

**BICYCLE-SHARING FACILITY PRIVILEGE AGREEMENT BETWEEN THE CITY
OF MADISON AND TREK BICYCLE CORPORATION**

This Bicycle-Sharing Facility Privilege Agreement (“Privilege 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.

WHEREAS, Trek is a Madison-area based company that is among the largest bicycle manufacturers in the world; 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 and the City have reached agreement on the establishment of a privately owned and operated bicycle-sharing program in the City in which Trek will provide substantial capital investments of approximately \$1.4 million for bicycles, bicycle-sharing stations, and daily operational expenses, and in which the City has agreed to provide staff support for the system; and,

WHEREAS, 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”, which agreement Trek, B-Cycle and the City have agreed to subsequently replace with a new five-year Operating Agreement between the City, Trek and its subsidiaries; and,

WHEREAS, on May 6, 2011 Trek submitted an Application for Bicycle-Sharing Facility Privilege (the “Application”) with the Department of Planning and Community and Economic Development for the privilege of the use of City right-of-way and other City lands for the placement of its bicycle-sharing facilities pursuant to Section 66.0425, Wisconsin Statutes and Section 10.33, Madison General Ordinances (MGO), which Application has been approved, subject to the City and Trek entering into this Privilege Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the City and Trek hereby enter into this Privilege 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 to the Operating Agreement as Attachment C), for the purposes of this Privilege Agreement the following definitions shall apply:

- a. Madison Program. The City-sponsored bicycle-sharing program operated by Trek in the City pursuant to the Operating Agreement, including all facility locations in the City on City right-of-way, other City land, non-City owned governmental lots such as the University of Wisconsin-Madison, and private zoning lots.
 - b. Operating Agreement is the active operating agreement, as amended from time-to-time, between the City and Trek during the term of this Privilege Agreement, and includes specifically the "City-Sponsored Bicycle-Sharing Program Operating Agreement Between the City of Madison and B-Cycle LLC for 2011-2013" entered into by the City and B-Cycle on April 28, 2011, and the five-year operating agreement between the City and Trek that will replace that agreement.
 - c. 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.
 - d. Trek includes Trek and its subsidiaries B-Cycle and Trek Retail.
2. Bicycle-Sharing Facility Privilege. Subject to the terms and conditions set forth in this Privilege Agreement, the City hereby grants Trek a Bicycle-Sharing Facility Privilege under Section 10.33, MGO (the "Privilege") for the installation and placement of Madison Program bicycle-sharing facilities on City right-of-way and other City land. This Privilege also allows Trek to connect its bicycle-sharing facilities to City electrical power sources and to perform necessary and approved alternations to City property to ensure the proper functioning of Madison Program bicycle-sharing facilities at the specified locations, and in accordance with the approved site plans, all at Trek's expense. The Privilege may be exercised only in accordance with the site plans submitted by Trek with its Application, or supplemental Applications, and only at those locations which have been approved by the City, which locations are generally described in Attachment A to this Privilege Agreement. The City-approved site plans shall define the scope of the Privilege at each location set forth in Attachment A.

Upon the written agreement of the Parties, the Privilege granted herein may be changed by amending Attachment A, as necessary, to add, delete, or modify the Privilege locations, provided that the scope of any new or amended Privilege locations are set forth on City-approved site plans. Trek understands that if it wishes to amend an existing location or add a new location, Trek will have to submit a supplemental Application to the City. Furthermore, Trek understands that any application to increase the number of bicycle-sharing facilities covered by this Privilege by more than thirty-five percent (35%) shall be accompanied by a new application fee pursuant to Sec. 10.33(5)(a), MGO.

All responsibilities of the City under this Section shall be administered by the Office of Real Estate Services of the Department of Planning and Community and Economic Development.

3. Term. The Privilege and this Privilege Agreement shall be effective as of the date by which all parties have signed hereunder, and, except as provided elsewhere in this Agreement, shall expire upon the expiration of the Operating Agreement.

4. Trek's Responsibilities. As conditions for approval of the Privilege, Trek agrees to the following:
- a. Ordinance and Policy Compliance. Trek agrees to abide by all ordinances and policies of the City in the operation of the Madison Program at the locations covered by this Privilege, 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 Privilege Agreement. If in doubt as to ordinance or policy compliance, the burden is upon Trek to contact the City to request clarification.
 - b. Waiver. In accepting this Privilege, Trek agrees to waive any and all rights to contest in any manner the validity of Sections 10.33, MGO or 66.0425, Wis. Stats., or the amount of fees or compensation charged by the City. In addition, Trek agrees that the City shall not be held responsible for any damage to the bicycle-sharing facility equipment associated with this Privilege that may be caused by the City, its employees, contractors, or others.
 - c. 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 the acts or omissions of Trek or its officers, officials, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Privilege Agreement or from the installation, use, maintenance, or presence of the bicycle-sharing facilities in the public right-of-way or on other City land, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.
 - d. Insurance. Trek shall carry commercial general liability insurance covering as insured the Permittee and naming the City as an additional insured, with no less than the following limits of liability: bodily injury, death and property damage of \$1,000,000 in the aggregate. This policy shall also be endorsed for contractual liability in the same amount. As evidence of this coverage, Trek shall furnish the City a certificate of insurance on a form provided by the City.
 - e. Permits and Approvals. Trek shall be responsible for obtaining and maintaining all 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 Privilege granted by this application to immediately expire for each location in question where non-compliance has occurred. Trek will have thirty (30) days to either obtain the necessary permit and approval for the non-complying location, or to complete full restoration of the location, otherwise the Privilege shall expire.

- f. Signs. Trek agrees and acknowledges that all signs on the bicycle-sharing facility equipment are subject to Sec. 10.33(10), MGO and the terms and conditions of the Operating Agreement.
- g. Diggers Hotline. Trek agrees to join and maintain membership in Diggers Hotline and secure and maintain the services of a competent locating service. That membership in Diggers Hotline and contracting of a locating service shall be continuous and uninterrupted throughout the term of this Privilege Agreement.
- h. Installation. Installation of a bicycle-sharing facility at a location covered by this Privilege may not commence until all necessary permits and approvals are obtained. During the installation, Trek shall comply with all conditions of approval related to the installation. Upon completion of the installation, Trek shall restore all City land affected by the installation to its original condition, except for the improvements made by Trek for the bicycle-sharing facility. The City may charge Trek for its costs associated with restoring the right-of-way or other City property to its original condition if Trek fails to do so.
- i. Location Changes. If Trek partially relocates or entirely removes a bicycle-sharing facility at a location covered by this Privilege, Trek shall inform the City of its plans and, prior to commencing the full or partial restoration of a location, shall contact the Parks Superintendent for locations on City parkland and the City Engineer for all other locations to inquire if the City is interested in accepting any of the physical improvements made by Trek (e.g., the concrete pad and the electrical service) being abandoned by the relocation or removal. If the City accepts the improvements, said acceptance shall be in writing. Once the facility is partially relocated or entirely removed, Trek shall restore all City land affected by the relocation or removal back to its original condition. The City may charge Trek for its costs associated with restoring the right-of-way or other City property to its original condition if Trek fails to do so.
- j. Site Maintenance. Trek agrees to maintain and operate all bicycle-sharing facilities (including the kiosks, docking stations, poster board signs, solar panels, electrical connections, and bicycles) at locations covered by this Privilege in a working condition and such that the facilities do not threaten, in any way, the safety of the public nor unreasonably impede vehicle, bicycle or pedestrian traffic or cause any type of hazardous obstruction within City right-of-way or on other City land. In addition, Trek agrees to keep each location free from trash and debris, graffiti, scratchiti, or any other condition that impacts the aesthetic appeal to the location. Trek agrees to cure any defect under this provision within five (5) days of receiving written notice from the City. If Trek fails to take this remedial

action, the City may perform, or contract to perform, the necessary repairs, which shall be billed to Trek.

- k. Damage to City Property. Unless otherwise agreed to by the Parties, Trek agrees to be responsible for all costs for moving or damaging City property as a result of exercising this Privilege, including moving or damaging of street signs, street lights and cable. Any or all work of this type that may be necessary shall be done by the City on a time and material basis.
- l. City Ordered Removal of Facilities. Trek shall agree to remove the bicycle-sharing facilities in the right-of-way that are permitted under this Privilege upon ten (10) days written notice by the City. For all other facilities subject to this Privilege Agreement located on other City land, Trek agrees to remove the bicycle-sharing facilities upon thirty (30) days written notice by the City. Furthermore, due to, among other things, special events, construction or public work activity, weather related concerns, unforeseen circumstances, or other reasons consistent with the City and the public's use and enjoyment of City land, the City may find that it is necessary for Trek to remove some or all of the bicycle-sharing facility equipment at a location, temporarily or permanently. Under these circumstances, the City shall give Trek as much notice as reasonably possible, after which Trek shall abide by the removal order. If removal is required under this Subsection, Trek shall not be entitled to damages for removal of the bicycle-sharing facilities, and if Trek shall not remove the same upon due notice, it shall be removed at Trek's expense.
- m. Reimbursement of the City. If Trek fails to restore City property or maintain the facilities covered by this Privilege and the City has to take remedial action, the City shall bill Trek upon completion of the activity, which amount Trek shall pay within thirty (30) days. If Trek does not so reimburse the City, this Privilege shall expire. Trek acknowledges that the City shall be the sole judge of whether locations have been satisfactorily restored or maintained.
- n. Annual Fee. Trek shall pay an annual fee as set by the Madison General Ordinances for each bicycle-sharing facility location either within thirty (30) days of this Privilege being granted or any new location is added through approval of a supplemental Application, or by January 1 of each year this Agreement is in effect. Failure to pay this annual fee shall result in this Privilege being immediately terminated. This annual fee covers each site for a calendar year, and will not be prorated. The annual fee for each location, based upon the City-approved site plans, is set forth on Attachment A. If, after installation, Trek changes the base dimensions of the rental station equipment or authorized poster board at any location, it shall inform the City so that the annual fee is accurately calculated.

The annual fee is set forth in Section 10.33(8)(i), MGO and, as of the execution of this Privilege Agreement, is set at 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 in Sec. 10.33(10)(c)3.a., MGO), or two hundred and fifty dollars (\$250), whichever is greater. Said annual fee may be adjusted from time to time by the City. The annual fee for all locations subject to this Privilege should be combined and paid by check made payable to the City Treasurer and mailed to Real Estate Section, Community and Economic Development Unit, Madison Municipal Building, 215 Martin Luther King, Jr. Boulevard, P.O. Box 2983, Madison, Wisconsin 53701-2983.

- o. Abandonment of Facilities. If this Privilege expires and the Privilege Agreement and Operating Agreement are no longer effective, and Madison Program facilities still occupy City land at locations set forth on Attachment A, Trek agrees that the City may remove all of this equipment and restore all of the locations. The City may sell any equipment recovered to reimburse its costs, and may pursue Trek civilly for any costs not recovered. Trek agrees that the City will not be responsible for any damages or losses incurred as a result of this activity.

5. Default and Termination.

- a. Except where specifically provided for elsewhere in this Privilege Agreement, in the event Trek shall default in any of the covenants, agreements, commitments, or conditions herein contained, or any of the terms or conditions set forth in the Operating Agreement, and any such default shall continue unremedied for a period of thirty (30) 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 Privilege and this Agreement and all rights of Trek hereunder.
- b. Notwithstanding any of the foregoing, the City agrees that Trek may terminate this Privilege at any time upon written notice to the City.
- c. Once the Privilege is terminated, this Privilege Agreement shall continue in effect until all facility equipment is removed and all locations are fully restored to the condition they were in prior to the granting of this Privilege, except as to improvements accepted by the City under Section 4.i. Following removal of all the bicycle-sharing facilities and restoration of the public area on which all the facilities existed to the satisfaction of the City Engineer or the Superintendent of the Parks Division, as the case may be, the City shall provide a document terminating the Privilege to Trek, filing a copy with the City Clerk.

6. Impossibility of Performance. Neither the City nor Trek shall be obligated to or liable for the performance of any term or condition of this Privilege 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.

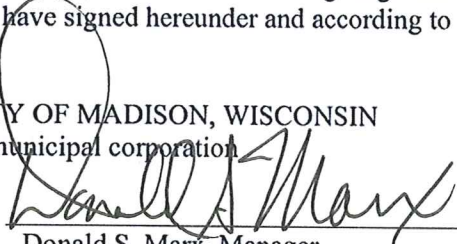
7. Title to be Retained by Trek. Except as provided for elsewhere in this Privilege Agreement, Trek shall retain title to and ownership of all the Madison Program facilities, including any improvements made to City land at Privilege locations.
8. Assignment and Subcontracting. Trek shall not assign this Privilege Agreement or any interest therein without the written approval of the City which will not be unreasonably withheld.
9. Binding on Parties; Amendments. This Privilege Agreement shall be binding on the Parties hereto, including Trek and its subsidiaries B-Cycle and Trek Retail, 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.
10. Notices. All notices required to be given under the terms of this Privilege Agreement shall be personally delivered or sent, postage prepaid, by depositing the same in United States mail addressed as follows:

City:	City of Madison - Office of Real Estate Services Attn. Jerry Lund Madison Municipal Building 215 Martin Luther King, Jr. Boulevard P. O. Box 2983 Madison, WI 53701-2983
Trek:	Joseph Siefkes, VP Finance Trek Bicycle 801 W. Madison St. Waterloo, WI 53594
11. Agreement Governed by Laws of Wisconsin. This Privilege 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.
12. Non-Discrimination. In the performance of the services under this Privilege 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 Privilege Agreement because of race, religion, color, age, disability, sex, or national origin.
13. 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.

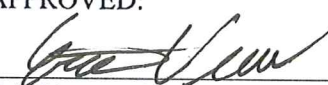
14. Entire Agreement. Except for the Operating Agreement, the entire agreement of the Parties is contained herein and this Privilege Agreement supersedes any and all oral contracts and negotiations between the Parties.
15. Joint Preparation. Each party and its counsel have participated fully in the review and revision of this Privilege 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 Privilege Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
16. 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.
17. Severability. It is mutually agreed that in case any provision of this Privilege 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 Privilege Agreement remain in full force and effect.
18. Authority. The Parties each represent that they have the authority to enter into this Privilege 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 Bicycle Corp. represents that it has the authority to bind its subsidiaries B-Cycle LLC and Trek Retail Corporation to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Privilege 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.

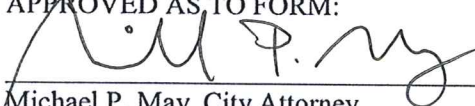
CITY OF MADISON, WISCONSIN
A municipal corporation

By: 
Donald S. Marx, Manager
Office of Real Estate Services
Date: 5/12/11

APPROVED:


Eric Veum, City Risk Manager
Date: 5/12/11

APPROVED AS TO FORM:


Michael P. May, City Attorney
Date: MAY 11, 2011

TREK BICYCLE CORP.

By: 
John Burke, President

Date: 5/9/11

ATTACHMENT A
Bicycle-Sharing Facility Privilege Locations
 Approved Locations as of May 9, 2011

<u>No.</u>	<u>Location Name</u>	<u>Location Address</u>	<u>Location Legal Description</u>	<u>Further Location Description</u>	<u>Permit Fee</u>
1	Wisconsin & E. Mifflin	2 E. Mifflin St.	N/E side of Wisconsin Ave., 20 feet NW of E. Mifflin St.	On existing sidewalk bump-out area adjacent to island	\$250
2	N. Webster & E. Mifflin	218 E. Mifflin St.	N/E side of N. Webster St., 100 feet NW of E. Mifflin St.	On terrace area, adjacent to sidewalk	\$250
3	E. Doty & S. Pinckney	215 Martin Luther King Jr. Blvd.	SE side of E. Doty St., 25 feet SW of S. Pinckney St.	On Madison Municipal Building grounds, adjacent to sidewalk	\$250
4	S. Hamilton & W. Main	25 W. Main St.	N/E side of S. Carroll St. at SE side of W. Main St., at S. Hamilton St.	On existing sidewalk area, adjacent to island	\$250
5	E. Washington & N. Pinckney	110 E. Main St.	SW side of E. Washington Ave., 100 feet NE of S. Pinckney St.	On existing sidewalk area, adjacent to terrace	On Hold
6	MLK Jr. & E. Wilson	215 Martin Luther King Jr. Blvd.	NW side of E. Wilson St., 120 feet NE of Martin Luther King Jr. Blvd.	On Madison Municipal Building grounds, adjacent to sidewalk	\$250
7	W. Wilson & MLK Jr.	210 Martin Luther King Jr. Blvd.	NW side of W. Wilson St., 10 feet SW of Martin Luther King Jr. Blvd.	On City-County Building grounds, adjacent to sidewalk	\$250
8	N. Park & Spring St	902 Spring St.	25 feet W of W side of N. Park St., 60 feet N of Spring St.	On Stormwater Utility Property, adjacent to decorative wall	\$250
9	N. Breese & Camp Randall	503 S. Spooner St.	W side of S. Breese Terrace, 60 feet S of Regent St.	L shaped kiosk adjacent to the Southwest bike path and S. Breese Terrace sidewalk, on Bike Path parcel	\$250
10	John Nolen & Law Park	410 Blair St.	15 feet SE of John Nolen Dr., 55 feet W of S. Blair St.	In Law Park, between parking lot and Capital City Trail	\$250
11	N. Park & Memorial Union	610 N. Lake St.	N end of N. Park St.	End of N. Park St. on existing sidewalk, adjacent to wall	\$250
12	W. Washington & Kohl Center	675 W. Washington Ave.	SE side of W. Washington Ave., 35 feet NE of Proudft St.	On terrace area, adjacent to sidewalk	\$250

13	Hawthorne Ct. & State St.	693 State St.	West side of Hawthorne Ct. 15 feet S of State St. right-of-way	In existing paved street along western edge of paved area	\$250
14	E. Gorham & James Madison Park	300 E. Gorham St.	NW side of E. Gorham St., 65 feet SW of N. Franklin St. extended	In James Madison Park, adjacent to sidewalk	\$250
15	W. Gilman & Peace Park	229 W. Gilman St.	10 feet SE of W. Gilman St. 210 feet NE of State St.	In the back of Elizabeth "Lisa" Link Peace Park, adjacent to sidewalk	\$250
16	North Shore & Brittingham Park	617 North Shore Dr.	30 feet east of North Shore Dr., 250 feet SW of S. Bedford extended	In Brittingham Park, adjacent to Capital City Trail	\$250
Total Annual Permit Fees					\$3,750.00