

**CITY-SPONSORED BICYCLE-SHARING PROGRAM OPERATING AGREEMENT
BETWEEN THE CITY OF MADISON AND TREK BICYCLE CORPORATION
FOR 2011-2015.**

This City-Sponsored Bicycle-Sharing Program Operating Agreement (“Operating Agreement”), made and entered into by and between the City of Madison, a Wisconsin municipal corporation (“City”), and Trek Bicycle Corporation., a Wisconsin Corporation (“Trek”), is effective as of the date by which all parties have signed hereunder and according to the terms and conditions set forth herein.

WHEREAS, Trek is a Madison-area based company that is among the largest bicycle manufacturers in the world and a major employer in the Dane County region; and,

WHEREAS, Trek is the majority owner of B-Cycle LLC (“B-Cycle”), which manufactures and operates a next-generation bicycle-sharing program to address urban transportation needs; and,

WHEREAS, Trek Retail Corporation (“Trek Retail”) is a wholly owned operating subsidiary of Trek; and,

WHEREAS, Trek approached the City expressing a desire to enter into a partnership with the City to establish a privately owned and operated bicycle-sharing program in the City in which Trek will provide substantial capital investments of around \$1.4 million for bicycles, bicycle-sharing stations, and daily operational expenses; and,

WHEREAS, it has been determined by the City that the Trek’s proposed B-Cycle bicycle-sharing program will do the following:

- Be an important amenity for the City and means of short-term alternative transportation for City residents, workers and visitors, particularly in the downtown area;
- Bring visitors to the City’s downtown;
- Displace car traffic and take pressure off of urban parking concerns;
- Improve public health by providing opportunities for exercise;
- Help the City meet its goals of reducing air pollution and greenhouse gas emissions and having 20% of all downtown trips done by bicycle by 2020; and,
- Provide a major area employer with a meaningful test of its new product in an easily accessible location for the company to observe and improve it, which test and demonstration could lead to new production and jobs for Madison area residents; and,

WHEREAS, for a bicycle-sharing program to be successful, program facilities will have to be placed at optimal locations throughout the urban environment that prioritize visibility, location desirability, and convenience, among other considerations. However, due to a lack of sufficient public or private open space at optimal locations, it will be necessary, at certain locations, to place some of the facilities of a City-sponsored bicycle-sharing program within the City right-of-way, including on sidewalks and terraces. It may also be necessary, and desirable,

to place these facilities on other City land, as well as land belonging to the University of Wisconsin, or other private zoning lots; and,

WHEREAS, in order for the City's residents, workers and visitors to have a high quality bicycle-sharing program with the features the City desires, the program must be supported in part by allowing limited advertising for sponsors on City-sponsored bicycle-sharing facility equipment, including the program bicycles; and,

WHEREAS, Trek and the City have worked collaboratively together in the enactment of City of Madison RES-11-00106 and ORD-11-00044, both of which set forth a framework for cooperation between the City and Trek, and the establishment and operation of the B-Cycle City-sponsored bicycle-sharing program in the City; and,

WHEREAS, in order to allow for the commencement of bicycle-sharing program operations by June 1, 2011, on April 28, 2011 B-Cycle and the City entered into the "City-Sponsored Bicycle-Sharing Program Operating Agreement Between the City of Madison and B-Cycle LLC for 2011-2013" ("Initial Operating Agreement"), with the understanding, as reflected in the Letter of Understanding attached hereto as Attachment A, that Trek, B-Cycle and the City would subsequently replace this Initial Operating Agreement with a new five-year Operating Agreement between the City, Trek and its subsidiaries; and,

WHEREAS, Trek and the City entered into the "Bicycle-Sharing Facility Privilege Agreement Between the City of Madison and Trek Bicycle Corporation" ("Privilege Agreement") on May 12, 2011, whereby Trek was granted a bicycle-sharing facility privilege and has since commenced operation of the bicycle-sharing program in the City, which privilege is contingent upon the terms and conditions of an operating agreement between the City and Trek; and,

WHEREAS, the City has already provided significant assistance in the establishment of the B-Cycle bicycle-sharing program currently operating in the City, and has expressed a commitment to continuing to provide such assistance to the program; and,

WHEREAS, on **June 21**, 2011, the City Common Council enacted RES-11-**00XXX**, which resolution rescinded RES-11-00106 and authorized the City to enter into this Operating Agreement, based upon the terms and conditions as set forth in the Letter of Understanding.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the City and Trek hereby enter into this Operating Agreement, subject to the following terms and conditions:

1. Definitions. In addition to the definitions set forth in Madison General Ordinances Sec. 10.33(3) (see ORD-11-00044, attached and incorporated hereto as Attachment D), for the purposes of this Operating Agreement the following definitions shall apply:
 - a. Madison Program. The City-sponsored bicycle-sharing program operated by Trek in the City pursuant to this Operating Agreement, including all facility locations

in the City on City right-of-way, other City land, non-City governmental lots such as the University of Wisconsin-Madison, and private zoning lots.

- b. Restoration Costs. The costs necessary to put land or property back into the same condition it was in before the land or property was disturbed by an activity.
 - c. Trek includes Trek and its subsidiaries B-Cycle and Trek Retail.
2. Purpose. The purpose of this Operating Agreement is to set forth the terms and conditions for Trek's operation of the Madison Program.
 3. New Agreement. Upon the execution of this Agreement, the Parties mutually agree that: this Operating Agreement replaces the Initial Operating Agreement; that the Initial Operating Agreement is void as to all terms and conditions; that this Operating Agreement now controls the operation of the Madison Program and the relationship between the City, Trek, Trek Retail and B-Cycle; and, that all actions taken by Trek, Trek Retail and/or B-Cycle under the Initial Operating Agreement shall be seen as if they were made pursuant to this Operating Agreement instead. Furthermore, by executing this Agreement, Trek agrees that, as the majority owner of B-Cycle and sole owner of Trek Retail, it has the authority to terminate the Initial Operating Agreement on behalf of B-Cycle and/or Trek Retail and that B-Cycle and/or Trek Retail will take no action to enforce the terms of the Initial Operating Agreement against the City. Trek further agrees that it shall be a default of this Operating Agreement if B-Cycle and/or Trek Retail seek to enforce the Initial Operating Agreement against the City, and Trek shall reimburse the City for any and all expenses and liabilities that arise from any such action pursued by B-Cycle and/or Trek Retail.
 4. Term. This Operating Agreement, unless earlier terminated or amended as provided for herein, is effective as of May 12, 2011 and shall expire on December 31, 2015.
 5. Renewal. No earlier than July 1, 2015 and no later than December 31, 2015, and upon the mutual agreement of the Parties, this Operating Agreement may be renewed for one five (5) year term from January 1, 2016 through December 31, 2020. The renewal shall be on the same terms and conditions of this Operating Agreement, unless otherwise agreed to in writing by the Parties. Trek shall give notice in writing to the City of its desire to renew this Agreement by the mailing or personal delivery of a notice of renewal to the Superintendent of Parks at the address specified in Section 16.
 6. Trek's Responsibilities.
 - a. Madison Program Operation. During the dates of operation set forth below, Trek agrees to operate a bicycle-sharing program in the City consisting of approximately thirty-five (35) facilities and three-hundred and fifty (350) bicycles. Trek will own the program and all of its facilities, and be responsible for all operations related thereto.
 - b. Dates of Operation. For each calendar year of this Operating Agreement, Trek shall not operate the Madison Program any earlier than March 15 nor any later

than December 15. Trek further agrees that between December 15 and March 15, it shall remove all bicycles from program facilities and ensure that any remaining program equipment will not prevent the City nor any adjoining property owners from meeting the City's snow and ice removal requirements and policies. Trek shall be permitted to operate the Madison Program outside of these dates of operation only with the written permission of the City.

c. Reporting Requirements.

- (1) Performance Report. Trek will provide a report on the Madison Program's performance each year by August 1, in time for the City's consideration for the next year's city operating budget. Trek shall supplement this report with a full calendar year report on the Madison Program's performance and operations within ten (10) days of the end of bicycle-sharing operations for that year.
- (2) Upon request of the City, Trek will provide the City with access to its financial records relating to the Madison B-Cycle program.

d. Fees, Revenues and Related Financial Matters.

- (1) Application and Permit Fee. Trek is solely responsible for paying the application and annual permit fees as set forth in MGO 10.33(5)(a) and (8)(i) pursuant to the terms and conditions of the Privilege Agreement.
- (2) Other Fees. Trek or its partners are solely responsible for paying all other necessary licensing, permitting, or registration fees that may be necessary to comply with the Madison General Ordinances, or other law.

e. Electrical Connections.

- (1) Ability to Connect to City's Electrical Supply. Trek may, on a site-by-site basis, and in consultation with the City, find that connecting the bicycle-sharing kiosks to the City street-lighting system or other City electrical source is the most cost-effective and efficient means of providing the electrical power needed to operate the kiosks. If this determination is made, Trek shall be entitled to connect to the City's electrical supply.
- (2) Connection Costs. Trek is responsible for all costs to connect and disconnect the kiosk electrical service to the City's electrical supply, including any restoration costs associated therewith.
- (3) Payment for Electrical Service. For each kiosk that is connected to the City's electrical supply, Trek agrees to pay a flat rate of \$40 for the entire operating year's electrical service.
- (4) Payment Due Date. For each operating year under this Operating Agreement, the amount due to the City for electrical service under this

Subsection shall either be due at the time of connection of the kiosk to the City's electrical supply, or upon Trek's commencement of yearly operations at an already connected kiosk. Failure to pay this amount to the City within 60 days of these events will be considered a default of the terms of this Operating Agreement.

- f. Ordinance and Policy Compliance. Trek agrees to abide by all ordinances and policies of the City in the operation of the Madison Program, as they may be amended from time-to-time, including, specifically, MGO Sec. 10.05 (Occupancy of Right-of-Way), Sec. 10.33 (Bicycle Sharing Facilities), Sec. 12.76 (Special Rules Applicable to Bicycles), Sec. 12.78 (Registration of Bicycles), Sec. 12.782 (Sale and Rental of Bicycles), Chap. 19 (Electrical Code), Chap. 28 (Zoning Code), Chap. 29 (Building Code), and Chap. 31 (Sign Control Ordinance). In the event that Trek is found to be in violation of any City ordinance or policy, the City shall notify Trek. Failure to comply with this notice within ten (10) days shall be considered a default under the terms of this Operating Agreement. If in doubt as to ordinance or policy compliance, the burden is upon Trek to contact the City to request clarification.
- g. Program Expansion. If, during the course of this Operating Agreement, Trek desires to expand facility locations to property located outside of the municipal boundaries of the City, it may do so upon written notification to the City. Any locations outside of the municipal boundaries of the City are not subject to the ordinance limitations set forth in this Operating Agreement, but will instead be regulated by the ordinances or regulations of the adjoining municipality. Trek agrees that it will comply with the ordinances or regulations of the adjoining municipality and that failure to comply with said ordinances or regulations, based upon the determination of the adjoining municipality, shall be considered a default under the terms of this Operating Agreement.
- h. Overture Center for the Arts Locations. Trek agrees that it shall not seek to place any bicycle-sharing facility locations immediately adjacent to the Overture Center for the Arts property located at 201 State Street and consisting of the entire block surrounded by State Street, Fairchild Street, W. Mifflin Street, and N. Henry Street without the agreement of the Overture Center for the Arts.

7. City Responsibilities.

- a. Madison Program Operation. The City recognizes that Trek's operation of the Madison Program will provide its citizens and visitors a valuable service that would otherwise be financially difficult for the City to provide itself. By entering into this Operating Agreement and the Privilege Agreement, the City is recognizing its commitment to the Madison Program. In addition to the financial contribution as set forth below, the City is also committed to providing Trek with staff assistance, as needed, in locating Madison Program facilities and operating the Madison Program. However, in no event is the City to assume any active role or responsibility for the operations of the Madison Program, which shall remain

entirely with Trek, nor shall the City be financially responsible for the Madison Program beyond the City contribution noted below.

- b. City Contribution. In recognition of its commitment to the Madison Program, the City agrees to make annual contributions of one dollar (\$1) to Trek for the operation of the Madison Program, which amount shall be deducted by Trek from the annual electrical service payments due as set forth above in Subsection 6.e.

8. Signage Limitations.

- a. General Limitations. Trek agrees that as it relates to all signage on Madison Program bicycle-sharing facilities in the City, specifically including facilities located on University of Wisconsin-Madison property, that it will abide by MGO Section 10.33(10), Chapter 31 (Sign Control Ordinance), including, but not limited to, Sec. 31.046(4), and all other applicable state, local and federal law relating to signs. Trek understands that, among other things, these ordinances generally prohibit the display of Advertising Signs as defined in Chapter 31.
- b. Signs on Right-of-Way or Other City Land. Signs on right-of-way or other City land are regulated by MGO Section 10.33(10)(c)3. Under this provision, one of the types of signs that Trek may include are "Sponsor Signs." Up to four (4) Sponsor Signs of not more than twelve inches by nine inches (12" x 9") in area may be placed on the facility kiosk for the display of sponsorship information. Each "Sponsor Sign" shall include only the logo and/or business name of the sponsor, and must include the words "sponsored by" or a similar statement to signify sponsorship of the Madison Program and/or facility.
- c. Signs on Non-City Owned Property. The signs on bicycle-sharing facilities on non-city owned zoning lots are limited to those described in Section 31.046(4). The only sponsorship opportunities available are for a business located on the zoning lot where the facility is located. This includes one "Poster Board" sign which may include a business sign for one or more business located on the zoning lot where the facility is located, pursuant to MGO 31.046(4)(a)1., and one additional sign located elsewhere on the equipment of not more than one (1) square foot in area, bearing only the logo and/or business name of a business located on the zoning lot. See 31.046(4)(a) for additional signs that can be displayed on non-city owned property. Off-premise sponsor signs may not be displayed on bicycle-sharing facilities located on non-City owned property. Nothing in this agreement shall be construed to authorize Advertising Signs or any other off-premise advertising on bicycle-sharing facilities located on non-City owned property or zoning lots, including, specifically, University of Wisconsin-Madison property.
- d. Signs on Bicycles. Trek agrees that, other than signs and logos related to Trek (as owner), Trek Retail (as operator), B-Cycle (as manufacturer) and the Madison Program, signs on Madison Program bicycles may only be displayed on those panels identified on Attachment B, pursuant to the dimensions set forth therein.

- e. Content Guidelines. Trek agrees that in addition to the restrictions set forth in MGO Sections 10.33(10) and 31.046(4), the content of the Sponsor Signs, bicycle signs, and zoning lot signs are subject to the “Madison Program’s Sponsorship and Advertising Guidelines,” attached hereto as Attachment C.
- f. Medium Restrictions. All signs on bicycle-sharing facilities shall be constructed of safe and sturdy materials and affixed in a safe and workmanlike manner, subject to the approval of the City. Any material that might interfere with the safe, timely, and convenient operation of the bicycle-sharing stations and bicycles, or the safety of users of the bicycle-sharing program or the general public, will not be allowed. This includes, but is not limited to, signs that include any flashing elements, sound makers, mirrors, attention-getting devices or any other special effects. The signs may not include any flyer or papers or other item designed to be removed from the sign.
- g. Default. A violation of the signage limitations as set forth in this Section shall be cause for the City to terminate this Operating Agreement if said violation is not corrected within fifteen (15) business days of notice to Trek. The determination that there has been a violation of these signage limitations shall be solely up to the City. Notice of a violation of these limitations will be sufficient if made verbally to a Trek representative.
- h. No Waiver. By setting forth sign limitations in this Section and providing contractual remedies therefor, the City does not intend to waive its right to enforce any and all City ordinances in a forfeiture action or other appropriate venue and nothing in this Agreement shall relieve Trek from compliance with all applicable state, local and federal laws.
- i. Changes to Sign Code and Policies. Trek understands that the City may be conducting a city wide review of all advertising, which may result in changes to the City’s sign code and sign policies. The City will make every reasonable effort to include Trek in this process, and Trek agrees that it will be sensitive to the City’s concerns regarding advertising and sponsorships on bicycle-sharing facility equipment, and that it will abide by the Madison General Ordinances as they may be amended from time-to-time during the life of this Operating Agreement.

9. Indemnification and Insurance.

- a. Indemnification. Trek shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from Trek’s acts or omissions in the performance of this Operating Agreement, whether caused by or

contributed to by the negligence of the City, its officers, officials, agents, or its employees.

b. Insurance.

- (1) Required Coverage. Trek will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated. Trek shall not commence operations under this Operation Agreement, nor shall the Contractor allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.
 - (a) General Liability. Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Trek's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. Trek shall require all subcontractors under this Operating Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds. This insurance shall be required for the full term of the Operating Agreement.
 - (b) Automobile Liability. Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Trek shall require all subcontractors under this Operating Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria. This insurance shall be required for the full term of the Operating Agreement.
 - (c) Workers' Compensation. Statutory Workers' Compensation insurance as required by the State of Wisconsin. Trek shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Trek shall require all subcontractors under this Operating Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
 - (d) Umbrella Liability. Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Business Automobile Liability and Employers Liability with minimum limits of \$4,000,000 per occurrence and in the aggregate.

- (2) Acceptability of Insurers. The above-required insurance is to be placed with insurers authorized to do business in the State of Wisconsin who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- (3) Proof of Insurance, Approval. Trek shall provide to the City certificate(s) of insurance showing the type, amount, class of operations covered, effective dates and dates of expiration of policies for approval by the City Risk Manager, prior to commencing program operations under this Operating Agreement. Trek shall provide the certificate(s) to the City at the time of signing this Operating Agreement, or sooner. Trek shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- (4) Notice to City of Changes in Coverage. Trek and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Operating Agreement.
- (5) Loss or Material Change in Coverage. In the event of cancellation or other material change of the insurance policies or coverage and protection as required under this Section, the City may, without notice of default, declare this Operating Agreement terminated. Trek shall have no right to operate the Madison Program or allow the public's use of the facilities of the Madison Program, unless all insurance policies required by this Operating Agreement are in full force and effect. If said insurance policies required by this Operating Agreement are not in full force and effect, City may, rather than cancel the Operating Agreement, move to secure all Madison Program equipment such that the bicycles may not be used by the public until such time as Trek can satisfy the insurance requirements of this Section. Should this occur, Trek agrees that City has no liability for and is not responsible for any damages alleged to have resulted from the City's actions, including, but not limited to, damage to the equipment or bicycles, lost income, or lost profit.

10. Default and Termination.

- a. Except where specifically provided for elsewhere in this Operating Agreement, in the event Trek shall default in any of the covenants, agreements, commitments, or conditions herein contained, or if any of the conditions set forth below in Section 10.b. shall occur, and any such default shall continue unremedied for a period of fifteen (15) business days after written notice thereof to Trek, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Trek, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of Trek under this contract.

- b. It shall be a default if any of the following conditions occur:
- (1) If Trek makes an assignment of its property for the benefit of creditors.
 - (2) If Trek petitions a court to be adjudged bankrupt, or is adjudged bankrupt.
 - (3) If a petition in bankruptcy shall be filed in any court against Trek for more than thirty (30) days.
 - (4) If Trek is judicially determined to be insolvent.
 - (5) If a receiver or other officer shall be appointed to take charge of the whole or any part of Trek' property or to wind up or liquidate its affairs.
 - (6) If Trek shall seek reorganization under any of the terms of the National Bankruptcy Act, as amended, or under any other insolvency law, including a Wisconsin Chapter 128 proceeding.
 - (7) Trek shall admit in writing its inability to pay its debts as they become due.
 - (8) If any final judgment shall be rendered against Trek and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final.
 - (9) If Trek shall abandon the operation of the Madison Program and its facilities.
11. Impossibility of Performance. Neither City nor Trek shall be obligated to or liable for the performance of any term or condition of this Operating Agreement on its part to be performed if such performance is prevented by fire, earthquake, flood, act of God, riots or civil commotions, or by reason of any other matter or condition beyond the control of either party.
12. Relationship of Parties. In the operation of the Madison Program, neither Trek nor its agents shall act as officers, employees, or agents of the City and Trek shall remain independent of, and separate from, the City. No partnership, joint venture, or other joint relationship is created hereby. In addition, the City does not extend to Trek or Trek's agents any authority, of any kind, to bind the City in any respect whatsoever.
13. Title to be Retained by Trek. Except as provided for in the Privilege Agreement, Trek shall retain title to and ownership of all the Madison Program facilities.
14. Assignment and Subcontracting. Trek shall not assign this Operating Agreement or any interest therein.
15. Binding on Parties; Amendments. This Operating Agreement shall be binding on the Parties hereto, and, except where expressly provided otherwise, cannot be varied or

waived by any oral representations or promise of any agent or other person of the Parties hereto unless the same be in writing signed by the duly authorized agent or agents of the Parties.

16. Notices. All notices required to be given under the terms of this Operating Agreement shall be personally delivered or sent, postage prepaid, by depositing the same in United States mail addressed as follows:

City: Superintendent of Parks
City of Madison Parks Division
210 Martin Luther King, Jr. Blvd., Room 104
PO Box 2987
Madison, WI 53701

Trek: Joseph Siefkes, VP Finance
Trek Bicycle
801 W. Madison St.
Waterloo, WI 53594

17. Agreement Governed by Laws of Wisconsin. This Operating Agreement shall be deemed executed in the City of Madison and in the State of Wisconsin and governed by the laws of the State of Wisconsin.
18. Non-Discrimination. In the performance of the services under this Operating Agreement, Trek agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. Trek further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Operating Agreement because of race, religion, color, age, disability, sex, or national origin.
19. Nondiscrimination Based on Disability. Trek shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and Activities." Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance. City financial assistance includes any arrangement by which the City provides or otherwise makes available assistance in the form of funds, services of City personnel, and the permission to use City property.
20. Compliance with the Law. Trek agrees to comply with all laws and ordinances of the United States, the State of Wisconsin, Dane County, and the City of Madison.
21. Entire Agreement. Except for the Privilege Agreement, the entire agreement of the Parties is contained herein and this Operating Agreement supersedes any and all oral contracts and negotiations between the Parties.

22. Joint Preparation. Each party and its counsel have participated fully in the review and revision of this Operating Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Operating Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
23. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Trek shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Trek therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
24. Severability. It is mutually agreed that in case any provision of this Operating Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the Parties that all other provisions of this Operating Agreement remain in full force and effect.
25. Authority. The Parties each represent that they have the authority to enter into this Operating Agreement, and the person(s) signing on behalf of the City and Trek represent and warrant that he or she have been duly authorized to bind the City and Trek and sign this Privilege Agreement on their behalf. In addition, Trek represents that it has the authority to bind its subsidiaries B-Cycle and Trek Retail to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Operating Agreement to be duly executed as of the date by which all parties have signed hereunder and according to the terms and conditions set forth herein.

CITY OF MADISON, WISCONSIN
A municipal corporation

By: _____
Paul R. Soglin, Mayor
Date: _____

By: _____
Maribeth Witzel-Behl, City Clerk
Date: _____

APPROVED:

Dean Brassler, City Finance Director
Date: _____

Eric Veum, City Risk Manager
Date: _____

APPROVED AS TO FORM:

Michael P. May, City Attorney
Date: _____

TREK BICYCLE CORP.
By:

John Burke, President

Date: _____

ATTACHMENT A

Letter of Understanding between the City, B-Cycle and Trek



VIA First Class Mail

April 27, 2011

Doran Viste
Assistant City Attorney
City Attorney's Office
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

RE: Madison B-cycle

Dear Mr. Viste,

I enjoyed meeting you in person this morning. As we discussed in our meeting with the Mayor, we are in agreement that B-cycle and the city of Madison will execute the currently drafted and approved Agreement now in order to keep things moving along towards launch.

We are also in agreement that we will amend the current Agreement in due course to cover the following points:

- The city will contribute \$1.00 per year towards operational expenses in Madison and not \$100,000 per year;
- The term of the Agreement will be extended from three years to five years with one five year option to renew on mutually agreeable terms;
- The term providing that the city and B-cycle will split any operational profits 50/50 will be deleted from the Agreement and Trek shall be entitled to any operational profits for the initial five year term of the Agreement;
- The changes to the sign ordinance and regulations governing advertisements and sponsorships on B-cycle stations shall remain as drafted in the Agreement; however, it is acknowledged that the Mayor intends to conduct a city wide review of all advertisements. B-cycle will participate in that process and will be sensitive to the city's concerns regarding advertising and sponsorships on B-cycle stations;
- The parties acknowledge that station locations are not yet finalized. B-cycle is flexible and agrees not to put any stations at the Overture Center on Henry Street without the agreement of the Overture Center.

801 West Madison St * Waterloo WI 53594 * 920.478.2191
Bcycle.com



I believe this covers the major points we agreed to this morning. I understand that your initial focus will now be draft the Privilege Agreement and necessary resolutions and we will amend the Agreement later.

I look forward to working with you on this exciting project.

Sincerely,

B-Cycle, LLC

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

Robert Burns
President

The City Attorney agrees that the points stated above accurately reflect the agreement between the City, B-Cycle and Trek.

A handwritten signature in black ink, appearing to read 'Michael P. May'.

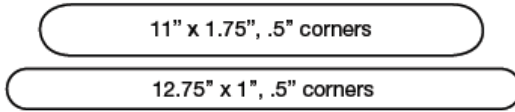
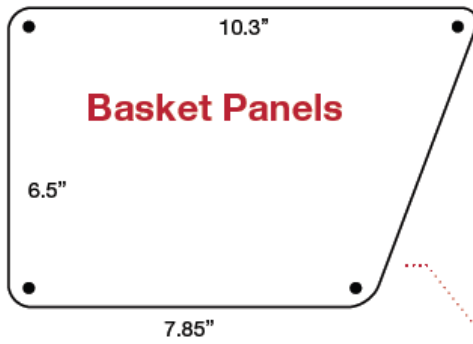
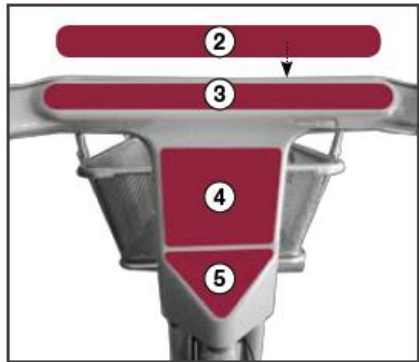
Michael P. May
City Attorney
City of Madison

ATTACHMENT B

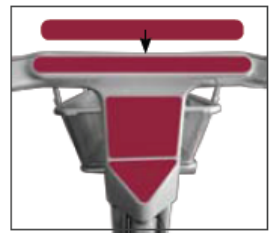
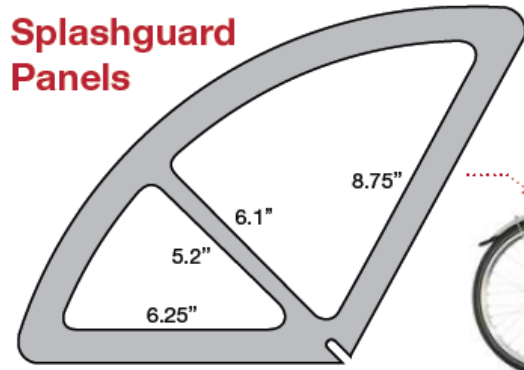
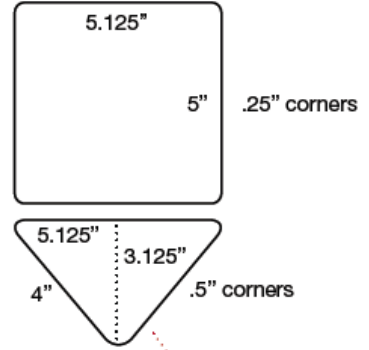
Bicycle-Sharing Program Bicycle Sponsorship Panels

BIKE PANELS

- ① Baskets (2)
- ② Handle Tap Top
- ③ Handlebar Face
- ④ Throat
- ⑤ Shroud (triangle)



Handlebar, Throat & Shroud Panels



ATTACHMENT C

Madison Program's Sponsorship and Advertising Guidelines

I. Introduction.

The bicycle-sharing program equipment and bicycles under the Madison Program are intended for the purposes of transportation and recreation and the promotion of the City's goals stated in MGO 10.33. In order to support the operation of the Madison Program, Trek will be soliciting sponsors willing to provide financial sponsorship for the Madison Program in exchange for sponsorship signage on the bicycle-sharing stations and/or the bicycles. Under the terms of the Operating Agreement, Trek is responsible for all of the operations of the Madison Program, including obtaining sponsorship and advertising necessary to support the program. However, under Section 8.e. of the Operating Agreement, in addition to the restrictions set forth in MGO Sections 10.33(10) and 31.046(4), the content of the Sponsor Signs, bicycle signs, and zoning lot signs are subject to these sponsorship and advertising guidelines ("Guidelines). No messages other than those of the City of Madison, Trek, the manufacturer of the facilities or the bicycles, and sponsors selected under these Guidelines are permitted on Madison Program facilities. The bicycle-sharing program facilities, equipment and bicycles are not a public forum for public debate or discourse.

II. Responsibility for Compliance

Trek is solely responsible for the selection of any sponsors and for ensuring that all Sponsor Signs, signs on non-City owned property, and signs on bicycles (collectively "Program Signs") comply with these Guidelines. Trek shall forward to the City for approval any proposed Program Signs that might violate one or more of these Guidelines. Trek will promptly remove any sign determined by the City to be in violation of these Guidelines.

II. Sign Criteria.

All signage on Madison Program facilities, equipment and bicycles shall comply with the following guidelines and restrictions:

Sponsors: Sponsors may not include the following:

- Any beer, liquor, or wine stores, distributors, or manufacturers.
- Taverns, which include any place in which fermented malt beverages are sold for consumption upon said premises, except for those whose sale of alcohol beverages accounts for 50% or less of the establishment's gross receipts.
- Adult-only orientated businesses or services.
- Tobacco companies or merchants whose sale of tobacco and tobacco related products make up a significant part of its business.
- Wagering related businesses, such as casinos or on-line gambling sites.
- Any entity whose logo and/or business name includes any reference to the above activities for which sponsorship is not available, or any of the prohibited copy listed below.

Prohibited Copy: Sign copy may not include the following:

- Copy that is illegal, obscene, libelous or fraudulent, or that refers to any of the above activities for which sponsorship is not available.

- Political messages of any kind.
- Any message that, in the opinion of the City, is disruptive, detrimental or adverse to the Madison Program specifically or the City's interests in general.

III. Guideline Amendments.

During the term of the Operating Agreement, the City may find it necessary to amend these Guidelines. If the City finds that an amendment to these Guidelines is necessary, the City may unilaterally amend these guidelines upon written notice to Trek, however the City shall be obligated to discuss said amendments with Trek prior to providing this notice. Said amendments shall be effective thirty (30) days after said notice is provided to Trek.

ATTACHMENT D

ORD-11-00044 (As adopted by the City of Madison Common Council on March 15, 2011)¹

10.33 BICYCLE-SHARING FACILITIES.

- (1) Purpose. A City-sponsored bicycle-sharing program offers residents and visitors of the City the ability to use rented bicycles as an alternative form of short-term transportation. Such a program will be an important amenity and means of transportation for City residents, workers and visitors, and will help bring visitors to the City's downtown, displace car traffic, take pressure off of the City's downtown parking needs, and improve public health by providing opportunities for exercise. This program will also help the City meet its goals of reducing air pollution and greenhouse gas emissions and having twenty percent (20%) of all downtown trips done by bicycle by 2020.

For a bicycle-sharing program to be successful, program facilities will have to be placed at optimal locations throughout the urban environment that prioritize visibility, location desirability, and convenience, among other considerations. However, due to a lack of sufficient public or private open space at optimal locations, it will be necessary, at certain locations, to place some of the facilities of a City-sponsored bicycle-sharing program within the City right-of-way, including on sidewalks and terraces. It may also be necessary, and desirable, to place these facilities on other City land.

Hence, to enable the success of the City-sponsored bicycle-sharing program, this section allows for the placement of bicycle-sharing facilities in the right-of-way and other City land through the granting of a bicycle-sharing facility privilege pursuant to the requirements of Wis. Stat. § 66.0425.

- (2) Applicability. The provisions of this ordinance shall only apply to bicycle-sharing facilities within the right-of-way or on other City land that are part of a City-sponsored bicycle-sharing program.
- (3) Definitions. For the purpose of this ordinance, the following words shall have the meaning indicated.
 - (a) Bicycle-Sharing Facility means a facility and all attachments and operational aspects thereto that are part of a bicycle-sharing program. This definition includes, but is not limited to, a rental station, informational signs, bicycles, solar panels, or other equipment attached to and necessary for the facility's operation.
 - (b) Bicycle-Sharing Program is a program which provides specially designed bicycles for short-term rent to the public at multiple facilities throughout the City and in which the users of the bicycles are able to return the bicycles at any other bicycle-sharing facility maintained by the program in the City.

¹ The ordinances set forth in this Attachment C are those ordinances as adopted by the Common Council on March 15, 2011. From time to time, the Common Council may decide to amend or repeal these ordinances. Except for the definitions set forth herein that give meaning to the terms in this Operating Agreement, to the extent that the Ordinances in this Attachment, or portions thereof, are amended or repealed, those updated Ordinances control and are effective, notwithstanding any language to the contrary in this Attachment.

- (c) Bicycle-Sharing System is the entire network of bicycle-sharing facilities that make up a City-sponsored bicycle-sharing program, including facility locations on right-of-way, other City land, and private property.
 - (d) City-Sponsored means that the City provides a bicycle-sharing program support, either by running and operating such a program in cooperation with another party, providing an applicant direct financial support for the program, or providing an applicant with significant assistance in the operation and establishment of the program.
 - (e) Contact Information includes the address, telephone number(s), e-mail address(s), and any and all other means that would allow City staff to contact a person, including the address of any registered agent.
 - (f) Managing Agent is the person who, by virtue of his or her position, operates a bicycle-sharing program and has control, including physical and contractual, over the bicycle-sharing facilities used therein.
 - (g) Other City Land includes City park land, City-owned or leased greenways, and bike paths owned by or under the control of the City.
 - (h) Owner means any person who jointly or severally is vested with all or part of legal title to (or beneficial ownership of) the bicycle-sharing facilities.
 - (i) Person means any individual, partnership, association, corporation, joint venture, limited liability company or partnership, trust, or other entity that may enter into contracts.
 - (j) Right-of-Way means the surface and space above and below an improved or unimproved public roadway, highway, street, bicycle lane, public sidewalk and terrace in which the City has an interest, including any other dedicated right-of-way for travel purposes.
- (4) Administration. This section is administered by the Director of the Department of Planning and Community and Economic Development or her/his designee.
- (5) Application. The application for a privilege under this section may be made by either the owner or managing agent of the bicycle-sharing program and shall be made to the Department of Planning and Community and Economic Development and shall include and incorporate the following:
- (a) Application Fee. A nonrefundable application and initial processing fee of five hundred dollars (\$500) shall accompany the application. There shall be no proration of the application and initial processing fee. This application fee shall cover all locations of bicycle-sharing facilities. Any application to increase the number of bicycle-sharing facilities by more than thirty-five percent (35%) shall be accompanied by a new fee under this section.
 - (b) Program Information. The application shall include the name, address, and telephone number of the bicycle-sharing program owner(s) and managing agent(s), and a basic description of the bicycle-sharing program, along with the means of City sponsorship of said program, the information required in sub. (c) below, and any other information as may be required by the Director of the Department of Planning and Community and Economic Development.

- (c) Location Information. The application shall include a description and drawing of the proposed bicycle-sharing facility locations sufficient enough to permit City staff to draft a legal description of the privilege(s) sought. All right-of-way, greenway and bike path locations for which a privilege is sought must be approved by the City Engineer, or designee, who shall assure that the proposed location complies with all applicable ordinances and does not unnecessarily or unduly interfere with the public's right of travel at the location. All park land locations for which a privilege is sought must be approved by the Superintendent of the Parks Division, or designee, who shall assure that the proposed location complies with all applicable ordinances and does not unnecessarily or unduly interfere with the public's right of travel or use at the location. The applicant is urged to consult with the City Engineer and Superintendent of the Parks Division regarding proposed locations prior to submitting an application under this section.
- (6) Approval of Application. Subject to the required conditions of approval noted in Sub. (8), the Director of the Department of Planning and Community and Economic Development shall not approve the bicycle-sharing facility privilege application unless the requirements of this section are satisfied, and that all other applicable ordinances, resolutions and policies will be complied with. If the Director approves the bicycle-sharing facility privilege application, the Director shall inform the applicant in writing of this recommendation and the conditions of approval.
- (7) Agreement. Following concurrence of the applicant with the conditions of approval, the Director, in cooperation with the City Attorney, shall prepare a bicycle-sharing facility privilege agreement, setting forth the requirements and conditions under which the bicycle-sharing facility privilege is permitted, including the conditions set forth in Sub. (8) below. This agreement may be included as part of a general bicycle-sharing program operating agreement between the owner and the City, and may cover bicycle-sharing facilities not located on right-of-way or other City land. This agreement shall be binding upon the owner, the owner's heirs and assigns, and the terms and conditions contained in the agreement shall remain in full force and effect as long as the bicycle-sharing facility privilege exists. The Director is authorized to execute this bicycle-sharing facility privilege agreement on behalf of the City. Following receipt of the insurance certificate, a copy of the agreement shall be furnished to the applicant and the City Clerk. The Risk Manager shall monitor the insurance requirements.
- (8) Conditions of Approval. As a condition of approval of the application, the following conditions must be met and shall be included in the bicycle-sharing facility privilege agreement required under Sub. (7):
- (a) Insurance. The owner shall be required to furnish a Certificate of Insurance, on a form provided by the City, evidencing existence of general public liability and property damage insurance with the City of Madison being named as an additional insured. The insurance shall include contractual liability coverage with minimum limits of one million dollars

(\$1,000,000) combined single limits per occurrence, which coverage owner agrees to keep in full force and effect throughout the term of the agreement entered into under this section.

- (b) Indemnification. The bicycle-sharing facility agreement shall include a requirement that the owner will hold harmless, defend, and indemnify the City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties resulting from the installation, use, maintenance, or presence of the bicycle-sharing facilities in the public right-of-way or on other City land.
- (c) Removal of Facilities. The owner shall remove the bicycle-sharing facilities in the right-of-way that are permitted under this section upon ten (10) days written notice by the City of Madison. Additionally, the owner or the owner's heirs or assigns shall be entitled to no damages for removal of the bicycle-sharing facilities, and if the owner shall not remove the same upon due notice, it shall be removed at the owner's expense.
- (d) Permits and Approvals. Owner is responsible for obtaining and maintaining all other required permits and approvals necessary to install and operate the program's facilities in the right-of-way or on other City land. Failure to have or maintain valid permits or approvals will cause the bicycle-sharing facility privilege granted under this section to immediately expire. Such expiration shall apply to the location in question, or the entire program, as the case may be.
- (e) Restoration. After a bicycle-sharing facility is removed, the owner shall restore the right-of-way or other City land to its original condition. City may charge the owner for its costs associated with restoring the right-of-way or other City property to its original condition if the owner fails to do so.
- (f) Signs. As a condition of approval, the owner must agree and acknowledge that all signs on the bicycle-sharing facility equipment are subject to Sec. 10.33(10) herein. Further, the owner agrees to give the City final approval of the specifications for any signs displayed on the bicycles, and such approved specifications shall be included in the agreement required under Sub. (7) and/or any bicycle-sharing program operating agreement between the owner and the City.
- (g) Waiver. In accepting the bicycle-sharing facility privilege, the owner agrees to waive any and all right to contest in any manner the validity of this ordinance or Wis. Stat. § 66.0425, or the amount of fees or compensation charged by the City.
- (h) Termination. The bicycle-sharing facility privilege will be terminated pursuant to the terms of the agreement required under Sub. (7). Following removal of the bicycle-sharing facility and restoration of the public area on which the facilities existed to the satisfaction of the City Engineer or the Superintendent of the Parks Division, as the case may be, the Director shall provide a document terminating the privilege to the owner, filing a copy with the City Clerk.

- (i) Annual fee. An annual permit fee for each bicycle-sharing facility location of fifty (\$50) dollars per square foot of right-of-way or other City land occupied by the base of the rental station equipment and authorized poster board sign (as described below in Sec. 10.33(10)(c)3.a.), or two hundred and fifty dollars (\$250), whichever is greater.
- (9) Operational Changes. If, at any time after approval of the application, the owner or managing agent desires to relocate existing program facilities subject to the agreement required under Sub. (7), or place new facilities in the right-of-way or on other City land (subject to the requirement of Sub. (5)(a) above), the applicant must submit an operational change request to the Director which shall include the information set forth in Sub. (5)(c) above, and shall proceed according to the procedures and requirements of Subsections (6) through (8).
- (10) Signs on City-Sponsored Bicycle-Sharing Facilities.
 - (a) Signs on City-sponsored bicycle-sharing facilities located on non-city owned property shall be subject to Sec. 31.046(4).
 - (b) Signs on City-sponsored bicycle-sharing facilities on other City lands may be displayed in compliance with the requirements of Sec. 10.33(10)(c) herein.
 - (c) Signs on City-Sponsored Bicycle-Sharing Facilities in the Right-of-Way.
 - 1. Purpose and Findings. As stated in Sec. 10.33(1), a bicycle-sharing program is critical to the well-being of the City of Madison, its residents and taxpayers. The City has considered options for providing a convenient, cutting-edge, public bicycle-sharing program for short-term travel about the city, especially the downtown area. To be successful, some of the facilities must be placed in the highway right-of-way. In order to fund a high quality City-sponsored program with the features the City desires, the program must be supported in part by allowing limited advertising for sponsors on City-sponsored bicycle-sharing facility equipment and bicycles located in the right-of-way and on other City land. The Common Council finds that the display of signs consistent with this section on City-sponsored bicycle-sharing facilities and bicycles, in the right-of-way and on other City land, will not cause aesthetic blight or traffic hazards of the sort unacceptable to the community. Rather, when included as part of the overall program, such signs will further the City's substantial governmental interests set forth in Sec. 10.33(1) by:
 - a. Allowing the City to select and control the location and appearance of the equipment and signs;
 - b. Identifying the equipment as part of the City-sponsored bicycle program;
 - c. Providing necessary directions and instructions for using the bicycle program;
 - d. Allowing for attractive, well-maintained public bicycle equipment;

- e. Providing information about sponsors of the program thereby defraying the costs of offering the program to the public;
 - f. Offering an environmentally beneficial transportation option that relieves vehicular congestion, reduces air pollution and greenhouse gas emissions;
 - g. Improving public health by providing opportunities for recreation and exercise;
 - h. The Common Council further finds that signs mounted on the bicycles used in the City-sponsored bicycle-sharing program are incidental to the primary use of the bicycles as vehicles.
2. Certain Wisconsin statutes and regulations, specifically Wis. Stat. § 86.19 and regulations adopted thereto, raise doubts about whether such signs may be placed within the highway rights-of-way. The determination of whether to place maps, directional information, instructions, operator or manufacturer logos, advertisements including business name and logo of sponsors, or other signs on City-sponsored bicycle-sharing facilities located on city sidewalks or terraces is a matter of the local affairs and government of the City of Madison. The Common Council of the City of Madison hereby determines that, to the extent Wis. Stat. § 86.19 and Wisconsin Administrative Code regulations restrict the City's ability to place signs or to sell or authorize the sale of advertisements on City-sponsored bicycle-sharing facilities within the limits of any street or highway right-of-way, the City will not be governed by Wis. Stat. § 86.19, to the extent stated herein.
3. Sign Criteria. The City, or the owner or managing agent operating under a bicycle-sharing facility privilege agreement under Sub. (7), may place advertisements and other signs on City-sponsored bicycle-sharing facilities in the street or highway right-of-way (except State Trunk Highways as defined in Wis. Stat. § 84.02) as follows:
- a. Poster Board Sign. One sign, permanently attached to the bicycle-sharing facility equipment, with not more than two (2) sign faces of not more than five feet and one inch (5'1") square feet in area per sign face. This sign shall not be illuminated, shall not include any flashing, moving, digital or electronic changeable copy features as those terms are defined in Chapter 31, and shall be oriented toward users of the facility and not toward the roadway, street frontage or motor vehicle traffic. At least one side of this sign shall include a map showing the bicycle-sharing system, other directional information, instructions for using the bicycle-sharing facility, and may also include:

- i. Maps and information about other City of Madison governmental services; and
- ii. A City of Madison logo and/or the logo and/or business name only of the owner, managing agent, or manufacturer of the bicycle-sharing facility of not more than one half (1/2) of a square foot in area each.

In lieu of a map and the signs in i. and ii. above, the other side of this sign may display text describing the bicycle-sharing program and up to one logo and/or business name of the owner, managing agent or manufacturer of the bicycle-sharing facility of not more than one half (1/2) of a square foot in area.

- b. Sponsor Signs: Four (4) additional signs mounted on a piece of equipment necessary for the bicycle-sharing facility, not more than twelve inches by nine inches (12" x 9") in area each, measured by drawing a box around the sign copy, to identify a sponsor of the facility. Such signs shall include only the logo and/or business name of the sponsor, and must include the words "sponsored by" or a similar statement to signify the sponsorship. Such signs shall not be illuminated nor shall they include any flashing, moving, digital or electronic changeable copy features as those terms are defined in Chapter 31.
- c. Operator Logos: In addition to the logos on the poster board sign under sub. 3.a.ii. above, the following signs bearing only the name and logo(s) of the owner, managing agent, or manufacturer of the bicycle-sharing facility or other symbol to identify the equipment as a bicycle-sharing facility may be displayed on the facility equipment:
 - i. One 2-sided round sign of not more than two (2) square feet in area, per side, and
 - ii. up to two (2) additional signs of not more than one half (1/2) of a square foot mounted on the equipment;
 - iii. one sign incorporated into the instructional panel described in sub. f. below.

The logo signs under this subsection c. are solely to identify the equipment as a City-sponsored bicycle-sharing facility and shall not include any sponsorship advertising.

- d. One sign of not more than 20 square inches, mounted upon the payment equipment, to identify credit cards accepted for payment.
- e. One sign of not more than 105 square inches denoting the location name of the bicycle-sharing station.

- f. One instructional panel with information for operating the bicycle-sharing facility mounted elsewhere on the equipment, that may include a twelve square inch sign bearing the logo or business name only of the owner, managing agent, or manufacturer of the bicycle-sharing facility, and no other logos, business names or sponsorship signs of any kind.
 - g. Signs on Bicycles. Signs mounted on the bicycles provided under the City-sponsored bicycle-sharing program are considered incidental to the primary and principle use of the bicycles as vehicles. The bicycles may include signs identifying the business name or logo of the owner, managing agent, or manufacturer of the facility or the bikes, and the logo, business name or other sign copy identifying sponsors of the bicycle-sharing program. The specifications for any signs on the bicycles, including number, location, size, and materials, must be approved by the City and included in the written bicycle-sharing facility privilege agreement.
- 4. Any sign on a City-sponsored bicycle-sharing facility in the highway right-of-way or other City land not authorized by this section is prohibited.
 - 5. This Charter Ordinance, Sec. 10.33(10)(c), shall not apply to State Trunk Highways as defined in Wis. Stat. § 84.02.
 - 6. Sec. 10.33(10)(c) is a Charter Ordinance adopted pursuant to Wis. Stat. § 66.0101, and Article XI, Sec. 3 of the Wisconsin Constitution and shall be effective upon sixty (60) days from passage and publication, subject to the referendum procedures of Wis. Stat. § 66.0101(5).”
- (11) Penalty. Any person causing or maintaining any bicycle-sharing facility in the right-of-way or on other City land contrary to this section shall be subject to a forfeiture of not less than twenty-five (\$25) nor more than five hundred dollars (\$500). Each day such violation continues shall be considered a separate offense.

8.15 REGULATION OF PRIVATE USE OF GREENWAYS, PARK LANDS, AND THE SOUTHWEST BIKE PATH.

- (3) Bicycle-Sharing Facilities. It shall not be a violation of this ordinance for bicycle-sharing facilities that are part of a City-sponsored bicycle-sharing program, as those terms are defined in Sec. 10.33, MGO, to be placed on City-owned or leased greenways and park lands or the Southwest Bike Path, provided that the owner of the facility has a valid bicycle-sharing facility privilege under Sec. 10.33 for the location and the Board of Parks Commissioners and/or the City Engineer, or their designees, as the case may be, approve the actual location of the bicycle-sharing facilities that will be located on City-owned or leased greenways and park lands or the Southwest Bike Path.

- (4) Abatement. If the City determines that a public nuisance exists pursuant to (1) or (2), notice to remove such public nuisance or cease such public nuisance activity shall be sent to the owner, occupant, or person causing, maintaining, or permitting the public nuisance. If the public nuisance is not removed within the time specified in the notice, the City shall remove the public nuisance or cause it to be removed. The cost of abatement shall be assessed as a special charge to the owner, occupant, or person causing, maintaining, or permitting the public nuisance. Any property held by the City after removal is subject to disposal thirty (30) days after a notice of removal is mailed to the owner, occupant or person causing, maintaining, or permitting the public nuisance. (Renumbered by ORD-06-00175, 12-8-06; ORD-10-00109, 11-17-10)
- (5) Appeal. Any person aggrieved by a determination that a public nuisance exists may appeal within fifteen (15) days of the mailing of the notice to remove the public nuisance or cease such public nuisance activity. Appeal shall be to the Board specified on the notice and will be either the Board of Public Works or the Board of Park Commissioners, depending on which Board has the control and management of the public property at issue. All requests for appeal shall be filed with the City Clerk and must inform the Board of the reasons for the appeal. Within thirty (30) days, the Board shall hold a hearing at which the parties may offer testimony and documents. Within twenty (20) days of the hearing, the Board shall affirm, modify, or reverse the determination that a public nuisance exists. Appeal from the action of the Board shall be to Circuit Court within thirty (30) days of the determination of the Board. (Renumbered by ORD-06-00175, 12-8-06; ORD-10-00109, 11-17-10)
- (6) Penalty. Any person violating this ordinance shall, upon conviction thereof, be subject to a forfeiture of not less than ten dollars (\$10) nor more than five hundred dollars (\$500). Each day such violation continues shall be considered a separate offense. In addition to any other penalty imposed by this ordinance, the City Attorney may maintain an action pursuant to Ch. 823, Wis. Stats. to abate the nuisance. (Cr. by Ord. 5672, 11-17-76; Am. by Ord. 12,836, 6-26-01; Renumbered by ORD-06-00175, 12-8-06)

31.03 RULES AND DEFINITIONS.

- (2) Definitions. For the purposes of this ordinance, the terms listed below shall have the following definitions:

Advertising Sign. A sign containing a commercial or noncommercial message directing attention to a business, commodity, service, political candidate or cause, public service, social cause, charity, community affair or entertainment, not related to the premises at which the sign is located, or directing attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises where the sign is located. Advertising appearing on public transportation vehicles, signs authorized on Madison Transit Utility bus shelters under Sec. 3.14(4)(i), and signs on City-sponsored bicycle-sharing facilities and the bicycles provided as part of a city-sponsored bicycle-sharing program located in the right-of-way or on other City lands in compliance with

Sec. 10.33 are not advertising signs as defined herein and are not regulated by this ordinance.

31.041 SIGN PERMITS AND FEES.

(3) Permit and Application Fees.

All fees under this subsection shall be payable to the City Treasurer, as follows:

(a) Initial Sign Permit. When a permit is required under this ordinance, the permit fee shall be as follows:

6. Bicycle-sharing facility signs on private property under Sec. 31.046(4): \$100 for all permitted signs per facility.
7. Minimum permit fee: in no case shall any sign permit fee be less than fifty dollars (\$50.00), change of copy under Sec. 31.041(3)(b) below.

31.044 SIGNS EXEMPT FROM PERMIT.

(1) Signs Exempt from Permit. Consistent with the purpose and scope of this ordinance, the Common Council recognizes that certain temporary, necessary, or limited-purpose signs may be displayed without obtaining a permit, subject to applicable safety and aesthetic regulations herein. The Common Council finds that the following signs may be displayed without a permit because they serve an immediate or temporary traffic safety or wayfinding function, including but not limited to the temporary replacement or relocation of permitted, permanent signs during construction; serve a governmental purpose; are permitted or mandated by city ordinance, state or federal law; allow freedom of speech and expression in a timely manner; allow freedom of speech and expression during election periods; or because the size, location or duration of the sign as regulated herein is not significant enough to require review and a permit prior to display of such sign.

No permit shall be required for the following signs when displayed according to the following provisions and any other applicable requirements of these Ordinances or applicable law. When zoning districts are indicated, such signs are only exempt from permit in those districts. When no zoning district is indicated, such signs are exempt from permit in all districts. Exempt signs may not be illuminated unless expressly stated herein or elsewhere in this chapter. Exempt signs may be displayed on a wall or on the ground unless another manner or location of display is expressly provided or prohibited herein, need not comply with Secs. 31.07 (Wall Signs) or 31.08 (Ground Signs) unless expressly stated herein, but shall comply with Secs. 31.04(5) and 31.045, MGO. Any exempt sign displayed on a wall must be displayed within the signable area and if no maximum net area is stated, the net area shall not exceed 100% of the signable area.

An exempt sign under this section may be displayed on a temporary basis if expressly indicated herein or in the definition section (Sec. 31.03(2)). Exempt signs displayed on a temporary basis shall comply with the construction requirements in Sec. 31.04(5) except a temporary exempt sign shall not be

electric, shall not be displayed on the roof or above-roof, and shall not be internally illuminated.

The following signs shall be exempt from permit as provided below:

- (c) 1. City Signs on City Property erected by Parks Division, Traffic Engineering Division, or the Department of Planning and Community and Economic Development on City-owned lands, park property or City-owned and occupied buildings.
Maximum Gross Area: Twenty-four (24) square feet.
Maximum Height: Minimum of two (2) feet and maximum of ten (10) feet above the curb.
Illumination: Yes.
Temporary: Yes.
- 2. Signs on City-Sponsored Bicycle-Sharing Facilities on City-Owned Lands. Signs on City-sponsored bicycle-sharing facility equipment located on other City land, as defined in Sec. 10.33, MGO are subject to the requirements of Sec. 10.33(10), MGO and not regulated herein.

31.045 UNSAFE AND UNLAWFUL SIGNS AND STRUCTURES.

(3) Hazardous or Prohibited Signs, Structures and Conditions.

(c) Public Right-of-Ways.

- 1. No sign, advertisement, cabinet or obstruction, or any other object shall be placed upon, over, or in any public highway right-of-way, including the sidewalk, street, alley or public ground, or upon posts, trees or other supports in any public street or public ground, except that this section shall not be construed to prohibit the erection or placing of official traffic control devices, signs, signals or markers or other signs authorized by law or this ordinance, or of any other object specifically authorized by law of the State of Wisconsin or by these ordinances. This section shall not prohibit carrying of portable hand-held signs on the sidewalk or other pedestrian ways, when done so in compliance with Sec. 31.046(2)(b).
- 2. This subsection does not apply to those matters set forth in Sec. 3.14(4)(i), MGO. This is a Charter Ordinance adopted pursuant to Wis. Stat. § 66.0101, and Article XI, Sec. 3 of the Wisconsin Constitution.
- 3. This subsection does not apply to signs on City-sponsored bicycle-sharing facilities set forth in Sec. 10.33, MGO. This is a Charter Ordinance adopted pursuant to Wis. Stat. § 66.0101, and Article XI, Sec. 3 of the Wisconsin Constitution, and shall be effective upon sixty (60) days from passage and publication, subject to the referendum procedures of Wis. Stat. § 66.0101(5).

31.046

MISCELLANEOUS SIGNS

(4) Bicycle-Sharing Facility Signs.

(a) The following signs may be displayed on a non-City owned zoning lot in any zoning district where a City-sponsored bicycle-sharing facility (as defined in Sec. 10.33) is permitted under Chapter 28, in addition to the signage permitted elsewhere in this ordinance:

1. Poster Board Sign. One (1) sign, permanently attached to the bicycle-sharing facility equipment, with not more than two (2) signs faces of not more than five feet and one inch (5'1") square feet in area per sign face. One side of the sign shall include a map and other information about the City-sponsored bicycle-sharing program, and may also include the logo and/or business name of a business or businesses located on the zoning lot where the facility is located, the name or logo of the operator or manufacturer of the bicycle-sharing facility, and a City of Madison logo. The other side of the sign may display a business sign for one or more businesses located on the zoning lot where the facility is located. Such sign shall not be illuminated.
2. One (1) additional sign located elsewhere on the bicycle-sharing facility equipment, of not more than one (1) square foot in net area, bearing only the logo and/or business name of a business located on the zoning lot. Such sign shall not be illuminated.
3. Operator Logos: In addition to the logos on the poster board sign under sub. (a)1. above, the following signs bearing only name and logo(s) of the owner, managing agent, or manufacturer of the bicycle-sharing facility or other symbol to identify the equipment as a bicycle-sharing facility may be displayed on the facility equipment:
 - a. One 2-sided round sign of not more than two (2) square feet in area, per side, and
 - b. up to two (2) additional signs of not more than one half (1/2) of a square foot mounted on the equipment.The operator logo signs under this subsection 3. are solely to identify the equipment as a City-sponsored bicycle-sharing facility and shall not include any business signs or sponsorship advertising.
4. One sign of not more than twenty (20) square inches, mounted upon the payment equipment, to identify credit cards accepted for payment.
5. One (1) sign of not more than one hundred five (105) square inches denoting the location name of the bicycle-sharing station.
6. Signs on Bicycles provided as part of the City-sponsored bicycle-sharing program as described in Sec. 10.33(10)(c)3.g.
7. One Instructional panel with information for operating the bicycle-sharing facility mounted elsewhere on the equipment, that may include a twelve square inch sign bearing the logo or business name only of the owner, managing agent, or manufacturer of the

bicycle-sharing facility, and no other logos, business names or sponsorship signs of any kind.

- (b) Permit Fees. There shall be one permit fee covering all signs displayed on a City-sponsored bicycle-sharing facility, as established in Sec. 31.041.
- (c) Nothing in this section shall be construed to permit or allow the display of any advertising sign or off-premise directional sign on a bicycle-sharing facility on non-city owned zoning lots or private property. Any sign on a bicycle-sharing facility on non-city owned zoning lots or private property other than those expressly allowed under this subsection is prohibited.