



Amendment No. 3  
To  
Contract No. GA130000088  
For  
Bikes, Kiosks, and Software for the Bike Share Program  
Between  
B-Cycle, LLC  
and the  
City of Austin

1.0 The total Contract amount is hereby increased by \$439,000. The total Contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 08/02/13 – 08/01/18	\$2,000,000	\$2,000,000
Amendment No. 1: Extension Option 08/02/18 – 08/01/23	\$0	\$2,000,000
Amendment No. 2: Administrative Increase September 2019	\$61,000	\$2,061,000
Amendment No. 3: Increase Authorization February 2020	\$439,000	\$2,500,000

2.0 MBE/WBE goals do not apply to this Contract.

3.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

4.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above-referenced contract.

Signature & Date:

 2-21-2020

Printed Name: Morgan Ramaker  
Authorized Representative

B-Cycle, LLC  
801 W. Madison  
Waterloo, WI 53594

Signature & Date:

 **Marian Moore**

Digitally signed by Marian Moore  
DN: cn=Marian Moore, o=City of Austin,  
ou=Purchasing Office,  
email=marian.moore@austintexas.gov, c=US  
Date: 2020.03.30 09:22:50 -05'00'

Printed Name: Marian Moore

Title: Procurement Specialist IV  
City of Austin Purchasing Office



Amendment No. 2  
To  
Contract No. GA130000088  
For  
Bikes, Kiosks, and Software for the Bike Share Program  
Between  
B-Cycle, LLC  
and the  
City of Austin

- 1.0 The total Contract amount is hereby administratively increased by \$61,000. The total Contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 08/02/13 – 08/01/18	\$2,000,000	\$2,000,000
Amendment No. 1: Extension Option 08/02/18 – 08/01/23	\$0	\$2,000,000
Amendment No. 2: Administrative Increase September 2019	\$61,000	\$2,061,000

- 2.0 MBE/WBE goals do not apply to this Contract.
- 3.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above-referenced contract.

Signature & Date:

Printed Name: Morgan Ramaker  
Authorized Representative

B-Cycle, LLC  
801 W. Madison  
Waterloo, WI 53594

Signature & Date:

10-8-19

Printed Name: Marian Moore

Title: Procurement Specialist IV  
City of Austin Purchasing Office



Amendment No. 1  
to  
Contract No. GA130000088  
for  
Bikes, Kiosks and Software for Bike Program  
between  
B-cycle, LLC  
and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the subject contract. This extension option will be effective August 2, 2018 to August 1, 2023. Zero options remain.
- 2.0 The total Contract amount is increased by \$0.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 08/02/2013 – 08/01/2018	\$2,000,000.00	\$2,000,000.00
Amendment No. 1: Option 1 – Extension 08/02/2018 – 08/01/2023	\$0.00	\$2,000,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: \_\_\_\_\_

Printed Name: Robert Burns  
Authorized Representative

Signature: \_\_\_\_\_

Danielle Lord, Procurement Manager  
City of Austin  
Purchasing Office

B-cycle, LLC  
801 W. Madison Street  
Waterloo, WI 53594  
[bburns@bcycle.com](mailto:bburns@bcycle.com)  
920-478-2191 ext 12654



**Financial and Administrative Service Department  
Purchasing Office**  
P.O. Box 1088, Austin, Texas, 78767

June 21, 2013

Robert Burns  
B-Cycle, LLC  
801 W. Madison  
Waterloo, WI 53594

Dear Mr. Burns:

The City of Austin has approved the award, negotiation, and execution of a contract with your company for the purchase of Bikes, Kiosks, and Software for the Bike Share Program for the Public Works Department.

Responsible Department:	Public Works Department
Department Contact Person:	Nadia Barrera
Department Contact Email:	<a href="mailto:Nadia.Barrera@austintexas.gov">Nadia.Barrera@austintexas.gov</a>
Department Contact Telephone:	(512) 974-7142
Project Name:	Bikes, Kiosks, and Software for the Bike Share Program
Contractor Name:	B-Cycle, LLC
Contract Number:	GA130000088
Contract Authorization:	\$2,000,000
Requisition Number:	6000 12101600068
Solicitation Number:	RFP EAG0111
Agenda Item Number:	32
Council Approval Date:	6/20/13

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person above.

Sincerely,

Erin D'Vincent,  
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")  
AND  
B-cycle, LLC ("Contractor")  
for  
Bikes, Kiosks and Software for Bike Share Program**

The City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between B-cycle, LLC having offices at 801 W. Madison Street, Waterloo, WI 53594 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number EAG0111.

**1.1 This Contract is composed of the following documents:**

- 1.1.1 This Contract, including all its attachments and exhibits
- 1.1.2 The City's Solicitation, Request for Proposal, EAG0111 including all documents incorporated by reference
- 1.1.3 B-cycle, LLC's Offer, dated November 9, 2012, including subsequent clarifications
- 1.1.4 Exhibit A – Contractor's Best and Final Offer

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This Contract, including all its attachments and exhibits
- 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.3 Exhibit A as referenced in Section 1.1.4
- 1.2.4 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications.

**1.3 Term of Contract.** The Contract shall be in effect for an initial term of 60 months and may be extended thereafter for up to one additional 60 month period, subject to the approval of the Contractor and the City Purchasing Officer or his designee. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 365 calendar days unless mutually agreed on in writing).

**1.4 Compensation.** The Contractor shall be paid, in accordance with Exhibit A, a total Not-to-Exceed amount of \$2,000,000, subject to section 1.5 below. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order. Future expenses for the operation and management of the Bike Share Program have been assigned to Bike Share of Austin in accordance with Item 1.7.3 below.

- 1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order.
- 1.6 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations, and in accordance with the following executed agreements:
- 1.6.1 Intellectual Property License Agreement
- 1.6.2 Digital Platform Services Agreement
- 1.7 **Clarifications and Additional Agreements.** The following are incorporated into the Contract.
- 1.7.1 The first year station service plan described in Contractor's Offer is included at no charge to the City.
- 1.7.2 The proposed schedule in the solicitation is changed as follows:
- 1.7.2.1 Subject to the city's compliance with section 1.7.7, below, and Bike Share of Austin's compliance with its responsibility of its May 2013 contract with the City of Austin, beginning of Service no later than December 31, 2013.
- 1.7.3 In accordance with Section 0300, Item 45, Assignment –Delegation of the City's Standard Terms and Conditions, Contractor acknowledges and understands the City has entered into an agreement with Bike Share of Austin assigning all the operations and management of the City's Bike Share Program to Bike Share of Austin with all rights and responsibilities as outlined in the Contract between the City and Bike Share of Austin (Exhibit B). At the City's direction and authorization Contractor shall coordinate, share at no cost to the City and cooperate fully with Bike Share of Austin in order to fulfill its obligations under this Contract and assist in the success of the City's Bike Share Program.
- 1.7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:
- 1.7.4.1 disposal of major assets;
- 1.7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 1.7.4.3 any significant termination or addition of provider contracts;
- 1.7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 1.7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 1.7.4.6 reorganization, reduction and/or relocation in key personnel;
- 1.7.4.7 known or anticipated sale, merger, or acquisition;

- 1.7.4.8 known, planned or anticipated stock sales;
- 1.7.4.9 any litigation against the Contractor; or
- 1.7.4.10 significant change in market share or product focus.

1.7.5 Contractor agrees that during the Term, Contractor will sell to the City and to Bike Share of Austin any and all parts to repair or replace equipment or updates of software as needed by the City.

1.7.6 **Installation.** Contractor shall install Stations at sites selected by the City. Contractor's installation services shall include the following:

- 1.7.6.1 Pre-site inspection.
- 1.7.6.2 Transport and delivery of the bicycles, kiosks, docks, and other equipment needed for the installation of the stations.
- 1.7.6.3 Installation of the Stations by no less than two (2) field technicians, to be provided by the Contractor.
- 1.7.6.4 On-site training and questions and answers at the time of installation.
- 1.7.6.5 Installation of Contractor's bicycles with associated City's stations.
- 1.7.6.6 Clean-up of sites.
- 1.7.6.7 Contractor's installation services shall be performed in accordance with Contractor's guidelines and criteria for installations of stations, attached hereto and incorporated herein as Attachment A, and any project and site-specific plans mutually agreed to by the parties.

1.7.7 **City's Responsibilities.** The City shall perform the following:

- 1.7.7.1 Provide station sites at its own cost and expense and obtain all necessary permits or other approvals required for each of the sites.
- 1.7.7.2 Ensure that each site satisfies the site requirements set forth in the Installation Criteria in Attachment A.
- 1.7.7.3 Notwithstanding any obligation of Contractor in this Agreement or as set forth in the Digital Services Agreement, the City shall provide, at its sole cost or delegate the responsibility, all maintenance to bicycles and stations.
- 1.7.7.4 Ensure satisfactory on site power access, quality and grounding for all equipment.
- 1.7.7.5 Ensure prompt and unencumbered access for Contractor to the sites and to network cabling and communication equipment as may be necessary for Contractor 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 Contractor (as applicable) to enable Contractor to perform support services and meet service levels, including diagnostic, monitoring and repair services. Contractor may separately charge the City for a scheduled service call where the City does not provide such access and Contractor is therefore required to schedule an additional service call.
- 1.7.7.6 Promptly place service calls in accordance with any reasonable Contractor protocols provided to the City and designate a City representative and alternate (which may be a third party) with the necessary skills to assist Contractor in the diagnosis of service problems.

1.7.7.7 Unless expressly provided otherwise, the City 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) the City's or its representatives' designs, specifications, or instructions, (2) anything external to equipment, including any causes or events beyond Contractor'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 the City's relocation, additions, or changes to equipment.

1.7.8 **Shakeout Period.** For a period of ninety (90) days following Installation Services, the City and Contractor acknowledge that issues may arise related to the normal operation of the equipment. The City and Contractor agree to work cooperatively to address any operational issues during this period.

1.7.9 **Reciprocity.** The City hereby executes the B-cycle Inter System Reciprocity Agreement (Reciprocity Agreement) attached hereto as Attachment B.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

**B-CYCLE, LLC**

Robert Burns

Printed Name of Authorized Person

[Signature]

Signature

President

Title:

7/31/13

Date:

**CITY OF AUSTIN**

Yolanda Miller

Printed Name of Authorized Person

[Signature]

Signature

Deputy Purchasing Officer

Title:

8/2/13

Date:

**Exhibits**

Attachment A – Installation Criteria

Attachment B – Reciprocity Agreement

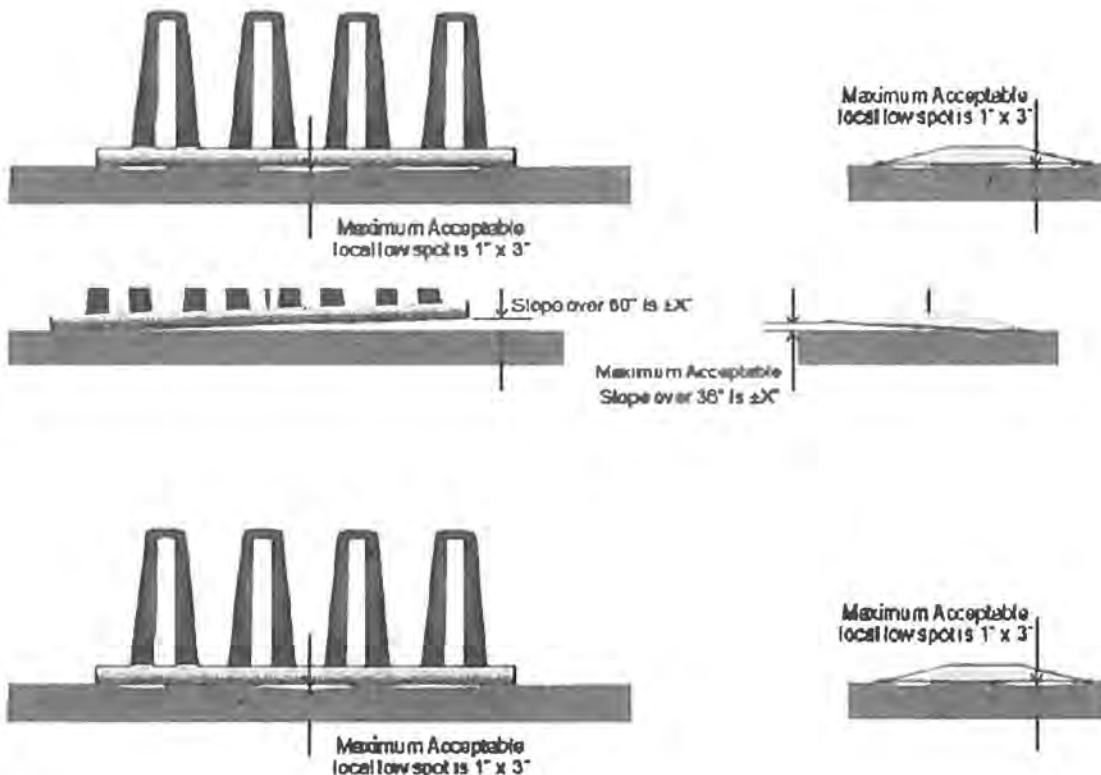
Exhibit A – Contractor's Best and Final Offer

Exhibit B – Contract between the City and Bike Share of Austin

## Attachment A

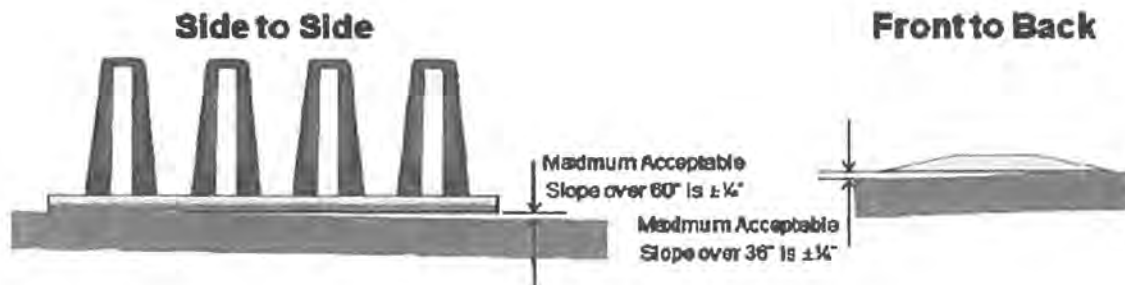
### INSTALLATION CRITERIA

- The maximum number of docks supported by one kiosk is 23 docks (station length would be 64' for 23 single sided docks with 1 kiosk or 32' for 23 double sided docks with 1 kiosk. These lengths do not include measurements for Map/Ad Module).
- 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.
- No dock shall be more than 30' away from the kiosk so we recommend that for stations longer than 30', the kiosk be moved between the docks to satisfy this requirement
- 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

- Allowable ground flatness
  - Maximum ground variation or flatness is constrained by ADA trip hazard guidelines, which states that a rise larger than  $\frac{1}{2}$ " 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  $\frac{1}{2}$ ", the grade variation must be less than  $\frac{1}{2}$ " (or  $\pm\frac{1}{4}$ ")
  - 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)

## ATTACHMENT B: 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

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

Denver Bike Sharing

DATE: 02.13.12

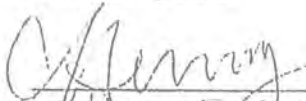
  
Parry Burnap-Executive Director

Boulder Bike Sharing

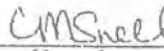
DATE: 2/8/12

  
Elizabeth Train-Executive Director

Additional Signatures:

  
Madison B. C. H.

DATE: 1/6/12

  
CMSneel  
San Antonio Bicycle

DATE: 12-6-12

\_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
DATE: \_\_\_\_\_

\_\_\_\_\_  
DATE: \_\_\_\_\_

**Attachment A**  
**INTELLECTUAL PROPERTY LICENSE AGREEMENT**

THIS INTELLECTUAL PROPERTY LICENSE AGREEMENT (this "Agreement") is 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 the City of Austin, a home-rule municipality incorporated by the State of Texas ("Licensee"), and is effective as of the date executed by both parties (the "Effective Date").

RECITALS

WHEREAS, Licensee is forming an independent bicycle 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 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.

## AGREEMENTS

### 1. Grant of License.

- 1.1 Licensors 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 Licensors and that all rights resulting from Licensee's use of the Intellectual Property as permitted hereunder inure to the benefit of the Licensors.
- 1.3 Licensors 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 Licensors is a party.
- 1.4 OTHER THAN EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSORS 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 Licensors and Bike Share of Austin. 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 Licensors' other trademarks, other than the grant of rights to use the Marks subject to the terms and conditions of this Agreement. Licensors expressly does not grant to Licensee the right to use any variation of the Marks that now exist or hereafter are developed by Licensors, 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 or sell or sub-license same to any third party except Bike Share of Austin.

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. 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.
- 5.3 Licensee will not create, use, distribute, or allow to be distributed, any materials that are false or misleading.
- 5.4 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.
- 5.5 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.
- 5.6 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 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.

- 5.7 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. Licensee shall have the right to use the Improvements without charge in perpetuity.

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 C 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 Licenseor 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 and Bike Share Austin 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 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 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.
  - 8.3 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 Contract for Equipment and Services dated July 31, 2013 between the parties, or the Digital Platform Services Agreement dated July 31, 2013 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 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 Austin, Purchasing Office  
Contract Administration  
P. O. Box 1088  
Austin, TX 78767


- 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 Texas 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 TEXAS AND EACH WAIVE ANY OBJECTION EITHER MAY HAVE TO THE PERSONAL JURISDICTION OF OR VENUE IN THE STATE OF TEXAS. 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]

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

By:   
Name: Yolanda Miller  
Its: Deputy Purchasing Officer

## 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

Internet Domain Names:

**Austin.bcycle.com**

**Bikeshareofaustin.com**

## **SCHEDULE B: TERRITORY**

Territory shall include and not go beyond the legal boundaries of Austin, Texas.

## **SCHEDULE C: TRADEMARK USE STANDARDS**

**Attachment B**  
**DIGITAL PLATFORM SERVICES AGREEMENT**

THIS DIGITAL PLATFORM SERVICES AGREEMENT together with its Schedules (collectively this "Agreement") is made 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 the City of Austin, a home-rule municipality incorporated by the State of Texas ("Customer") and is effective as of the date executed by both parties (Effective Date).

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.

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 Bcycle.com; and (3) B-cycle's location-specific website for Austin, Texas, 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](http://www.bcycle.com) or other internet address as B-cycle may specify from time to time.

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 or B-cycle's website 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 pursuant to that certain Contract for Equipment and Services and all attachments thereto between B-cycle and Customer (the "Contract"). B-cycle will activate the Service on the number of Kiosks 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 Contract; (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 (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 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 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 with third party credit card payment gateway service, Authorize.net ("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; and (iii) 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.

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 60 months (the "Initial Term"). At the end of the Initial Term, the Agreement may be renewed with mutual agreement of the parties. 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 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.

10.2 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.

10.3 *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.

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-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 Contract 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 THREE (3) TIMES 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 B-cycle will indemnify, defend and hold the City 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 The City will promptly give written notice of any known claim to the B-cycle (provided that any delay by the City in providing such notice will not absolve B-cycle from indemnifying any the City, unless such delay materially prejudices the B-cycle's ability to respond to such claim), and provide any assistance which tB-cycle may reasonably request for the defense of the claim (with all reasonable associated costs and expenses paid by the B-cycle). B-cycle will have the right to control the defense or settlement of the claim, provided, however, that the City 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 the City 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 Texas, excluding of choice of law provisions. The parties submit to the exclusive jurisdiction of state and federal courts of the state of Texas or the United States District Court for the District of Texas.

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. B-cycle approves the assignment of this Agreement to the City's Contractor, for the operations and management of the City's Bike Share Program, Bike Share of Austin,

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 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.

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 AUSTIN

By: 

Name: Yolanda Miller  
Its: Deputy Purchasing Officer

## 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](http://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](mailto: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 as 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;

- 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](mailto: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](mailto: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

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](mailto: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

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](mailto: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](mailto: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

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](mailto: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](http://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.

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@bcycle.com](mailto:info@bcycle.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@bcycle.com](mailto:info@bcycle.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@bcycle.com](mailto:info@bcycle.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@bcycle.com](mailto:info@bcycle.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.

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.

**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 4<sup>th</sup> 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

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 set forth in the Contract on a date that is on or before the Launch Date (as defined in the Contract), as mutually agreed upon by the parties.

## **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 2012 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.

#### **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.

## **SCHEDULE G: FEES**

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

- A \$7500 set up fee ("**Software Design Fee**")
- A fee equal to \$100 per dock per year ("**Software Fee**").

B-cycle will issue an Invoice to Customer setting forth the Software Design Fee. The Software Fee will be pro-rated for the remainder of the year following the date that B-cycle activates each dock. Customer will pay all Invoices for Fees within seven (7) days following the date of the Invoice.

**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.

## **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

## SCHEDULE I: SERVICE LEVEL AGREEMENT

Service Levels; Credits. B-cycle will provide the Service to Users via the Internet and through the Kiosks 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.
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) 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 *Schedule I* that Customer may apply toward future Base Fees.

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.

## 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 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.

# AUSTIN *cycle*™

REQUEST FOR PROPOSAL  
**Bikes, Kiosks and Software  
for Bike Share Program**

#EAG0111  
November 15, 2012



# CITY OF AUSTIN, TEXAS

## Purchasing Office REQUEST FOR PROPOSAL (RFP) Offer Sheet

**SOLICITATION NO:** EAG0111

**COMMODITY/SERVICE DESCRIPTION:** Bikes, Kiosks, and Software for Bike Share Program

**DATE ISSUED:** October 22<sup>nd</sup>, 2012

**REQUISITION NO.:** 6000 12101000038

**PRE-PROPOSAL PHONE CONFERENCE TIME AND DATE:**

Tuesday, October 30<sup>th</sup>, 2012 at 11 AM. Please call 512-974-9300.  
Conferee Code to enter: 778858 Confirmation No: 1898

**COMMODITY CODE:** 92962

**LOCATION:** N/A

**FOR CONTRACTUAL AND TECHNICAL  
ISSUES CONTACT:**

**PROPOSAL DUE PRIOR TO:** November 15<sup>th</sup>, 2012, 2 PM, local time

Erin D'Vincent

**COMPLIANCE PLAN DUE PRIOR TO:** N/A

Buyer II

**Phone:** (512) 972-4017

**LOCATION:** MUNICIPAL BUILDING, 124 W 8<sup>th</sup> STREET  
RM 310, AUSTIN, TEXAS 78701

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office
Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 <sup>th</sup> Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500


Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

### SUBMIT 1 ORIGINAL AND 5 SIGNED COPIES OF OFFER

One electronic copy of the proposal in Word or PDF format shall also be submitted on either a CD or a flash drive with the original sealed proposal

### OFFER SUBMITTED BY

By the signature below, I certify that I have submitted a binding offer.

  
Signature of Person Authorized to Sign Offer

Robert Burns, President

Signer's Name and Title: (please print or type)

**FEDERAL TAX ID NO.** [REDACTED]

**Date:** 11/09/12

**Company Name:** B-cycle, LLC

**Address:** 801 W. Madison Street

**City, State, Zip Code** Waterloo, WI 53594

**Phone No.** ( 920 ) 478-2191 ext.12654

**Fax No.** ( 920 ) 478-4200

**Email Address:** bburns@bcycle.com

Offer Sheet



November 15, 2012

SENT VIA OVERNIGHT DELIVERY

City of Austin, Purchasing Office  
Municipal Building  
124 W. 8<sup>th</sup> Street, Rm 310  
Austin, TX 78701

RE: Response to Request for Proposal for Bikes, Kiosks, and Software for Bike Share Program  
Solicitation No. EAG0111

Dear Sir or Madam,

We are pleased to submit this response to the City of Austin's Request for Proposal for Bikes, Kiosks, and Software for Bike Share Program. The B-cycle staff has developed world-class bike sharing equipment and software. The system is described in great detail in our response but a few unique B-cycle features should be highlighted here:

- B-connected. B-cycle has developed software which allows members of various B-cycle systems to use B-cycle systems in other communities. For example, members of the Austin bike sharing system would be able to utilize the San Antonio and Houston systems as members and vice versa.
- Smart Kiosks. B-cycle kiosks feature color touchscreens and are highly adaptable and programmable. Based on our experience in Denver and elsewhere, many bike sharing users in North America are walk-up users, not annual members. Therefore, a high quality user experience at the kiosk is of paramount importance.
- Customer Support. By the end of 2012, B-cycle will be in approximately fifteen small and medium sized installations around the United States. Since the launch of our first system with Denver Bike Sharing in April 2010, B-cycle has become skilled in assisting local operators to establish successful bike sharing systems in their own communities. We are focused on the local operator and have developed many tools to help you succeed, discussed in more detail in our response.

We are proud to advise you the B-cycle stations are manufactured in Louisville, Colorado, B-cycle's enterprise software was written and is maintained in Boulder, Colorado and final assembly of the B-cycles will take place in the Austin area using local labor. We thank you for the opportunity to respond, and look forward to answering any additional questions you may have. Please feel free to contact me at (920) 478-2191 ext. 12654 or [bburns@bcycle.com](mailto:bburns@bcycle.com).

Sincerely,

B-cycle, LLC

A handwritten signature in blue ink, appearing to read 'R. Burns'.

Robert Burns  
President



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## Part 1: Business Organization

### PROFILE

B-cycle, LLC, as an organization, brings together a unique combination of talent and experience. B-cycle is a joint venture between Trek Bicycle Corporation, Humana Inc. and Crispin Porter + Bogusky. Trek is the largest manufacturer of high quality bicycles in the United States, Humana is a health insurance company, and Crispin, Porter + Bogusky was recently named advertising agency of the decade. As a result of the commitment of these founders, B-cycle was recently named Number 5 on Fast Company's list of innovative transportation companies.

Formed in 2008 for the express purpose of bringing public bike sharing to North America, B-cycle is operating in fifteen locations. B-cycle is located at the headquarters of Trek at 801 West Madison Street, Waterloo, Wisconsin. B-cycle is incorporated in the state of Delaware.





## Part 2: System Concept and Solution

### BIKE SHARE SYSTEM COMPONENTS

Below please find detailed information regarding the B-cycle equipment. We want to highlight the following features of our “fourth generation” system:

- B-connected. Annual members of your B-cycle system can use participating B-cycle systems in other cities as annual members.
- Virtual Kiosk. B-cycle’s enterprise software allows for the management of large populations of B-cycles at special events without the need to construct large stations at the event locale.
- GPS Capability. Each B-cycle is equipped with proprietary self-charging GPS technology that provides actual—not estimated—rider data including speed and actual route ridden. This allows the user to see his or her actual statistics on B-cycle’s website. More importantly, this GPS data can be sanitized and aggregated to show city planners exactly where these bicycles are being ridden in the City.
- Redundant Locking. Each B-station dock comes equipped with two proprietary locks which lock the B-cycle securely at each hub. We believe this provides the most secure bikes having locking system in the world.
- Color Touchscreen. All B-cycle kiosks are equipped with high quality, high response, and full color touchscreens with visibility in direct sunlight that have highly configurable user flows and are capable of incorporating several languages.



The B-cycle station is made in the United States and was designed to be highly configurable for the urban environment. Station siting does not require the ripping up of any pavement and stations can be single-sided, double-sided, bolted to the pavement or non-bolted. The B-cycle base is highly configurable and can turn corners or be situated completely around urban obstacles such as trees or monuments. Please see the attached station dimensions details attached as Exhibit A.

The iconic B makes it easy for users to find bikes.



The B-cycle system was designed to be flexible so that it can help communities achieve a wide range of goals. But the core design principle of B-cycle is to provide an aesthetically appealing and technologically powerful bike sharing system for North American communities. We designed our bike sharing system to enhance personal mobility, which leads to a reduction in the use of private automobiles and an increase in personal health and wellness.

B-cycle is visually and programmatically iconic. The big “B” is intended as a way-finding device to inform users where to find bikes.



## Part 2: System Concept and Solution

Designed from scratch specifically for North American bike sharing programs, the B-cycle system is comprised of three main components:

- (1) The B-cycle itself, which was designed by Trek Bicycle corporation specifically for bike sharing;
- (2) The Station, which we believe offers the most efficient footprint in the industry, can be solar or A/C or battery powered, docks that are single or double-sided, with bolted or non-bolted installation, and assembles on-site quickly and easily without the need for a crane truck;
- (3) The Software, which includes a back-end administration and maintenance system, local consumer web page, individual profiles, and extensive links to social networking sites.

### THE B-CYCLE BICYCLE



The B-cycle bicycle was designed by Trek Bicycle Corporation specifically for bike sharing. It is fun to ride, low maintenance, easy to adjust, and comfortably fits riders from 5' to 6' 2"+. The B-cycle features an onboard *self-charging* GPS computer that runs off the power generation of the front hub and uses RFID technology for tracking and anti-theft purposes.

### B-CYCLE COMPONENTS AND SPECIFICATIONS

#### CUSTOMIZATION

- Color choices: Red, Blue, Gray
- Branding: Custom graphics  
Can be branded "B-cycle" or custom branded
- Decals: Basket (left & right panels)  
Shroud (triangle & handlebar surfaces)  
Skirt guard (left & right panels)  
See Exhibit B for more details on placement and size





## Part 2: System Concept and Solution

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**COMPUTER** Built-in *self-charging* GPS that reports ride stats and route back to the server/web

**BASKET** The standard B-cycle features a front basket that is designed to carry a lap top computer bag and other gear up to 20 pounds, and that dovetails perfectly in a double sided B-station.

However a newer basket configuration is also available. With a smaller front basket and a rear side basket, it offers additional cargo space. Any combination of these baskets can be used as an option.



### **FRAMESET**

Sizes: One Size Fits Most (specifically 5' - 6'2"+)

Frame: Oversized Alpha Aluminum. Weight is designed to be carried directly over bike's center of gravity for superior balance and control for all size of riders.

Fork: Proprietary triple clamp aluminum

### **WHEELS**

Front: Shimano Dynamo generator hub with alloy rims

Rear: Shimano 3-speed (or 7-speed) internal gear hub with alloy rims

Tires: Puncture resistant Bontrager hard case with reflective sidewalls and sealant filled tubes

### **DRIVETRAIN**

Shifters: Shimano twist shifter

Rear: Shimano Nexus 3-speed (or 7-speed) internal gear hub

Crank: 38T alloy

Chain: KMC Rustproof 1/2x1/8" heavy duty

Pedals: Platform

### **COMPONENTS**

Saddle: Seamless Bontrager all-weather saddle

Seat Post: Proprietary theft resistant indexed post with easy to use proprietary four-finger clamp

Grips: All weather grips with reflective bar ends

Headset: Sealed bearing

Brakeset: Shimano IM40 all-weather internal brake system

Fenders: Color coded matching low profile metal or black dent-proof polycarbonate

### **SECURITY**

At B-station: Proprietary dual front hub locking design, seamless integration with the B-station.

While Away: Built-in Kryptonite cable lock equipped with keys so the consumer does not have to bring his or her own lock. Theft deterrent hardware throughout.

### **LIGHTING**

B-cycles are equipped with always-on Spanninga 3W 10 Lux LED front and rear lights that run off the bicycle's Dynamo hub. The lights remain illuminated for approximately four minutes after the B-cycle stops, ensuring safe illumination when the rider stops at a traffic light.



## Part 2: System Concept and Solution

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### TRIKE

The trike, recently developed at Trek for B-cycle, fits in the standard B-cycle stations without need for special equipment. It allows greater access to the system for the balance impaired and elderly, and also offers a larger cargo capacity.



### EXTRAS

Fully encased shroud housing, robust kickstand, and bell

Spring bar handlebar straightening system

Bicycle weighs less than 50 pounds completely assembled (with on-board lock).



## Part 2: System Concept and Solution

### THE B-CYCLE STATION



#### A few important things to note:

1. This station can be configured as a single or double-sided station. Single-sided offers the least impact on pedestrian traffic, while double-sided maximizes the number of bikes at a station with a limited amount of space.
2. The station has three base options--a lighter bolted base or one of two heavier non-bolted bases depending on the power source.
3. The station locks the bicycle at the hub, using two robust locking mechanisms to double secure the bicycle. If one lock fails to engage, or is broken, the other will secure the bike.
4. The stations can be solar, A/C or battery powered, or a combination. Alternate power sources are available. Wirelessly cellular technology with encryption is used to connect each station to B-cycle's secure computer server. System will maintain equipment security in the event of a power failure or wireless data connection.
5. Kiosks at each station allow walk-up users to purchase short-term memberships. Longer-term members are issued B-cards with RFID chips, and can bypass the kiosk completely and use their card to check a bike out directly from any dock.
6. The B-cycle stations are made in the USA.

#### KIOSK

The kiosk replaces one dock at each station. It can be powered by solar, A/C, 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: Zinc coated Galvanneal
- Paint: Powder Coat
- Power Options:
  - Solar powered (single 135-watt panel with dual battery backup)
  - A/C (110 vac, 60 hz, 3 amps)
  - Combination of Solar and AC as backup



## Part 2: System Concept and Solution

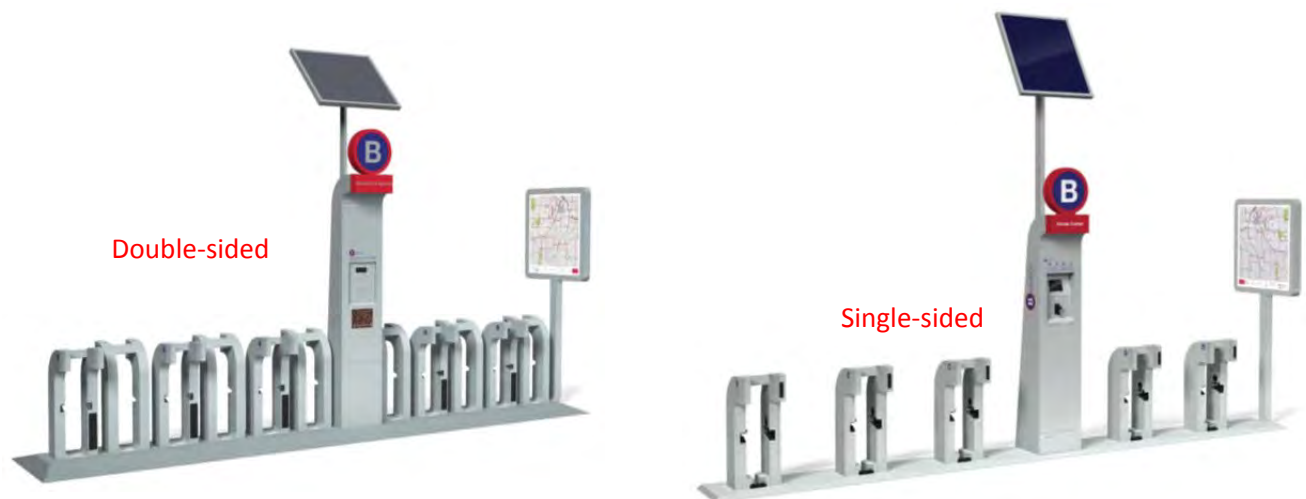
- Display: Color Touchscreen highly visible in direct sunlight
- Language: English and Spanish (with other language availability)
- Magnetic stripe all-weather credit card reader
- Communications to central server via broadband cellular (wireless)

### AD/MAP MODULE

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

### DOCKS/BASES

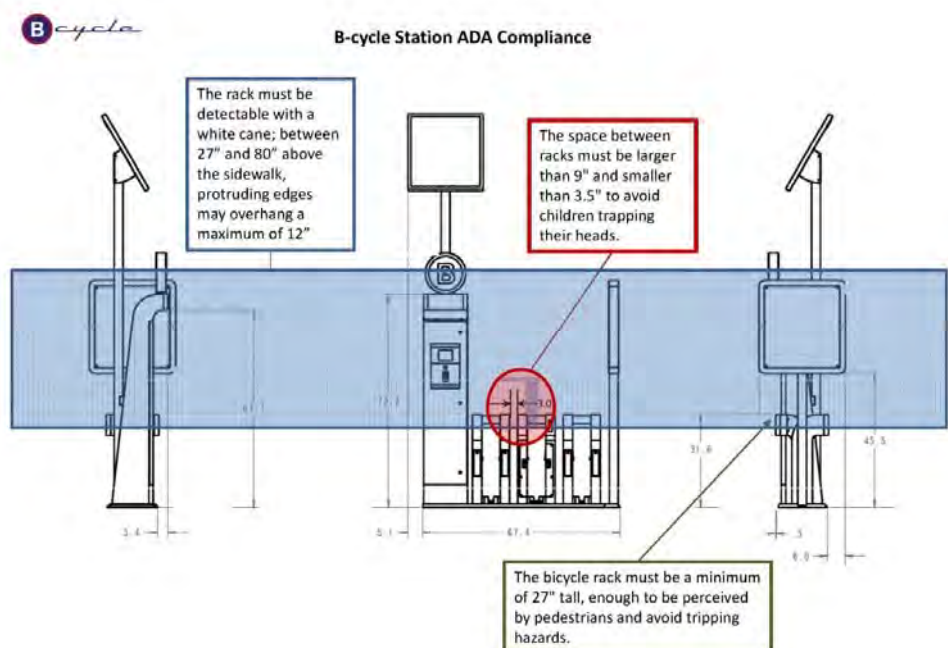
Docks can be single or double-sided on the same base. Single-sided docks allow for “walk through” access, while double-sided docks maximize the number of bikes at a station. Theft resistant hardware used throughout.



The bases are zinc dipped 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.

### ADA COMPLIANCE

B-cycle stations are compliant with the Americans with Disabilities Act:





## Part 2: System Concept and Solution

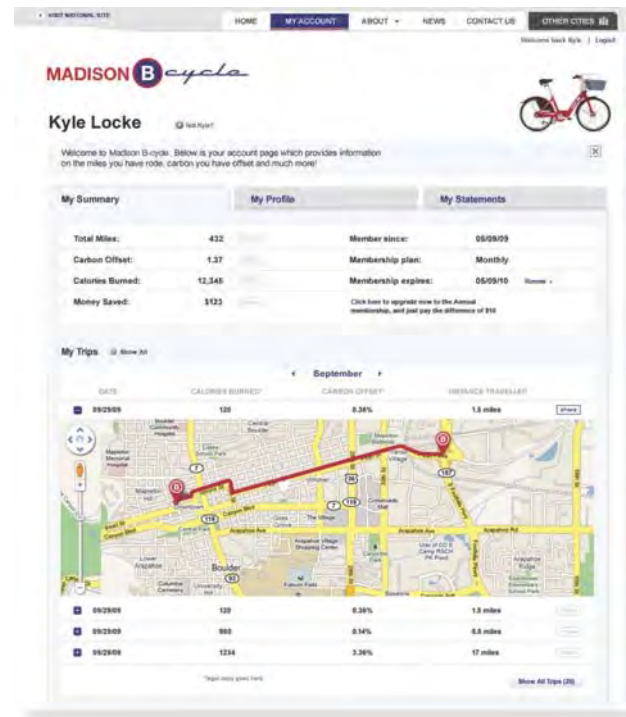
### THE B-CYCLE SOFTWARE

B-cycle has developed a proprietary, best-in-class, web-based enterprise bike sharing software system. The software features both back-end and consumer-facing web pages that enable members to be part of an expansive bike sharing community, maintain a personal profile, and participate in an open source, affinity-based social network. The B-cycle bicycle includes an integrated *self-charging* GPS computer, which works in unison with the software to show actual (not estimated) rider metrics and ride maps.

The B-cycle bike sharing software system includes a digital platform comprised of five components.

### COMMUNITY WEBSITE (CUSTOMIZABLE)

- Static information pages (what is B-cycle, how do you use it, safety information etc.). A typical website can be viewed at [www.bcycle.com](http://www.bcycle.com) and then pick from any of the B-cycle cities from the Locations & Rates dropdown
- Provides a station and map and real-time station information such as bike and dock availability, etc.
- Interactive content and tools
- Local news and events published via live, relevant Twitter feeds
- Online subscription purchases, renewals, and upgrades with ability to offer discounts and promotion codes
- Hooks to established social networking sites (links and live feeds)
- Password-protected member portal with personalized data:
  - individual profile information
  - ride and payment history
  - health and environmental impact
  - leader board
  - user population ranking
- “See My Ride” provides the user of with a map of his/her latest rides, and can be shared via Twitter, Facebook, or email



### SELF SERVICE BIKE RENTAL

- Color touchscreen access at kiosk provides:
  - Bike check-out for members
  - short-term rentals via credit card
  - real-time status of nearby stations to locate bikes for rental or open docks for returns
  - 15 minute credit requests when station is full
- Dock-based check-out for members with RFID equipped B-cards (bypass kiosk)



## Part 2: System Concept and Solution

### VIRTUAL KIOSK

- Standard bike check-in and check-out performed by bike sharing staff members from a standard computer.
- This option allows communities to encourage use of the bike sharing system at special events, such as festivals or sporting events, without the need to set up large stations at the event. Using the virtual kiosk, bikes can be checked in and out of the system using only a computer. The user does not need to find an available station to dock his/her bike.

### MOBILE APPLICATIONS

- Apple and Android platforms
- Location-based dock and bike locator (find bikes and open docks relative to user's GPS coordinates)
- Open API for mobile developer community
- Outbound system-generated text alerts (overdue bike warnings, etc.)



### BACK-END OPERATIONS MANAGEMENT

- Tiered, role-based access
- Manage system and kiosk functions remotely from the office or from your own personal computer with internet access (disable system or just a kiosk, lock down a bike so that a user is not able to rent it, adjust hours of operation of the system or by kiosk)
- Subscriber and member management (including bulk-loading)
- Inventory management (kiosks, RFID cards, bikes, docks, etc.)
- Generate many different reports with many different metrics (total trips by membership types, miles ridden, calories burned,
- Configurable notifications (maintenance events, overdue bikes, etc.)
- Fulfillment process support
- Rebalancing, maintenance and issue tracking (including reporting capabilities)
- Program personalization and configuration (notifications, subscription types and pricing)
- Virtual kiosk management – mobile bike check ins/outs, off-site maintenance
- Ability to collect email addresses, telephone numbers, addresses, zip codes and other pertinent information
- Ability to limit the number of membership and walk-up rentals that can be purchased using one credit card

### B-CYCLE INNOVATION

A few of the features that set the B-cycle system apart from the competition include:

#### B-CONNECTED

An exciting feature of the B-cycle system is that it allows for system reciprocity which will link your B-cycle program to other B-cycle programs so that users of your system can use their membership card in other systems such as San Antonio and Houston, and vice versa. This is a wonderful opportunity for Austin to give their bike share members access to other bike sharing systems all over the United States. To our knowledge, no other bike sharing system has this capability.



## Part 2: System Concept and Solution

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### SEE MY RIDE

B-cycles are equipped with *self-charging* GPS computers and RFID technology, and all user metrics are measured and saved to the rider's personal profile on the local consumer website. The rider can go on the website and see where he/she rode.

### VIRTUAL KIOSK

B-cycle's back-end software allows the system operator to check bikes in and out using only a computer. At large events, where the community may want to encourage users to ride B-cycles to the event to reduce parking congestion, the rider can check his or her bike in at a temporary "station" set up for the event. There is no need to set up – and then take down – stations for the event.

### WEBSITE WITH METRICS

Each local B-cycle installation has its own website, which is linked to the national site. The local website can post local information, promote local events, and engage cyclists in the local marketplace. Each local site shows the aggregate rider metrics and carbon offset values. These values are true ride measurements not estimated ride metrics.

### REDUNDANT LOCKING

B-cycles are locked at each side of the front hub with two, not one, robust locking mechanisms. If one lock fails to engage, the other will keep the bike secure.

### FLEXIBLE PRICING STRUCTURE

B-cycle's proprietary software allows highly flexible pricing structures, which allows system operators to adjust their pricing schemes based on local experience.

### QUICK, EASY AND PAPERLESS

With a credit card, a customer can sign up for a membership at any kiosk and be on a bike in less than 2 minutes. The whole process is digital, and *uses no paper access chits or paper receipts*.

### MODULAR AND CONFIGURABLE STATIONS

B-stations have docks that can be manipulated to fit even the most unusual spaces including a curve.

### B-CYCLE PRODUCT TESTING

- Trek designed and tested the B-cycle to meet or exceed at U.S. CPSC and CEN standards for bicycles.
- The B-stations, designed and built in the United States by B-cycle's station vendor, were tested to UL standard 60950, including extreme temperatures, excessive vibration or moisture. Additionally they are wind rated to 150 mph.
- Winter Field Testing: To field test the B-station and B-cycles, a three station pilot test was conducted at Denver University during the winter of 2009, including solar application during the winter months. Operation of the bicycles and the stations was conducted from November to March including operation in sub-zero temperatures, snow and ice. Both the bicycles and the stations exceeded expectations and remain in service.



## Part 2: System Concept and Solution

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### USER EXPERIENCE

#### ONLINE SUBSCRIBER:

- Subscriber goes to the website
- Under Join Now, the subscriber creates a username and password and completes their profile information and accepts liability waiver
- Subscriber chooses a membership type and enters their credit card information to create an account
- Depending upon the membership type the user chooses the member may receive an RFID card (B-card). The B-card will allow the user to bypass using the kiosk at the station and enables them to check-out a bike directly at the dock. The user simply pushes a button to wake-up the dock, and with just a wave of their B-card, the dock unlocks the bike and the member is on their way.
- If the subscriber chooses a membership type that does not issue a B-card, the member would go to any station kiosk, follow the instructions on the color touchscreen, and by using the same credit card as they used online, check-out a bike.
- A fulfillment package will be sent to the online applicant, whose membership type uses the B-card, and will include their official B-card and may include other items developed specifically by and for the bike share program. Some communities have added local maps, helmet discounts and even discounts to local businesses seeking to support the bike share program as a part of their fulfillment kits.
- Once signed up, each member enjoys his or her own personal profile and account pages, as detailed above.

#### WALK-UP USER:

- User walks-up to any station kiosk to purchase a 24-hour membership
- User simply follows the short user flow on the kiosk color touchscreen, accepts liability waiver and swipes their credit card to check-out a bike.
- User is now a member for the day, and enjoys the similar low bike sharing rates
- Up to four daily memberships can be purchased using the same credit card

### PRODUCT WARRANTIES

#### BICYCLES

The B-cycle bicycles have a five-year frame warranty and one-year parts warranty, excluding theft, vandalism, accident, or misuse.

#### STATIONS

The B-cycle station comes with a manufacturer's one-year parts warranty, excluding theft, vandalism, accident, or misuse. An optional one-year service plan is available.

#### CUSTOMER SUPPORT SERVICES

B-cycle has a full customer support staff which provides 24/7 system monitoring and top notch support for our system operators. We provide system set-up training before the program launch, in-depth program training just before launch, and support our customers with all of their ongoing needs post-launch, as follows:



## Part 2: System Concept and Solution

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### BICYCLES

We work with customers on initial bicycle assembly, bicycle maintenance, and provide support for any bicycle warranty needs.

### STATIONS

We work with customers on Tier 1 station troubleshooting, elevate service requests and answer any questions a customer may have regarding a B-station.

### SOFTWARE

We provide ongoing customer support with regard to any aspect of the B-cycle system software whether it be an issue a customer is having, answering questions a customer may have, or providing additional training with respect to improvements made to the software.

### TOOLS

Additional tools that we have developed to support the local operator include a comprehensive B-cycle Manual which includes:

- sub-manuals such as an Implementation Manual, Station and Bicycle Technical Manual, and Operations Manual;
- Library of Marketing Materials;
- Sample sponsorship agreements; and
- Sample station easements/leases.

All of these tools, together with hands on personal training, will be made available to the local bike share operator if we are selected as the preferred equipment vendor.

### ATTACHMENT B REQUIREMENTS

### CONFIDENTIAL INFORMATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## Part 2: System Concept and Solution

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**CONFIDENTIAL INFORMATION**

[REDACTED]

[REDACTED]

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## Part 2: System Concept and Solution

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**CONFIDENTIAL INFORMATION**

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]



## Part 3: Program

### TECHNICAL PLAN FOR ACCOMPLISHING WORK TO BE PERFORMED

#### Description of Work

The Implementation Manager will work with the team throughout the entire project to ensure a seamless implementation and installation.

#### Pre-Installation

B-cycle will work with your team to finalize station configurations, advise on any site preparations and will coordinate all other aspects of installing a bike sharing system. Additionally, we will provide training on how to use the front-end and back-end software. You will be provided with our Implementation Manual which outlines all of the steps in implementing a bike sharing system.

#### Installation

The bicycles will be delivered to a location of your choice where your team will assemble the bikes. A B-cycle representative will lead the bike build process and you will be provided with a bicycle assembly manual for your reference. The stations will be delivered to each site and installed by our professionals. Our stations are modular so there is no need for a crane to install the stations.

#### Post Installation

After the stations are installed, there is a testing period for the system. During this time, B-cycle will provide your team with first level station maintenance and troubleshooting training. B-cycle's customer service manager will follow-up with any additional training on the software system.

Additionally, your team will be provided with B-cycle's Station and Bicycle Technical Manual which covers all of the technical aspects of the bicycle and stations. We also provide an Operations Manual which is a reference guide for using the B-cycle software. In addition to these reference materials, B-cycle's customer service department is available to provide any additional assistance that is need post installation.

#### Timeline

As previously indicated, your B-cycle Implementation Manager will walk you through all of the stops of launching a bike share system. Because we have implemented 16 systems, we are able to anticipate your needs, questions and concerns. We will outline for you what each team member is responsible for, have regular meetings, and assist with anything involved in launching your system. However, one of the most time consuming pieces of implementing a system are obtaining the permits necessary for the stations. If this has already been completed, or even started, this would move the project along even faster.

	MONTH 1				MONTH 2				MONTH 3				MONTH 4				MONTH 5			
<b>CONTRACTING</b>																				
<i>Award issued</i>																				
<i>Agreement signed</i>																				

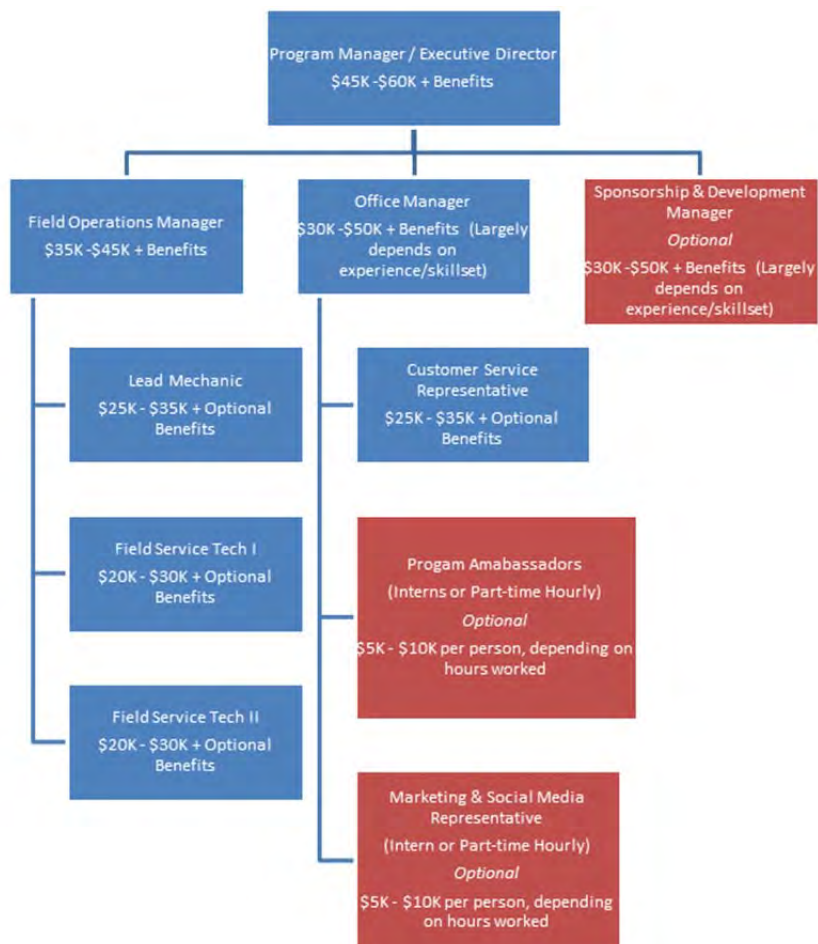
16



## Part 3: Program

### OPERATIONAL NEEDS

Below is a chart outlining the operational needs B-cycle would anticipate for a bike share system operator with the system size proposed in this RFP.



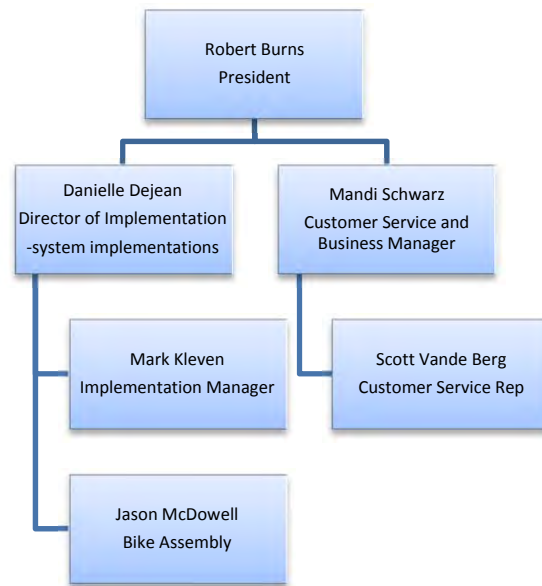
### STATEMENT OF COMPLIANCE

B-cycle will comply with all Federal, State and Local governing entities and with the terms of the RFP.



## Part 4: Project Management Structure

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Above is the core B-cycle team members that will work with the City of Austin management team and personnel on the bike share implementation.

B-cycle, through its parent corporation Trek, has worked for many years with the Mellow Johnny's team which has created a local non-profit company to operate the bike share system (we understand this team is responding to the corresponding RFP for operations of a bike share system). We have an excellent working relationship with the Mellow Johnny's team and we have worked with local operators, like the team that is being proposed, in fifteen other cities to implement bike share programs. B-cycle's Director of Implementations, Danielle Dejean, will have direct responsibility during the entire implementation process to work with the City and the selected local operator to ensure that all of our past experience is focused on a smooth and efficient bike share implementation in Austin.

B-cycle support will continue long after the bike share system implementation. We monitor the health of all of our systems 24 hours a day, seven days a week and B-cycle provides comprehensive training and support to our system operators.



## Part 5: Prior Experience

B-cycle believes that bike share should be locally managed and operated by people from the community who are in the best position to understand each community's unique character and specific needs. Consistent with this belief, B-cycle specializes in working with local operators to assist them in implementing a bike share system from beginning to end. B-cycle's team is prepared to help you with site selection, station configuration, system size and density, pre-launch marketing, launch day planning, and ongoing operations. We have developed special tools specifically for the local operator which we have compiled into a B-cycle Manual discussed in more detail in this response. This manual is intended to introduce you to the world of bike share, advise you what to expect as we implement your program, and assist you with marketing, operations, and bike share maintenance. In addition, B-cycle monitors our enterprise software and the overall health of the entire B-cycle ecosystem 24 hours a day, seven days a week. Our customer service team will always be available to assist you with questions, problems, or just for you to share thoughts and ideas. We are also fully staffed and equipped to provide you with local customer service call coverage should you need or desire that service.

<b>PAST PROJECTS</b>	
Denver B-cycle, Denver, Colorado Launched April 22, 2010 Parry Burnap, Executive Director Denver Bike Sharing 2737 Larimer Street, Suite A Denver, CO 80205 T: (720) 865-9031 E: parry.burnap@denverbikesharing.org	Des Moines B-cycle, Des Moines, Iowa Launched September 3, 2010 Carl Voss, Executive Director Des Moines Bicycle Collective 617 Grand Ave. Des Moines, IA 50309 T: (515) 210-0237 E: carlvoss@mac.com
Private System, South San Francisco, California Launched November 1, 2010 Nate Byerly, Sr. gRide Outreach Manager Genentech, Inc. 1 DNA Way South San Francisco, CA 94080 T: (650) 225-8285 E: Byerly.nathan@gene.com	San Antonio B-cycle, San Antonio, Texas Launched March 25, 2011 Cindi Snell, Executive Director San Antonio Bike Share 600 Hemisfair Plaza Way #203 San Antonio, TX 78205 T: (210) 828-5558 E: cindi@bikeworld.com
Hawaii B-cycle, Kailua, Hawaii Launched April 29, 2011 Heidi Hansen-Smith, Community Outreach Coordinator Hawaii Department of Health 1250 Punchbowl Street, Room 422 Honolulu, HI 96813 T: (808) 586-4495 E: Heidi.hansen-smith@doh.hawaii.gov	Boulder B-cycle, Boulder, Colorado Launched May 20, 2011 Chris Hazlitt, Member of Board of Directors Boulder Bike Sharing PO Box 620 Boulder, CO 80306 T: (303) 417-8548 E: chris.hazlitt@bryancave.com



## Part 5: Prior Experience

<p>Madison B-cycle, Madison, Wisconsin          Launched May 22, 2011          Claire Hurley, City Manager          Madison B-cycle          801 West Madison Street          Waterloo, WI 53594          T: (262) 483-7204          E: Claire.hurley@madisonbicycle.com</p>	<p>Omaha B-cycle, Omaha, Nebraska          Launched June 17, 2011          Kerri Peterson, Executive Director          Live Well Omaha          12565 West Center Road, Suite 220          Omaha, NE 68144          T: (402) 934-5886          E: kpeterson@livewellomaha.org</p>
<p>Spartanburg B-cycle, Spartanburg, South Carolina          Launched July 1, 2011          Laura Ringo, Executive Director          Partners for Active Living          226 South Spring Street          Spartanburg, SC 29306          T: (864) 598-9638          E: lringo@active-living.org</p>	<p>Private System, Louisville, Kentucky          Launched September 22, 2011          Kirk Kandle, Manager          Humana, Inc.          500 West Main Street          Louisville, KY 40202          T: (502) 580-5084          E: kkandle2@humana.com</p>
<p>Broward B-cycle, Broward County, Florida          Launched December 14, 2011          Cynthia Corbett-Elder          Assistant to the Division Director          Broward County Transit Division          1 N. University Drive, Suite 3100A          Plantation, FL 33324          T: (954) 357-8451          E: celder@broward.org</p>	<p>Houston B-cycle, Houston, Texas          Launched May 2, 2012          Laura Spanjian, Sustainability Director          Office of Sustainability, City of Houston          Office of the Mayor          City Hall, 901 Bagby, 1st Floor          Houston, TX 77002          T: (832) 393-0849          E: Laura.Spanjian@houstontx.gov</p>
<p>Kansas City B-cycle, Kansas City, Missouri          Launched July 3, 2012          Eric Rogers, Executive Director          BikeWalkKC          208 West 19th Street          Kansas City, MO 64108          T: (816) 304-9533          E: eric.rogers@bikewalkkc.org</p>	<p>Charlotte B-cycle, Charlotte, North Carolina          Launched August 1, 2012          Allison Billings          Charlotte Center City Partners          200 South Tryon Street, Suite 1600          Charlotte, NC 28202          T: (704) 332-4041          E: abillings@charlottecentercity.org</p>
<p>Nashville B-cycle, Nashville, Tennessee          Will Launch December 13, 2012          Keith Rawls, General Manager          Nashville Downtown Partnership          150 4th Avenue N Suite G-150          Nashville, TN 37219          T: (615) 743-3086          E: krawl@nashvilledowntown.com</p>	



## Part 6: Personnel

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### KEY PERSONNEL

Robert Burns is President of B-cycle and will oversee the implementation and operation of the Austin bike share program. Bob is also a Vice President at Trek and dedicated to B-cycle by Trek. He is a sixteen year employee of Trek, a bicycle industry veteran and recipient of the 2009 BPSA Brainy Award for distinguished service to bicycle advocacy.

Danielle DeJean is B-cycle's Director of Implementation. Danielle has overseen all of the B-cycle implementations including Denver (then the largest system in the United States), Madison, Broward County and Charlotte.

Mandi Schwarz is B-cycle's Customer Service and Business Manager and will manage training the local operations team on all system software and operational tools.

Other key personnel who are part of the B-cycle team are:

- Andrea Beatty-Software Development Manager
- Matthew Poster-Bike and Station Product Manager
- Lee Jones-Director of Sales
- Mark Kleven-Implementation Manager
- Jason McDowell-Implementation
- Scott Vande Berg-Customer Service
- Eric Johnson-Customer Service
- Tyler Reeder-Customer Service and Sales

Resumes of selected key staff are included as Exhibit C.

B-cycle is also supported by the extensive resources of Trek as well as on-going service and product development relationships with Amadeus Consulting and KIOSK Information Systems. All three companies are located in the United States. Amadeus and KIOSK are located in Colorado where the stations are built and the software is written and hosted. For your convenience, we have added a description of those companies at Exhibit D.



## Part 7: Cost Proposal

**CONFIDENTIAL INFORMATION**

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## Part 7: Cost Proposal

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## Part 7: Cost Proposal

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## Part 7: Cost Proposal

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## Exhibit A: Station Dimensions

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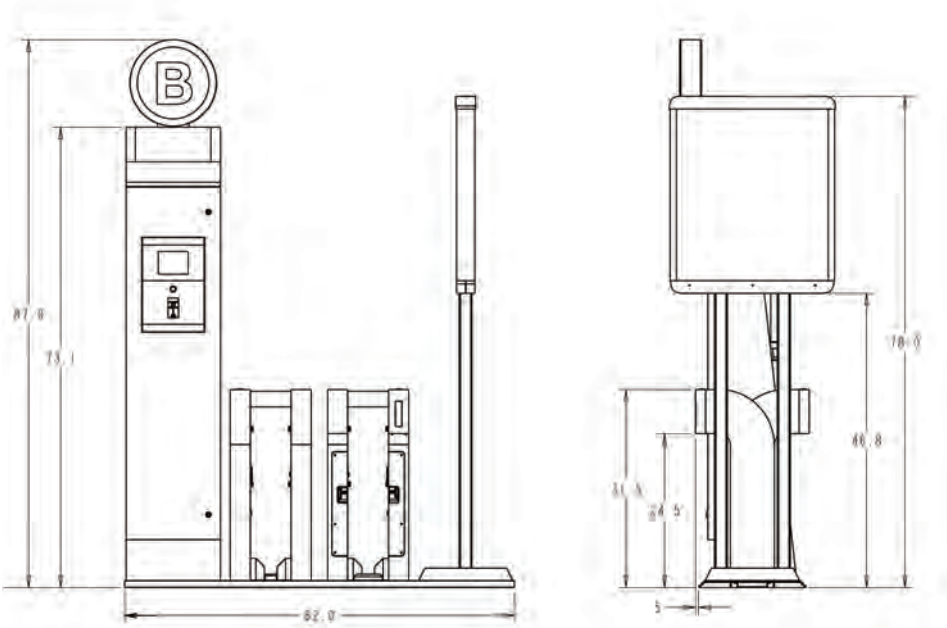
# Dimensions

Please contact a B-cycle representative to consult with you on optimal B-station size, configuration options, siting considerations and many other relevant factors.

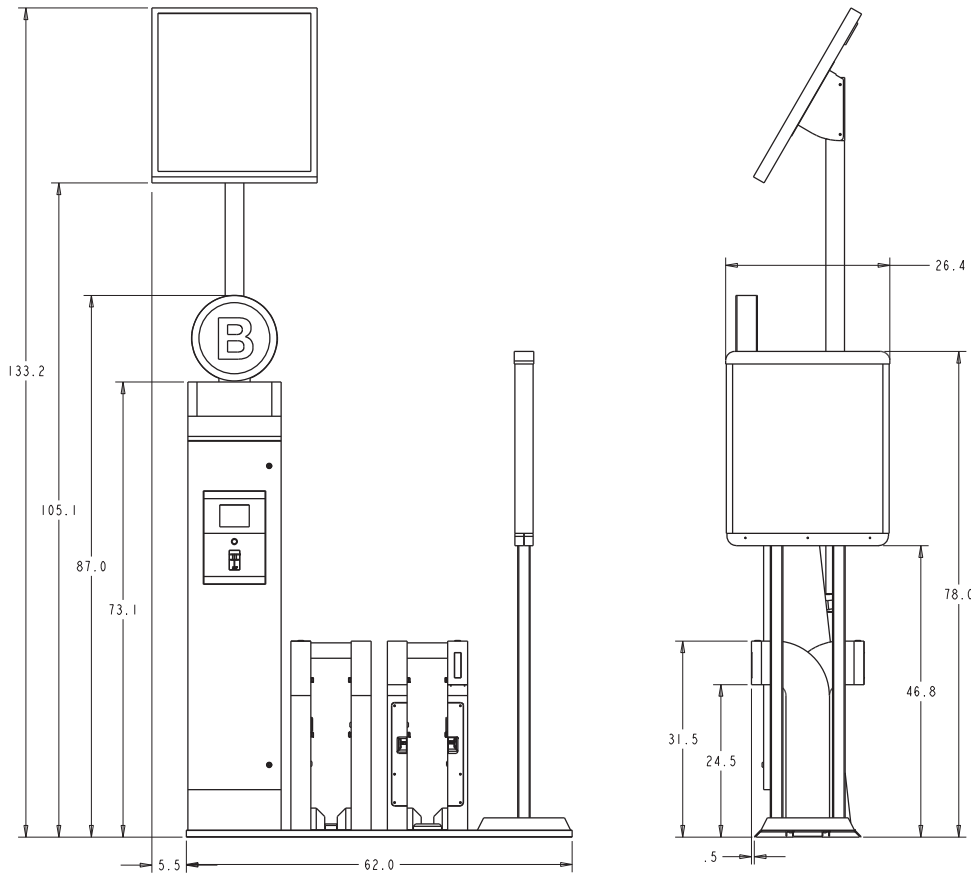
## Power

### AC, Solar or Battery-powered

- A dedicated power line of at least 110V is required for all AC stations.
- Solar power can power a B-station at sites with sufficient sun exposure.
- Use battery power if there is no AC connection or insufficient sunlight.



AC  
Height: 7'3"  
\*Battery-powered reaches same height as AC



Solar (135W)  
Height: 11'1"  
Optional AC Backup

\*Dimensions and overhang values in inches



## Base plates

### Bolted or Non-bolted

- All base plates are 5'2" in length
- All bolted base plates are 19" in depth
- Non-bolted AC or battery-powered base plates are 35" in depth
- Non-bolted solar-powered base plates are 45" in depth
- Refer to the chart to the right for more details.



## Station Weights

- Kiosk - 160 lbs.
- Solar Kit - 120 lbs.
- 19 in. baseplate - 40 lbs.
- 35 in. baseplate - 175 lbs.
- 45 in. baseplate - 215 lbs.
- Dock - 54 lbs.
- Map module - 65 lbs.



# Dimensions

Please contact a B-cycle representative to consult with you on optimal B-station size, configuration options, siting considerations and many other relevant factors.

## Single-sided vs Double-sided

### Single

- Two docks fit on one base.
- A kiosk takes the place of one dock and can face any direction (to reduce glare, the screen should face away from the sun).
- An endcap takes a spot on the base but still allows space for two docks.
- Max 12 bases = 23 docks

### Double

- Four docks fit on one base.
- A kiosk takes the place of one dock and can face any direction (to reduce glare, the screen should face away from the sun).
- An endcap takes a spot on the base but still allows space for three docks.
- Max 6 bases = 22 docks

## Depth space

- Single-sided stations must have at least 5'8" of space (this includes a 6" front tire overhang) plus a recommended 4' back-up zone totaling 9'8".
- Double-sided stations must have at least 8'6" of space plus a recommended 4' back-up zone on each side totaling 16'6".
- Refer to the chart below for more details.

### Common Configurations



1 kiosk, 1 dock



2 docks



2 docks, 1 endcap

### Common Configurations



1 endcap, 3 docks



4 docks



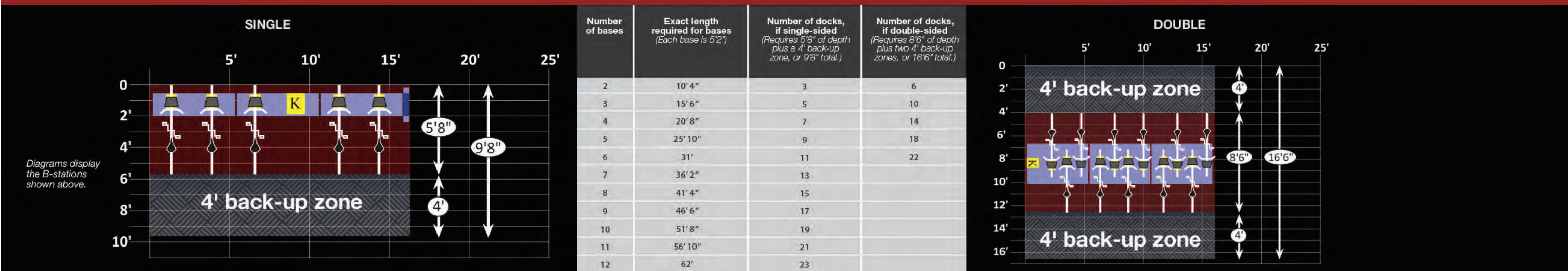
3 docks, 1 kiosk



Single-sided



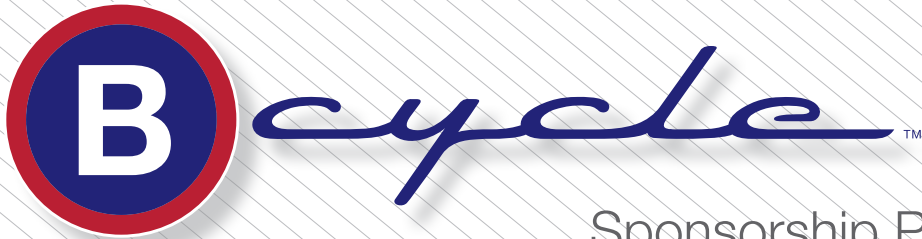
Double-sided





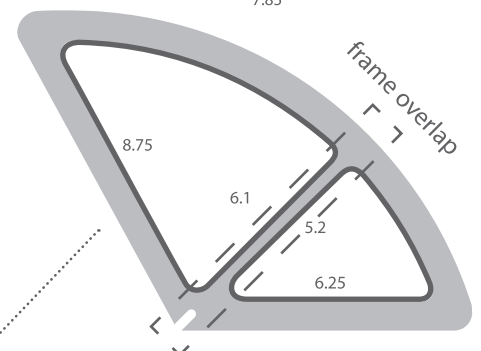
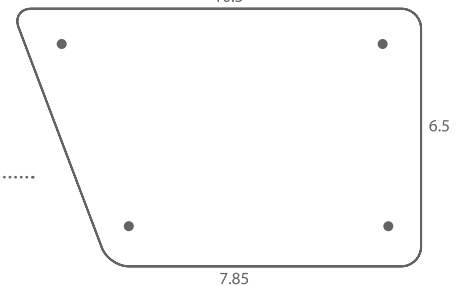
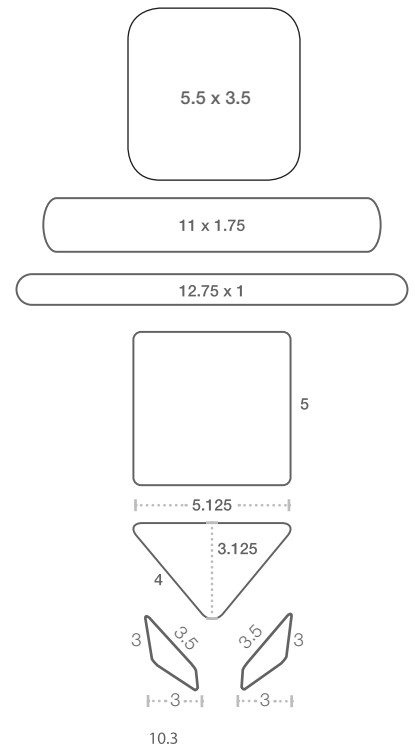
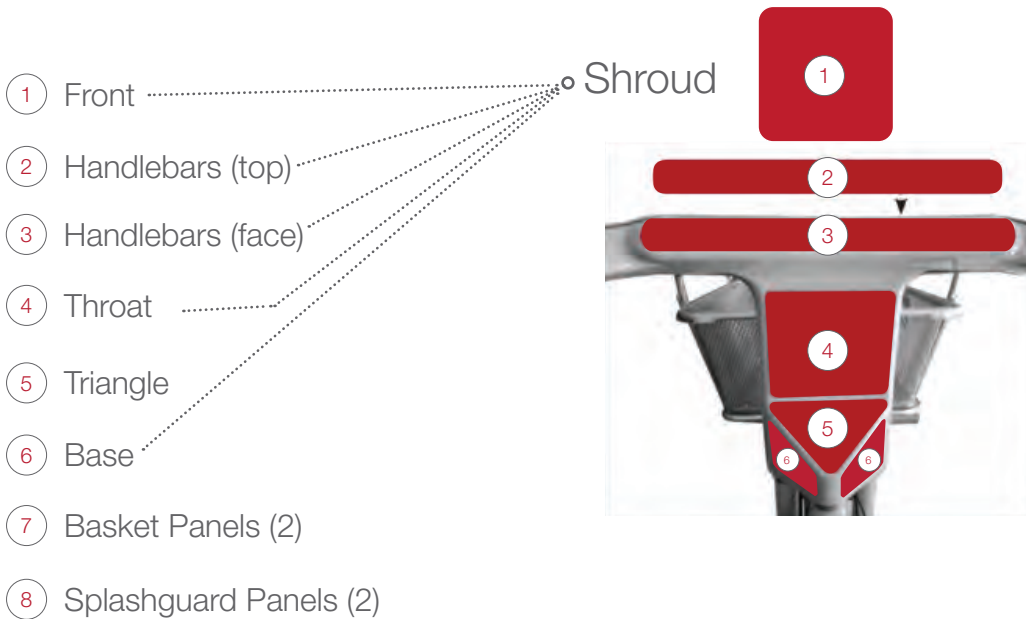
## **Exhibit B: Sponsorship Opportunities**

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## Sponsorship Panel Specifications

The B-cycle bike offers **8** sponsorship spaces!





## Exhibit C: Key Personnel Resumes

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### **Robert Burns**

President  
B-cycle, LLC  
801 West Madison Street  
Waterloo, WI 53594  
920-478-2191, ext 12654

### **EXPERIENCE**

#### **B-cycle, LLC – Waterloo, Wisconsin**

President, April 2009 – Present

#### **Trek Bicycle Corporation – Waterloo, Wisconsin**

Vice President, General Counsel & Secretary, August 1995 – Present

#### **Fort Howard Corporation – Green Bay, Wisconsin**

Attorney, July 1990 – August 1995

#### **Quarles & Brady – Milwaukee, Wisconsin**

Attorney, May 1988 – July 1990

### **EDUCATION**

#### **Notre Dame Law School – Notre Dame, Indiana**

JD, May 1988

Director of Domestic Violence, Legal Aid

Dean Knop Award for outstanding legal aid service

#### **Beloit College – Beloit, Wisconsin**

Bachelor of Arts in English Literature, Cum Laude

Phi Beta Kappa



## Exhibit C: Key Personnel Resumes

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### **Danielle DeJean**

**Director of Implementation**  
**B-cycle, LLC**  
**801 West Madison Street**  
**Waterloo, WI 53594**  
**920-478-2191, ext 12176**

#### **EXPERIENCE**

##### **B-cycle, LLC – Waterloo, Wisconsin**

Director of Implementation, September 2008 – Present

##### **Humana Europe Ltd – London, England**

September 2007 – September 2008

##### **Humana Commercial Operations – Louisville, Kentucky**

Account Installation Process, September 2005 – September 2007

##### **Humana Service Operations and IT – Louisville, Kentucky**

SOIC Strategic Consultancy, January 2004 – September 2005

#### **EDUCATION**

##### **Bellarmino University – Louisville, Kentucky**

Master of Business Administration, 2009

##### **University of Notre Dame – Notre Dame, Indiana**

B.S. Aerospace Engineering, 2003



## Exhibit C: Key Personnel Resumes

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### Mark Kleven

Implementation Manager  
B-cycle, LLC  
801 West Madison Street  
Waterloo, WI 53594  
920-478-2191, ext 12565

#### EXPERIENCE

##### **B-cycle, LLC – Waterloo, Wisconsin**

Implementation Manager, January 2011 – Present

##### **Trek Bicycle Corporation – Waterloo, Wisconsin**

Inside Sales Representative, June 2007 – January 2011

##### **American Family Insurance – Madison, Wisconsin**

Payment Service Technician, 2007

##### **Door Creek Golf Course – Cottage Grove, Wisconsin**

Assistant Golf Professional, 2000 – 2006



## Exhibit C: Key Personnel Resumes

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### Mandi Schwarz

Customer Service and Business Manager  
B-cycle, LLC  
801 West Madison Street  
Waterloo, WI 53594  
920-478-2191, ext 12198

#### EXPERIENCE

##### **B-cycle, LLC – Waterloo, Wisconsin**

Customer Service and Business Manager, June 2010 – Present

##### **National Guardian Life Insurance Company – Madison, Wisconsin**

Paralegal, August 2008 – June 2010

##### **Fiskars Brands, Inc. – Madison, Wisconsin**

Sr. Legal Paraprofessional, July 2006 – February 2008

##### **Reinhart Boerner Van Deuren s.c. – Madison, Wisconsin**

Project Manager, July 2005 – July 2006

##### **Bradshaw, Fowler, Proctor & Fairgrave, P.C. – Des Moines, Iowa**

Legal Assistant, October 2004 – May 2005

##### **Reinhart Boerner Van Deuren s.c. – Madison, Wisconsin**

Legal Secretary, May 2003 – June 2004

##### **Liebmann, Conway, Olejniczak & Jerry, S.C. – Green Bay, Wisconsin**

Paralegal, April 2001 – May 2003

#### EDUCATION

##### **St. Norbert College – De Pere, Wisconsin**

Bachelor of Business Administration, May 2002



## Exhibit D: About Our Partners



Amadeus Consulting is a business and technology solutions company with over 16 years of experience providing intelligent technology solutions with successful business results. The company is an expert in custom technology solutions with deep skill sets across teams including:

- Creative Services . The team highlights usability experts across platforms and technology stacks, Rich Internet Applications, Silverlight, and other emerging technologies.
- Development and Architectural services teams experienced in system configuration and integration, data collection and management, and an array of application solutions ranging from content management systems, to e-commerce, to surveys, and more.
- Mobile Application Development with expertise in Windows Mobile, iPhone, Symbian, Blackberry, and Android
- Large scale data management, the creation of data visualization tools for large datasets and advanced analysis and reporting



Founded in 1993, KIOSK Information Systems has earned the title of World Leader in Kiosk Design and Manufacturing, coupled with the reputation for the broadest industry experience. In 2003, KIOSK held prominent positions on the Technology Fast 500 and Inc, 500 Fastest Growing Companies in the USA. Since then, the company has continued to grow 10-to-30% year-over-year. With 30% market share, KIOSK holds a very stable industry leadership position.

With 17 years of experience in virtually every self-service vertical market, KIOSK has designed, integrated, and manufactured over 100,000 kiosks. We offer standard, custom and OEM contract manufacturing models. With seven distinctive self-service product lines featuring 30+ standard models, our customers enjoy the largest offering in the industry. In addition, we are contracted / partnered as the OEM manufacturer of choice for Dell, Hewlett Packard, and Fujitsu.

Integrated Quality / Speed to Market: KIOSK's integrated certification with UL / CE not only ensure the highest safety standards, but can greatly reduce the kiosk certification cycle. Compliance with multiple international safety regulatory agencies has been achieved through previous design efforts, and can be leveraged universally by our customers.



ISO 9001 Certified facility



Integrated UL, CE, and RoHS Certifications



## Exhibit E: Forms Packet

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**ADDENDUM**

**REQUEST FOR PROPOSAL (RFP)**

**PURCHASING OFFICE  
CITY OF AUSTIN, TEXAS**

**RFP No.: EAG0111**

**Addendum No: 1**

**Date of Addendum: November 2, 2012**

- 1.0 This addendum is incorporating the following questions and answers and clarifications to the above-referenced RFP.

The following questions were posed by one or more Vendors at the Pre-Proposal conference or in writing.

1. **Q:** Has the City of Austin taken care of the permitting on the bike placement and installation?

**A:** Yes.

2. **Q:** How will the sites be stationed? With solar stations, or running on AC?

**A:** At this time, a 50/50 mix would be preferable.

3. **Q:** Will the City of Austin cover the costs of preparing the installation sites?

**A:** If the City of Austin determines there are site preparation costs, the City will cover those costs.

4. **Q:** Section 0600 - Under C. Part III – Program on page 1 of section 0600 Proposal Preparation Instructions and Evaluation Factors, it requests a description of our work program by tasks including operational needs. This would seem to be referencing the operational side of the bike share system. Would you like for us to provide our feedback on what we would anticipate your operational needs would be?

**A:** Yes.

5. **Q:** Section 0600 – Under K. Part XI – Cost Proposal, i. (manpower) and vi. (printing), how do you want this listed out?

**A:** These two, K.XI.i. and K.XI.vi. should have been deleted and do not need to be included in the proposal.

- 2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY:

  
Erin D'Vincent, Buyer II

11/2/12  
Date

Purchasing Office

ACKNOWLEDGED BY:

Bayle, LLC

Vendor Name

Ray

Authorized Signature

11-9-12

Date

**RETURN A COPY OF THIS ADDENDUM**

to the Purchasing Office, City of Austin, Texas with your proposal.  
Failure to do so may constitute grounds for rejection of your offer.

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

**10. WORKFORCE**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
  - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
  - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

**12. INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. delivery of defective or non-conforming deliverables by the Contractor;
  - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made bycheck unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

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<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

**15. FINAL PAYMENT AND CLOSE-OUT:**

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
  - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
  - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**16. SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**17. RIGHT TO AUDIT:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

**18. SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and

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Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
  - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
  - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
  - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
  - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

**19. WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and

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regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.
  - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
  - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
  - E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
  - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior

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to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an

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adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

**31. INDEMNITY:**

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
  - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

**32. INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

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- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

**B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions**

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit,

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or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

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- A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.
- C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City

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shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION**:
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
50. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
51. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
52. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

**55. EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

**56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
  - ii. "Cost of components" means -
    - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
    - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
  - iii. "Domestic end product" means-
    - (1) An unmanufactured end product mined or produced in the United States; or
    - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
  - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
  - v. "Foreign end product" means an end product other than a domestic end product.
  - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

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- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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SUPPLEMENTAL PURCHASE PROVISIONS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email, to [erin.d.vincent@austintexas.gov](mailto:erin.d.vincent@austintexas.gov), or by fax to 512-972-4015, no later than 3 PM, local time, on Thursday, November 1<sup>st</sup>, 2012.

2. **ALTERNATE BIDS/QUOTES** (reference paragraph 7A in Section 0200)

Alternate Bids/Quotes will NOT be considered.

3. **INSURANCE**. Insurance is required for this solicitation.

A. General Requirements. See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

B. Specific Coverage Requirements. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
  - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
    - (a) Waiver of Subrogation, Form WC 420304, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage

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- ii. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
    - (1) The policy shall contain the following provisions:
      - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
      - (b) Contractor/Subcontracted Work.
      - (c) Products/Completed Operations Liability for the duration of the warranty period.
      - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage (X,C,U).
    - (2) The policy shall also include these endorsements in favor of the City of Austin:
      - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
      - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
      - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
  - iii. Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
    - (1) The policy shall include these endorsements in favor of the City of Austin:
      - (a) Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage
      - (b) Thirty (30) days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage
      - (c) The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.
- C. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

**4. QUANTITIES**

The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

**5. DELIVERY REQUIREMENTS**

Location:

TBD

Days: TBD

- A. Delivery is to be made within 60 calendar days after the order is placed (either verbally or in writing). All orders must be shipped complete unless arrangements for partial shipments are made in advance.
- B. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.

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- C. The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.
- D. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 52 in Section 0300).

**6. INVOICES and PAYMENT** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a non-duplicated invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Public Works Department
Attn:	Accounts Payable
Address	P.O. Box 1088
City, State Zip Code	Austin, TX 78767

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

**7. SAMPLES – EXACT REPLICA**

- A. If requested, the Offeror shall submit an exact replica of the goods to be provided per the specification. This sample shall be provided within 30 working days after request by the City.
- B. Send samples to the City at the following address:

City of Austin	
Department	Public Works Department
Address	TBD
City, State Zip Code	Austin, TX 78767
Attn:	Adrian Lipscombe

- C. All products provided to the City under this solicitation will be evaluated or tested and must meet all requirements of the specification, regardless of whether or not all requirements are to be evaluated or tested.
- D. Samples will be provided at no cost to the City, will be retained by the City, and may be used for use in assuring compliance with materials specifications after award. Failure to supply samples when requested shall subject the Offer to disqualification from consideration for award.

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**8. SAMPLES – REPRESENTATIVE**

- A. If requested, the Offeror shall submit a representative sample of the goods to be provided per the specification. This sample shall be provided within 15 working days after request by the City. At a minimum, the representative sample shall reflect the following:
- B. Send samples to the City at the following address:

City of Austin	
Department	Public Works Department
Address	TBD
City, State Zip Code	Austin, TX 78767
Attn:	Adrian Lipscombe

- C. The Offeror must also submit with the sample a statement from the manufacturer that guarantees the goods will be manufactured in accordance with the City specifications and that delivery requirements will be met. Failure to do so may subject the Offer to disqualification from consideration for award.
- D. All products provided to the City under this solicitation will be evaluated or tested and must meet all requirements of the specification, regardless of whether or not all requirements are to be evaluated or tested.
- E. Samples will be provided at no cost to the City, will be retained by the City, and may be used in assuring compliance with materials specifications after award. Failure to supply samples when requested shall subject the Offer to disqualification from consideration for award.

**9. RECYCLED PRODUCTS**

- A. The City prefers that Offerors offer products that contain recycled materials. When a recycled product is offered by the Offeror, the Offeror must state in their Offer the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.
- B. The recycled content of paper products offered to the City shall be in accordance with the Federal Environmental Protection Agency's Recycled Product Procurement Guidelines. These guidelines are available at <http://www.epa.gov/cpg/> .
- C. Contract award for paper products will be made for recycled products unless the cost is more than 10% above the lowest price for non-recycled paper products as required in the City's Comprehensive Recycling Resolution.

**10. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING**

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.

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- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
  - C. If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.
  - D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit, certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at:  
<http://www.ci.austin.tx.us/edims/document.cfm?id=161145>
11. **INTERLOCAL PURCHASING AGREEMENTS** (applicable to competitively procured goods/services contracts).
- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
  - B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.
12. **BUY AMERICAN ACT – SUPPLIES** (applicable to certain Contracts with Federal funding).
- A. In accordance with applicable Federal Regulations, the City is restricted from purchasing supplies that are not domestic end products, for use within the United States. Offerors shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the Buy American Act Certificate. (See Section 0300, paragraph 56 for additional guidelines).
  - B. Offerors shall sign and return with their Offer, the **Buy American Act Certificate** included in the Solicitation.

**SPECIFICATIONS  
BIKES, KIOSKS, AND SOFTWARE FOR BIKE SHARE PROGRAM  
RFP EAG0111**

## **1. PURPOSE**

The City of Austin Public Works Department is soliciting proposals from qualified companies for the design, fabrication, and initial placement of a public bicycle sharing system located primarily in the public right of way and operation of a bike share subscriber registration and billing system.

The City of Austin will use funds made available through the Federal Highway Administration (FHWA) Non-Motorized Transportation Pilot to purchase part of the bike sharing equipment.

The City of Austin is seeking a public bicycle sharing system that will provide clean, easy-to-ride, and reliable bicycles to city residents, tourists, and students for short trips (typically under 5 miles) in urban areas. The system should enhance transportation options by making it possible to quickly rent and return a bicycle near places of employment, education buildings, and transit stops.

The City of Austin's expectations are:

- a) Rugged, high-quality, and easy-to-use bicycles and docking equipment
- b) A subscription system that ensures accountability and makes it possible for subscribers to access and return a bicycle very quickly at locations throughout the downtown area and its environs.
- c) Equipment designed to be an attractive amenity with minimal impact on pedestrian movement
- d) A financially self-sustaining system

## **2. BACKGROUND INFORMATION**

In general, the services to be performed are a) design and fabrication of bike sharing equipment, including bicycles, docks, and pay stations, b) initial placement of bike sharing equipment at future designated locations, and c) software development for a subscription-based registration and payment system and operation of that system.

### **a) Design and Fabrication of Bike Sharing Equipment**

The City of Austin requires proposers to offer financial assessment and design specifications, in accordance with this RFP, for the following package of bike sharing equipment:

#### Baseline Elements

- 300-400 bicycles
- 30-40 kiosks containing at least one pay station at each kiosk and at least 600 docks in the system

#### Optional Elements

- 40 poster cases containing space for system map and sponsor recognition

#### Future Inventory

- Typical replacements due to wear and tear

**SPECIFICATIONS  
BIKES, KIOSKS, AND SOFTWARE FOR BIKE SHARE PROGRAM  
RFP EAG0111**

- Warranty of upgrade of software

By signing the Buy American Act Certificate, the bidding firm and the signer certify that they will comply with the latest provisions of Buy America as listed at 23 CFR 635.410 and CFR 635.409. The Proposer, therefore, must state in its proposal the geographic location where said bike share equipment will be manufactured and assembled. If any manufacture and assembly shall occur within the United States, the Proposer should state:

- The actual cost of labor and materials used in the manufacture and assembly of the bike share equipment in the United States
- The percentage of Proposer's actual total cost of labor and materials for the project is represented by the actual cost of United States manufacture and assembly.

**b) Initial Placement of Kiosks**

The City of Austin desires that proposers offer financial assessment for the following: delivery of the equipment to Austin and installation at the future locations designated.

**c) Software and Operation of Subscription-Based Operating System**

The City of Austin desires that proposers offer financial assessment and design specifications, in accordance with Section 8 of this RFP for the following: development and operation of a subscription-based operating system that will register subscribers, accomplish financial transactions, send subscriber statements, measure usage, and provide a real-time map. Please reference **Attachment B** for criteria the City prefers regarding functional requirements, technical requirements, and cost.

**d) Schedule Constraints**

In order to meet conditions placed on the award of the Federal Highway Administration reimbursable program, The City of Austin is required to operate the bike sharing system in 2013. The successful Proposer must be prepared to commence operations beginning spring 2013.

**e) Minimum Qualifications**

Proposers are expected to demonstrate the following minimum qualifications:

- A demonstrated history of design, fabrication, installation, operation, and operation of bike sharing equipment in an urban environment, competitive prices, and compliance with design criteria as outlined within the RFP, Section 3.

**3. SPECIFIC CRITERIA**

**a) Equipment Design** - Specific criteria for the design of the bike sharing system are contained in **Attachment A**.

**b) Installation** - Installation of all equipment on City of Austin's right of way must be consistent with permits to be issued by The City of Austin Right of Way Department.

**c) Operation** - Specific criteria for the bike sharing operating system are contained in **Attachment A and**

**SPECIFICATIONS  
BIKES, KIOSKS, AND SOFTWARE FOR BIKE SHARE PROGRAM  
RFP EAG0111**

**Attachment B.**

**4. PROPOSED SCHEDULE**

RFP Release	October 22, 2012
Proposals due	November 15, 2012
Evaluations	November 19-30, 2012
Council Approval	January 2013
Estimated submission of purchase order for equipment	February 2013
Estimated launch of web-based subscription system	March 1, 2013
Delivery and placement of kiosks	April 1 - May 1
Beginning of Service	May 2013

# ATTACHMENT A

## Typical Trip Characteristics

The system should be designed for an average trip length of 1-3 miles and duration of 15-30 minutes. Trips will be made both during daylight and at night.

The pricing system will be designed with incentives to encourage users to return the bicycles to a kiosk within 30 minutes, so that many trips can be made on the same bicycle each day. For this reason, many trips will be one-way (i.e., the bicycle is checked into a kiosk near the destination). The system should also encourage two-way trips for quick errands (such as dropping of a package or getting a haircut). Encouraging those two-way trips maximizes convenience to the user and reduces kiosk rebalancing.

## Design Approach:

The system should be designed for the target users on a short trip within the service district in all seasons. A system designed for recreational rides, which are typically longer, on bike pathways or low-traffic roads outside the center city, in fair weather, by users wearing athletic clothing, would be insufficient.

## Basic Operating Requirements:

The system should be designed to allow bicycles to be removed from the self-service kiosks by two user groups: subscribers and walk-up renters.

Subscribers will be the largest user group. They will use a web page to register, submit credit card data, and execute a user agreement. After registration, subscribers should be able to immediately access a bike at any kiosk. Subscriptions should last one year with an automatic renewal option. Shorter Subscription periods, such as 3-day and 7-day, should also be available.

Walk-up renters will include out-of-town visitors and first-time users. The system should be designed to allow one-time use by walk-up registration at any kiosk. The system should enable walk-up renters to register, submit credit card data, and execute a user agreement at any kiosk.

The system should be designed to automatically complete financial transactions with data input at the web page and kiosks. For subscribers, a subscription fee (which will be determined by the City and the managing partner based on average market costs) would be withdrawn after registration. Subscribers who return the bicycle to a kiosk within 30 minutes will not be charged. After 30 minutes, charges will be automatically withdrawn. These charges should be sufficient to encourage users to get the bicycles back into circulation quickly.

If a bicycle is not returned to a kiosk within 24 hours and the user has not contacted customer service, the system should automatically deduct a predetermined amount (dependent on bicycle acquisition costs) from the user's credit card account, notify the user via e-mail of the deduction, and, if the user is a subscriber, terminate the subscription.

## Size of the System

It is critical that the system contain a sufficient number of bicycles and kiosks to enable subscribers to have a reasonable degree of certainty that they will find a bike at a kiosk when they look for one and find an empty docking point in a kiosk at their destination. If those conditions are not achieved, sales of Subscriptions will lag. For the Proposed Phase 1 Service Area, we estimate those numbers to be 300-400 bikes and 30-40 kiosk locations with 600 docking points. We request that vendors provide a proposal and pricing for a system

# ATTACHMENT A

of that size and also make an independent recommendation regarding the minimum size necessary for a successful bike sharing system.

## Bicycles

The following desired elements are considered most important:

- Safety and stability in all weather conditions;
- Upright riding position for confident riding in traffic;
- Easy to operate; easy to mount and to hold in stopped position, including for shorter rider;
- Reliable and intuitive braking system;
- Protection from grease, dirt, and tire spray including enclosed drive train and full fenders;
- One size to fit 90% of adult population with seat-only adjustment (small and large bikes should be available for rental at bike centers) (because bikes will move continuously and randomly throughout the system, maintaining a sufficient supply of small and large bikes at anyone kiosk would not be feasible);
- Theft deterrent (potentially through use of components not compatible with other bicycles and/or requiring tools not commonly available).
- Low-maintenance/durable;
- Corrosion resistant;
- Puncture resistant tires;
- Cargo capacity for typical briefcase, book bag, grocery bag weighing up to twenty pounds;
- Lighting system including rear flasher and front headlight;
- Front, rear, and side reflectors;
- Capacity for sponsorship advertising that can be easily changed;
- Gears and shifters that are easy to use and sufficient for operation in head winds and on hills in subsequent phases of the bicycle sharing system.

### Additional desired elements include:

- Compatibility with racks inside Cap Metro light rail cars and on the fronts of buses;
- Equipped with lock to enable user to secure bike to any bike rack or post while making a quick stop;
- Equipped with tracking devices, if cost-effective;
- Estimate of the useful life of the bicycle and proposed warranty terms.

# ATTACHMENT A

**Physical Layout of Kiosks:** The following desired elements are considered most important:

- Smallest feasible footprint to enable installation in a space currently used as a parking space or on a wide sidewalk; including not obstructing pedestrian walkways and/or hinder ADA compliance on the sidewalks;
- Aesthetic compatibility with streetscape, both when kiosk is full of bicycles and when it is empty;
- Minimal impairment of pedestrian movement on streets and sidewalks (kiosks cannot create long barriers); again, must not obstruct pedestrian walkways and/or hinder ADA compliance on the sidewalks;
- Pedestrian and rider safety-the kiosk should not have horizontal components that could trip a pedestrian or injure a rider approaching a kiosk at night;
- Low-maintenance/durable;
- Adequate space at each kiosk for a lighted map indicating both kiosk locations and bicycle routes;
- Clear and prominent instructions at each kiosk directing the users who to call in the event of problems (to prevent calls to right-of-way owners).

**Additional desired elements include:**

- Capacity to add lighting where necessary to facilitate nighttime use of kiosk and adjustment of bicycles and to reduce vandalism;
- Capacity to add emergency call buttons;
- Ability to remove kiosk to a different location without leaving behind attachment points that could impede a pedestrian;
- If wireless internet connections are used, the reliability of that system will be an important consideration.

**Operation of Kiosks and Registration System:** In addition to the basic operating requirements described above, the following desired elements are considered most important:

- Data security, particularly for financial data, user names, and addresses;
- Capacity to convey bicycle safety information and laws affecting bicyclists via the webpage. (A possible approach would require subscribers to watch a webinar and take a short quiz. Subscribers should also be referred to in-person training programs.)
- Automatic confirmation that subscriber's credit cards is valid and has sufficient funds to cover charge if bicycle is not returned, before each bicycle is removed from a kiosk;
- Limit on the number of subscriptions and walk-up rentals that can be purchased by one user or using one credit card;
- Capacity to maintain security of the system during a power failure event or loss of internet connection;
- Indicator on kiosk showing whether the bicycle is available for use or out of-service (such as when the system is shut down during an emergency or an individual bicycle has been identified as needing repair);
- Capacity for user to identify a bicycle as needing repair;
- Capacity to issue reports indicating to repair crews where to rebalance and where bicycles needing repair are located; (For example, the system could signal repair crews when kiosks are within two bikes of being full or empty.)

# ATTACHMENT A

- A process for situations in which a user wants to return a bike to a kiosk that is full. (One alternative would enable the user to add free time and view a map indicating the nearest kiosks with open docking points at the full kiosk. Another would be to enable the user to stop the clock at the full kiosk, lock the bike to a nearby post with the on-bike lock, and drop the key into a drop box, which could be opened by repair crews later.) Additional desired elements include:
- Flexibility to add features and modify system as needed;
- Capacity for user to track number of available bikes and open docking points in each kiosk via web page and/or cellphone;
- Ability to disable walk-up registration at times;
- A mechanism for users to report problems and make suggestions for system improvement via the webpage.
- Language options for web page and kiosk, particularly Spanish.

## **On-Site Repairs, Cleaning, and Rebalancing:**

It is anticipated to contract with a non-profit to maintain, repair, cleaning, and rebalancing the bicycle and maintain the kiosk as needed. The non-profit would be responsible for the following tasks:

- Filling tires
- Cleaning bikes
- Making minor repairs
- Moving bikes needing major repairs or periodic overhauls to a repair facility.
- Moving bikes from overloaded kiosks to under loaded kiosks ("rebalancing").

*Building New and Replacement Bikes; Periodic Overhauls:* We anticipate the nonprofit will assemble new and replacement bikes and to perform overhauls on each bike at regular intervals.

*Major Repairs:* We also anticipate the nonprofit will perform or contract out the repairs that cannot be done on-site, such as rebuilding a damaged wheel or drive train.

## **Customer Service**

To drive subscriptions and avoid unnecessary calls to right-of-way owners, a robust customer service program is required. Potential elements of the customer service program include:

- A customer service phone line with adequate staffing to address local problems (i.e., flat tire leaving a stranded rider) and operating system problems (i.e. questions about a subscriber's account). The phone number should appear on every bike. The customer service line should also be reachable through Austin 311.
- Personal customer support in a few locations, such as in bike centers.

# Attachment B

## 1.0 FUNCTIONAL REQUIREMENTS

### 1.1 Payment Requirements

Requirement Description	Required Response
<b>Payment Type/Channel (Credit Card/Online):</b> The system shall enable users to make online credit card payments for a product or service.	Describe how the system processes an online credit card payment.
<b>Payment Type (Credit Card):</b> The system shall support credit card payments for the following types: Visa, MasterCard, Discover, and American Express.	Describe the credit card vendors that the system supports. What capabilities does the system have (if any) to add additional payment card types presently or in the future?
<b>Transaction Fee Administration:</b> The system shall provide a flexible model for configuring and administering the payment of transaction fees.	<p>Describe the capabilities the system provides for:</p> <ul style="list-style-type: none"><li>▪ Assigning transaction fee types (percentage or fixed fee) to specific types of transactions (e.g., by transaction type, merchant ID or department system)</li><li>▪ Assigning the transaction fee payer (e.g., citizen, department, central fund, hybrid)</li><li>▪ Debiting appropriate accounts for fees due at set intervals. (Expected)</li></ul> <p>Describe how other fees (i.e. interchange, merchant processor or bank) are assigned and collected (e.g., to citizen, initiating department).</p>
<b>Duplicate Transaction Prevention:</b> The system shall provide controls to prevent duplicate transactions.	Describe how the system prevents the use of the same unique transaction identification number.
<b>Payment Refund (Credit Card):</b> The system shall provide refunds of a transaction or portion of a transaction for a product or service.	Describe how the system provides payment refunds for credit card transactions.
<b>Voiding a Transaction (Credit Card):</b> The system shall allow an authorized user to void a transaction within the same day the original posting is made prior to batch processing.	Describe how to void a transaction in the system including any controls to limit this activity (e.g., transactions can only be voided on the date the transaction was originally posted).
<b>Payment Chargeback (Credit Card):</b> The system shall enable the resolution of a payment chargeback.	Describe how the system processes a payment chargeback.
<b>Payment Type (PINless Debit Card):</b> The system shall process PINless debit card payments for a product or service.	Describe how the system supports the processing of PINless debit cards for payment. If the system does not support this payment type then provide a detailed description of how the system integrates with other vendor systems that do provide this capability.
<b>Payment Channel (Mobile Device):</b> The system shall enable customers to pay for products and services from a mobile device.	Describe how the system supports the processing of payments from a mobile device. If the system does not support this payment channel then provide a detailed description of how the system integrates with other vendor systems that do provide this capability.
<b>Real Time Transaction Error Feedback:</b> The system shall provide immediate online notification to the user of erroneous transactions.	Describe how the system communicates the reason for the error to the users and how the error can be corrected.

## 1.2 Merchant Processor Requirements

Please note that these requirements only apply to vendors that are submitting their own merchant processor in their response. The City currently has a contract with Chase Paymentech.

Requirement Description	Required Response
<b>Unique Transaction ID:</b> The merchant processor shall assign a unique ID to each transaction.	Describe how the merchant processor assigns a unique ID to each transaction.
<b>Credit Card Validation:</b> The merchant processor shall determine that the account number is valid, the credit card has not expired, and there is sufficient credit available to cover the charge. Any credit card transaction that does not meet these criteria will be declined.	Describe the process the merchant processor uses to determine the validity of a transaction. Describe expected response times.
<b>PCI-DSS (Level 1) Compliance:</b> The merchant processor shall be PCI-DSS (Level 1) compliant.	Provide the system PCI-DSS (Level 1) documentation.
<b>Supported Card Types:</b> The merchant processor shall process Visa and MasterCard credit and debit cards. It shall also process other card types (e.g. American Express and Discover).	Describe the type of cards your system can process.
<b>Merchant Processor Headquarters:</b> The merchant processor shall be headquartered and process transactions in the United States.	Describe where the merchant processor is headquartered and where they process transactions.
<b>Minimum Merchant Processing History:</b> The merchant processor shall have an ongoing minimum of five years of experience processing credit and debit transactions.	Describe the amount of ongoing experience the merchant processor has processing credit and debit transactions.
<b>Transaction Processing Expectation:</b> The merchant processor shall process all transactions submitted by the City that are valid, and satisfy applicable rules, regulations and laws.	Describe any conditions or obstacles that may potentially block transactions from being processed.
<b>Electronic Authorization/Capture Availability:</b> The merchant processor shall provide electronic authorization and capture capability for transactions 24 hours a day, 7 days per week.	Describe the availability of the system to provide electronic authorization and capture capability.
<b>Regulated Chargeback Process:</b> The merchant processor shall process all chargebacks in accordance with the applicable card regulations governing chargebacks.	Describe how chargebacks are processed in accordance with applicable card regulations.

## 2.0 TECHNICAL REQUIREMENTS

### 2.1 Security Requirements

Requirement Description	Required Response
<b>Secure Session Communication:</b> If the solution provides a Web server, the solution's Web interface shall be able to operate a secure communication session as SSL 128 bit encrypted HTTPS.	Describe how the solution's Web interface is able to operate a secure communication session as SSL 128 bit HTTPS.
<b>PCI Compliance:</b> The vendor shall be PCI-	Provide evidence of PCI compliance. Provide PCI audit

compliant (Level 1) and shall remain compliant through the life of the contract.	results from previous audits.
<b>Encrypted Data Transport:</b> The solution shall provide a secure method of data transport that encrypts application data sent between the front-end user system and the back-end servers.	Describe the encryption methodologies provided by the solution for transport of application data.

## 2.2 User Interface Requirements

Requirement Description	Required Response
<b>Section 508 Compliance:</b> If the solution is web-based and usable by public citizens, it shall be ADA and compliant with Section 508 of the Federal Rehabilitation Act.	Provide evidence of section 8 compliance for publicly accessible web interfaces.
<b>Mobile Device Compatibility:</b> The application shall provide Web functionality for wireless hand-held devices (WAP) as part of publicly accessible Web Service.	Describe your Web service's capability to present information to hand-held devices.

## 3.0 COST

Requirement Description	Required Response
<b>Transaction Fees:</b> The vendor shall detail the total cost per transaction of using their system.	Describe the total cost per transaction associated with using the system including any tiered transaction discounts based on quantity or transaction amount.
<b>Merchant Processor Fees:</b> The Vendor shall detail any fees associated with using the proposed merchant processor. (Only applies to prospective vendors bringing their own merchant processor).	Detail any and all fees associated with using the Vendor's merchant processor including any tiered transaction discounts based on quantity.
<b>Setup/Termination Fees:</b> The Vendor shall detail any costs associated with initial system set-up, configuration or termination of the system.	Detail any setup, configuration or termination fees associated with the system.
<b>Monthly and/or Annual Fees:</b> The Vendor shall detail any costs associated with ongoing recurring costs (Transaction fees are separate).	Describe any recurring monthly or annual fees associated with the system.
<b>Support and Maintenance Fees:</b> The Vendor shall describe any support costs or system maintenance/upgrade fees.	Describe any support costs (per incident or other) or system maintenance/upgrade fees associated with the system.
<b>Storage Fees:</b> The Vendor shall provide any fees associated with data storage.	Describe any fees associated with storage of real time or archived data. Include any tiered discounts or cost structures based on type and amount of data storage.
<b>Years 2 through 5 Fees:</b> The Vendor shall provide an additions or reductions to any fees after year 1.	Describe any additions or reductions to any portion of the fee schedule for years 2 through 5.

**CITY OF AUSTIN  
PURCHASING OFFICE  
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS  
SOLICITATION NUMBER: EAG0111**

**1. PROPOSAL FORMAT**

Prefacing the proposal, the Proposer shall provide an Executive Summary of three (3) pages or less, which gives in brief, concise terms, a summation of the proposal. **The original proposal shall be single sided, unbound, with no staples or paperclips. Copies of the proposal do not need to follow this format. One electronic copy of the proposal on a CD or flash drive in Word or PDF must also be submitted with the original bid. The CD or flash drive will not be returned.** The proposal itself shall be organized in the following format and informational sequence:

- A. **Part I - Business Organization**: State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
- B. **Part II - System Concept and Solution**: Define in detail your understanding of the requirement presented in the Scope of Work of this request for proposal and your system solution. Provide all details as required in the Scope of Work and any additional information you deem necessary to evaluate your proposal.
- C. **Part III - Program**: Describe your technical plan for accomplishing required work. Include such time-related displays, graphs, and charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Scope of Work and your plan for accomplishment. Specifically indicate:
  - i. A description of your work program by tasks including the design and manufacturing, the implementation plan and installation schedule, and the operational needs. Proposal must include the capacity for maintaining data privacy, retaining data pursuant to a record retention policy, and providing access to databases, and generating reports.
  - ii. The technical factors that will be considered in section above, and the depth to which each will be treated.
  - iii. The degree of definition provided in each technical element of your plan.
  - iv. The points at which written, deliverable reports will be provided.
  - v. A statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities. The Proposer must state his compliance with terms of this Request for Proposal (RFP).
  - vi. Drawings. Each proposer must submit color renderings and drawings that accurately reflect the overall concept of their proposal and satisfies and builds upon the objectives and concepts described in the Scope of Work section of this RFP.

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All diagrams or drawings shall be submitted as 11 x 17 size prints, with electronic resolution of 300 dpi for JPGs. Additionally, the proposer should submit detail drawings of each bike share element, including a site plan, front, side and rear elevations, and transverse and longitudinal sections. Detail drawings should accurately depict construction methods, including the method of mounting the structure to the sidewalk (if applicable), structural, mechanical, electrical, and telecommunications (if applicable). All dimensions will be included on the drawings indicating methods of construction and the specific types of materials and finishes to be used, including colors and textures as applicable. Notes shall also be provided to demonstrate that the designs meet applicable code requirements. The City of Austin may request at a later date that some or all Proposers submit additional items including perspective drawings, model photographs and samples of materials, as well as additional sets of drawings (including reproductions). Upon request, drawings sized at 36 inches by 48 inches mounted on foam-core may be provided by the Proposer for purposes of evaluation.

- D. **Part IV - Project Management Structure:** Provide a general explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.
- E. **Part V - Prior Experience:** Describe only relevant corporate experience and individual experience for personnel who will be actively engaged in the project. Only include experience on projects of similar type of work, scope, and magnitude. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience prior to the year 2000. Supply the project title, year, and reference name, title, present address, and phone number of principal person for whom prior projects were accomplished.
- F. **Part VI - Personnel:** Include names and qualifications of all professional personnel who will be assigned to this project. State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title. Submit chronological resumes for all key and technical personnel from all firms committed to this project. Describe previous related experience and provide references including: name, address and telephone number of client contact person, and brief description of the project(s). At a minimum, resumes provided should be for key personnel in the areas of project management, financial management, design, operations.
- G. **Part VII - Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying:**
- i. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2-7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
  - ii. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.

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- iii. If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.
  - iv. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at:  
<http://www.ci.austin.tx.us/edims/document.cfm?id=161145>
- H. **Part VIII - Proposal Acceptance Period:** All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal
- I. **Part IX - Proprietary Information:** All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.
- J. **Part X - Authorized Negotiator:** Include name, address, and telephone number of person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.
- K. **Part XI - Cost Proposal:** Information described in the following subsections is required from each Proposer. Your method of costing may or may not be used but should be described. A firm fixed price or not-to-exceed Contract is contemplated, with progress payments as mutually determined to be appropriate. Ten percent (10%) of the total contractual price will be retained until submission and acceptance of all work products.
- i. Manpower. Itemize to show the following for each category of personnel with separate hourly rates:
    - (1) manager, senior consultant, analyst, subcontractor, etc.
    - (2) estimated hours for each category of personnel
    - (3) rate applied for each category of personnel
    - (4) total cost
  - ii. Itemize cost of supplies and materials
  - iii. Other itemized direct costs
  - iv. If applicable, general and administrative burden. Indicate base used, percentage, and total cost relative to this procurement.

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- v. Travel expenses. All travel lodging expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

[http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA\\_BASIC](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC)

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

- vi. Printing. State separately the cost of furnishing copies of the final report (if applicable).
- vii. Total cost schedule.

**2. EXCEPTIONS:**

Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal.

**3. PROPOSAL PREPARATION COSTS:**

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.

**4. EVALUATION FACTORS AND AWARD**

- A. **Competitive Selection:** This procurement will comply with applicable City Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph B below shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the Best Offeror. Award of a Contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

**B. Evaluation Factors:**

- i. 100 points.
- (1) Total Evaluated Cost **51 points**
- (2) System Concept and Solutions Proposed (Grasp of the requirement and its solution(s), responsiveness to terms and conditions, completeness and thoroughness of the technical data and documentation.) **15 points**
- (3) Demonstrated Applicable Experience **5 points**
- (4) Equipment/Facilities **10 points**
- (5) Evidence of Good Organization and Management Practices **9 points**

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(6) Schedule **5 points**

(7) Drawings Included **5 points**

- ii. Interviews, Optional. Interviews may be conducted at the discretion of the City. Maximum 25 points

**CITY OF AUSTIN  
PURCHASING OFFICE  
REFERENCE SHEET**

**Please Complete and Return This Form with the Offer**

Solicitation Number:

Offeror's Name

Date

The Offeror shall furnish, with the Offer, the following information, for at least  recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

To add additional references to this form, click the Add Reference Button. =====>

**Add Reference**

Company's Name	<input type="text" value="San Antonio Bike Share"/>		
Name of Contact	<input type="text" value="Cindi Snell"/>	Contact Title	<input type="text" value="Executive Director"/>
Present Address	<input type="text" value="600 Hemisfair Plaza Way #203"/>		
City	<input type="text" value="San Antonio"/>	State	<input type="text" value="Texas"/> Zip Code <input type="text" value="78205"/>
Telephone Number	<input type="text" value="(210) 828-5558"/>	FAX Number	<input type="text"/>
Email Address	<input type="text" value="cindi@bikeworld.com"/>		

Company's Name	<input type="text" value="Denver Bike Sharing"/>		
Name of Contact	<input type="text" value="Parry Burnap"/>	Contact Title	<input type="text" value="Executive Director"/>
Present Address	<input type="text" value="2737 Larimer Street, Suite A"/>		
City	<input type="text" value="Denver"/>	State	<input type="text" value="Colorado"/> Zip Code <input type="text" value="80205"/>
Telephone Number	<input type="text" value="(720) 865-9031"/>	FAX Number	<input type="text"/>
Email Address	<input type="text" value="parry.burnap@denverbikesharing.org"/>		

Company's Name	<input type="text" value="Boulder Bike Sharing"/>		
Name of Contact	<input type="text" value="Chris Hazlitt"/>	Contact Title	<input type="text" value="Member of Board of Directors"/>
Present Address	<input type="text" value="P.O. Box 620"/>		
City	<input type="text" value="Boulder"/>	State	<input type="text" value="Colorado"/> Zip Code <input type="text" value="80306"/>
Telephone Number	<input type="text" value="(303) 417-8548"/>	FAX Number	<input type="text"/>
Email Address	<input type="text" value="chris.hazlitt@bryancave.com"/>		

**City of Austin, Texas  
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE  
NON-DISCRIMINATION CERTIFICATION**

**SOLICITATION NO** EAG0111

**City of Austin, Texas  
Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin  
Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.*

*Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.*

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.**

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 9th day of November, 2012.

CONTRACTOR

B-cycle, LLC

Authorized Signature

Title

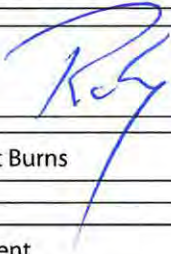
President

**City of Austin, Texas**  
**NON-SUSPENSION OR DEBARMENT CERTIFICATION**

SOLICITATION NO. EAG0111

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:	<div style="border: 1px solid black; min-height: 20px;">B-cycle, LLC</div>		
Signature of Officer or Authorized Representative:		Date:	<div style="border: 1px solid black; min-height: 20px;">Nov 9, 2012</div>
Printed Name:	<div style="border: 1px solid black; min-height: 20px;">Robert Burns</div>		
Title:	<div style="border: 1px solid black; min-height: 20px;">President</div>		

**CITY OF AUSTIN  
NON-COLLUSION,  
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT  
SOLICITATION NO. EAG0111  
FOR**

Bikes, Kiosks, and Software for Bike Share Program

**State of Texas**

**County of Travis**

**The undersigned "Affiant" is a duly authorized representative of the Offeror for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:**

The term "**Offeror**", as used herein, includes the individual or business entity submitting the Offer and for the purpose of this Affidavit includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and anyone or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

- 1. Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:
  - a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
  - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
- 2. Preparation of Solicitation and Contract Documents.** . The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
- 3. Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
- 4. Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
- 5. City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
- 6. Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:
  - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;

**CITY OF AUSTIN  
NON-COLLUSION,  
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT**

- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/department/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

Offeror's  
Explanation:

--

7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a City official or to a City employee, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

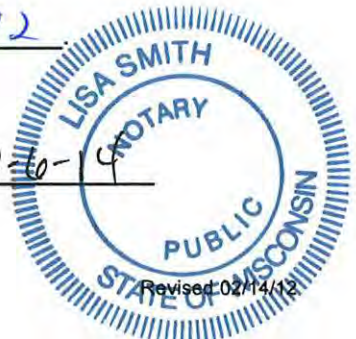
Contractor's Name:	B-cycle, LLC
Printed Name:	Robert Burns
Title:	President

Signature of Officer or Authorized Representative:

Subscribed and sworn to before me this 9th day of November, 2012

  
\_\_\_\_\_  
Notary Public

My Commission Expires 7-6-13




**CITY OF AUSTIN, TEXAS**  
**BUY AMERICAN ACT CERTIFICATE**  
(Please duplicate as needed)

**SOLICITATION NO.** EAG0111

1. The Offeror certifies that each end product, except those listed in paragraph below, is a domestic end product and that the Offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in Section 0300, paragraph 55, entitled "Buy American Act-Supplies."
2. Foreign End Products:

<div style="border: 1px solid black; padding: 2px; width: 100px;">Add Item</div>	Line Item No. <span style="border: 1px solid black; display: inline-block; width: 80px; height: 20px; vertical-align: middle;"></span>	Country of Origin <span style="border: 1px solid black; display: inline-block; width: 180px; height: 20px; vertical-align: middle;"></span>
<input type="checkbox"/> Check if Foreign End Product is treated as domestic on an approved Government List (Attach Documentation)		

Contractor's Name:	<div style="border: 1px solid black; padding: 2px;">B-cycle, LLC</div>		
Signature of Officer or Authorized Representative:		Date:	<div style="border: 1px solid black; padding: 2px;">Nov 9, 2012</div>
Printed Name:	<div style="border: 1px solid black; padding: 2px;">Robert Burns</div>		
Title:	<div style="border: 1px solid black; padding: 2px;">President</div>		

\*see attached opinion letter



March 29, 2012

Via Email

Emily Snyder, AICP  
Denver Public Works  
[Emily.Snyder@denvergov.org](mailto:Emily.Snyder@denvergov.org)

RE: Made in the USA

Dear Emily,

Thank you for the information regarding the Buy America requirements for the Denver bike-sharing system. Although no certification has been issued, we understand that funds from the Federal Highway Administration's (FHWA) will be used for this project, and therefore that the FHWA's Buy America requirements will apply. As you've noted, those requirements indicate that manufacturing processes for iron or steel materials must occur in the United States.

I am pleased to inform you that B-Cycle's bike-sharing system complies with the FHWA's Buy America requirements. B-Cycle is proud that the stations themselves—including the dock, map/ad module, kiosk A/C, kiosk solar kit, and bases—are made of U.S. steel and are manufactured and produced in Colorado, USA. The batteries are also manufactured in the USA.

The bicycles are likewise compliant. As you have noted, the frames are aluminum. However, because aluminum is not subject to the FHWA's Buy America requirements, the source of that material is not relevant. In fact, the FHWA has made this explicit

([http://www.fhwa.dot.gov/construction/contracts/buyam\\_qa.cfm](http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm)):

- Q# 15. *Does Buy America apply to aluminum products (like aluminum light poles)?*
- A# 15. No. Buy America applies only to **iron and steel products**.

In any event, the completed bicycles themselves are not subject to the FHWA's Buy America scheme because they are not permanently incorporated into the project, as required for the scheme to apply. For example, the FHWA has advised that permanently incorporated items include those items that "are impractical to remove due to design, construction staging or other functional requirements," and do not



include items that may be removed during subsequent phases of the project. (See *FHWA Memorandum (June 13, 2011)*).

Unlike the stations, the bicycles in a bike-sharing system do not remain in place at the end of the project. They are not impractical to move due to their design, construction staging, or other functional requirements. By their very nature, they will be removed from the project site by DBS and end users. Further, they can and will be removed—for repair and replacement—during subsequent phases of the work by DBS.

I hope this answers your questions. Please let me know if there is any additional information that B-Cycle can provide at this time.

Sincerely,

B-Cycle, LLC

A handwritten signature in black ink, appearing to read 'R. Burns'.

Robert Burns  
President  
[bburns@bcycle.com](mailto:bburns@bcycle.com)


**City of Austin, Texas**  
**NONRESIDENT BIDDER PROVISIONS**  
**SOLICITATION NO. EAG0111**

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "Non-resident Bidder"?

- ☐ Texas Resident Bidder - A Bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
- ☒ Non-resident Bidder

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state? ☐ Yes ☒ No

Bidder's Name:	B-cycle, LLC		
Signature of Officer or Authorized Representative:		Date:	Nov 9, 2012
Printed Name:	Robert Burns		
Title:	President		

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)  
PROCUREMENT PROGRAM  
NO GOALS FORM**

SOLICITATION NUMBER: EAG0111

PROJECT NAME: Bikes, Kiosks, and Software for Bike Share Program

**The City of Austin has determined that no goals are appropriate for this project.** Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

**Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?**

No   x   If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes        If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

B-cycle, LLC

Company Name

Robert Burns, President

Name and Title of Authorized Representative (Print or Type)

Signature

11/09/12

Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)  
PROCUREMENT PROGRAM  
NO GOALS UTILIZATION PLAN**  
(Please duplicate as needed)

SOLICITATION NUMBER:	EAG0111
PROJECT NAME:	Bikes, Kiosks, and Software for Bike Share Program

**PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION**

Name of Contractor/Consultant	B-cycle, LLC		
Address	801 W. Madison Street		
City, State Zip	Waterloo, WI 53594		
Phone	920-478-2191	Fax Number	
Name of Contact Person	Robert Burns		
Is company City certified?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Robert Burns, President

Name and Title of Authorized Representative (Print or Type)

11/09/12

Signature

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

<b>Sub-Contractor/Consultant</b>	
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Amount of Subcontract	\$
List commodity codes & description of services	

<b>Sub-Contractor/Consultant</b>	
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Amount of Subcontract	\$
List commodity codes & description of services	

**FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:**

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor \_\_\_\_\_ Date \_\_\_\_\_ Director/Deputy Director \_\_\_\_\_ Date \_\_\_\_\_



February 14, 2013

SENT VIA EMAIL

Ms. Erin D'Vincent, Buyer II  
City of Austin, Purchasing Office  
P.O. Box 1088  
Austin, TX 78701

RE: Bikes, Kiosks and Software, Solicitation # EAG0111, Austin B-cycle Topics for Clarification

Dear Erin,

We are in receipt of your email dated February 12, 2013. Please see below for our response to the question you posed in your letter.

**1. On the spreadsheet, please fill in the quantity of bases needed to support the quantity of docks listed.**

Please see the attached completed Base Clarification.

**2. Define how many bikes that your single sided base holds.**

Each single sided base can hold 2 docks which will hold a total of 2 bikes. Please note that a kiosk will take the place of one dock at each station.

**3. Define how many bikes that your double sided base holds.**

Each double sided base can hold 4 docks which will hold a total of 4 bikes. Please note that a kiosk will take the place of one dock at each station.

**4. Please confirm the prices listed on the BAFO submitted by your company on Friday, as well as this clarification today, are the only charges the City will incur.**

With regard to capital equipment, this is correct and confirmed. However, we do recognize that as final station locations and configurations are finalized, the quantities of each of the items may change. Additionally, the final shipping charges of the stations and bicycles will be finalized upon delivery of actual equipment. If requested, as station configurations are finalized and delivery dates are determined, more accurate shipping quotes can be provided prior to shipment.

**5. If this is not your understanding, on a separate page please explain in detail the additional charges the City will incur by each line item.**


As previously stated, the City, or the system operator, can expect to incur a monthly fee for a cellular data connection at each station. Additionally, the City, or the system operator, can expect to incur an Annual Enterprise Software Fee in the amount of \$100/dock for the first year and \$125/dock/year thereafter.

Thank you for your time on the telephone yesterday. I hope it was helpful in assisting you to make your decision. We trust that this responds to your concerns. However, if you do require any additional information, please do not hesitate to contact me.

Sincerely,

B-cycle, LLC

Mandi Schwarz  
Business Manager

City of Austin Best and Final Offer	
RFP EAG0111 Bikes, Kiosks, and Software for Bike Share Program	
Vendor Name: B-cycle, LLC	
Vendor Signature:	
Date: 02/14/13	
<b>Special Instructions:</b> An entry of "0" (zero) will be interpreted by the City as a no-charge (free) item and the City will not pay for that item. Except for Informational Purposes Only section: Items listed below are required to have a price or an entry of 0.  The quantities noted below are estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide. Actual purchases may be more or less.	

Item	Description	Quantity of Docks	Quantity of Bases	Unit Price	Extended Price
Base (to support the number of docks listed to the right)	Permanent (Bolted) - Single Sided	450	240	\$271.00	\$65,040.00
		525	280	\$271.00	\$75,880.00
		600	320	\$271.00	\$86,720.00
	Removable (Non-Bolted) - Single Sided	450	240	\$777.00	\$186,480.00
		525	280	\$777.00	\$217,560.00
		600	320	\$777.00	\$248,640.00

Item	Description	Quantity of Docks	Quantity of Bases	Unit Price	Extended Price
Base (to support the number of docks listed to the right)	Permanent (Bolted) - Double Sided	450	120	\$271.00	\$32,520.00
		525	140	\$271.00	\$37,940.00
		600	160	\$271.00	\$43,360.00
	Removable (Non-Bolted) - Double Sided	450	120	\$777.00	\$93,240.00
		525	140	\$777.00	\$108,780.00
		600	160	\$777.00	\$124,320.00

PLEASE NOTE: The quantity of bases listed above also includes space for the kiosk at each station. Bases are charged on an individual station basis. There is no additional charge if some stations are bolted and some stations are non-bolted. Please also note that bolted stations are not "permanent" in the sense that they can be removed by simply removing the bolts.



February 8, 2013

SENT VIA EMAIL

Ms. Erin D'Vincent  
Buyer II  
City of Austin, Purchasing Office  
P.O. Box 1088  
Austin, TX 78701

RE: Bikes, Kiosks and Software, Solicitation # EAG0111, Austin B-cycle Topics for Clarification

Dear Erin,

We are in receipt of your letter dated February 1, 2013. Pursuant to your letter, attached please find our Best and Final Offer. Additionally, please see below for our response to the question you posed in your letter.

**Question #1: In your proposal you list the price of the RFID Reader at \$300 and a quantity of one. If the RFID Reader is included in all of the kiosks, is this correct, or would the quantity change to the same number of kiosks the City is purchasing?**

The RFID Reader quoted at \$300 in the quantity of 1 in the quote is a handheld RFID reader which we recommend that you purchase in order to read the RFID tags on the bikes for use during maintenance and/or during use of the virtual kiosk feature. Only one is required. This RFID Reader is not part of the station and only one is required.

Regarding the Best and Final Offer as per Austin's request during our telephone conference on January 3, 2013, B-cycle "sharpened its pencil" and we took approximately \$91,430 out of the cost of the system. Unfortunately we cannot sharpen this particular pencil any further. Accordingly, I have completed the Best and Final Offer form pursuant to the quote we previously provided dated January 7, 2013.

We trust that the above responds to your questions and concerns however if you do require any additional information, please do not hesitate to contact me.

Sincerely,

B-cycle, LLC

Mandi Schwarz  
Business Manager

## City of Austin Best and Final Offer

## RFP EAG0111 Bikes, Kiosks, and Software for Bike Share Program

Vendor Name: B-cycle, LLC

Vendor Signature: 

Date: 02/08/13

**Special Instructions:**

An entry of "0" (zero) will be interpreted by the City as a no-charge (free) item and the City will not pay for that item. Except for Informational Purposes Only section: Items listed below are required to have a price or an entry of 0.

The quantities noted below are estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide. Actual purchases may be more or less.

Item	Description	Quantity	Unit Price	Extended Price
Bikes	3 Speed	300	\$1,043.00	\$312,900.00
		350	\$1,043.00	\$365,050.00
		400	\$1,043.00	\$417,200.00
	7 or 8 speed	300	\$1,300.00	\$390,000.00
		350	\$1,300.00	\$455,000.00
		400	\$1,300.00	\$520,000.00

Item	Description	Quantity	Unit Price	Extended Price
AC Kiosk Stations	Must include: Pay Stations Wireless Connection RFID reader	30	\$5,116.00	\$153,480.00
		35	\$5,116.00	\$179,060.00
		40	\$5,116.00	\$204,640.00

Item	Description	Quantity	Unit Price	Extended Price
Docks with locking mechanism	The City will purchase a ratio of 1.5 docks to bikes	450	\$927.00	\$417,150.00
		525	\$927.00	\$486,675.00
		600	\$927.00	\$556,200.00

Item	Description	Quantity	Unit Price	Extended Price
Base (to support the number of docks listed to the right) <i>*assumes 50% single-sided and 50% double-sided stations</i>	Permanent	450	\$271.00	\$48,780.00
		525	\$271.00	\$57,452.00
		600	\$271.00	\$65,040.00
	Removable	450	\$777.00	\$139,860.00
		525	\$777.00	\$164,724.00
		600	\$777.00	\$186,480.00

Item	Description	Quantity	Unit Price	Extended Price
Kiosk Software	One time start up software fee	1	\$7,500.00	\$7,500.00
	Installation Fee per Kiosk (must include any travel expenses as these can not be billed separately)	30	\$1,869.00	\$56,070.00
		35	\$1,869.00	\$65,415.00
		40	\$1,869.00	\$74,760.00

Item	Description	Quantity	Unit Price	Extended Price
Shipping and Handling	Bikes and Accessories	300	\$27.00	\$8,100.00
		350	\$27.00	\$9,450.00
		400	\$27.00	\$10,800.00
	Kiosk Stations <i>*Shipping charges will be finalized upon final station configurations and actual delivery date.</i>	30	\$1,315.00	\$39,450.00
		35	\$1,127.00	\$39,445.00
		40	\$986.00	\$39,440.00
	Docks (if dock shipping is included with the kiosk shipping then please note this)	450	\$0.00	\$0.00
		525	\$0.00	\$0.00
		600	\$0.00	\$0.00

Item	Description	Quantity	Unit Price	Extended Price
Bike Accessories	Must include: front basket of standard size capable of carrying 20 pounds front and rear flashing lights cable locks front, rear, and side reflectors	300	\$0.00	\$0.00
		350	\$0.00	\$0.00
		400	\$0.00	\$0.00

Item	Description	Quantity	Unit Price	Extended Price
Misc. Items	RFID Membership Cards	1,500	\$2.00	\$3,000.00
	Tracking Devices (i.e. GPS system)	300	\$57.00	\$17,100.00
		350	\$57.00	\$19,950.00
		400	\$57.00	\$22,800.00

**FOR INFORMATIONAL PURPOSES ONLY**

**THE CITY MAY WISH TO PURCHASE ADDITIONAL ITEMS OR SERVICES FROM THE SUCCESSFUL PROPOSER. PLEASE INDICATE THE PRICES YOU WILL CHARGE THE CITY FOR THESE ITEMS**

<b>ITEM OR SERVICE (if any)</b>	<b>HOW MUCH WILL YOU CHARGE THE CITY FOR THESE ITEMS OR SERVICES? (list cost per item below)</b>
Solar Powered Kit for Kiosks	\$3509/kit plus shipping
Map/Ad Module	\$973/module plus shipping
Annual Warranty	\$0
Custom Paint Job	\$0
Adder for 50/50 base mix	\$0
<b>Miscellaneous Accessories (please list below)</b>	
example: helmets	\$40.00/ea.
Annual Enterprise Software Fee	\$100/dock for first year only, thereafter \$125/dock/year *B-cycle system will not work without this fee being paid



January 18, 2013

SENT VIA EMAIL

Ms. Erin D'Vincent  
City of Austin, Purchasing Office  
P.O. Box 1088  
Austin, TX 78701

RE: Bikes, Kiosks and Software, Solicitation # EAG0111, Austin B-cycle Topics for Clarification

Dear Ms. D'Vincent,

Below please find our responses to your questions you posed in our telephone call on January 18, 2013.

**Topic 1**

**Has B-cycle provided custom color bikes for any other bike sharing program? Is there an additional cost for a custom color bike?**

B-cycle has provided custom color bikes for one other bike share system. While there is no additional charge for custom color bikes per se, we encourage system users to choose one of our three standard colors for several reasons. First, there is at least a six month lead time for custom color and, depending on when we can fit the custom order in our production schedule, that lead time could be longer. In contrast, B-cycle keeps an inventory of its three standard colors in stock making future expansions much easier. Second, B-cycle cannot keep an inventory of custom color replacement parts in stock. In contrast, we do keep an inventory of replacement parts in our three standard colors in stock. Therefore, if a system owner chooses a custom color, it must either: 1) purchase and keep an inventory of custom color replacement parts in stock; or 2) wait approximately six months if those parts are ordered as needed.

**Topic 2**

**Austin would like to launch the system in May 2013. Is there a delay in shipment if custom color bikes are ordered?**

Yes. If Austin chose a custom color the delay would be at least an additional six months, but probably longer. The reason for this is once a custom color is chosen and the correct PMS number is selected, sample tubes must be painted at the factory and sent to Austin for approval. This process can take as long as one to two months.

**Topic 3**

**If a bike is scratched or damaged, how would the bike share operator fix the paint?**

This question illustrates the many difficulties that arise from choosing a custom color. However, once the PMS number and the type of paint are chosen, as a practical matter, most systems purchase and carry their own touchup paint and/or have a local paint shop perform this service. This method is both faster and cheaper.

Finally, B-cycle is facing a very busy spring implementation schedule therefore, if we are your chosen vendor, please advise us of your color decision as soon as practicable so that we may ensure that we have adequate inventory in stock in time for your launch.

We trust that the above responds to your questions and concerns however if you do require any additional information, please do not hesitate to contact me.

Sincerely,

B-cycle, LLC

A handwritten signature in blue ink, appearing to read "R. Burns", with a stylized flourish extending from the end.

Robert Burns  
President



December 27, 2012

SENT VIA EMAIL

Mr. David Kucko  
Corporate Contract Administrator  
City of Austin, Purchasing Office  
P.O. Box 1088  
Austin, TX 78701

RE: Bikes, Kiosks and Software, Solicitation # EAG0111, Austin B-cycle Topics for Clarification

Dear Mr. Kucko,

Below please find our responses to your questions you posed in an email dated December 19, 2012.

**Topic 1**

**Proposal Cover Letter, 11/15/12, first bullet "B-connected," how are payments handled regarding members from other cities in the system?**

A visiting annual member of another B cycle system can use the Austin system as a member and vice versa. If that member incurs usage fees while in Austin those fees are billed to his or her account and then credited to Austin.

Therefore, the usage fees that an annual member, of another program, will incur while using the Austin system will be collected and deposited into the Austin system's account.

**Topic 2**

**Proposal Part 2: System Concept and Solution, page 3, (3) who maintains/updates the web page?**

The web page is maintained by B-cycle and it is updated with local content by the system operator.

**Topic 3**

**Proposal Part 2: System Concept and Solution, page 11, "Stations," please describe the optional one-year service plan further.**

B-cycle will provide a one year parts and service warranty for the stations.

**Topic 4**

**Proposal Part 2: System Concept and Solution, page 12, "Stations," what is "Tier 1?"**

Tier 1 station troubleshooting is the most basic level of troubleshooting that a system operator typically performs on a station when an issue arises (i.e rebooting a station, checking the station for solar power, etc.). B-cycle has developed a Tier 1 Station Troubleshooting Guide and is also available via phone or email to walk a system operator through some basic steps in solving some very basic station issues.

**Topic 5**

**Proposal Part 2: System Concept and Solution, page 12, "Software," explain the "training" further.**

B-cycle, at the request of the system operator, is happy to provide additional training in the use of the B-cycle software so that the system operator is always up to date with the latest features that are developed. We perform additional training mostly through online web conferences.

#### **Topic 6**

**Proposal Part 2: System Concept and Solution, page 14, 3.0 Cost, what monthly and/or annual fees would a customer expect to see?**

A system operator should expect to see monthly cellular fees from their cellular provider and an annual software fee that is billed quarterly. The annual software fee includes the consumer facing website, the administrative website, the payment gateway, the kiosk service, the mobile app, the GPS and all non-custom software upgrades.

#### **Topic 7**

**Proposal Part 3: Program, Timeline, please provide additional task details and dates.**

**Contracting** – The entire installation timeline begins when the purchase agreements are signed.

**Insurance** – All B-cycle system operators have been able to secure affordable insurance and we would be happy to provide Austin with a referral if desired.

**Site Selection, Permitting & Preparation** – This is the process of selecting and finalizing the station locations with the B-cycle Implementation Manager, receiving the proper permits for the installation of the station, and performing any site preparation (i.e. pouring concrete, providing electricity to the site if desired, etc.). Site selection and permitting is typically the longest and most time consuming portion of any bike share implementation, and depends largely on coordination between the local authorities and the relevant city officials that must issue the requisite approvals.

**Product Procurement** – As soon as the B-cycle Implementation Manager has reviewed all station locations and the configurations, an order is placed for the final configurations of each of the stations and bicycles.

**Product Shipment, Assembly & Testing** – At a time to be coordinated with the system operator, the bicycles will be shipped to the system operator for assembly, and testing in a mock docking station. Additionally, again at a time to be coordinated with the system operator, the stations will be shipped to Austin, installed in the field and tested for a second time. Station installations can be performed in phases or all at once.

**Branding Design & Promotion** – Typically the system owner/operator determines the program name (i.e. Austin B-cycle). B-cycle offers three standard bicycle colors with down tube decals included. The station branding is fairly standard, although there is a standard optional sponsor decal on the station as well as the map/ad module posters. Typically, the system owner/operator designs a system map and a sponsorship poster to include in the map/ad modules. The printing of these posters is included in the price of the map/ad module.

**Promotion Plan** – The promotion plan is typically developed and executed by the system operator; however, B-cycle has accumulated a library of marketing assets which can be adapted for Austin and are available at no additional charge.

**Web Community** – Each B-cycle community has its own local website which allows the system operator to post local content and provides individual user pages, a Twitter feed and an optional leaderboard (which posts the names of the members who have ridden B-cycle the furthest). In our experience, the leaderboard fosters a friendly and local competition that the members enjoy very much. Further, most B-cycle systems have a strong presence on Facebook, Twitter and other social media.

**Training** – B-cycle will provide the website software training as soon as the website is delivered to the system owner/operator. B-cycle will then provide additional, more in-depth, training on the backend software closer to

the launch date of the system. Further, B-cycle will assist with and provide training on bicycle assembly and routine station maintenance and troubleshooting. There is no additional charge for this training.

**System Launch** – This is the date the system officially opens to the public. Beginning with the end in mind, the selection of this date drives many of the critical deadlines which precede it. We recommend that cities use both a “Soft Launch” during which time the system is functioning and available for use to a small number of testers. During this time, system training is completed and any bugs are worked out of the system. Typically, the “Public Launch” involves a small ceremony/celebration at which local political leadership and media are usually present.

B-cycle has successfully implemented and launched 16 systems on time and on budget.

#### **Topic 8**

##### **Proposal Part 3: Program, what support would B-cycle need from COA?**

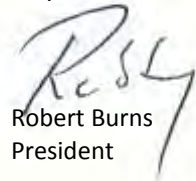
The City of Austin can be as involved in the planning, implementation and installation processes as it would like -- or as little as it would like. In our experience, it is extremely helpful to have a high level of political support and leadership from the City to expedite the site selection and permitting process.

Finally, we have taken the liberty to include the just-published 2012 Annual Report for the B-cycle system in Madison, Wisconsin. This report has many interesting statistics and will give you a sense of how a system, that is similar in size to the one contemplated for Austin, actually functions in the real world. There is however one difference which we should point out: because of the climate in Madison, Wisconsin, the Madison system is closed from mid-December until mid-March. The Austin system, of course, will enjoy the benefits of year-round operation.

We trust that the above responds to your questions and concerns however if you do require any additional information, please do not hesitate to contact me.

Sincerely,

B-cycle, LLC



Robert Burns  
President



December 31, 2012

SENT VIA EMAIL

Erin D'Vincent  
Buyer II  
City of Austin - Purchasing Office  
P.O. Box 1088  
Austin, TX 78767

RE: Texas Franchise Tax

Dear Ms. D'Vincent,

We have consulted with our tax advisor and have been advised that B-cycle, LLC is currently not required to file the Texas Franchise Tax. Thank you.

Sincerely,

B-cycle, LLC

A handwritten signature in black ink, appearing to read 'RcG', written over the printed name and title.

Robert Burns  
President



TO: Veronica Lara, Director  
Department of Small and Minority Business Resources

FROM: Erin Grace, Buyer II  
Purchasing Office

DATE: October 4, 2012

SUBJECT: Approval to use Zero Goals for Solicitation No. RFP

Project Name: Bikes, Kiosks, and Software

Commodity Code(s): 92045, 65010 + 92962

Estimated Value: \$1,000,000

(all 3 packaged as one)  
per Buyer 8/10/12

The Purchasing Office has determined that the following Goals are appropriate for this Commodity solicitation:

☒ No Goals (Goal of 0%)

This determination is based on the following reason:

This solicitation will be bid by and awarded to a prime contractor. No subcontracting opportunities have been identified.

Per paragraph 8.2.1 of the Rules Governing the Minority and Women Owned Business Enterprise Procurement Program, please approve the use of the above goals by completing and returning the below endorsement. If you have questions, please call me at 972-4017.

☒ Approval is hereby granted to use the above Goals.

☐ Approval is hereby denied. Recommend the use of the following goals based on the below reasons:

a. Goals: \_\_\_\_\_% MBE \_\_\_\_\_% WBE

b. Subgoals: \_\_\_\_\_% African American \_\_\_\_\_% Hispanic

\_\_\_\_\_% Native/Asian American \_\_\_\_\_% WBE

This determination is based on the following reasons:

There are no certified subcontracting firms that can provide all three scopes in this solicitation package.

Veronica Lara, Director

Date: 10/15/12