

CAMINO REAL REGIONAL MOBILITY AUTHORITY BOARD RESOLUTION

WHEREAS, various area agencies have partnered to develop a bike share program within the El Paso region (the “Bike Share Program”), whereby the various agencies agreed to provide funding to the Camino Real Regional Mobility Authority (CRRMA) and the CRRMA agreed to develop, implement and operate such Bike Share Program; and

WHEREAS, certain funding sources allocated for the Bike Share Program have stringent timelines associated with their use, which has required the CRRMA to pursue this project in an expedited manner, utilizing all resources available to the CRRMA and the program stakeholders that will allow for the development and implementation of a successful program; and

WHEREAS, in order to achieve the tight timelines associated with this Bike Share Program funding, the CRRMA desires to authorize its Executive Director to negotiate and execute a purchase agreement and any related instruments necessary in order to implement said program within the referenced timelines, provided that any such agreements or other instruments result in obligations to the CRRMA only in such amounts as are within the project budgets identified for this phase of the Bike Share Program.

NOW, THEREFORE, BE IT RESOLVED BY THE CAMINO REAL REGIONAL MOBILITY AUTHORITY:

THAT the Executive Director be authorized to negotiate and execute a Purchase Agreement and associated instruments with B-CYCLE, LLC. as such instruments relate to Phase I of the proposed Bike Share Program, provided such liabilities do not exceed the established project budget of \$720,000.

PASSED AND APPROVED THIS 11TH DAY OF DECEMBER 2013.

**CAMINO REAL REGIONAL
MOBILITY AUTHORITY**

ATTEST:

Scott McLaughlin, Chair

Susan A. Melendez, Board Secretary

APPROVED AS TO CONTENT:

Raymond L. Telles
Executive Director

PURCHASE AGREEMENT FOR EQUIPMENT AND SERVICES

THIS PURCHASE AGREEMENT FOR EQUIPMENT AND SERVICES (this “Agreement”) is made this [Day] day of [Month], [Year] (the “Effective Date”), by and between B-CYCLE, LLC, a Delaware limited liability company, with its principal offices at 801 West Madison Street, Waterloo, Wisconsin 53594 (“Seller”), and [Entity], a [State where company was incorporated and type of incorporation] with its principal offices located at [Address] (“Buyer”).

RECITALS

WHEREAS, Buyer has been duly authorized by [City and State], to install and operate a bike share system in [City and State] on behalf of the [City and State];

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

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

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

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

AGREEMENTS

1. Definitions. As used herein, the term:

- (a) “Bicycle” means Seller’s bicycle to be purchased by Buyer from Seller pursuant to this Agreement and meeting the specifications set forth in Schedule A, attached hereto and incorporated herein.
- (b) “Station” refers collectively to one (1) kiosk and its associated docks, bases, and map/ad module(s), if applicable, as set forth in Schedule B.
- (c) “Equipment” shall mean any and all Bicycles, docks, kiosks, bases, map/ad modules, components, spare parts, goods, equipment or materials of any kind which are supplied, modified, repaired or overhauled by Seller.
- (d) “Loss” shall mean any and all losses, claims, damages, liabilities, expenses, including without limitation special, consequential, loss of profit, incidental, resultant or indirect damages (including without limitation, loss of use, revenue, profit and good will), future or exemplary damages.
- (e) “Site” means the specific physical location where a Station is or will be installed.

2. Sale of Goods and Services.

- (a) Seller shall sell to Buyer and Buyer shall purchase from Seller [Number of bikes] Bicycles, together with [Number of stations] Stations, at the prices listed in Schedule C, attached hereto and incorporated herein.

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

3. Payment.

- (a) Buyer shall make a deposit payment equal to fifty percent (50%) of the total initial costs as provided in Schedule C on or before the date that this contract is signed. Payment in full shall be made immediately on delivery, installation and inspection of the Stations.
- (b) All prices exclude state and local use, sales, or similar taxes, any direct or excise tax, and any import or customs exactions. Buyer is responsible for reporting such costs, taxes and exactions.
- (c) In the event Buyer fails to make a payment when due under this Agreement, Seller may, upon thirty (30) days prior written notice to Buyer, either:
 - i. exercise Seller's rights pursuant to the security agreement granted in Section 9 and/or withhold delivery of further Equipment or suspend the software service or planned maintenance due to be performed on Equipment without liability for any Loss to Buyer until such overdue sum, together with any interest as may be due thereon, is paid; or
 - ii. exercise Seller's rights pursuant to the security agreement granted in Section 9 and/or terminate this Agreement without liability for any Loss to Buyer, and

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Buyer shall immediately pay such overdue sum, together with any interest as may be due thereon, to Seller.

- (d) Notwithstanding the foregoing, if Buyer pays to Seller such overdue sum, together with any interest as may be due thereon, on or before the expiration of said thirty (30) day period, this Agreement, including Seller's delivery obligations hereunder, shall remain in full force and effect.
- (e) If Buyer is in default of any payment obligation, Seller is, without reminder and prejudice to any other rights, entitled to (1) charge interest at a rate equal to the lesser of one-and-one-half percent (1.5%) per month or the legal maximum rate that may be imposed according to Wisconsin law for similar debts, from the date on which payment was due until such overdue sum, together with any interest as may be due thereon, is paid; and (2) exercise all rights and remedies granted to Seller pursuant to the Security Interest in Equipment granted herein.
- (f) Buyer shall reimburse Seller for reasonable costs (including attorneys' fees) relating to collection of past due amounts.

4. Installation.

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

5. Buyer's Responsibilities. Buyer shall perform the following:

- (a) Provide Station Sites at its own cost and expense and obtain all necessary permits or other approvals required for each of the Sites;
- (b) Ensure that each Site satisfies the site requirements set forth in the Installation Criteria in Schedule D;
- (c) Notwithstanding any obligation of Seller in this Agreement or as set forth in the Digital Services Agreement, Buyer shall provide, at its sole cost, all maintenance to Bicycles and Stations.

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

6. Warranties and Limitations of Liability.

- (a) Seller warrants that all Equipment sold hereunder shall be of merchantable quality, free from defects in materials and workmanship (whether the work was performed by Seller or by its approved subcontractor), and fit for their intended use; that all Equipment will be manufactured in accordance with applicable Federal, state, and local laws, regulations, and orders; and that Equipment shall be manufactured in material conformity with the specifications attached hereto as Schedules A and B;
 - i. Except as otherwise agreed to in writing, this warranty shall commence upon delivery of Equipment to the Buyer-designated Site, and continue for a period of twelve (12) months after delivery. If Buyer discovers within this period a failure of any Equipment to conform to warranty stated herein, Buyer shall notify Seller in writing within ten (10) days of discovery. Notification of such discovery shall be made to Seller by Buyer and shall describe the nature of the defect and the manner in which the defect became apparent in sufficient detail to indicate that the defect is covered by this warranty. The notification shall also state the date of

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delivery of such Equipment to Buyer, proof of purchase from Seller, and the amount of intervening use where applicable.

- ii. Within a reasonable time after proper notification, Seller, or Seller's contractor, shall correct any failure of Equipment to conform to specifications or drawings or defects in workmanship, with either new or used replacement parts. If Equipment is proved to Seller's satisfaction to be defective and covered by this warranty, such repair or replacement shall be made by Seller without charge. The original duration of this warranty shall continue for replaced parts. These remedies are the exclusive remedies of Buyer or operator, as the case may be, for breach of this warranty.
- iii. This warranty shall not extend to the following:
 - (1) Normal wear and tear of Equipment;
 - (2) Equipment that has been moved or subjected to any tampering, alteration, modification, installation of unauthorized parts, or repair without prior authorization by Seller;
 - (3) Equipment subjected to experimental running or any type of operation or use other than that for which Equipment is designed;
 - (4) Equipment from which manufacturer's and/or vendor's trademark or serial number has been altered, removed, or obliterated without Seller's written permission, excluding any alteration, removal, or obliteration directly caused by accident or mishap to such Equipment;
 - (5) Equipment that has been in storage or immobilized for more than one (1) year from the date of acceptance of Equipment by Buyer; and
 - (6) Defects resulting from accidents, misuse, abuse, negligence, vandalism, rusting/corrosion, theft, acts of God or other events beyond the control of Seller.
- iv. For the purpose of this warranty, Equipment shall not be regarded as defective merely because some modification or alteration is required to be made by reason of Federal, state, or local regulation after delivery of Equipment.
- v. Any official action or legal proceeding for breach of this warranty must be commenced within three (3) months after discovery by Buyer of an alleged defect in Equipment.
- (b) Seller warrants that the delivery, redelivery, manufacture, installation, maintenance, repair, overhaul, servicing, or replacement of Equipment by Seller shall be performed by trained individuals in a professional, workmanlike manner, in accordance with sound business practices.
- (c) Each party shall defend, indemnify, and hold the other party and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns harmless from and against any Losses and threatened Losses to the extent they arise from or in connection with any of the following: (i) the death or bodily injury of any agent, employee, customer, invitee, visitor or other person, or the damage, loss, or

- destruction of any real or tangible personal property, either of which is caused by Equipment or the acts or omissions of the other party, its employees, agents, contractors, or subcontractors (except if such Losses or threatened Losses are caused by the gross negligence or willful misconduct of the other party, its employees, agents, contractors, or subcontractors); (ii) any action taken by or on behalf of a party in the performance of this Agreement that causes the other party to be obligated to indemnify, defend, or hold harmless any third party; and (iii) any claim, demand, charge, action, cause of action, or other proceeding resulting from an act or omission of a party, its employees, agents, or subcontractors acting in its or their capacity as an employer or potential employer with respect to the claimant.
- (d) Seller warrants that Equipment to be delivered hereunder including, without limitation, the Bicycles, Stations and kiosks, do not infringe on any United States patents, trademarks, or copyrights, or on any other right of any other person. Seller shall indemnify and hold Buyer harmless against any claim of infringement of patent, trademark, or copyright, or such other rights relating to the manufacture, sale, or use of Equipment, and shall bear all costs and expenses, including reasonable attorneys' fees, arising from or related to any such claim. As used herein, the term "claim" includes, without limitation, any claim for temporary or permanent injunctive relief in any action for such infringement of patent or other rights.
- (e) The warranties identified herein shall not be transferred, assigned, extended, altered or varied except by written instrument executed by the parties.
- (f) Notwithstanding any other provision in this Agreement, Seller's total liability for any and all claims, whether in contract, warranty, tort (including negligence but excluding willful misconduct or recklessness), product liability, patent infringement, or otherwise, for any damages arising out of, connected with, or resulting from the performance or non-performance of any service or from the manufacture, sale, redelivery, resale, repair, overhaul, replacement or use of Equipment or any item or part thereof, will not exceed the price allocable to the repaired or overhauled item, part or service which gives rise to the claim. In no event, whether as a result of breach of contract, warranty, tort (including negligence but excluding willful misconduct or recklessness), product liability, patent infringement, or otherwise, will Seller be liable for any special, consequential, incidental, resultant or indirect damages (including, without limitation, loss of use, revenue, profit or goodwill) or punitive or exemplary damages.
7. Assignment of Manufacturer's Warranties. To the extent possible, Seller hereby assigns to Buyer all of its rights and interests in the warranties, and shall hereinafter assign to Buyer any future warranties (if any), provided by the manufacturers of Equipment, including, without limitation, new and refurbished parts and components incorporated into Equipment during servicing, maintenance, repair, or replacement.
8. Termination.
- (a) Except as otherwise provided in Section 3(c) of this Agreement, if either party materially breaches this Agreement, the Intellectual Property Agreement, or the Digital Services Agreement, the other party may notify the breaching party in writing, setting out the breach, and the breaching party will have thirty (30) days following

such notice to remedy the breach. If the breaching party fails to remedy the breach during said thirty (30)-day period, the non-breaching party may by written notice terminate this Agreement. Notwithstanding the foregoing, if the steps needed to remedy a breach are such that the same cannot be reasonably corrected within said thirty (30)-day period, then the breaching party shall undertake such corrections within said thirty-day period and shall diligently prosecute the same to completion. In such event, the breaching party shall give prompt notice of such delay to the other party and the time for performance shall be extended as reasonably necessary to enable completion.

- (b) Each party shall have the right, in its sole discretion, to terminate this Agreement if (i) the other party becomes insolvent or is adjudged bankrupt, (ii) at any time the property and assets of the other party are in liquidation, or (iii) the other party ceases or threatens to cease carrying on its business.

9. Security Interest.

- (a) Buyer hereby grants to Seller a first priority security interest in Equipment to secure all amounts owed by Buyer to Seller under this Agreement, including, without limitation, the amount of all sums and expenses advanced or incurred by Seller in connection with Seller's installation, repair or overhaul of any Equipment, and the protection of the security interests herein granted (including, without limitation, reasonable attorneys' fees, court costs and collection, legal and receivers' expenses).
- (b) Buyer acknowledges and agrees that, in addition to the security interest and lien expressly granted by Buyer to Seller hereunder, Seller shall have a lien on Equipment retained in possession of Seller to the extent otherwise provided by law.
- (c) Buyer acknowledges that the lien for repairs or overhaul shall be for the full value of such work, and shall be superior to any lien or interest in favor of Buyer, its parents, affiliates, or subsidiaries, or any other person who has knowledge of this Agreement. To the extent that Seller maintains possession of Equipment under repair, Buyer agrees that Seller is a secured creditor of Buyer and has all the rights of a secured creditor. Upon the occurrence of any default by Buyer hereunder, Seller may, at its option, after reasonable written notice to and demand on Buyer, and in addition to all rights and remedies available to Seller under this Agreement, foreclose or otherwise enforce its security interest hereunder in any manner permitted by law.
- (d) Buyer agrees that at any time and from time to time Buyer will promptly make, execute, endorse, acknowledge, file and/or deliver all further instruments and documents, and take all further action, that Seller may reasonably deem to be necessary or desirable, or that Seller may reasonably request, in order to perfect and protect any security interest granted or purported to be granted by Buyer or to enable Seller to exercise and enforce its rights and remedies hereunder.

10. Dispute Resolution.

- (a) EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 10, EACH PARTY EXPRESSLY WAIVES ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE ARISING UNDER THIS AGREEMENT. This agreement shall be governed by, and interpreted in accordance with the laws of the state of

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Wisconsin without reference to its conflict of laws rules. Any action brought by either party pursuant to this Agreement shall be brought in the United States District Court in Madison, Wisconsin, which shall have the sole and exclusive jurisdiction over the matter. Each party shall bear its own costs and fees, including attorneys' fees.

(b) The rights and obligations set forth in this Section 10 shall survive the termination of this Agreement.

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

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

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

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

15. General Provisions.

(a) *Headings.* The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or of any term or provision hereof.

(b) *Beneficiaries.* This Agreement is solely for the parties' mutual benefit and not for the benefit of any third party.

(c) *Independent Contractor.* Buyer and Seller are now and will remain as to each other separate and independent. In the performance of this Agreement, it is mutually understood and agreed that each party is at all times acting and performing under this Agreement as an independent contractor, and not as an employee, joint venturer or franchisee or partner of the other party. The parties expressly agree that this Agreement, together with the Intellectual Property License Agreement and the Digital Platform Services Agreement shall not constitute a franchise. Buyer acknowledges that all goods and services provided hereunder are for value in kind, and shall not constitute a fee. Buyer hereby affirmatively elects to utilize Seller's trademarks in connection with Buyer's bike share program, and Buyer acknowledges that it is not required to do so in order to purchase the goods and services specified herein. Buyer is solely responsible for its own marketing plans, rate structure, and methods of doing business. Neither party shall have any right, authority, or duty to act for the other party, except as otherwise agreed to in this Agreement.

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- (d) *Confidentiality.* The parties agree that, in the course of performance of this Agreement, it may be necessary and desirable for them to exchange confidential information. Each party shall treat the other party's written, proprietary business information as confidential provided that such written material is: (i) marked as confidential or proprietary at the time of disclosure and (ii) not otherwise publicly or already known or available from a lawful source. The receiving party shall not disclose confidential information of the disclosing party to any person outside its employ, except when authorized by the disclosing party. Any party receiving confidential information under this Agreement shall maintain such information in confidence in the same manner it protects its own confidential information and shall use it only for the performance of this Agreement and for no other purpose. Notwithstanding the foregoing, confidential information excludes information relating to the U.S. tax treatment or U.S. tax structure of the transactions covered by this Agreement.
- (e) *Assignment.* This Agreement is not assignable and the duties hereunder are not delegable without the other party's prior written consent, which consent shall not be unreasonably withheld; provided, however, that either Seller or Buyer may transfer and assign this agreement without the other party's consent to any person or entity (except to a competitor of Seller) that is an affiliate of such party or that acquires substantially all of the stock or assets of such party's applicable business if any such assignees agree, in writing, to be bound by the terms of this agreement. Subject to such limitation, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding anything to the contrary contained herein, Seller may hire subcontractors to perform the installation and maintenance work provided for in this Agreement; provided, however, that Seller shall at all times remain responsible for the performance of its obligations and duties under this Agreement.
- (f) *Sponsorship.* Should the Buyer seek sponsorship opportunities with companies in the health insurance industry, Humana, Inc. will be given right of first refusal for such sponsorship opportunity. Buyer agrees that it will not sell or offer sponsorships to competitors of Trek Bicycle Corporation.
- (g) *Entire Agreement.* This Agreement, including any and all schedules and exhibits attached hereto and incorporated herein, is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. Acceptance of, or acquiescence in, a course of performance rendered under this Agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
- (h) *Amendments and Termination.* This Agreement can only be amended, modified, or terminated by a writing signed by all of the parties or their duly authorized agents. If a mutually agreed to amendment or modification results in an increase or decrease in the cost, or the time required for completion, of any delivery or part of the work to be completed by Seller under this Agreement, an equitable adjustment shall be made in

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the price or delivery schedule, or both, and this Agreement shall be modified in writing accordingly.

- (i) *Survival.* The terms of this Agreement that, by their nature, are intended to survive this Agreement's expiration (such as the confidentiality provisions included herein) shall continue in full force and effect after its expiration.
- (j) *Waiver.* Any failure to enforce any provision of this Agreement is not a waiver of that provision or of either party's right to later enforce each and every provision.
- (k) *Severability.* If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the remaining provisions of this Agreement, all of which shall remain in full force and effect.
- (l) *Force Majeure.* Neither party is liable for delays or failures in performance under this Agreement due to a cause beyond its reasonable control including, without limitation, embargoes, fire, flood, explosions, Acts of God or a public enemy, strikes, labor disputes, vandalism, or civil riots or commotions. In the event of such delay, the party that is unable to perform shall give prompt notice of such delay to the other party and the time for performance shall be extended as reasonably necessary to enable performance.
- (m) *Notices.* All notices or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered personally, one business day following when sent via a nationally recognized overnight courier, or when sent via facsimile (or other electronic transmission) confirmed in writing to the recipient. Such notices and other communications will be sent to the addresses indicated below or such other address or to the attention of such other person as the recipient party shall have specified by prior written notice to the sending party:

To Buyer:

[Buyer contact information and address]

To Seller:

B-cycle, LLC

801 W. Madison St

Waterloo, WI 53594

Attn: Robert Burns, President

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

[Signature Page to Follow]

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

SELLER

B-CYCLE, LLC

By: _____

Name: Robert Burns

Its: President

BUYER

[COMPANY NAME]

By: _____

Name: [Name]

Its: [Title]

SCHEDULE A: DESCRIPTION OF B-CYCLE BICYCLE



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)

Computer Built-in self-charging GPS that reports ride stats back to the server/web

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

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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
Handlebars: Innovative handlebar basket designed to fit an oversized laptop case and up to 20 lbs of cargo. It will also accommodate sponsorship logo and tagline on the customizable side panels.
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 and 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 hub dynamo. The lights remain illuminated for approximately 4 minutes after the B-cycle stops, ensuring illumination when the rider stops at a traffic light.

Extras

Fully encased shroud housing, robust kickstand, and bell
Front fork centering spring
Kryptonite cable lock has its own key, nests in basket, and serves as a drink holder when not in use

SCHEDULE B: DESCRIPTION OF B-CYCLE STATION



KIOSK

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

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

AD/MAP MODULE

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

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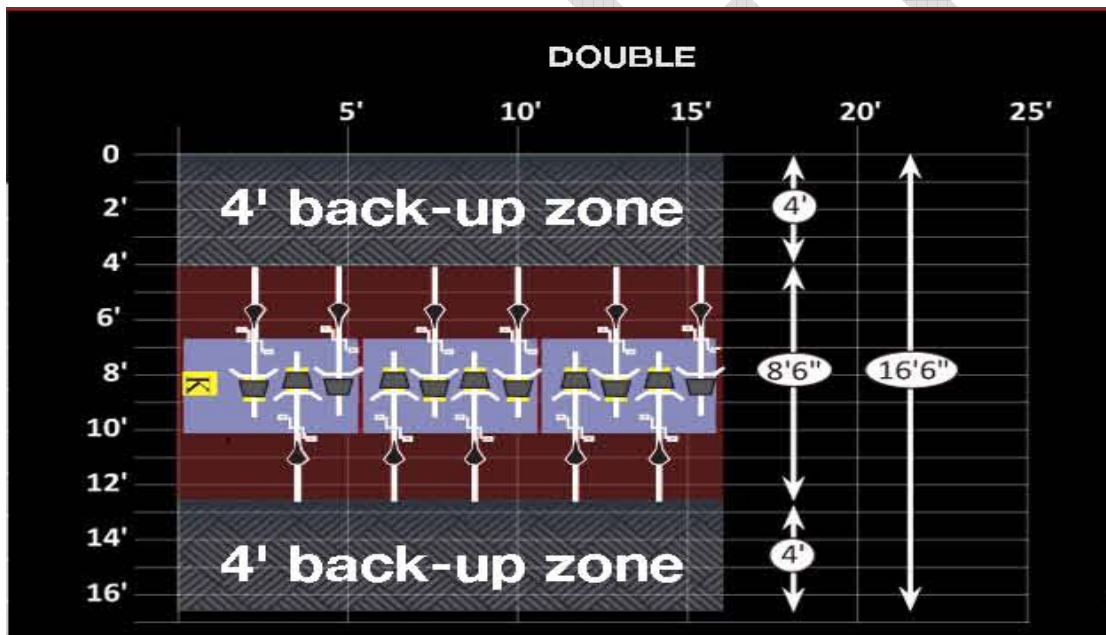
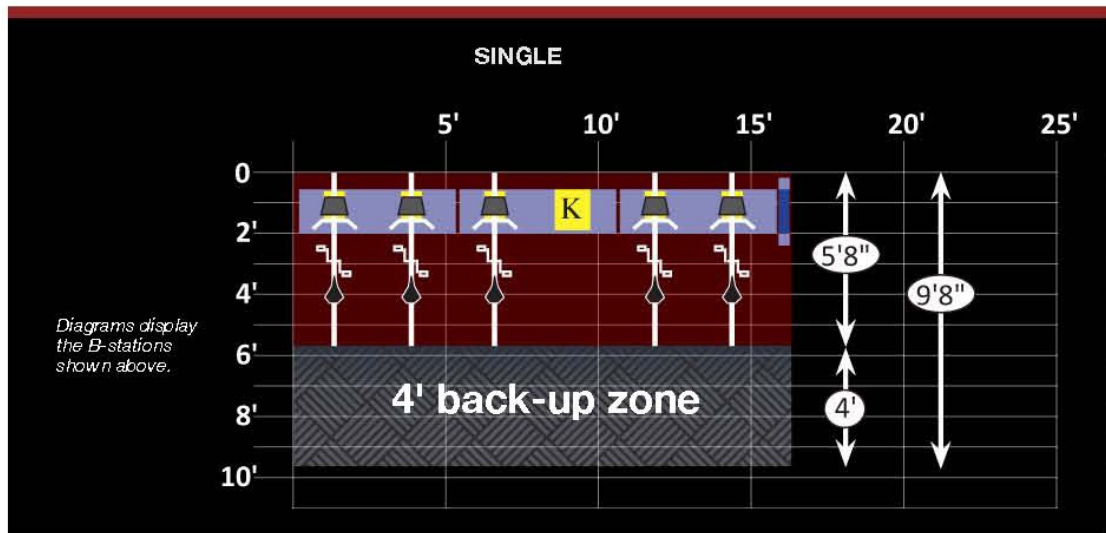
DOCKS/BASES

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



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

STATION FOOTPRINTS



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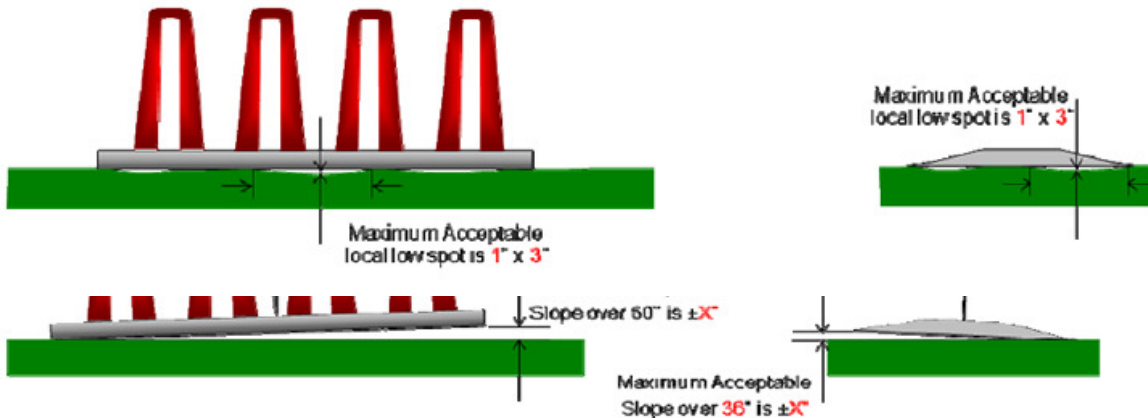
SCHEDULE C: INITIAL COSTS

[To be inserted by B-cycle after first quote is created]

DRAFT

SCHEDULE D: 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

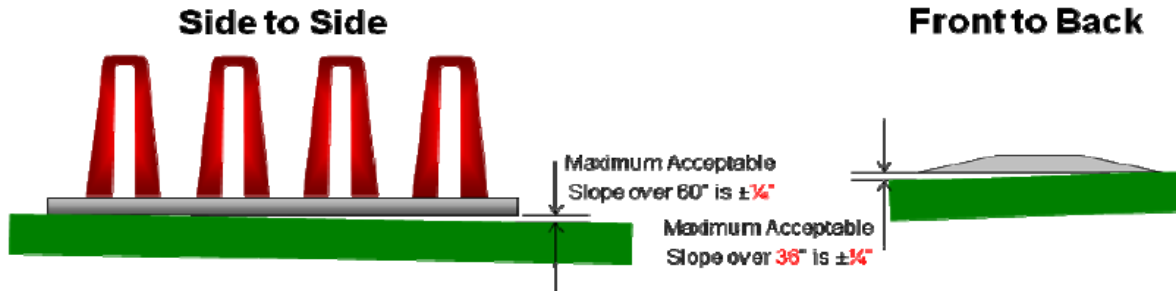


- Allowable ground undulation



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- Allowable ground flatness
 - Maximum ground variation or flatness is constrained by ADA trip hazard guidelines, which states that a rise larger than $\frac{1}{2}$ " 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)