactured in accordance with applicable Federal, state, and local laws, regulations, and orders; and that Equipment shall be manufactured in material conformity with the specifications attached hereto as Schedules A and B;
- i. Except as otherwise agreed to in writing, this warranty shall commence upon delivery of Equipment to the Buyer-designated Site, and continue for a period of twelve (12) months after delivery. If Buyer discovers within this period a failure of any Equipment to conform to warranty stated herein, Buyer shall notify Seller in writing within ten (10) days of discovery. Notification of such discovery shall be made to Seller by Buyer and shall describe the nature of the defect and the manner in which the defect became apparent in sufficient detail to indicate that the defect is covered by this warranty. The notification shall also state the date of delivery of such Equipment to Buyer, proof of purchase from Seller, and the amount of intervening use where applicable.
 - ii. Within a reasonable time after proper notification, Seller, or Seller's contractor, shall correct any failure of Equipment to conform to specifications or drawings or defects in workmanship, with either new or used replacement parts. If Equipment is proved to Seller's satisfaction to be defective and covered by this warranty, such repair or replacement shall be made by Seller without charge. The original duration of this warranty shall continue for replaced parts. These remedies are the exclusive remedies of Buyer or operator, as the case may be, for breach of this warranty.
 - iii. This warranty shall not extend to the following:
 - (1) Normal wear and tear of Equipment;
 - (2) Equipment that has been moved or subjected to any tampering, alteration, modification, installation of unauthorized parts, or repair without prior authorization by Seller;
 - (3) Equipment subjected to experimental running or any type of operation or use other than that for which Equipment is designed;
 - (4) Equipment from which manufacturer's and/or vendor's trademark or serial number has been altered, removed, or obliterated without Seller's written permission, excluding any alteration, removal, or obliteration directly caused by accident or mishap to such Equipment;
 - (5) Equipment that has been in storage or immobilized for more than one (1) year from the date of acceptance of Equipment by Buyer; and
 - (6) Defects resulting from accidents, misuse, abuse, negligence, vandalism, rusting/corrosion, theft, acts of God or other events beyond the control of Seller.

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- iv. For the purpose of this warranty, Equipment shall not be regarded as defective merely because some modification or alteration is required to be made by reason of Federal, state, or local regulation after delivery of Equipment.
 - v. Any official action or legal proceeding for breach of this warranty must be commenced within three (3) months after discovery by Buyer of an alleged defect in Equipment.
- (b) Seller warrants that the delivery, redelivery, manufacture, installation, maintenance, repair, overhaul, servicing, or replacement of Equipment by Seller shall be performed by trained individuals in a professional, workmanlike manner, in accordance with sound business practices.
- (c) Each party shall defend, indemnify, and hold the other party and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns harmless from and against any Losses and threatened Losses to the extent they arise from or in connection with any of the following: (i) the death or bodily injury of any agent, employee, customer, invitee, visitor or other person, or the damage, loss, or destruction of any real or tangible personal property, either of which is caused by Equipment or the acts or omissions of the other party, its employees, agents, contractors, or subcontractors (except if such Losses or threatened Losses are caused by the gross negligence or willful misconduct of the other party, its employees, agents, contractors, or subcontractors); (ii) any action taken by or on behalf of a party in the performance of this Agreement that causes the other party to be obligated to indemnify, defend, or hold harmless any third party; and (iii) any claim, demand, charge, action, cause of action, or other proceeding resulting from an act or omission of a party, its employees, agents, or subcontractors acting in its or their capacity as an employer or potential employer with respect to the claimant.
- (d) Seller warrants that Equipment to be delivered hereunder including, without limitation, the Bicycles, Stations and kiosks, do not infringe on any United States patents, trademarks, or copyrights, or on any other right of any other person. Seller shall indemnify and hold Buyer harmless against any claim of infringement of patent, trademark, or copyright, or such other rights relating to the manufacture, sale, or use of Equipment, and shall bear all costs and expenses, including reasonable attorneys' fees, arising from or related to any such claim. As used herein, the term "claim" includes, without limitation, any claim for temporary or permanent injunctive relief in any action for such infringement of patent or other rights.
- (e) The warranties identified herein shall not be transferred, assigned, extended, altered or varied except by written instrument executed by the parties.
- (f) Notwithstanding any other provision in this Agreement, Seller's total liability for any and all claims, whether in contract, warranty, tort (including negligence but excluding willful misconduct or recklessness), product liability, patent infringement, or otherwise, for any damages arising out of, connected with, or resulting from the performance or non-performance of any service or from the manufacture, sale, redelivery, resale, repair, overhaul, replacement or use of Equipment or any item or part thereof, will not exceed the price allocable to the repaired or overhauled item, part or service which gives rise to the claim. In no event, whether as a result of breach

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of contract, warranty, tort (including negligence but excluding willful misconduct or recklessness), product liability, patent infringement, or otherwise, will Seller be liable for any special, consequential, incidental, resultant or indirect damages (including, without limitation, loss of use, revenue, profit or goodwill) or punitive or exemplary damages.

7. Assignment of Manufacturer's Warranties. To the extent possible, Seller hereby assigns to Buyer all of its rights and interests in the warranties, and shall hereinafter assign to Buyer any future warranties (if any), provided by the manufacturers of Equipment, including, without limitation, new and refurbished parts and components incorporated into Equipment during servicing, maintenance, repair, or replacement.

8. Termination.

- (a) Except as otherwise provided in Section 3(c) of this Agreement, if either party materially breaches this Agreement, the Intellectual Property Agreement, or the Digital Services Agreement, the other party may notify the breaching party in writing, setting out the breach, and the breaching party will have thirty (30) days following such notice to remedy the breach. If the breaching party fails to remedy the breach during said thirty (30)-day period, the non-breaching party may by written notice terminate this Agreement. Notwithstanding the foregoing, if the steps needed to remedy a breach are such that the same cannot be reasonably corrected within said thirty (30)-day period, then the breaching party shall undertake such corrections within said thirty-day period and shall diligently prosecute the same to completion. In such event, the breaching party shall give prompt notice of such delay to the other party and the time for performance shall be extended as reasonably necessary to enable completion.
- (b) Each party shall have the right, in its sole discretion, to terminate this Agreement if (i) the other party becomes insolvent or is adjudged bankrupt, (ii) at any time the property and assets of the other party are in liquidation, or (iii) the other party ceases or threatens to cease carrying on its business.

9. Security Interest.

- (a) Buyer hereby grants to Seller a first priority security interest in Equipment to secure all amounts owed by Buyer to Seller under this Agreement, including, without limitation, the amount of all sums and expenses advanced or incurred by Seller in connection with Seller's installation, repair or overhaul of any Equipment, and the protection of the security interests herein granted (including, without limitation, reasonable attorneys' fees, court costs and collection, legal and receivers' expenses).
- (b) Buyer acknowledges and agrees that, in addition to the security interest and lien expressly granted by Buyer to Seller hereunder, Seller shall have a lien on Equipment retained in possession of Seller to the extent otherwise provided by law.
- (c) Buyer acknowledges that the lien for repairs or overhaul shall be for the full value of such work, and shall be superior to any lien or interest in favor of Buyer, its parents, affiliates, or subsidiaries, or any other person who has knowledge of this Agreement. To the extent that Seller maintains possession of Equipment under repair, Buyer agrees that Seller is a secured creditor of Buyer and has all the rights of a secured

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creditor. Upon the occurrence of any default by Buyer hereunder, Seller may, at its option, after reasonable written notice to and demand on Buyer, and in addition to all rights and remedies available to Seller under this Agreement, foreclose or otherwise enforce its security interest hereunder in any manner permitted by law.

- (d) Buyer agrees that at any time and from time to time Buyer will promptly make, execute, endorse, acknowledge, file and/or deliver all further instruments and documents, and take all further action, that Seller may reasonably deem to be necessary or desirable, or that Seller may reasonably request, in order to perfect and protect any security interest granted or purported to be granted by Buyer or to enable Seller to exercise and enforce its rights and remedies hereunder.

10. Dispute Resolution.

- (a) EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 10 this agreement shall be governed by, and interpreted in accordance with the laws of the state of Wisconsin without reference to its conflict of laws rules. Any action brought by either party pursuant to this Agreement shall be brought in the state courts or the United States District Court in Milwaukee, Wisconsin, which shall have the sole and exclusive jurisdiction over the matter. Each party shall bear its own costs and fees, including attorneys' fees.
- (b) The rights and obligations set forth in this Section 10 shall survive the termination of this Agreement.

11. Representations and Warranties. Seller and Buyer each represent and warrant that they have full corporate authority to enter into and fulfill the terms of this Agreement. Buyer further warrants that it is authorized to, and has all requisite approvals to, establish, own and operate a bicycle sharing system.

12. Term. This Agreement will commence on the Effective Date and will continue for [Number of years – usually 3 years] from the date of the Effective Date (the “Term”). At the end of the Term, the Agreement, together with all Exhibits incorporated herein, shall automatically renew for additional one (1) year terms unless either party shall have given the other party written notice of its intent to terminate at least one hundred eighty (180) days prior to the expiration of the then current term.

13. Schedules and Exhibits. The schedules and exhibits attached hereto and incorporated herein are subject to reasonable change.

14. Reciprocity. The B-cycle system provides for membership reciprocity between participating B-cycle cities. In the event Buyer wishes to participate in the reciprocity program at B-cycle's discretion, then Buyer agrees to execute and be bound by the B-cycle Inter System Reciprocity Agreement (“Reciprocity Agreement”) attached hereto as Schedule E.

15. General Provisions.

- (a) *Headings.* The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or of any term or provision hereof.
- (b) *Beneficiaries.* This Agreement is solely for the parties' mutual benefit and not for the benefit of any third party.

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- (c) *Independent Contractor.* Buyer and Seller are now and will remain as to each other separate and independent. In the performance of this Agreement, it is mutually understood and agreed that each party is at all times acting and performing under this Agreement as an independent contractor, and not as an employee, joint venturer or franchisee or partner of the other party. The parties expressly agree that this Agreement, together with the Intellectual Property License Agreement and the Digital Platform Services Agreement shall not constitute a franchise. Buyer acknowledges that all goods and services provided hereunder are for value in kind, and shall not constitute a fee. Buyer hereby affirmatively elects to utilize Seller's trademarks in connection with Buyer's bike share program, and Buyer acknowledges that it is not required to do so in order to purchase the goods and services specified herein. Buyer is solely responsible for its own marketing plans, rate structure, and methods of doing business. Neither party shall have any right, authority, or duty to act for the other party, except as otherwise agreed to in this Agreement.
- (d) *Confidentiality.* The parties agree that, in the course of performance of this Agreement, it may be necessary and desirable for them to exchange confidential information. Each party shall treat the other party's written, proprietary business information as confidential provided that such written material is: (i) marked as confidential or proprietary at the time of disclosure and (ii) not otherwise publicly or already known or available from a lawful source, and (iii) materials and information obtained via B-cycle's suppliers including pricing, tech info, training materials, and manuals. The receiving party shall not disclose confidential information of the disclosing party to any person outside its employ, except when authorized by the disclosing party. Any party receiving confidential information under this Agreement shall maintain such information in confidence in the same manner it protects its own confidential information and shall use it only for the performance of this Agreement and for no other purpose. Notwithstanding the foregoing, confidential information excludes information relating to the U.S. tax treatment or U.S. tax structure of the transactions covered by this Agreement. Notwithstanding the foregoing, the parties further acknowledge that Buyer is subject to the requirements of the Wisconsin Public Records Law. Wis. Stats. §§19.21 et seq.. Under these statutes, all documents and records are subject to public disclosure, unless there is a statutory, common law, or public policy reason for nondisclosure. The parties acknowledge that this Agreement is subject to the provisions of the Public Records Law of the State of Wisconsin (Wis. Stat. Section 19.21 et seq.) This Agreement and attachments to this agreement are deemed to be public records. Should Buyer receive a records request for documents that contain financial information, Buyer shall notify Seller of the request and afford Seller a reasonable period of time (not to exceed 10 days) to respond to Buyer. If Seller objects to release of the requested record(s) or part thereof, Buyer shall perform the common law balancing test. If Buyer determines that the balance falls in favor of non-disclosure, it shall so inform Seller and the requestor. If Buyer determines that the balance falls in favor of disclosure, it shall so notify Seller and the requestor and afford Seller a reasonable time (not to exceed 10 business days) to commence an action seeking to prevent disclosure of the record(s).
- (e) *Assignment.* This Agreement is not assignable and the duties hereunder are not delegable without the other party's prior written consent, which consent shall not be

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unreasonably withheld; provided, however, that either Seller or Buyer may transfer and assign this agreement without the other party's consent to any person or entity (except to a competitor of Seller) that is an affiliate of such party or that acquires substantially all of the stock or assets of such party's applicable business if any such assignees agree, in writing, to be bound by the terms of this agreement. Subject to such limitation, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding anything to the contrary contained herein, Seller may hire subcontractors to perform the installation and maintenance work provided for in this Agreement; provided, however, that Seller shall at all times remain responsible for the performance of its obligations and duties under this Agreement.

- (f) *Sponsorship.* Buyer agrees that it will not sell or offer sponsorships to competitors of Trek Bicycle Corporation.
- (g) *Entire Agreement.* This Agreement, including any and all schedules and exhibits attached hereto and incorporated herein, is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. Acceptance of, or acquiescence in, a course of performance rendered under this Agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
- (h) *Amendments and Termination.* This Agreement can only be amended, modified, or terminated by a writing signed by all of the parties or their duly authorized agents. If a mutually agreed to amendment or modification results in an increase or decrease in the cost, or the time required for completion, of any delivery or part of the work to be completed by Seller under this Agreement, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Agreement shall be modified in writing accordingly.
- (i) *Survival.* The terms of this Agreement that, by their nature, are intended to survive this Agreement's expiration (such as the confidentiality provisions included herein) shall continue in full force and effect after its expiration.
- (j) *Waiver.* Any failure to enforce any provision of this Agreement is not a waiver of that provision or of either party's right to later enforce each and every provision.
- (k) *Severability.* If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the remaining provisions of this Agreement, all of which shall remain in full force and effect.
- (l) *Force Majeure.* Neither party is liable for delays or failures in performance under this Agreement due to a cause beyond its reasonable control including, without limitation, embargoes, fire, flood, explosions, Acts of God or a public enemy, strikes, labor disputes, vandalism, or civil riots or commotions. In the event of such delay, the party that is unable to perform shall give prompt notice of such delay to the other

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party and the time for performance shall be extended as reasonably necessary to enable performance.

- (m) *Notices.* All notices or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered personally, one business day following when sent via a nationally recognized overnight courier, or when sent via facsimile (or other electronic transmission) confirmed in writing to the recipient. Such notices and other communications will be sent to the addresses indicated below or such other address or to the attention of such other person as the recipient party shall have specified by prior written notice to the sending party:

To Buyer:
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: Peter C. Daniels, Principal Engineer

To Seller:
B-cycle, LLC
801 W. Madison St
Waterloo, WI 53594
Attn: Robert Burns, President

- (n) *Counterparts; Facsimile.* This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. This Agreement may be executed and delivered via facsimile or other electronic transmission.
- (o) *Language.* If this document is drafted in more than one language, then the English version shall be the controlling document and any disputes arising out of this document shall be resolved with the English version.

[Signature Page to Follow]

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IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed as of the Effective Date indicated above.

SELLER
B-CYCLE, LLC

By: _____
Name: Robert Burns
Its: President

BUYER
City of West Allis

By: _____
Name: Michael G. Lewis
Its: Director of Public Works/City Engineer

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SCHEDULE A: DESCRIPTION OF B-CYCLE 2.0 STANDARD BICYCLE



B-CYCLE 2.0 COMPONENTS AND SPECIFICATIONS

FRAMESET	
Size	One size fits most 5' to 6'2"
Colors	Stock white or custom color (6 month lead time)
Material	Oversized alpha aluminum
Fork	Proprietary dual crown aluminum
Integration	Completely internal cable routing
COMPONENTS	
Handlebar	Integrated on-piece aluminum handlebar/stem
Seatpost	Proprietary theft resistant indexed post with easy to use four-finger clamp
Saddle	Seamless Bontrager all-weather saddle
Pedals	Anti-slip platform
Lights	Proprietary 3 watt 10 lux LED white front and red rear lights that run off of the Dynamo hub StVZO Compliant with 5 minute run time after stopping
Bell	Tamper resistant twist grip
Grips	Proprietary weather and UV resistant silicon
Fenders	Full coverage polycarbonate
Kickstand	Dropout mounted, 3 bolt kickstand
LOCKING MECHANISM	
Locking	Secondary cable lock

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DRIVETRAIN	
Shifters	Shimano Nexus 3-speed twist shifter
Rear Derailleur	Shimano Nexus 3-speed internal gear hub
Brakes	Shimano IM40 all-weather internal brake system
Brake Levers	Tektro CL525-RS Alloy 2 finger
Cassette	19 Tooth stock
Chain	KMC rustproof, 1/2"x1/8", heavy duty
Crankset	38 tooth crank, 170mm crank arm
WHEELS	
Rims	GLM CR-64 26in
Front Hub	Shimano Nexus front Dynamo hub
Rear Hub	Shimano Nexus 3-speed internal gear hub
Spokes	Stainless steel
Tires	Puncture resistant Bontrager hard case with reflective sidewalls
ADVERTISING/SPONSORSHIP	
Panels	Front caddy in 1 segment: front Rear skirtguards in 2 segments: right and left
EXTRAS	Meets or exceeds CPSC, ISO, EN standards for safety Fully enclosed chain and rear derailleur Spring loaded front caddie rated to 20 lbs of cargo Proprietary and theft resistant fasteners 2 year frame and 1 year parts warranty

Note: Bicycle specifications and components subject to change

SCHEDULE B: DESCRIPTION OF B-CYCLE 1.0 STANDARD STATION



KIOSK

The kiosk replaces one dock at each station. It can be powered by solar, AC, battery or a combination. A standard B-cycle kiosk covers all basic station functionality (registration with a credit card, check-in/out, nearest bike/dock availability, 15 minute extensions for full stations).

- Frame: Galvanneal
- Paint: Powder Coat
- Power Options:
 - Solar powered (single 135-watt panel with dual battery backup)
 - A/C (110 VAC, 60 Hz, 3 Amps)
- Display: Color Touchscreen
- Language: English and Spanish (with other language availability)
- Magnetic stripe all-weather credit card reader
- Communications to central server via broadband cellular (wireless)

AD/MAP MODULE

Taking the place of one dock, the ad/map module can display a map of the system and also offers a sponsorship opportunity.

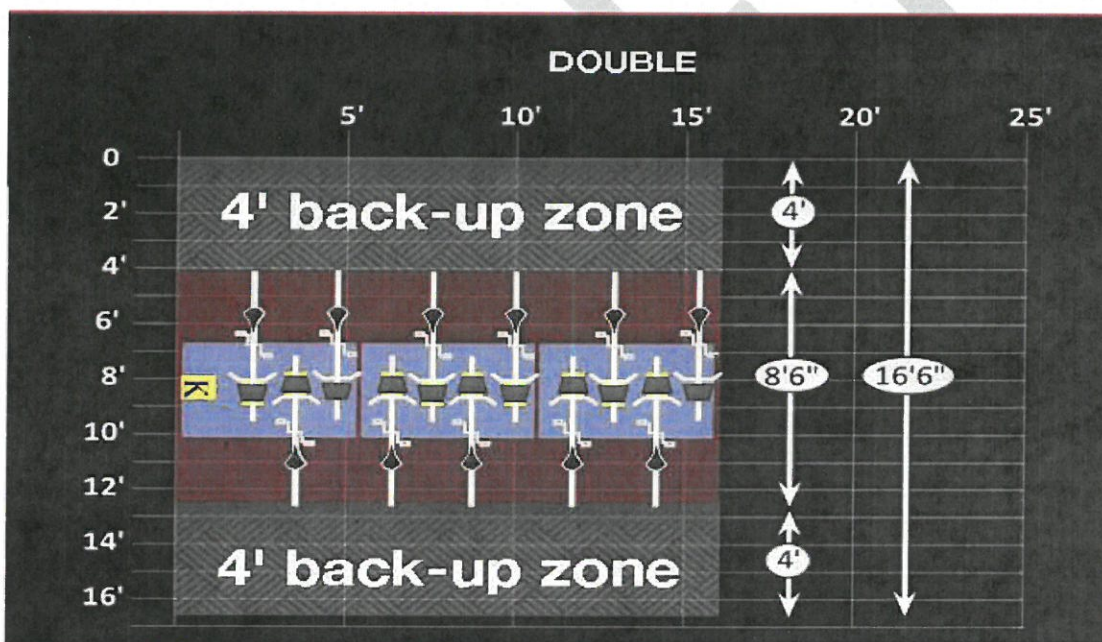
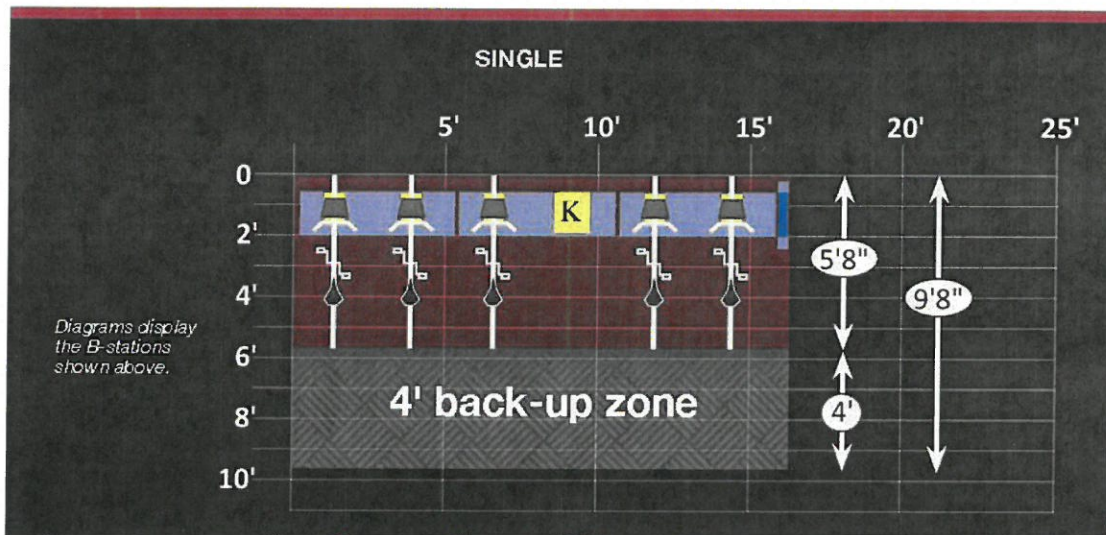
DOCKS/BASES

Docks can be single or double-sided on the same base. Single-sided docks allow for “walk through” access, while double-sided docks maximize the number of bikes at a station.



The bases are a powder-coated steel that can be mounted either by “dropping” (no bolting required) or bolting. The bases are configurable to fit many kinds of spaces including a curve.

STATION FOOTPRINTS



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SCHEDULE C: INITIAL COSTS

B-Cycle Quote vs Estimated Quantities By Community

Capital Equipment		B-Cycle Quote		Wauwatosa		West Allis		Shorewood		Total Three Communities	
	Unit Price	QTY	Total	QTY	Total	QTY	Total	QTY	Total	QTY	Total
2.0 BIKES - Bublr Blue	\$ 1,100	210	\$ 231,000	56	\$ 61,600	57	\$ 62,700	47	\$ 51,700	160	\$ 176,000
1.0 STATION (US Steel)					\$ -		\$ -		\$ -	0	\$ -
Kiosk AC	\$ 4,950	25	\$ 123,750	9	\$ 44,550	8	\$ 39,600	7	\$ 34,650	24	\$ 118,800
Solar Kit	\$ 3,500	25	\$ 87,500	1	\$ 3,500	5	\$ 17,500	0	\$ -	6	\$ 21,000
AC Charging Kit	\$ 2,500	0	\$ -	7	\$ 17,500	2	\$ 5,000	6	\$ 15,000	15	\$ 37,500
Dock	\$ 925	360	\$ 333,000	118	\$ 109,150	121	\$ 111,925	100	\$ 92,500	339	\$ 313,575
Base Non-Bolted	\$ 750	0	\$ -	0	\$ -	22	\$ 16,500	23	\$ 17,250	45	\$ 33,750
Base Bolted	\$ 255	192	\$ 48,960	60	\$ 15,300	39	\$ 9,945	27	\$ 6,885	126	\$ 32,130
Map/Ad Module	\$ 890	25	\$ 22,250	9	\$ 8,010	8	\$ 7,120	7	\$ 6,230	24	\$ 21,360
US Steel Upcharge	\$ 27,051	1	\$ 27,051	38%	\$ 10,144	33%	\$ 9,017	29%	\$ 7,890	1	\$ 27,051
Capital Equipment Total:			\$ 873,511		\$ 269,754		\$ 279,307		\$ 232,105		\$ 781,166
Additional Equipment and Fees		B-Cycle Quote		Wauwatosa		West Allis		Shorewood		Total Three Communities	
	Unit Price	QTY	Total	QTY	Total	QTY	Total	QTY	Total	QTY	Total
SHIPPING AND HANDLING	\$ 23.10	210	\$ 4,851	56	\$ 1,294	57	\$ 1,317	47	\$ 1,086	160	\$ 3,696
1.0 Bike Shipping	\$ 56,128	1	\$ 56,128	38%	\$ 21,048	33%	\$ 18,709	29%	\$ 16,371	1	\$ 56,128
OPTIONAL Bublr Pain	\$ 10,500	1	\$ 10,500	38%	\$ 3,938	33%	\$ 3,500	29%	\$ 3,063	1	\$ 10,500
OPTIONAL Bublr Kiosk Decals	\$ 208	25	\$ 5,200	9	\$ 1,872	8	\$ 1,664	7	\$ 1,456	24	\$ 4,992
1.0 INSTALLATION	\$ 1,975	25	\$ 49,375	9	\$ 17,775	8	\$ 15,800	7	\$ 13,825	24	\$ 47,400
INSTALLATION TRAVEL EXPENSES	\$ 3,531	1	\$ 3,531	38%	\$ 1,324	33%	\$ 1,177	29%	\$ 1,030	1	\$ 3,531
Software Fee (Year 1)	\$ 99	360	\$ 35,640	118	\$ 11,682	121	\$ 11,979	100	\$ 9,900	339	\$ 33,561
Bike Decals	\$ 55	210	\$ 11,550	56	\$ 3,080	57	\$ 3,135	47	\$ 2,585	160	\$ 8,800
Additional Fees w/o Decals			\$ 165,225		\$ 58,932		\$ 54,146		\$ 46,730		\$ 159,808
Additional Fees w Decals			\$ 176,775		\$ 62,012		\$ 57,281		\$ 49,315		\$ 168,608
Total Cost w/o Decals			\$ 1,038,736		\$ 328,686		\$ 333,453		\$ 278,835		\$ 940,974
Total Cost w/ Decals			\$ 1,050,286		\$ 331,766		\$ 336,588		\$ 281,420		\$ 949,774

Notes:

B-Cycle Quote information and unit prices based on 3/27/2017 B-Cycle Quote

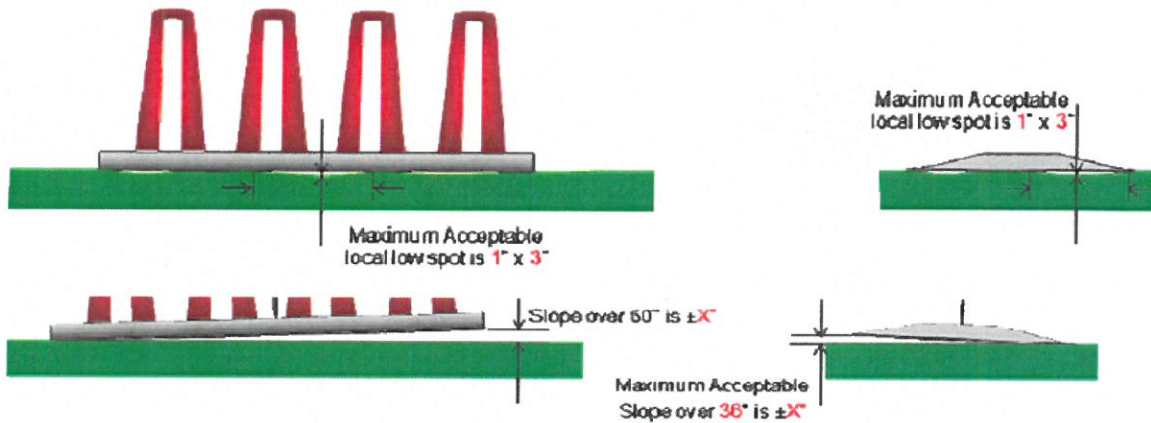
B-Cycle quote included a solar kit for each station. See next page 2 for detail of how each station will be powered.

B-Cycle quote assumed all bolted bases. See page 3 for a listing of station anticipated to use non-bolted bases due to placement on asphalt pavement or brick pavers.

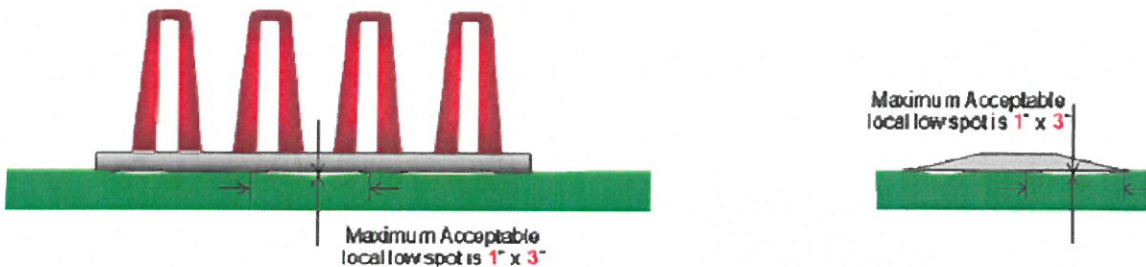
Originally R.A. Smith estimated 1 bike for every 1.9 docks, this has been revised to 1 bike for every 2.1 docks based on an acceptable ratio of 1 bike/2.25 docks from Bublr.

SCHEDULE D: INSTALLATION CRITERIA

- The minimum length for an unlagged single-sided station is 4 bases or 21'4" (with ½" thick plate). Single-sided stations with less than 4 bases will need to be lagged into the ground. The minimum length for an unlagged double-sided station is 3 bases or 16' (with ½" thick plate). Double-sided stations with less than 3 bases will need to be lagged into the ground.
- Power Requirements
 - For installations with an AC kiosk, 110V 20Amp single phase service will be required
 - Ideally service is routed under base plate containing kiosk as per sketch
 - Electrical lead ends should be no shorter than 12"
- Allowable ground slope/grade
 - Cross Slope – is the angle perpendicular to the direction of travel or usage
 - Running Slope – is the steepness measured parallel to the direction of travel or usage

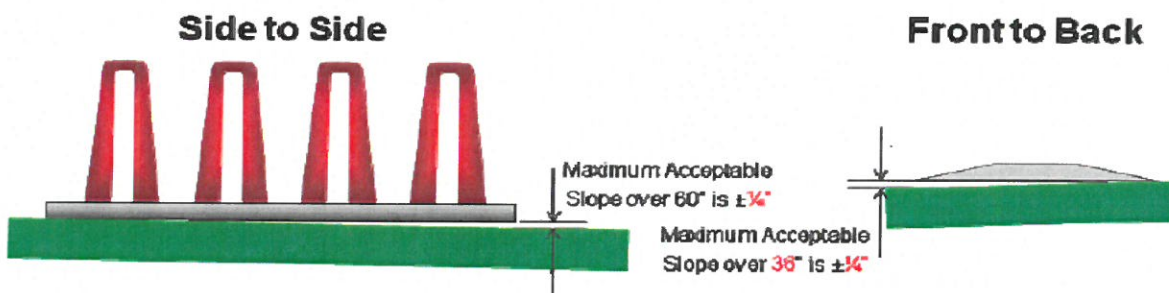


- Allowable ground indulation



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- Allowable ground flatness
 - Maximum ground variation or flatness is constrained by ADA trip hazard guidelines, which states that a rise larger than 1/2" requires a ramp with maximum grade of 1:12
 - Therefore, in order to ensure that the gap between the ground and the base is less than 1/2", the grade variation must be less than 1/2" (or ±1/4")
 - If flatness of site is outside of spec, special measures can be employed to avoid a tripping hazard (i.e., locally filling the low spot)



- Parallel parking spots
 - Please exercise caution when siting stations for street parallel parking spots
 - Normally, the minimum clearance behind the bikes is 4 feet. In this case, space behind the bike would only be 2.5 feet on a 9 foot wide spot
 - Spots should be chosen close to the intersection (with a stop sign ideally) of a quiet street (because cars are slowing and coming to a stop)

Note: Installation criteria subject to change.

SCHEDULE E: RECIPROCITY AGREEMENT

B-cycle Inter System Reciprocity Agreement

WHEREAS, B-Cycle, LLC (“B-cycle”) has installed bike sharing systems in several different locations; and

WHEREAS, all of these bike sharing systems are operated by the same proprietary B-cycle enterprise software; and

WHEREAS, it is technologically feasible to allow B-cycle system members from one system to utilize B-cycle systems in other locations while enjoying the membership benefits of their home location; and

WHEREAS, most B-cycle systems are independently owned and operated by local organizations (“Operators”); and

WHEREAS, many of these Operators have expressed an interest in providing their members with membership privileges in other B-cycle locations in exchange for reciprocal privileges in their own locations; and

NOW THEREFORE; the signatories to this Agreement agree to provide reciprocity for their respective members subject to the terms and conditions set forth below.

1. Reciprocity shall be extended to annual members only;
2. Current annual members in good standing shall enjoy the privileges of annual membership in participating cities without incurring additional membership fees;
3. Usage fees accrued shall be paid to the location where usage takes place (“Host Location”);
4. B-cycle will not charge any additional fees to Operators participating in the reciprocity program;
5. All annual members wishing to enjoy the privilege of reciprocity in participating locations must first accept that location’s User Agreement and Terms and Conditions at a kiosk in the Host Location;
6. In the unlikely event that a visiting annual member returns a B-cycle to another participating location, it shall be the responsibility of the Host Location to make arrangements to retrieve its B-cycle, and the Host Location shall determine a retrieval fee which shall be charged to the user;
7. Each Operator shall be responsible for damage to its own facilities which is not otherwise covered by the Kiosk User Agreement or is not recoverable from the User.
8. All participating locations agree that the other participating locations shall have access to the user profiles of the annual members who have opted into other participating locations. This access shall include visibility to all participating locations’ user

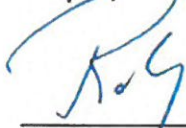
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- information and the ability to charge one-time charges, usage fees, and settle outstanding delinquencies to annual members who have opted into other participating locations when they incur these fees in the Host Location. This access shall not include modifying profile, card, or membership information or making adjustments to receipts with the exception of receipts charged by the Host Location;
9. All participating locations shall keep the customer information and other proprietary information of the other participating locations strictly confidential and shall not disclose such information to third parties or use it for any purpose other than those specified herein. Further, all participating locations agree that they will not use other participating locations' user information for marketing purposes unless it is part of a joint marketing effort agreed to by all Operators whose user information is involved;
 10. Participating locations will confer and exchange their member's trips in other participating locations;
 11. Participation in this Reciprocity Agreement is voluntary and no B-cycle location shall be required to participate;
 12. Any participating location may elect to withdraw participation on three months written notice to B-cycle. In the event a participating location elects to withdraw from this Reciprocity Agreement, it shall be its sole responsibility to notify all other reciprocity operators 3 months before reciprocity privileges will expire ;
 13. B-cycle, in its reasonable discretion, shall determine whether any individual B-cycle location may participate in this Reciprocity Agreement;
 14. Participating locations acknowledge that reciprocity arrangements, by their nature, create the need for inter-system customer service, cooperation and coordination and each signatory below agrees to reasonably cooperate with B-cycle and all other participating locations as may be necessary to effect the purposes and spirit of this Agreement;
 15. The original signatories below acknowledge that new systems may be added to this Agreement from time to time.

AGREED:

Original Signatures

B-Cycle, LLC



Robert Burns-President

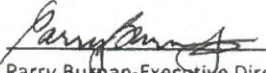
DATE:

2/8/12

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Denver Bike Sharing

DATE: 02.13.12

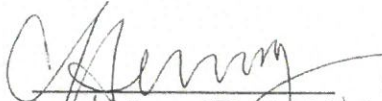

Parry Bulnap-Executive Director

Boulder Bike Sharing

DATE: 2/8/12


Elizabeth Train-Executive Director

Additional Signatures:


Madison Bicycle DATE: 9/6/12


San Antonio Bicycle DATE: 12-6-12

DATE: _____

DATE: _____

DATE: _____

DATE: _____

Exhibit A
INTELLECTUAL PROPERTY LICENSE AGREEMENT

THIS INTELLECTUAL PROPERTY LICENSE AGREEMENT (this "Agreement") is made this [Day] day of May, 2017 (the "Effective Date"), by and between B-CYCLE, LLC, a Delaware limited liability company, with its principal offices at 801 West Madison Street, Waterloo, Wisconsin 53594 ("Licensor"), and CITY OF WEST ALLIS, Wisconsin, a municipal corporation with its principal offices located at 7525 West Greenfield Avenue, West Allis, WI 53214 ("Licensee").

RECITALS

WHEREAS, Licensee is forming an independent bicycle share program ("Bike Share Program") with equipment purchased from Licensor;

WHEREAS, Licensee hereby elects to use certain trademarks and other intellectual property of Licensor;

WHEREAS, Licensor owns or has rights to all right, title, and interest in and to the trademarks and internet domain names in the form more fully described in Schedule A hereto (the "Marks");

WHEREAS, Licensor owns or has rights to all right, title, and interest to certain secret and valuable processes, procedures, techniques, and secret and valuable business, financial, software object and source code, and other proprietary information (the "Trade Secrets") that that are useful in the business of bicycle sharing programs (the "Business") and that Licensee may elect to access under the terms of this Agreement;

WHEREAS, Licensor owns or has rights to all right, title, and interest in and to certain information, designs, drawings, operations manuals, compilations of technical information, research files and records, methods and specifications, quality assurance specifications, know-how, processes, business methods, and other priority information related to the Business (the "Know-How") (the Marks, Trade Secrets, and Know-How will be collectively referred to as the "Intellectual Property");

WHEREAS, Licensor wishes to license and Licensee wishes to receive the right to use the Intellectual Property in connection with the Bike Share Program;

WHEREAS, the Intellectual Property constitute valuable rights used by Licensor in conducting its business;

WHEREAS, the Marks designate the origin or sponsorship of Licensor's products and services and Licensor desires to protect the goodwill of its Marks and to preserve and enhance its rights in and the value of the Marks; and

WHEREAS, Licensor and Licensee agree that certain restrictions on Licensee's use of the Intellectual Property are necessary to ensure Licensor's rights to the Intellectual Property are preserved, protected, and enhanced.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

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AGREEMENTS

1. Grant of License.

- 1.1 Licensor hereby grants to Licensee, and Licensee hereby voluntarily accepts, a non-exclusive, royalty-free, non-transferable license to use the Intellectual Property solely in connection with the Bike Share Program, subject to the terms of this Agreement.
- 1.2 Licensee recognizes and acknowledges that the Intellectual Property and all rights therein and goodwill pertaining thereto belong exclusively to Licensor and that all rights resulting from Licensee's use of the Intellectual Property as permitted hereunder inure to the benefit of the Licensor.
- 1.3 Licensor represents and warrants to Licensee that: (i) it owns or has the right and all necessary authority to license the Intellectual Property in accordance with the terms of this Agreement; (ii) the Intellectual Property does not infringe any third party intellectual property or other proprietary right, nor misappropriate any third party trade secrets; and (iii) the entering into of this Agreement with Licensee will not breach the terms of any other agreement to which Licensor is a party.
- 1.4 OTHER THAN EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE USE, EXCLUSIVE OWNERSHIP, VALIDITY OR ENFORCEABILITY OF THE MARKS OR THE INTELLECTUAL PROPERTY.

2. Rights Not Granted. All rights other than those expressly granted to Licensee are reserved to Licensor. This Agreement is not an assignment or grant to Licensee of any right, title or interest in or to the Intellectual Property, or any of Licensor's other trademarks, other than the grant of rights to use the Marks subject to the terms and conditions of this Agreement. Licensor expressly does not grant to Licensee the right to use any variation of the Marks that now exist or hereafter are developed by Licensor, Licensee or any other person.

Licensee agrees that it will not make use of the Intellectual Property except in connection with the Bike Share Program nor sell or sub-license same to any third party.

Licensee further acknowledges that the rights granted hereunder do not include the right to: (i) operate a retail or outlet store under the Marks or any variation thereof; (ii) sell any products bearing the Marks at retail stores anywhere in the world, including in the Territory; (iii) sell any products bearing the Marks directly to the public through catalogs (print, CD-ROM or otherwise) or wholesale clubs; or (iv) sell any products bearing the Marks on the Internet or any other electronic network of any kind currently in existence or which may be developed in the future.

3. Territory. The license of the Intellectual Property granted under this Agreement is for use solely in the Territory described in Schedule B hereto.

4. Quality Control.

- 4.1 *Quality Control Standards.* Licensee will use the Intellectual Property only in accordance with the guidance and directions as may be furnished in writing from

time to time by Licensor or its agents.

- 4.2 *Purpose of Quality Control.* To maintain the quality reputation of the Marks, all promotional or packaging material relating to the Bike Share Program must have Licensor's prior written approval, such approval not to be unreasonably withheld.

5. Ownership and Use of Intellectual Property.

- 5.1 Licensee acknowledges and agrees that Licensor is the owner or licensee of the Intellectual Property and that it will never dispute, contest, or challenge, directly or indirectly, the validity or enforceability of the Intellectual Property or Licensor's ownership of or right in the Intellectual Property, nor counsel, procure, or assist anyone else to do the same, nor will it take any action that is inconsistent with Licensor's ownership of or rights in the Intellectual Property, nor will it represent that it has any right, title, or interest in the Intellectual Property other than those expressly granted by this Agreement.
- 5.2 Upon Licensor's request, Licensee will cooperate fully, both before and after termination or expiration of this Agreement and at Licensor's expense, in confirming, perfecting, preserving, and enforcing Licensor's rights in the Intellectual Property, including but not limited to, executing and delivering to Licensor such documents as Licensor reasonably requests for any such purpose, including but not limited to, assignments, powers of attorney, and copies of commercial documents advertising the Bike Share Program. Licensee hereby irrevocably appoints Licensor as its attorney-in-fact for the purpose of executing such documents.
- 5.3 In the event Licensee acquires, as a result of the exercise of any rights provided under this Agreement, any rights in the Intellectual Property, it agrees to assign and hereby assigns all such rights to Licensor.
- 5.4 Licensee will not create, use, distribute, or allow to be distributed, any materials that are false or misleading.
- 5.5 Licensee will ensure that all advertising, labeling, packaging and other materials associated with the Bike Share Program fully conform to all applicable laws and regulations.
- 5.6 Licensee will conduct its business operations in accordance with all applicable laws and regulations, including but not limited to, laws relating to consumer protection, wages, hours, labor, health and safety, and immigration.
- 5.7 Licensee agrees that all right, title and interest in and to all materials, including but not limited to, all artwork and designs, created by Licensor, and used with the Intellectual Property or in association with the Business are the property of Licensor. Additionally, all such materials created by Licensee or any other person or entity retained or employed by Licensee that incorporate any Intellectual Property are works made for hire within the meaning of the United States Copyright Act and are the property of Licensor, who shall be entitled to use and license others to use such materials unencumbered by moral rights. To the extent such materials are not works made for hire or rights in the such materials do not automatically accrue to Licensor, Licensee irrevocably assigns and agrees to

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assign to Licensor, its successors and assigns, the entire right, title, and interest in perpetuity throughout the world in and to any and all rights, including all copyrights and related rights, in such materials, which Licensee and the author of such materials warrant and represent as being created by and wholly original with the author. Where applicable, Licensee agrees to obtain any other assignments of rights in such materials from another person or entity necessary to ensure Licensor's right in such materials.

- 5.8 If Licensee, during the term of this Agreement, conceives or develops any improvements or additions to the Intellectual Property, website or any other documents or information pertaining to or relating to the Business, or any new trade names, trade and service marks, logos, or commercial symbols related to the Business or any advertising and promotional ideas or inventions related to the Business (collectively, the "Improvements"), Licensee shall fully disclose the Improvements to Licensor, without disclosure of the Improvements to others, and shall obtain Licensor's written approval prior to using such Improvements. Any such Improvement may be used by Licensor without any obligation to Licensee for royalties or other fees. Licensee shall assign and does hereby assign to Licensor, all right, title and interest in and to the Improvements, including the right to grant sublicenses to any such Improvement. Licensor, at its discretion, may make application for and own copyrights, patents, trade names, trademarks and service marks relating to any such Improvement and Licensee shall cooperate with Licensor, in securing such rights. Licensor may also consider such Improvements as the property and Trade Secrets of Licensor.

6. Ownership and Use of Marks. It is of utmost importance that the goodwill, stature, and image of quality associated with the Marks be maintained and enhanced by Licensee. Licensee will make no use of the Marks without the prior approval of Licensor, this Agreement itself not constituting such approval. To maintain and enhance the goodwill and image of quality associated by the public with the Marks, Licensee will conduct its business in accordance with the following:

- 6.1 Licensee will use the Marks only in lettering, logos, print styles, forms, and formats, including but not limited to, advertising and promotional materials, invoices, signage and promotional items which have been approved by Licensor in accordance with this Agreement, and otherwise promptly follow instructions regarding the Marks given by Licensor in writing from time to time. Licensee will not alter, move, change or obscure any of Licensor's or Licensor's sponsors, trademarks, logos, or other indicia as delivered to Licensee by Licensor on the goods sold to Licensee pursuant to that certain Purchase Agreement for Equipment and Services executed contemporaneously herewith. Licensee shall only use the Marks in accordance with Licensor's Trademark Use Standards, as may be changed by Licensor from time to time and provided to Licensee in writing, and which are attached hereto, and incorporated herein, as Schedule C.
- 6.2 Licensee agrees to use commercially reasonable efforts to safeguard and maintain the reputation and prestige of the Marks and will not do anything that would knowingly tarnish the image of or adversely impact the value, reputation or

goodwill associated with the Marks. Licensee will never attempt to knowingly dilute, directly or indirectly, the value of the goodwill attached to the Marks, nor to counsel, procure, or assist anyone else to do the same.

- 6.3 Licensor may decide, in its sole and absolute discretion, to apply to register or to register any trademarks with respect to the Business or any other goods and services. Failure of Licensor to obtain or maintain in effect any such application or registration is not a breach of this Agreement. Licensee will not, before or after termination or expiration of the Agreement, register or apply to register any of the Marks, or any trademark or logo confusingly similar thereto, anywhere in the world.
- 6.4 Licensee should mark the Marks with a superscript "®" or "TM," as appropriate, unless and until advised by Licensor to use a different notice.
- 6.5 If, in Licensor's reasonable determination, the use of a Mark in connection with the Bike Share Program will infringe or potentially infringe upon the rights of any third party or weakens or impairs Licensor's rights in the Marks, then upon notice from Licensor, Licensee will immediately terminate or modify such use in accordance with Licensor's instructions, and Licensee will have no rights of damages, offset, or right to terminate this Agreement as a result thereof.
- 6.6 Licensee shall not use Licensor's Marks as part of a domain name, except as authorized herein. See Schedule A for a list of approved domain names. Immediately on expiration or termination of this Agreement, Licensee shall cease use of any domain name which incorporates any of Licensor's marks, and shall assign registered ownership in such domain names to Licensor.

7. Trade Secrets. Licensee agrees to take all reasonable steps to protect the Trade Secrets, and to employ at least those precautions that Licensee employs to protect its own confidential or proprietary information. In order to protect the Trade Secrets from public disclosure, Licensee agrees to take at least the following minimum steps:

- 7.1 All access to Trade Secret information will be limited to those employees of Licensee who may require the information in order to perform their jobs;
- 7.2 Other than as specifically provided in Section 7.1 above, no Trade Secret information will be disclosed to third parties; and
- 7.3 Licensee will require that all relevant employees enter into confidentiality agreements, in a form suitable to Licensor, acting reasonably.

8. Indemnification and Infringement.

8.1 Licensor shall defend, indemnify, and hold harmless Licensee and its officers, directors, employees, agents and members from any and all third party damage, liability, claims, and expense, including reasonable attorneys' fees and expenses, related to any suit, action, legal proceeding, claim or demand of whatever kind or character based on:

- 8.1.1 any allegation of infringement of any patent, copyright, industrial design, trademark, or other intellectual property or proprietary right or

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- misappropriation of any trade secret of a third party, arising from the use of the Intellectual Property in accordance with the terms of this Agreement; or
- 8.1.2 Breach of a warranty, representation, or duty of Licensor to Licensee or to any vendors or consumers.
- 8.2 Licensee shall defend, indemnify, and hold harmless Licensor from any and all third party damage, liability, claims, and expense, including reasonable attorneys' fees and expenses, related to any:
- 8.2.1 Act or omission of those with whom Licensee contracts for the provision of goods and services related to the Bike Share Program;
- 8.2.2 Suit, action, legal proceeding, claim or demand of whatever kind or character based on:
- (a) any allegation of false or misleading advertising involving the goods and services of the Bike Share Program or the Intellectual Property by Licensee; or
- (b) any allegation of infringement of any patent, copyright, industrial design, trademark, or other right of a third party, arising from the advertisement, or promotion, by Licensee of the Bike Share Program.
- 8.2.3 Use of the Intellectual Property in a manner not authorized by this Agreement; or
- 8.2.4 Breach of a warranty, representation, or duty of Licensee to Licensor or to any vendors or consumers.
- 8.3 Licensee shall notify Licensor within three (3) days in writing of any act that Licensee believes constitutes an act of infringement by a third party either of its rights under this Agreement or of the Intellectual Property and shall cooperate fully with Licensor in dealing with it.
- 8.4 Licensee, in its sole discretion and at its expense, shall have the right but not the obligation to bring any action against persons it believes are infringing the Intellectual Property. Licensee agrees to consult with Licensor concerning the strategy for and settlement of any action brought by Licensee. Licensor also has the right but not the obligation to bring any action against persons it believes are infringing the Intellectual Property. Licensor may bring such action if Licensee does not do so and may take over an action that Licensee initiates. If Licensor brings an action or takes over an action brought by Licensee, Licensor will have full control of the proceedings and Licensee will provide complete cooperation to Licensor in connection with the action, provided that, if any settlement requires an affirmative obligation of, results in any ongoing liability to or prejudices or detrimentally impacts Licensee in any way and such obligation, liability, prejudice or impact can reasonably be expected to be material, then such settlement shall require Licensee's written consent (not to be unreasonably withheld or delayed) and Licensee may have its own counsel in attendance at all proceedings and substantive negotiations relating to such claim. Whichever party

brings the action shall notify the other party in writing. Whichever party brings the action is entitled to any recovery, whether by judgment or settlement.

9. Term. This Agreement, unless terminated earlier as provided herein, will remain in full force and effect until the termination of Licensee's B-cycle branded Bike Share Program, including, without limitation, the termination of the Digital Platform Services Agreement entered into between Licensor and Licensee in connection with the Bike Share Program.

10. Termination.

10.1 *Termination for Default.* A non-defaulting party may terminate this Agreement in the event of the occurrence of any of the following events of default:

10.1.1 The failure of the other party to comply with any material provision of this Agreement, the Purchase Agreement for Equipment and Services dated _____ between the parties, or the Digital Platform Services Agreement dated _____ between the parties, if such noncompliance is not remedied within thirty (30) days after written notice of such default is provided to the defaulting party;

10.1.2 The filing by Licensor or Licensee of a voluntary petition under any chapter of the United States Bankruptcy Code, or any similar state or foreign law;

10.1.3 The appointment of a receiver for Licensee, unless remedied to the satisfaction of Licensor within thirty (30) days after such appointment; or

10.1.4 The unauthorized sale, transfer or assignment of this Agreement by Licensee to a third party. The sale of an interest exceeding fifty percent (50%) in Licensee will constitute an assignment for purposes of this Agreement.

10.2 *No Exclusive Remedy.* The parties agree that termination of this Agreement will not be the exclusive remedy of the non-defaulting party in the event of a default. Rather, in addition to or in lieu of termination pursuant to this Section 10, such non-defaulting party may exercise any and all other legal remedies available to it under applicable law in the event of default.

10.3 *Effect of Termination.* Upon the effective date of termination of this Agreement as provided in Section 10.1 or 10.2, Licensee agrees to immediately discontinue all use of the Intellectual Property. It is expressly understood that the obligations of Sections 5 and 8 above survive termination or rescission of the Agreement or any part thereof.

11. Miscellaneous Provisions.

11.1 *Relationship Between Parties.* The relationship between the parties established by this Agreement is solely that of licensor and licensee. Neither party, based on this Agreement alone, is in any way the legal representative, partner, employee or agent of the other, nor is either party authorized or empowered to create or

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assume any obligation of any kind, implied or expressed, on behalf of the other party, without the express prior written consent of the other.

- 11.2 *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and therein and will supersede all prior agreements, proposals or understandings between the parties whether written or oral.
- 11.3 *Amendment.* This Agreement will not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by written instrument signed by both parties hereto.
- 11.4 *Waiver.* Neither the waiver by either party hereto of any breach of or default under any of the provisions of this Agreement, nor the failure of either of the parties to enforce any of the provisions of this Agreement or to exercise any right hereunder, will be construed as a waiver of any subsequent breach or default, or as a waiver of any such rights or provision hereunder.
- 11.5 *Severability.* If any term or provision of this Agreement will be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each term and provision will be valid and enforceable to the fullest extent permitted by law.
- 11.6 *Notices.* All notices given pursuant to this Agreement will be given in writing and will be given by telegram, telex, cable, facsimile, certified mail or hand delivery to the addresses set forth below or at such other address as a party may from time to time specify in writing:

If to Licensor:

B-cycle, LLC
801 West Madison Street,
Waterloo, Wisconsin 53594
Attention: President
Fax: (920) 478-4200

If to Licensee:

City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: City Engineer

- 11.7 *Headings.* The headings in this Agreement are for convenience purposes only and will not be construed as part of this Agreement or in any way limiting or amplifying any of the provisions of this Agreement
- 11.8 *Execution in Counterparts.* To facilitate execution, this Agreement may be executed in counterparts, and it will not be necessary that the signatures of each party appear on each counterpart; but it will be sufficient that the signature of each party appear on one or more of the counterparts. All counterparts will collectively constitute a single agreement.

- 11.9 *Governing Law.* This Agreement will be governed by the substantive laws of the State of Wisconsin without regard to the application of conflicts of law principles. **LICENSEE AND LICENSOR HAVE NEGOTIATED REGARDING A FORUM IN WHICH TO RESOLVE ANY DISPUTES WHICH MAY ARISE BETWEEN THEM AND HAVE AGREED TO SELECT A FORUM IN ORDER TO PROMOTE STABILITY IN THEIR RELATIONSHIP. THEREFORE, IF A CLAIM IS ASSERTED IN ANY LEGAL PROCEEDING INVOLVING LICENSEE, LICENSOR, EITHER OF THEIR AFFILIATES AND ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, OR PARTNERS, BOTH PARTIES AGREE THAT THE EXCLUSIVE VENUE FOR DISPUTES BETWEEN THEM SHALL BE IN THE STATE OF WISCONSIN MILWAUKEE COUNTY AND EACH WAIVE ANY OBJECTION EITHER MAY HAVE TO THE PERSONAL JURISDICTION OF OR VENUE IN THE STATE OF WISCONSIN. LICENSOR AND LICENSEE IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS AND WAIVE ANY OBJECTION THEY MAY HAVE TO EITHER THE JURISDICTION OR VENUE IN SUCH COURT.**
- 11.10 *Attorneys' Fees.* Each party will be responsible for the payment of its own attorneys' fees incurred with the respect to the preparation of this Agreement.
- 11.11 *Language.* If this document is drafted in more than one language, then the English version shall be the controlling document and any disputes arising out of this document shall be resolved with the English version.

[Signature Page to Follow]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

LICENSOR
B-CYCLE, LLC

By: _____

Name: Robert Burns

Its: President

LICENSEE
City of West Allis

By: _____





Name: Michael G. Lewis

Its: Director of Public Works/City Engineer

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SCHEDULE A: MARKS

U. S. Federal Trademark Registrations:

Trademark	Registration Date	Registration No.	Class
Bcycle	10/20/09	3700047	12
Bcycle	05/29/12	4149982	25
Bcycle	12/23/08	3790814	35
Bcycle	10/20/09	3700048	39
Bcycle Logo 	05/17/11	3960369	12, 35, 39
Circle B Logo 	02/14/12	4098871	12, 35, 39
Bcycle Logo 			
Circle B Logo 			

Internet Domain Names:
[insert domains used]

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SCHEDULE B: TERRITORY

[Insert territory intellectual property can be used]

DRAFT

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SCHEDULE C: TRADEMARK USE STANDARDS

DRAFT

Exhibit B
DIGITAL PLATFORM SERVICES AGREEMENT

THIS DIGITAL PLATFORM SERVICES AGREEMENT together with its Schedules (collectively this “Agreement”) is made this [Day] day of May, 2017 (the “Effective Date”), by and between B-CYCLE, LLC, a Delaware limited liability company, with its principal offices at 801 West Madison Street, Waterloo, Wisconsin 53594 (“B-Cycle”), and CITY OF WEST ALLIS, Wisconsin, a municipal corporation with its principal offices located at 7525 West Greenfield Avenue, West Allis, WI 53214 (“Customer”).

1. Definitions. In addition to capitalized terms defined elsewhere in this Agreement, the following terms have the following meanings:

- 1.1 “B-cycle Property” is defined in Section 9.
- 1.2 “Confidential Information” is defined in Section 11.
- 1.3 “Data” is defined in Section 12.
- 1.4 “Intellectual Property Rights” is defined in Section 9.
- 1.5 “Kiosk(s)” means the self-service bicycle rental kiosks through which Users will have access to the Service, including standard kiosks and/or smart kiosks as applicable.
- 1.6 “Schedule” means a document attached to this Agreement, identifying, without limitation, specific services, terms and conditions, agreements, specifications and Fees as set forth in this Agreement.
- 1.7 “Service” means B-cycle’s proprietary automated bicycle sharing digital platform, including access to and use of (1) B-cycle’s online enterprise software for bicycle renting and tracking; account and data management; and system administration; (2) B-cycle’s national website at Bicycle.com; (3) B-cycle’s location-specific website for [insert description or url for location-specific website]; and (4) B-cycle’s cell phone app (“App”) for bicycle renting and tracking; as applicable, as all of the foregoing may be modified by B-cycle from time to time, including all applicable documentation and user guides supporting the use of the service.
- 1.8 “B-cycle Website Terms and Conditions of Use” means B-cycle’s Website Terms and Conditions of Use between B-cycle and users of B-cycle’s national and location-specific websites, if any, as such websites may be modified by B-cycle from time to time. B-cycle’s current version of the Website Terms and Conditions of Use is attached as Schedule A.
- 1.9 “B-cycle Website Privacy Policy” means B-cycle’s privacy policy for users of B-cycle’s national and location-specific websites, as such may be modified by B-cycle from time to time. B-cycle’s current version of the

B-cycle Website Privacy Policy is attached as Schedule B.

- 1.10 “User(s)” means end user(s) of the Service.
- 1.11 “User Agreement” means the agreement between Customer and each User that sets forth the terms and conditions governing Customer’s bike share program, including the membership and payment terms and conditions for such program and Users’ access to the Service through Customer’s location-specific website. Customer’s current version of the User Agreement is attached to this Agreement as Schedule C.
- 1.12 “User Manual” means the web based user manual for the Service, as updated by B-cycle from time to time, available at www.bcycle.com or other internet address as B-cycle may specify from time to time.
- 1.13 “Smart Bicycle(s)” means the self-service bicycle through which Users may have access to the Service. References to “bicycles” in general include Smart Bicycles.

2. Services. Subject to the terms and conditions of this Agreement and the Schedules incorporated herein by reference, during the Term (as defined in Section 10), B-cycle will provide Customer, and Users who have accepted the User Agreement, access to the Service solely in connection with Customer’s bike sharing program activities.

3. Restrictions. Except as otherwise expressly set forth in this Agreement, authorized by B-cycle in writing, or to the extent limited or prohibited by law, Customer will not, and will not cause or permit any User or third party to: (i) transfer User names or passwords between Users; (ii) attempt to gain unauthorized access to the Service, other User accounts, web sites or networks connected to the Service, through password mining or any other means; (iii) breach, violate or circumvent the User Agreement or any other regulations, policies or procedures governing the use of the Service; (iv) intentionally interfere with or disrupt the Service; (v) disassemble, decompile, reverse engineer or otherwise attempt to derive the source code of the software used in the Service; (vi) upload or transmit any content to Kiosks, B-cycle’s website, Smart Bicycles or App that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party; (vii) use the Service to develop a product that is competitive with the Service. Customer will notify B-cycle in writing of any

instances of which Customer is aware that any User has breached the User Agreement. All rights not expressly granted to Customer herein are reserved by B-cycle. If any of the restrictions in this Section 3 are prohibited by applicable law, then, to the extent the following requirements are permissible, Customer will notify B-cycle in writing before engaging in any of the foregoing activities.

4. Activation and Training. During the Term, B-cycle will perform the following services:

4.1 *Activation; Testing.* Customer will purchase Kiosks and/or Smart Bicycles pursuant to that certain Purchase Agreement for Equipment and Services and all attachments thereto between B-cycle and Customer (the "Purchase Agreement"). B-cycle will activate the Service on the number of Kiosks and/or Smart Bicycles identified in Schedule D within the activation schedule set forth in such Schedule D (the "Initial Activation"). Customer will review and test the Service and either accept or reject the activation of each location as expressly provided for in this section within ten (10) days ("Acceptance Testing Period") following the date that B-cycle notifies Customer that such location is active ("Activation Date") by delivering to B-cycle on or before the end of the Acceptance Period either (i) a written "Notice of Acceptance" or (ii) a written list containing any and all reasons for not accepting the activation of the Service in such location ("Correction List"). B-cycle will use commercially reasonable efforts to promptly resolve any issues identified within the Acceptance Period, including, without limitation, the Correction List, to the reasonable satisfaction of Customer. The acceptance date ("Acceptance Date") for the activation of each location will be the date that the Acceptance Testing Period concludes unless the Customer has provided a Correction List, in which case the Acceptance Date for such location will occur when B-cycle resolves the issues identified on the Correction List and provides written notification to Customer that the Service is active for such location.

4.2 *Exclusions.* Activation services under this Agreement do not include (i) providing bicycles for the Kiosks, which is provided for under the Purchase Agreement; (ii) training the Customer's staff to rent or service bicycles; or (iii) activating any future versions of the Service or activating the Service in additional Kiosks or Smart Bicycles (each a "Subsequent Activation") unless otherwise specified in Schedule D or agreed by the parties in writing. B-cycle will charge Customer for activation services in connection with each Subsequent Activation as set forth in Exhibit D.

4.3 *Initial Training and Support Services.* B-cycle will provide the initial training and support services set forth in Schedule E. Customer may elect to receive additional training at any time, subject to B-cycle's then-current

prices and schedule, upon reasonable advance notice to B-cycle.

5. Custom Development Services. B-cycle will provide customization, programming, consulting, support and development services ("Custom Development Services") to Customer as specified in Schedule F or in any statement of work accepted in writing by B-cycle on a time and materials basis at the rates specified in Schedule F or such statement of work. For purposes of clarity, B-cycle has sole discretion whether to perform any requested Development Services.

6. Customer Obligations.

6.1 *Cooperation and Assistance.* Subject to applicable laws and regulations, Customer will provide B-cycle access to Kiosks and/or Smart Bicycles for purposes of B-cycle's fulfillment of its obligations hereunder. Customer and Customer's representatives will provide all reasonably necessary information and assistance to B-cycle with respect to activation, support and use of the Service.

6.2 *Compliance with Laws.* Customer will comply with all applicable laws and regulations relating in any way to Customer's use of the Service and its provision of the Service to Users.

6.3 *Customer Support.* Except as set forth in the B-cycle Website Terms of Use or any separate written agreement with Customer, B-cycle is not required to provide customer support to Users. Customer will handle or cause to be handled any and all User complaints regarding the bicycles (including Smart Bicycles) rented to Users through the Service.

6.4 *Bike Share Program; User Agreement.* Customer is solely and exclusively responsible for establishing, maintaining and enforcing the terms and conditions of Customer's bike share program including, without limitation, membership rules and pricing. Customer will draft and provide B-cycle with a copy of the User Agreement for approval prior to using such User Agreement with Users. Specifically, B-cycle will have the right to approve the following minimum provisions in the User Agreement, which will incorporate and benefit B-cycle, its licensors, vendors and suppliers: indemnification, disclaimers of warranties and limitation of liability. Customer will have the right to modify the User Agreement from time to time following B-cycle's written approval of the foregoing minimum provisions. B-cycle will not unreasonably withhold, condition or delay its approval of any form of the User Agreement that complies with the obligations in this Section 6.4.

6.5 *Membership Fee Processing.* If Customer elects to charge Users for use of the Service, Customer will, at its expense, obtain an account or sub-account with third party credit card payment gateway service, CreditCall

(Kiosk) and/or Stripe (App) ("Payment Gateway").

Customer is also required to obtain an account with a third party credit card merchant or payment processor ("Payment Processor") that is compatible with the Payment Gateway. B-cycle has the sole and exclusive right to select the Payment Gateway, but Customer may choose any Payment Processor that can interface with the Payment Gateway selected by B-cycle. The Payment Gateway and Payment Processor will be required to receive and collect credit card payments from Users, if applicable under Customer's User Agreement, in any of the following methods: (i) through a Kiosk; (ii) online; (iii) through the App; and (iv) manually or verbally entered by one of Customer's authorized representatives.

B-cycle will capture User payment information input through the Service and transmit it to the Payment Gateway, which in turn passes it to the selected Payment Processor. Except for the foregoing, B-cycle will not be responsible for any other aspect of collecting payment from Users.

7. Fees.

7.1 *Fees.* Customer will pay B-cycle the fees identified in Schedule G for the Initial Activation (the "Fees").

- (a) Except as otherwise provided in Schedule G, the Fees for the Initial Activation and any Subsequent Activation will be due within seven (7) days following the date of the invoice provided by B-cycle to Customer ("Invoice").
- (b) Except as otherwise expressly set forth in the Agreement, (A) the Fees are non-refundable, and (B) upon any termination of this Agreement, Customer will promptly pay B-cycle all outstanding Fees, including, without limitation, any Fees that Customer would have paid (or would have owed) to B-cycle during the Initial Term and any current Renewal Term.

8. Payment.

8.1 B-cycle will have the right to charge Customer a late charge of one and one-half percent (1.5%) per month, (or any applicable legal maximum, whichever is less), for any invoice that is not paid within (30) days of the date of invoice. Such late fees reasonably estimate the amount necessary to compensate B-cycle for costs and losses associated with delays in payment and are therefore not penalties. In addition to late fees, Customer will reimburse B-cycle for all reasonable costs and expenses (including any reasonable attorney fees) it incurs collecting any past due Fees owed by Customer. This provision shall not apply where there is a bona fide dispute as to the amount owed.

8.2 In the event Customer fails to pay B-cycle any Fees when due, B-cycle will have the right, upon written notice to Customer and following Customer's failure to cure within ten (10) days, and without waiving or limiting any other remedies to which B-cycle may be entitled hereunder, in law or in equity, to suspend the operation of the Service until such time as all amounts due have been paid in full.

8.3 The Fees exclude all applicable sales, use, and service taxes ("Taxes"), and Customer will pay all such Taxes (other than taxes based on B-cycle's income) and any penalties or charges that accrue with respect to the non-payment of any Taxes by Customer.

9. Ownership. Except for the limited rights explicitly granted in this Agreement, B-cycle and/or its licensors and suppliers retain all right, title and interest in and to the Service, including, without limitation, all new software or product enhancements, updates and modifications developed by B-cycle, or by B-cycle and Customer jointly, in the performance of this Agreement, all documentation and all intellectual property rights in each of the foregoing (including, without limitation, all copyrights, patents, trademarks, trade secret and other rights therein, and all improvements, modifications, derivative works, extensions, applications and renewals thereof, in any form, format or media ("Intellectual Property Rights") (such items and rights individually and collectively, "B-cycle Property"). To the extent (if any) Customer acquires any Intellectual Property Rights in or to any of the B-cycle Property, Customer hereby irrevocably and without further consideration assigns and transfers to B-cycle all such right, title and interest to any such B-cycle Property and waives the enforcement of any moral rights or rights of authors that cannot be so transferred. Customer will take any reasonably requested actions by B-cycle to document or otherwise facilitate B-cycle's ownership of the B-cycle Property.

10. Term and Termination.

10.1 This Agreement will commence on the Effective Date and will continue for [Number of years – usually 3 years but consistent with Purchase Agreement] (the "Initial Term"). At the end of the Initial Term, the Agreement shall automatically renew for successive additional one (1) year terms, (each, a "Renewal Term") unless either party gives the other at least one hundred eighty (180) days' written notice of non-renewal prior to the expiration of the Initial Term or then-current Renewal Term. The Initial Term and each applicable Renewal Term constitute the "Term" of this Agreement.

10.2 Either party will have the right to terminate this Agreement in the event the other party: (i) materially breaches this Agreement, or any other agreement between the parties, and fails to cure such breach within sixty (60) days following written notice from the non-breaching party, or as otherwise stated in the agreement under which

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the breach has arisen; (ii) files a petition in bankruptcy or an involuntary petition in bankruptcy is filed against it and is not dismissed within thirty (30) days of such filing; or (iii) is subject to the appointment of a trustee, receiver or other custodian for such party or such party's property.

10.3 Upon expiration or termination of this Agreement: (i) all of the parties' rights and obligations granted hereunder will immediately cease to exist (except for rights and obligations that survive as set forth in Section 10.4); (ii) B-cycle will have the right to immediately deactivate the Service; (iii) Customer will return (or, at B-cycle's request, destroy) all B-cycle Property; (iv) B-cycle will provide Customer a copy of the Data; and (v) Customer will promptly pay B-cycle all amounts, Fees, charges and expenses owed as of the date of expiration or termination.

10.4 *Survival.* Sections 1, 3, 8 (solely to the extent of any unpaid Fees) 9, 10.3, 10.4 and 11 through 18 will survive the termination of this Agreement for any reason and continue in full force and effect.

11. Confidentiality.

11.1 As used herein, "Confidential Information" means: (i) any and all technical or business data or information (including, without limitation, third-party information), materials or software furnished or made available, in whatever form or medium, by the parties to each other regardless of whether such technical or business data or information is marked or identified as "Confidential."

11.2 The parties will, during the Term and for a period of two (2) years thereafter, (i) treat as confidential, and preserve the confidentiality of, all Confidential Information; (ii) use the Confidential Information solely for the purposes of this Agreement; (iii) not copy such Confidential Information unless specifically authorized by the disclosing party; and (iv) limit dissemination of the Confidential Information to those employees, agents and representatives to whom disclosure is necessary for the purposes of this Agreement, provided such employees, agents and representatives have first agreed to maintain the confidentiality thereof in writing. Notwithstanding the foregoing, the parties may use Confidential Information for purposes of routine due diligence or internal audit or if required by law.

11.3 The receiving party will promptly return all Confidential Information to the disclosing party at the disclosing party's request, to the extent such request is reasonable and does not interfere with the parties' performance pursuant to this Agreement.

11.4 The obligations imposed by this Section 11 of the Agreement do not apply to any information that: (i) is already in the possession of the receiving party; or (ii) is or becomes publicly available through no fault of the

receiving party; or (iii) is obtained by the receiving party from a third person without breach by such third person of an obligation of confidence with respect to the Confidential Information disclosed. Information will not be deemed to be within the foregoing exceptions merely because it is embraced by more general information in the public domain or in the possession of the party receiving such information, or a combination of individual items of information that could be pieced together to reconstruct such combination from non-Confidential Information.

11.5 Because the Confidential Information is unique, either of the parties' failure to comply with the provisions of this Section 11 will result in irreparable harm to the disclosing party and, in the event of a breach by the receiving party of its obligations under this Section, the disclosing party may bring suit in equity to enjoin any such breach.

11.6 Notwithstanding the foregoing, the parties further acknowledge that Buyer is subject to the requirements of the Wisconsin Public Records Law. Wis. Stats. §§19.21 et seq.. Under these statutes, all documents and records are subject to public disclosure, unless there is a statutory, common law, or public policy reason for nondisclosure. The parties acknowledge that this Agreement is subject to the provisions of the Public Records Law of the State of Wisconsin (Wis. Stat. Section 19.21 et seq.) This Agreement and attachments to this agreement are deemed to be public records. Should Buyer receive a records request for documents that contain financial information, Buyer shall notify Seller of the request and afford Seller a reasonable period of time (not to exceed 10 days) to respond to Buyer. If Seller objects to release of the requested record(s) or part thereof, Buyer shall perform the common law balancing test. If Buyer determines that the balance falls in favor of non-disclosure, it shall so inform Seller and the requestor. If Buyer determines that the balance falls in favor of disclosure, it shall so notify Seller and the requestor and afford Seller a reasonable time (not to exceed 10 business days) to commence an action seeking to prevent disclosure of the record(s).

12. Data. The data entered into the Service by Users of Customer or generated through the Service solely through the location-specific section of the B-cycle website for Customer, if applicable (collectively, "Data") will be stored on B-cycle's servers. As between B-cycle and Customer, B-cycle owns such Data and will have the right to use and disclose the Data for any lawful purpose. During the Term, B-cycle will provide Customer with copies of such Data upon request, subject to applicable law, and will provide Customer with access to various system administration features of the Service in accordance with B-cycle's then current policies and requirements, as modified by B-cycle from time to time in its discretion and provided to Customer, solely for Customer's geographic location. B-cycle grants to Customer a non-

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exclusive, irrevocable, perpetual license to use the Data for its lawful purposes.

13. WARRANTIES, DISCLAIMERS, AND LIMITATION OF LIABILITY.

13.1 Representations and Warranties. B-cycle warrants to Customer that, after an initial ninety (90) day Shakeout Period (as defined in the Purchase Agreement for Equipment and Services) following the Activation Date, the Service will operate in material compliance with the specifications set forth in Schedule H to this Agreement.

13.2 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 13.1, THE SERVICE AND ALL SERVICES ARE PROVIDED STRICTLY "AS IS," AND B-CYCLE DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO ANY SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY OR MERCHANTABILITY. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY B-CYCLE, ITS EMPLOYEES, DISTRIBUTORS, OR AGENTS WILL INCREASE THE SCOPE OF THE ABOVE WARRANTY OR CREATE ANY NEW WARRANTIES. ANY DISCLAIMERS SET FORTH IN THE ATTACHED SCHEDULES ALSO APPLY BUT DO NOT LIMIT THE FOREGOING. THE ENTIRE RISK ARISING OUT OF THE USE, PERFORMANCE, OR INABILITY TO USE THE SERVICE REMAINS WITH CUSTOMER. EXCEPT FOR CLAIMS UNDER SECTIONS 3, 9, 11 AND 14 OF THIS AGREEMENT, IN NO EVENT IS EITHER PARTY LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, PERSONAL INJURY OR PROPERTY LOSS TO EITHER PARTY'S EMPLOYEES, USERS OR OTHER THIRD PARTIES, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL B-CYCLE'S LIABILITY EXCEED THE AMOUNT IT HAS BEEN PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE CLAIM.

13.3 Customer acknowledges that the Fees, disclaimers and limitations of liability set forth in this Agreement reflect the allocation of risk negotiated and agreed to by

the parties and that B-cycle would not enter into this Agreement without these limitations on its liability. These limitations will apply notwithstanding any failure of essential purpose of any limited remedy.

14. Indemnification.

14.1 Each party will indemnify, defend and hold the other party and its affiliates and each of their respective officers, directors, members, managers, employees and agents harmless from and against any and all third party claims, damages, losses and expenses (including, without limitation, reasonable attorneys' fees) arising from (i) B-cycle's breach of any warranty regarding the Service; (ii) any claim that Customer's or User's use of the Service pursuant to the terms of this Agreement infringes or violates any third party's copyright, U.S. patent, trade secret or trademark or any other intellectual property right, or misappropriates any third party trade secret; or (iii) either party's use of Data in violation of any applicable laws, including, without limitation, any privacy and data security laws regarding the collection, use, sharing and storage of personally identifiable information or credit card information of a User.

14.2 Customer will indemnify, defend and hold B-cycle, its suppliers, licensors and vendors harmless from any and all third party claims, damages, losses and expenses (including, without limitation, reasonable attorneys' fees) arising from (i) use of the Service by Customer or any User; (ii) any claim of injury by a User other than a claim that the Service has directly injured such User; (iv) any negligent or wrongful acts or omissions of any User, Customer or its representatives; and (v) Customer's use of Data in violation of any applicable laws, including, without limitation, any privacy and data security laws regarding the collection, use, sharing and storage of personally identifiable information or credit card information of a User.

14.3 The indemnified party will promptly give written notice of any known claim to the indemnifying party (provided that any delay by the indemnified party in providing such notice will not absolve the indemnifying party from indemnifying any indemnified party, unless such delay materially prejudices the indemnifying party's ability to respond to such claim), and provide any assistance which the indemnifying party may reasonably request for the defense of the claim (with all reasonable associated costs and expenses paid by the indemnifying party). The indemnifying party will have the right to control the defense or settlement of the claim, provided, however, that the indemnified party will have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense, and if any settlement requires an affirmative obligation of, results in any ongoing liability to or prejudices or detrimentally impacts

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the indemnified party in any way and such obligation, liability, prejudice or impact can reasonably be expected to be material, then such settlement will require the indemnified party's written consent (not to be unreasonably withheld or delayed).

15. Restrictive Covenant. Except as the parties mutually agree in writing, during the term of this Agreement and for a period of one (1) year thereafter, neither Customer nor B-cycle will knowingly hire, contract, or solicit the employment of any current or previous employee of the other party who has been involved with this Agreement or performance hereunder, either indirectly or directly, unless a period of at least twelve (12) months has elapsed from the last date that such employee was employed by the party, provided that publications of open positions in media of general circulation will not constitute solicitation by either party.

16. Service Level Agreement. B-cycle will provide the Service according to the Service Levels set forth in Schedule I.

17. Escrow. Upon request by Customer and at Customer's sole expense, the parties will cooperate in good faith to locate a suitable and mutually agreeable escrow agent to hold a copy of the source code for the software used to provide the Service ("Source Code") upon the terms and conditions set forth in Schedule J.

18. General Provisions.

18.1 Dispute Resolution. This Agreement will be construed under and governed by the laws of the State of Wisconsin, excluding of choice of law provisions. The parties submit to the exclusive jurisdiction of state and federal courts of the State of Wisconsin, Milwaukee County or the United States District Court for the District of Wisconsin.

18.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to and services provided by B-cycle to Customer pursuant to the terms herein. This Agreement supersedes any and all prior agreements and understandings between the parties with respect thereto and may be amended or modified only by a writing signed by each of the parties.

18.3 Assignment. This Agreement is not assignable and the duties hereunder are not delegable without the other party's prior written consent, which consent shall not be unreasonably withheld; provided that either B-cycle or Customer may transfer and assign this Agreement without the other party's consent to any person or entity (except to a competitor of B-cycle) that is an affiliate of such party or that acquires substantially all of the stock or assets of such party's applicable business if any such assignees agree, in writing, to be bound by the terms of this Agreement. Subject to such limitation, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and

permitted assigns. For purposes of this Agreement, any change in control of a party constitutes an assignment of the Agreement. Any attempted assignment in violation of this provision is null and void.

18.4 Notices. The parties will make all notices required under this Agreement in writing at the addresses set forth on Page 1 of this Agreement. Notices are deemed delivered when transmitted by facsimile or deposited with an express delivery service with guaranteed third day delivery, prepaid. The parties will notify one another about changes of address in the same manner as they provide any other notice.

18.5 Force Majeure. Neither party will be liable to the other for any delay or failure to perform any obligation (other than failures to pay) hereunder if such delay or failure is due to any act of God, acts of civil or military authority, labor disputes, fire, riots, civil commotions, sabotage, terrorism, war, embargo, blockage, floods, or other inclement weather, epidemics, delays in transportation, inability beyond such party's reasonable control to obtain necessary labor, materials, or manufacturing facilities, or when due to governmental restrictions. In the event of any such delay or failure, the parties will have an additional period of time equal to the time lost by reason of the foregoing in which to perform hereunder.

18.6 Headers. The titles of the Sections of this Agreement are solely for the convenience of the parties and will not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

18.7 Severability. If any provision of this Agreement is held to be invalid or unenforceable by a proper authority having jurisdiction over this Agreement, such provision will be deemed null and void and the remaining provisions of this Agreement will remain in full force and effect. The parties will promptly substitute for the affected provision an enforceable provision that approximates the intent and economic effect of the affected provision.

18.8 Independent Contractor Relationship. The parties intend to create an independent contractor relationship, and nothing contained in this Agreement will be construed to make either B-cycle or Customer (or any of their respective representatives, patients, officers, employees, subcontractors or agents) partners, joint venturers, principals, agents or employees of the other. Neither party will have any right, power or authority, express or implied, to bind the other and neither will be or become liable or bound by any representation, act or omission whatsoever of the other. The parties are independent contractors and not employees of the other party and none of the parties' personnel will be entitled to

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receive any compensation, benefits or other incidents of employment from the other party.

18.9 *Language.* If this document is drafted in more than one language, then the English version shall be the controlling document and any disputes arising out of this document shall be resolved with the English version.

[Signature Page to Follow]

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IN WITNESS WHEREOF, in consideration of the foregoing and the following terms and conditions of this Agreement, together with the terms and conditions of the Schedules, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties by their authorized representatives have entered into this Agreement as of the Effective Date set forth above.

SELLER

B-CYCLE, LLC,

By:

Name: Robert Burns

Its: President

CUSTOMER

City of West Allis

By:

Name: Michael G. Lewis

Its: Director of Public Works/City
Engineer

SCHEDULE A: WEBSITE'S TERMS OF USE

B-CYCLE WEBSITE TERMS AND CONDITIONS OF USE

We welcome you to the B-cycle websites, including www.bcycle.com and the other websites that display these B-cycle Website Terms and Conditions of Use (collectively, the "Website"). The Website is owned by B-cycle, LLC and is licensed to third parties (together defined as "B-cycle"). **PLEASE READ VERY CAREFULLY THE FOLLOWING TERMS AND CONDITIONS FOR USE OF THE WEBSITE.**

1. **Acceptance of Terms.** This Terms and Conditions of Use Agreement (the "Agreement") sets forth legally binding terms for your use of Website. By using our Website, you agree to be bound by this Agreement and all applicable laws and regulations with regard to your use of the Website, whether you are a "Visitor" (which means that you simply browse our Website) or you are a "Member" which means that you have registered as a Member of this Website and obtained an "Account" which permits you to set up your "Member Profile." **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT USE THIS WEBSITE.**
2. **Changes to Terms.** We may modify this Agreement from time to time, and such modification will be effective upon its posting on our Website or any other website or location through which you are able to access our Website. You agree to be bound by any modification to this Agreement when you use the Website after any such modification is posted; it is therefore important that you review this Agreement regularly. If you have an Account, we will attempt to notify you by email when we update the terms of this Agreement.
3. **Bicycle Rental Agreement.** If you wish to rent bicycles through our system of kiosks in your area, you are required to review and accept the User Agreement You can access the User Agreement at any time by clicking on the link identified as "User Agreement" at the bottom of any page on the Website.
4. **Member Account, Password and Security.** You must be at least 18 to become a Member of our Website. If you register to become a Member, you will be required to choose a password and user name, and you may be asked for additional information regarding your Account, such as your email address. You agree to provide true, accurate, current and complete information about yourself as prompted by the registration form (the "Registration Data") and maintain and promptly update your Registration Data to keep it true, accurate, current and complete. For safety reasons, we recommend that your user name should not contain your last name (in addition, rather than your actual first name, you may want to consider using a word or term with meaning to you). You are responsible for maintaining the confidentiality of the password and account information, and are fully responsible for all activities that occur under your password and Account. You are required to (a) immediately notify B-cycle (email: info@bcycle.com) of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you log out from your account at the end of each session. B-cycle will not be liable for any loss or damage arising from your failure to comply with this paragraph. Use of and registration for the Website are void where prohibited.
5. **Leader Board.** When you register for the Website, we will give you the option to permit us to display your user name on the Website's "Leader Board." The Leader Board displays publicly visible statistics of some individual Members relating to the Member's use of the Service. If you choose to permit us to display your user name on the Leader Board, we may post your user name and statistics such and number of miles ridden, calories burned, etc. Nothing in this Section will require us to include any information about you in the Leader Board. The Leader Board is an entertainment feature of the Website. Although we will strive to track and display information about Members in the Leader Board accurately, we will not be liable for any errors or inaccuracies in the Member statistics displayed on the Leader Board.
6. **Your Interactions With Other Members.** You acknowledge that we have no screening policy, and that anyone who registers to become a Member will become a Member without any review or approval by us. You are solely responsible for your interactions with other Members that occur as a result of the Website, whether online or offline, and any communications with other individuals through or as a result of the Website are at your own risk. We disclaim all liability for any actions of other Members. Please use your discretion when deciding whether to send any of your personal information to another Member.
7. **Prohibited Conduct.** You agree not to use the Website to post or otherwise transmit information, data, text, software, music, sound, photographs, graphics, video, messages, tags, or other materials ("Content") that:
 - is patently offensive and/or promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
 - harasses or advocates harassment of another person;
 - exploits people in a sexual or violent manner;

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- contains nudity, violence, or offensive subject matter;
- solicits personal information from anyone under the age of eighteen (18);
- provides any telephone numbers, street addresses, last names or email addresses of anyone other than your own (and we advise you not to post your own and to communicate such information in private messages to other Members only at your own risk);
- promotes information that you know is false or misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
- violates any intellectual property or other proprietary right of any third party (including without limitation Content that promotes or links to an illegal or unauthorized copy of another person's copyrighted work or provides information to circumvent copy-protect devices);
- involves the transmission of "junk mail," "chain letters," or unsolicited mass mailing, instant messaging, "spimming," or "spamming";
- contains restricted or password only access pages or hidden pages or images (those not linked to or from another accessible page);
- furthers or promotes any criminal activity or enterprise or provides instructional information about illegal activities including, but not limited to making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;
- solicits passwords or personal identifying information for commercial or unlawful purposes from other Members;
- involves commercial activities and/or sales without our prior written consent, such as contests, sweepstakes, barter, advertising, or pyramid schemes;
- includes a photograph of another person that you have posted without that person's consent or, in the case of children under the age of eighteen (18), parental consent, or otherwise constitutes an invasion of an individual's privacy or infringement of publicity rights; or
- contains a virus or other harmful component.

In addition, any unauthorized modification, tampering or change of any information, or any interference with the availability of or access to the Website is strictly prohibited. You may not attempt to override or circumvent any security components and usage rules of the Website. You are prohibited from engaging in any hacking, cracking, or other means of obtaining access to any Member's account information or other data or communications not intended for you. We reserve all rights and remedies available to us, and we will not hesitate to pursue all available legal actions in response to violations of this Agreement.

8. Responsibility for Content. You, and not B-cycle, are entirely responsible for any Content that you may upload, post, email, transmit or otherwise make available via the Website. B-cycle does not control the Content posted via the Website and, as such, we do not guarantee the accuracy, integrity or quality of such Content. You understand that by using the Website, you may be exposed to Content that you deem offensive, indecent or objectionable. Under no circumstances will B-cycle be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Website.

9. Rejection/Removal of Content. You acknowledge that B-cycle does not generally pre-screen or review Member Profiles or other Content posted on our Website. However, B-cycle will have the right (but not the obligation) in its sole discretion to pre-screen, edit, refuse, or remove any Content or portion thereof that is available via the Website, in its sole discretion, for any reason.

10. Termination of Account or Access. B-cycle has the right in its sole discretion to restrict, suspend, or terminate your Account, or your access to all or any part of the Website at any time, for any or no reason, with or without prior notice, and without liability. You may choose to terminate your membership at any time by notifying us by email at info@bcycle.com. Please allow us sufficient time to process termination requests. You understand that termination of your membership is your sole right and remedy with respect to any dispute with B-cycle. Following the cancellation or termination of your membership by you or by B-cycle for any reason, B-cycle will have no further obligation to save your Member Profile, communications via the Website or any of your settings, information or Content you have posted on or transmitted through the Website. We have the right to delete any personal information or other Content immediately following termination of your Account.

11. Objectionable Content and Abuse. If you become aware of misuse of the Website by any person, if you find any Content on the Website that you feel is objectionable, or if you feel that any Member has violated the terms of this Agreement in any manner, please contact B-cycle (email: info@bcycle.com). Please include a description of the misuse of the Website or the objectionable Content or activity (along with the URL or a copy of the Content if possible) in your email. B-cycle has no obligation to take any action whatsoever in response to any such notice, and

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the receipt of any such notice will not be deemed to create any duty or liability on the part of B-cycle.

12. Preservation/Disclosure. You acknowledge, consent and agree that B-cycle may access, preserve and disclose your Account information and Content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of B-cycle, its Members and the public. Under no other circumstances will B-cycle intentionally disclose your account information to any third party.

13. Non-commercial Use. The Website may not be used in connection with any commercial purposes, except as specifically approved by B-cycle. You may link to the home page of our Website, but any unauthorized framing of or linking to our Website, or any Content therein, is prohibited. Commercial advertisements, affiliate links, and other forms of solicitation may be removed from your Member Profile without notice and may result in termination of membership privileges.

14. Ownership of Content. B-cycle does not claim ownership rights in any Content you post on or transmit through the Website. Subject to the non-exclusive license contained in the following paragraph, as between B-cycle and you, you will retain all intellectual property rights that you may have in any Content that you post on or transmit through the Website.

15. License to Your Content. In order to be able to offer you the use of our Website, you are required to grant a license to B-cycle to use and distribute your Content. This enables us to permit other Visitors to the Website and Members to view and share your Content, and to display your Content in other places within the Website. Accordingly, by posting, displaying, publishing, transmitting, or otherwise making available (individually and collectively, "posting") any Content on or through our Website, you hereby grant to B-cycle a non-exclusive (meaning you can license the Content to other parties as well), fully-paid, royalty-free, irrevocable, worldwide license (including the right to sublicense) for the duration of copyright in your Content, to use, copy, modify, adapt, translate, create derivative works, publicly perform, publicly display, store, reproduce, transmit, distribute, and otherwise make available such Content on and through our Website, in print, or in any other format or media now known or hereafter invented, without any obligation of notification, compensation, attribution or consent. If you wish to remove any Content from the Website, your ability to do so may depend on the type of Content, the location and manner of posting, and other factors. You may contact us at info@bcycle.com to request the removal of certain Content you have posted, but B-cycle has no obligation to remove any such Content, may choose whether or not to do so in its sole discretion, and makes no guarantee as to the complete deletion of any such Content and copies thereof. In any case, a back-up or residual copy of any Content posted by you may remain on B-cycle's servers after the Content appears to have been removed from our Websites, and B-cycle retains all rights granted in this paragraph to all such remaining copies. You represent and warrant that: (i) you own all right, title and interest in all Content posted by you on or through our Website, or otherwise have the right to grant the license set forth in this section, and (ii) the posting of your Content on or through our Website does not violate the privacy rights, publicity rights, copyrights, trademarks, patents, trade secrets, contract rights, confidentiality, any other rights of any third party, or any terms of this Agreement.

16. B-cycle and Third Party Content. Our Website contains Content of B-cycle ("B-cycle Content"), and Content of third party licensors to B-cycle (including content provided by you and other users of our Website, as described above), which is protected by copyright, trademark, patent, trade secret and other laws. B-cycle owns and retains all rights, title and interest in the B-cycle Content. B-cycle hereby grants to you a limited, revocable, non-sublicensable license to reproduce and display a single copy of the B-cycle Content and any third party Content located on or available through our Website (excluding any software code therein) solely for your personal, non-commercial use in connection with viewing our Website and using the features that appear on the Website. Except for Content posted by you, you may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, make available, or sell any Content appearing on or through our Website.

17. Other Sites. Our Website may contain links to other sites owned by third parties (i.e. advertisers, affiliate partners, strategic partners, or others). We are not responsible for examining or evaluating, and we do not warrant the products or offerings of, any of these businesses or individuals, or the accuracy of the content of their websites. B-cycle does not assume any responsibility or liability for the actions, product, and content of any such websites. Before you use any third party website, you should review the applicable terms of use and policies for such websites. The inclusion of a link in any of our Websites does not imply B-cycle's endorsement of such third party website. If you decide to access any such linked websites, you do so at your own risk.

18. International Use. Due to the global nature of the Internet, you agree to comply with all local rules regarding online conduct and acceptable Content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data or personal information exported from the United States or the country

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in which you reside.

19. Privacy Policy. Please review our Privacy Policy to learn what personal information we collect through this Website, how we use and share the personal information we collect, and some of the steps we take to protect your privacy. Our Privacy Policy is part of these Terms of Use. By agreeing to these Terms of Use, you are also consenting to the collection, use and disclosure of your personal information in accordance with our Privacy Policy. You can access the Terms of Use and the Privacy Policy at any time by clicking on the links for these documents at the bottom of any page on the Website.

20. Copyright Policy. B-cycle has in place certain legally mandated procedures regarding allegations of copyright infringement occurring on our Website. B-cycle reserves the right in its sole discretion to immediately suspend and/or terminate access to our Website by any user who is alleged to have infringed on the intellectual property rights of B-cycle or of a third party, or otherwise violated any intellectual property laws or regulations. B-cycle's policy is to investigate any allegations of copyright infringement brought to its attention. If you have evidence, know, or have a good faith belief that your rights or the rights of a third party have been violated and you want B-cycle to delete, edit, or disable the material in question, you must provide B-cycle with all of the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) identification of the material that is claimed to be infringed or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit B-cycle to locate the material; (d) information reasonably sufficient to permit B-cycle to contact you, such as an address, telephone number, and if available, an electronic mail address at which you may be contacted; (e) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. For this notification to be effective, you must provide it to B-cycle either by e-mail at: info@bcycle.com, or by U.S. mail to our designated agent for notification of infringement, Bob Burns, B-cycle, LLC, 801 West Madison St, Waterloo, WI 53594.

21. Term and Termination. This Agreement will remain in full force and effect for so long as it is accessible through the Website. If you wish to terminate your membership, please follow the instructions on the FAQ page for the Website or email us at info@bcycle.com. B-cycle reserves the right to terminate your Account or your access to our Website immediately, with or without notice to you, and without liability to you, if B-cycle believes that you have breached any of the terms of this Agreement, furnished B-cycle with false or misleading information, or interfered with use of the Website by others.

22. Disclaimer of Warranties. You expressly understand and agree that:
YOUR USE OF THE WEBSITE IS AT YOUR SOLE RISK. THE WEBSITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. B-CYCLE AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS (THE "B-CYCLE PARTIES") EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WITH RESPECT TO THE WEBSITE, AND ANY THIRD PARTY WEBSITES WITH WHICH THEY ARE LINKED.
THE B-CYCLE PARTIES MAKE NO WARRANTY: (I) THAT THE WEBSITE OR THE FEATURES OFFERED ON THE WEBSITE WILL MEET YOUR REQUIREMENTS, WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR FREE OF ANY HARMFUL COMPONENTS (INCLUDING VIRUSES); (II) REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE WEBSITE; AND (III) THE QUALITY OF THE BICYCLES, CONTENT, PRODUCTS, SERVICES, INFORMATION OR ANY MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE WEBSITE WILL MEET YOUR EXPECTATIONS. WE DO NOT PROVIDE ANY REPRESENTATIONS OR WARRANTIES AGAINST THE POSSIBILITY OF DELETION, MISDELIVERY OR FAILURE TO STORE COMMUNICATIONS, PERSONALIZED SETTINGS, OR OTHER DATA.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF OUR WEBSITE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

23. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS IN NO EVENT WILL THE B-CYCLE PARTIES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY

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INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE OF THE WEBSITE, OR ANY WEBSITE WITH WHICH THEY ARE LINKED, EVEN IF B-CYCLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, B-CYCLE'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO B-CYCLE FOR THE WEBSITE. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, in certain jurisdictions, some of the above limitations of liability may not apply to you; all other provisions of this Agreement remain in full force and effect.

24. Indemnity. You agree to indemnify, defend, and hold harmless the B-cycle Parties from any and all third party claims, losses, liability, damages, and/or costs (including reasonable attorney fees and costs) arising from or relating to your breach of the terms of this Agreement or your use of the Website. B-cycle will notify you promptly of any such claim, loss, liability, or demand, and will provide you with reasonable assistance, at your expense, in defending any such claim, loss, liability, damage, or cost.

25. Additional Terms. We may also require you to follow additional rules, guidelines or other conditions ("Additional Terms") in order to participate in certain promotions or activities available through our Website, to obtain certain premium Content through our Website, or for other reasons. These Additional Terms will be posted on the relevant portions of our Website or on the portions of our Website that describe the specific promotions, Content, or activities. These Additional Terms are part of this Agreement, and you agree to comply with them when you participate in those promotions, purchase items from our online stores, or otherwise engage in activities governed by such Additional Terms.

26. Modification and Discontinuation. We reserve the right at any time to modify, edit, delete, suspend or discontinue, temporarily or permanently our Website (or any portion thereof) with or without notice. You agree that we will not be liable to you or to any third party for any such modification, editing, deletion, suspension or discontinuance of the Website.

27. Entire Agreement. This Agreement, together with any other terms or policies referenced herein (including without limitation the Privacy Policy and Additional Terms), constitutes the entire agreement between you and B-cycle and governs your use of the Website, superseding any prior agreements between you and B-cycle with respect to the Website.

28. Choice of Law and Forum. This Agreement and the relationship between you and B-cycle will be governed by the laws of the State of Wisconsin without regard to its conflict of law provisions. You and B-cycle agree to submit to the personal and exclusive jurisdiction of the courts located within Madison, Wisconsin.

29. Waiver and Severability of Terms. The failure of B-cycle to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect.

30. Limitation on Actions. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Websites or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

31. Questions. If you have any questions regarding this Agreement, please contact us by email at info@bcycle.com, or by mail at 801 West Madison St, Waterloo, WI 53594.

SCHEDULE B: PRIVACY POLICY

B-CYCLE WEBSITE PRIVACY POLICY

This B-cycle Website Privacy Policy (“**Privacy Policy**”) governs your use of the B-cycle websites, including www.bcycle.com and any other websites that display this Privacy Policy (collectively, the “**Website**”). The Website is owned by B-cycle, LLC and licensed to third parties (together known as “**B-cycle**”). We have created this Privacy Policy to ensure that you understand our policies and procedures, what personal information you must provide if you wish to use our Website and, ultimately, how we use such personal information. This Privacy Policy is a part of and is incorporated into our B-cycle Website Terms and Conditions of Use. You can access either of these documents at any time by clicking on the links at the bottom of any page on the Website. By accessing or using the Website, you accept, without limitation or qualification, the terms of this Privacy Policy.

1. **Information We Collect.** We collect two types of information from users of our Website: personal information described below; and non-personal information such as information about traffic patterns and usage statistics regarding our Website.

2. **Personal Information.** You may browse our Website without registering for the Website. However, to access certain features of our Website, we require you to register as a member (“**Member**”) and select a user name and password. Some personal data is collected during the registration process. We may then ask for additional information, including personally identifiable and non-personally identifiable information.

When you register as a Member of the Website, or when you enter a contest or other promotion, we may ask you for certain personal information such as your name, address, e-mail address, or credit card number, in order to process your order, administer the contest, or send you promotional e-mails. Providing personal information in these instances is solely your choice; you do not need to provide such information, register as a Member, or enter such contests to browse our Website.

3. **How We Use Your Personal Information.** We use the information collected through our Website for a variety of purposes, including, but not limited to, processing your registration as a Member, operating the Website, and contacting Members. We may use your information to communicate with you, to update you regarding features of the Website, to personalize the Website for you, to contact you for market research or to provide you with marketing information, newsletters, or other information we think would be of interest to you. In addition, if you become a Member of our Website, we may send you an email confirming your membership details.

You can request to remove your email address from our email list for marketing related email messages, or other emails which are not necessary to your participation as a Member of the Website by following the procedures set forth in the “Opt Out Procedures” section below. In addition, you can modify your information or change your preferences, as set forth in the “Reviewing or Changing Your Information” section below. We will strive to exclude you from future communications if you follow the procedures set forth in this section.

Information obtained through our Website may be intermingled with and used in conjunction with information obtained through sources other than our Website, including both offline and online sources.

4. **Disclosure of Personal Information through Leader Board or to Other Members.** If you elect during registration, your user name and other information or Content you provide may be visible on the Leader Board to anyone who visits our Website or browses through our Website, including individuals who are not registered Members. Please keep this in mind as you select your user name.

The Website is not currently set up for social networking. Except for information about you that may appear on the Leader Board, information that you provide as part of your registration or that is collected about you through your use of the B-cycle Service is generally not visible to other Members or to non-members who visit the Website. This may change in the future as we add more features and functionality to the Website.

Please use extreme caution when deciding whether and when to provide any personally identifiable information about yourself (such as your full name, email address, phone number, or address) to another Member of the Website via email, through the Leader Board or otherwise.

5. **Non-Personal Data.** In some cases, we may collect non-personal information. Examples of this type of information include the type of internet browser you are using, the type of computer operating system application software, and peripherals you are using and the domain name of the website from which you accessed our Website. We use your information to do such things as operate and enhance our Website, and sell and deliver advertising.

6. **Cookies.** Certain features on our Website utilize cookie technology. A cookie is a small data file that certain web sites write to your hard drive when you visit them. A cookie file can contain various types of information, including a user ID that the site uses to track the pages you've visited. We may use cookies to enhance your experience on our Website, to determine user traffic patterns and for other purposes.

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Most browsers are initially set up to accept cookies; however, you can reset your browser to refuse all cookies or indicate when a cookie is being sent or you can flush your browser of cookies from time to time. (Note: you may need to consult the help area of your browser application for instructions.) If you choose to disable your cookies setting or refuse to accept a cookie, however, you may not be able to access all areas or features of our Website.

7. Opt Out Procedures. You have certain options to opt out of receiving promotional or commercial information from B-cycle and our Website during registration and through your Account settings. However, you may not opt out completely of receiving email communications necessary for the operation of your membership in the Website unless you decide to terminate your membership. If you no longer wish to use or visit our Website, or receive any form of direct contact from B-cycle or our Website, whether it is email, discounts, newsletters, or other promotional offers or materials, contact us at: info@bicycle.com.

8. Reviewing or Changing Your Information. In order to ensure that the information we maintain is accurate, B-cycle gives Members the option to change or modify their information previously provided during registration. If you would like to change your information currently in our database please log in to your Account and click the "My Profile" link or email us at info@bicycle.com.

9. Sharing of Your Information. Except as prohibited by law, B-cycle may share your personal information: (i) with the operators of our Websites and bicycle rental programs; (ii) third parties for advertising or marketing purposes, (iii) if B-cycle is required by law to do so, (iv) in the event of a transfer of ownership of B-cycle, merger or other similar transaction, or (v) as otherwise set forth in this Privacy Policy.

We may share certain personal information with third parties for advertising, promotional and other purposes regarding products and services that we think may be of interest to you. We also may work with third party advertising companies, to serve and track our ads. These third parties may serve other cookies. Our advertising partners may use personal and non-personal information they collect from our Website to help us better market and serve our customers.

This Privacy Policy does not address the practices of third parties who may collect your personal information. You may visit other websites, through links on the Website, which may collect, use and share your personal information in accordance with their own privacy policies. The information practices of those linked websites are not covered by this Privacy Policy, and we encourage you to be very cautious before you disclose your personal information to others.

In order to provide you with the Website and any information, products or services which you have requested, we may share or transfer your personal information with our affiliates or subsidiaries, or third party agents acting on their behalf.

B-cycle may be obligated to cooperate with various law enforcement inquiries. B-cycle reserves the right to disclose or transfer personal information and non-personal information about you and your activities on the Website in order to comply with a legal requirement or request from law enforcement or other government officials, administrative agencies or third parties as we, in our sole discretion, determine necessary or appropriate for the administration of justice, or in connection with an investigation of fraud, intellectual property infringements or violations of any other law, rule or regulation, our B-cycle Terms and Conditions of Use or other rules or policies of our Website, the rights of third parties, or an investigation of any other activity that may expose us or you to legal liability, or to investigate any suspected conduct which B-cycle in its sole discretion deems improper.

10. Security. We have installed encryption software conforming to the Secure Socket Layers (SSL) protocol to safeguard all of the information you send to us. All information is stored on our servers in a secure location. It is important for you to protect against unauthorized access to your password and to your computer. If your password is compromised, notify Customer Service at once at info@bicycle.com.

11. Protection for Children. Our Website is not intended for users under the age of 18. Furthermore, we do not knowingly collect personally identifiable information from children (i.e., individuals under the age of 13). If you believe that a child has provided information to us through the Website, please contact us by email at info@bicycle.com or by writing us at B-cycle 801 West Madison St, Waterloo, WI 53594 Attn. Privacy Officer. We will use our best efforts to remove all of the information provided by the child from our system.

12. Privacy Precaution Warning. Please note that no data transmission over the Internet is 100% secure. As a result, we cannot guarantee the security of the information that you transmit via our Website.

13. Your Consent. You may have certain rights under various state and federal statutes that may apply to the personal and non-personal information we collect in connection with the Website. By accepting the terms of this Privacy Policy and using our Website, you are waiving all of such rights as to collection, use, disclosure and storage of your personally identifiable and non-personal information as described herein. You recognize that we are able to offer our Website to you solely based upon these terms, which are an integral part of our contract for the provision of services.

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By using our Website and providing your personal information to us, you also authorize the export of your personal information to the USA, as well as its storage and use as specified herein. Our headquarters is located in the state of Wisconsin, in the USA. This Privacy Policy and our legal obligations are subject to the laws of Wisconsin and the USA, regardless of the location of any user. Any claims or complaints must be filed in the USA in the State of Wisconsin.

We may amend our Privacy Policy at any time, without notice to you, by posting such revised Privacy Policy on this page, so you are always aware of what information we collect, how we use it and under what circumstances we may disclose it. Any changes will only apply to information collected after the change is posted.

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**SCHEDULE C: USER AGREEMENT
FOR EXAMPLE ONLY-CUSTOMER TO PROVIDE**

USER BIKE SHARING AGREEMENT

TERMS AND CONDITIONS, RIDER'S RELEASE OF LIABILITY, ASSUMPTION OF RISK, INDEMNITY AND HOLD HARMLESS.

RIDER should CAREFULLY READ all terms and conditions before entering this Agreement.

1. PURPOSE OF AGREEMENT

This document constitutes the entire Agreement ("Agreement") between (a) RIDER, the person agreeing to lease and use the bike ("Bike"), and (b) [NAME OF ENTITY] ("___").

2. GENERAL RENTAL AND USE OF BIKE: Agreements and Restrictions

2.1 **RIDER is sole user:** ___ expressly agrees to let, and the RIDER expressly agrees to take on, rental of the Bike subject to the terms and conditions set out herein. ___ and the RIDER are the only parties to this Agreement. The RIDER is the sole lessee and is solely responsible for compliance with all terms and conditions contained herein.

2.2 **RIDER is ___ or older:** RIDER represents and certifies that RIDER is at least ___ years old. If RIDER intentionally or unintentionally misrepresents his/her age, RIDER accepts full responsibility and is liable for any consequence, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits or disbursements of any kind or nature whatsoever related to any such misrepresentation.

2.3 **RIDER is a competent bike operator:** RIDER represents and certifies that he/she is familiar with the operation of the Bike, and is reasonably competent and physically fit to ride the Bike.

2.4 **Bike is exclusive property of ___:** RIDER agrees that the Bike and any equipment attached thereto, at all times, remains the exclusive property of ___. RIDER will not make any modification to the Bike at any time.

2.5 **Bike Operating Hours and Bike Availability:** RIDER agrees and acknowledges that the Bikes are available seasonally, 7 days/week. Bikes must be rented within the maximum rental time limits set forth in 2.6 below. Bikes are limited and Bike availability at any station is never guaranteed.

2.6 **MAXIMUM RENTAL TIME AND CHARGES:** Maximum rental time is ___ hours. RIDER agrees that RIDER will return the Bike to a designated ___ Bike Station within ___ hours of time that rental of the Bike began. RIDER may then rent again. RIDER agrees that he/she is solely responsible for being aware of any elapsed time related to the timely return. Bike Rental Charges are \$___ for the first half hour, \$___ for the second half hour, \$___ additional for the third half hour, \$___ additional for the 4th half hour, and \$___ additional for each half hour thereafter. The maximum day charge is \$___ and is based on a calendar day. Upon return of the bicycle, the rider will be charged the accumulated rental charges, or the maximum day charge; whichever is less. Bikes not returned within ___ hours will be considered stolen, and Rider will be charged \$___. Applicable local and state sales tax of ___% included in Rental and Replacement Charges.

2.7 **Bike may be used and/or operated only in the City of _____:** RIDER agrees to only use, operate and/or ride the Bike in the City of _____. RIDER will not, under any circumstances, remove the Bike from the City of _____.

2.8 **RIDER must follow rules of use and/or operation of Bike:** RIDER agrees to follow all laws pertaining to the use, riding and/or operation of the Bike, including all state and local laws and the rules and regulations pertaining to bicycles in the City of _____.

2.9 **Bike is intended for only limited types of use:** RIDER agrees that he/she will not use the Bike for racing, mountain bike riding, stunt or trick riding. RIDER agrees that he/she will not operate and/or use the Bike on unpaved roads, through water, or in any location that is prohibited, illegal and/or a nuisance to others. RIDER agrees that he/she will not use the Bike for hire or reward, nor use it in violation of any law, ordinance or regulation.

2.10 **RIDER's use of front carrier/basket is limited:** RIDER acknowledges that the front carrier/basket of the Bike is intended for light goods only, and that he/she will not carry people or animals anywhere on the bicycle.

2.11 **RIDER must report accident, stolen or lost Bike and/or ___ Membership Card:** RIDER agrees that

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he/she must immediately report an accident, or a stolen or lost Bike to ___ and Police. Stolen or lost membership cards will be reported to ___. RIDER agrees that he/she is responsible and liable for any misuse, consequences, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits or disbursements of any kind or nature whatsoever related to a stolen or lost Bike and/or ___ Membership Card.

2.12 **RIDER responsibility related to Bike use and damage:** RIDER agrees to return the BIKE to ___ in the same condition received, ordinary wear and tear expected. RIDER agrees to ensure that the Bike is always locked and secured when unattended. Bikes may be equipped with wire locks; however, ___ will not be responsible for any lost, stolen, destroyed and/or damaged Bike under any circumstances, regardless of whether Bike locks are used or not properly functioning. RIDER agrees to pay for destruction or loss of Bike and for any damage, including replacement parts. (RIDER agrees to pay for any loss even though damage was caused by someone else). All repairs needed as a result of any damage, will be performed at the normal labor rates. In the event the Bike is lost or damaged beyond repair, regardless of fault or cause, RIDER agrees to pay ___ the full replacement value of the equipment.

3. WAIVER AND/OR LIMITATION OF LIABILITY

3.1 For and in consideration of rental and use of the Bike, RIDER specifically forever releases and relinquishes and discharges ___, B-cycle, LLC, the City of _____, all ___ Sponsors as well as owners of property upon or near which stations are located ("Released Parties") from any and all claims, liability, cause (s) of action and/or damage or wrongful death, injury to others and/or third parties, which arise out of, result from or relate to this Agreement; the rental, maintenance, design, use and/or operation of the Bike; the ___ program, and/or its website, including any and all claims, liability, cause(s) of action and/or damages related to the sole or partial negligence of Released Parties and/or the negligence of others. By this agreement any such claims, rights, and causes of action that RIDER (and RIDER'S legal guardian(s), if applicable) may have are hereby waived, released and relinquished, and RIDER (and guardian(s), if applicable) does(do) so on behalf of RIDER'S heirs, executors, administrators and assigns.

3.2 RIDER expressly agrees to indemnify, release and hold harmless Released Parties from all liability for any such property loss or damage, personal injury or loss of life, whether caused by the sole or partial negligence of ___ and/or the negligence of others, whether based upon breach of contract, breach of warranty, active or passive negligence or any other legal theory, in consideration for using and/or operating the Bike.

3.3 RIDER voluntarily agrees, understands and recognizes that RIDER will have no right to make a claim or file a lawsuit against Released Parties arising out of this Agreement, the rental, maintenance, design, use and/or operation of the Bike, the ___ program, and/or this website, in consideration for using and/or operating the Bike.

3.4 This agreement is governed by the applicable laws of the State of _____. If any provision of this agreement is found to be unenforceable, all other provisions will be given full force and effect.

4. **ACCEPTANCE of AGREEMENT and TERMS and Conditions by RIDER:** RIDER expressly acknowledges that he/she has carefully read the entire Agreement, including the Terms and Conditions, and understands this Agreement, including, but not limited to, the Waiver and Liability, Assumption of risk and Indemnification Provisions fully and expressly agrees to be bound by this Agreement. After careful deliberation, RIDER voluntarily gives his/her consent and expressly agrees to all the conditions included in this Agreement as set forth above.

SCHEDULE D: ACTIVATION PLAN

Initial Activation

B-cycle will activate the Service on the number of Stations and/or Smart Bicycles set forth in the Purchase Agreement on a date that is on or before the Launch Date (as defined in the Purchase Agreement), as mutually agreed upon by the parties.

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SCHEDULE E: TRAINING AND SUPPORT SERVICES

B-cycle will provide a system set-up manual to customer when the administration and CMS websites become available. B-cycle will then provide a two (2) hour training session via web conference on how to set-up and operate the administration and CMS sites. At a time closer to launch date, B-cycle will provide more in-depth training on operation of the administration site.

B-cycle will provide telephone support to Customer's personnel at no charge during B-cycle's normal business hours during the first four (4) weeks after the Acceptance Date for the first location. Thereafter, B-cycle will have the right to charge, and Customer will pay, for such telephone support at B-cycle's then current rates. The rate for telephone support for the calendar year 2013 will be \$40 per call.

Notwithstanding the foregoing, B-cycle will not charge Customer for telephone support calls if B-cycle later determines, in its reasonable discretion, that the call reported an error in the Service or other maintenance issue relating to the Service. In contrast, technical support questions regarding functionality of the Service or questions how to perform certain tasks or operations within the Service's existing functionality will be subject to the per call charge as set forth in this paragraph.

For purposes of clarity, the training and telephone support provided in this *Schedule E* will be provided only to Customer and its personnel. B-cycle will not provide training, support or telephone support directly to Users under the Digital Platform Services Agreement.

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SCHEDULE F: CUSTOM DEVELOPMENT SERVICES

In the event B-cycle and Customer mutually agree that a custom software enhancement request by Customer should be developed, the parties will mutually agree in advance in writing to the fee that B-cycle will charge for any Custom Development Services performed by B-cycle for Customer or Users.

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SCHEDULE G: FEES

Fees. During the Initial Term, Customer will pay B-cycle the following Fees:

- A \$7500 set up fee (“Software Design Fee”) (Note: this fee is waived if incorporated into the existing Bublr system)
- A fee equal to \$125 per dock per year (“Software Fee”).(Note: this fee is reduced to \$99 per dock per year if incorporated into the existing Bublr system)
- A Billing Administrative Fee of 1% on all credit card transactions through the Mobile App System.

B-cycle will issue an Invoice to Customer setting forth the Software Design Fee. B-cycle will automatically apply and deduct the Billing Administrative Fee. The Billing Administrative Fee is subject to change at any time at the sole discretion of B-cycle. Customer will pay all Invoices for Fees within thirty (30) days following the date of the Invoice. Mobile App credit card payments will be administered through a sub-account of B-cycle’s account.

Exclusions. The Software Design Fee and the Software Fee are limited to the Services described in this Schedule G. Without limitation, the Fees do not cover the cost of delivery, installation, power, site preparation, connectivity, the bicycles, bicycle computers, radio head controllers, kiosks, docks or other hardware.

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SCHEDULE H: SPECIFICATIONS FOR THE SERVICE

B-CYCLE DIGITAL SOLUTION

The B-cycle bike sharing system includes a digital platform comprised of 5 discrete components

1. Customizable Public Facing Website

Capabilities and Features:

- Static information pages (what is it, how to use it, etc.)
- Interactive content and tools
- Local news and events publishing with live, relevant Twitter feeds
- B-Station
- Online subscription purchases, renewals, and upgrades
- Hooks to established social networking sites (links and live feeds)
- Password protected member's portal with personalized data
- Profile information
- Ride and payment history
- Health and environmental impact
- Leader board – user population ranking

2. Self Service Kiosk

Capabilities and Features:

- Touch screen access to:
 - Bike checkout for subscription holders
 - 1 Day/24H subscription purchase via credit card
 - Text-based way-finding for available open docks
 - 15-minute credit requests when station is full
- RFID scanning access to:
 - Bike checkouts at the dock

3. Virtual Kiosk

Capabilities and Features:

- Standard bike check in and outs performed by bike sharing staff members from a laptop (with RFID reader and credit card reader as needed)

4. Mobile Applications

Capabilities and Features:

- Location based Dock and Bike Locator (find bikes and open docks relative to GPS coordinates of the user)
- Outbound system generated SMS text alerts (overdue bike warnings, etc.)
- Open API for mobile developer community

5. Backend Operations Management

Capabilities and Features:

- Tiered, role-based access
- Subscriber and member management (including bulk-loading)
- Inventory management (Kiosks, RFID cards, Bikes, Docks, etc.)
- Reports and role-specific dashboards
- Configurable notifications (maintenance events, overdue bikes, etc.)
- Fulfillment process support
- Maintenance and Issue Tracking
- Program personalization and configuration (notifications, subscription types + pricing)
- Virtual Kiosk management – mobile bike check ins/outs, offsite maintenance

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SCHEDULE I: SERVICE LEVEL AGREEMENT

Service Levels; Credits. B-cycle will provide the Service to Users via the Internet and through the Kiosks and Dash bikes on a daily basis every day of the year and will provide a credit to Customer in the event that the Service is not available in any single month in excess of the following maximum downtime standards:

Performance Standards

Service	Up Time Requirement	Penalty
Kiosk Service	95% up time per month	1% of the average monthly service fee in Schedule G for every 1% up time below stated requirement.
Dash Smart Bicycle Service	95% up time per month	1% of the average monthly service fee (excluding cellular fees) in Schedule G for every 1% up time below stated requirement.
Web Service (front and back end)	95% up time per month	1% of the average monthly service fee in Schedule G for every 1% up time below stated requirement.
Connectivity	B-cycle is not responsible for loss of, or poor, cellular connectivity	Connectivity is dependent on third party providers, local landscapes and/or weather conditions.
Station Power	B-cycle is not responsible for loss of power supply	Power is dependent on third party utility providers, property owners and/or or solar conditions.

Downtime. The following will not count as downtime or a breach of the performance standards: planned downtime for maintenance that is scheduled at least 24 hours in advance and held between the hours of 11 pm and 5 am; any loss or interruption of the Service from causes beyond the control of B-cycle, or which are not reasonably foreseeable by B-cycle, including, without limitation, user error, ping or denial of service attacks, third party attacks, interruption or failure of power supply, telecommunication or digital transmission links, cellular network traffic, Internet slowdowns or failures, insufficient solar coverage, hardware issues, failures attributable to the actions of Customer or third parties; downtime that occurs between the hours of 11 p.m. and 5 a.m. Mountain time (for Kiosks & Dash bikes) or between the hours of 11 p.m. and 5 a.m. (for the Internet).

Payment of Credits. B-cycle will track downtime for the Service as set forth in this **Schedule I** during the Term and will periodically provide written or electronic reports to Customer setting forth the down time, if any, of the Service per month and the calculation of any credits awarded to Customer as set forth in this.

Escalation Procedures. Customer will contact the customer service representative (“Service Representative”) designated by B-cycle from time to time to report unscheduled downtime and will provide all available information about the outage in order for the Service Representative to handle or direct the timely resolution of the issue.

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SCHEDULE J: SOURCE CODE ESCROW TERMS AND CONDITIONS

1. Customer will pay all costs and fees relating to the creation and maintenance of the escrow, including all fees charged by the escrow agent. B-cycle will provide the Source Code to the escrow agent upon execution of an Escrow Agreement between the parties and an escrow agent which is agreeable to both Customer and B-cycle (“**Escrow Agreement**”). During the Term of the Agreement, B-cycle will provide updated versions of the Source Code, if any (excluding source code in development or testing stages), to the escrow agent within thirty (30) days after B-cycle makes such updates generally available to its other customers. The Escrow Agreement will provide that the Escrow Agent will release the Source Code to Customer only upon the occurrence of the following conditions (each a “**Releasing Event**”):

(a) if B-cycle has availed itself, or been subjected by any third party, to a proceeding in bankruptcy, which proceeding has not been dismissed within thirty (30) days, in which B-cycle is the named debtor; in which a receiver has been appointed for B-cycle; or any other proceeding involving insolvency or the protection of B-cycle from creditors; or

(b) if B-cycle has ceased its on-going business operations, or has clearly manifested its intent to permanently cease or has ceased providing the Services for a period of thirty (30) continuous days.

2. The terms of this Section 2 will be effective only if the Agreement is in full force upon the occurrence of a Releasing Event. If the Agreement has been previously terminated, then despite the occurrence of a subsequent Releasing Event, the Source Code will not be released. Customer will give written notice by certified mail to the escrow agent and B-cycle if it claims the occurrence of a Releasing Event. The Escrow Agreement will provide that unless B-cycle files, within ten (10) days, an affidavit executed by a responsible executive clearly refuting the occurrence of the Releasing Event, then the escrow agent will deliver to Customer within the next five (5) business days the Source Code. If Customer disputes any claims in such affidavit, Customer may seek adjudication by a neutral third-party arbitrator that a Releasing Event has occurred, and B-cycle will agree to all aspects of the arbitration process and the third-party arbitrator selected by Customer.

3. Subject to the terms and conditions of this *Schedule I* and the Agreement, upon release of the Source Code to Customer, B-cycle hereby grants to Customer a non-exclusive, non-transferable, non-assignable license to use, copy and modify such Source Code solely as necessary to continue to use and maintain the Services provided by B-cycle to Customer’ customers under the Agreement and consistent with all obligations and limitations set forth therein, including restrictions on disclosure of Confidential Information. Further, Customer will use the Source Code strictly in accordance with the following conditions:

(a) Customer may use the Source Code only to make modifications to the Source Code that are necessary to support and maintain the provision of Services for the uses expressly provided in this Agreement or as required by law and for no other purpose. Customer will not make copies of the Source Code except as necessary to support and maintain the provision of the Services as provided in the preceding sentence, and will not authorize anyone else to make copies of the Source Code. All copies of the Source Code will be marked with a restrictive legend identifying the Source Code as confidential and proprietary to B-cycle and prohibiting any unauthorized use or reproduction;

(b) Customer will allow use of or access to the Source Code only by employees and contractors of Customer who have a need to use the Source Code for exercise of Customer’ rights with respect to the Source Code set forth herein and who have signed nondisclosure agreements containing

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terms at least as restrictive as those set forth in this Agreement;

(c) Customer will not allow use of or access to the Source Code by any third parties except as provided above, and when provided with access to the Source Code, will maintain and use the Source Code only in reasonably secure facilities. For Source Code that is useable or stored on any computer equipment (whether a multi-user system, network, stand-alone computer or otherwise), the equipment will have password-based access control, with each user having a unique user identification and associated password;

(d) Customer will maintain a record of (1) all employees, contractors, and other personnel who use or have access to the Source Code, (2) the number of copies made, if any, of the Source Code, and (3) the computer equipment and storage media on which the Source Code is used or stored, and will provide such record(s) to B-cycle upon request.

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