

CITY-SPONSORED BICYCLE-SHARING PROGRAM OPERATING AGREEMENT
Between the City of Madison and B-Cycle LLC
For 2021-2030

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 B-Cycle LLC, a Delaware Limited Liability Company (“B-Cycle”), is effective as of the date by which all parties have signed hereunder and according to the terms and conditions set forth herein.

RECITALS

WHEREAS, Trek Bicycle Corporation (“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, in 2010, 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 would provide substantial capital investments for bicycles, bicycle-sharing stations, and daily operational expenses; and,

WHEREAS, on March 15, 2011, the City adopted ORD-11-00044, creating Madison General Ordinances Section 10.33, which ordinance allows for the placement of City-sponsored bicycle-sharing facilities in the right-of-way and on other City land through the granting of a bicycle-sharing facility privilege; and,

WHEREAS, on May 12, 2011, the City and Trek entered into a bicycle-sharing facility privilege agreement (the “Privilege Agreement”), as required by ordinance, which agreement is contingent upon the terms and conditions of an operating agreement between the City and Trek; and,

WHEREAS, on June 29, 2011, the City and Trek entered into a 10-year bicycle-sharing program operating agreement, during which time the resulting bicycle-sharing program, Madison B-Cycle, has grown to include 50 stations, many of which are located in the public right-of-way or on City property, and an all-electric bike fleet that saw more than 231,000 trips taken in 2019; and,

WHEREAS, Madison B-Cycle has proven to be a valuable part of the City’s transportation network, providing alternative transportation options for City residents, workers and visitors, particularly in the downtown and campus area, and is a benefit to the City, Trek and B-Cycle;

WHEREAS, the initial operating agreement will expire on December 31, 2020, meaning that for Madison B-Cycle to continue to operate, succeed, and grow, it will be necessary for the City and Trek to enter into a new operating agreement which will, among other things, extend the Privilege Agreement and the legality of the program under MGO Sec. 10.33, continue to provide a mechanism for bicycle-sharing stations to be located in the right-of-way and on other City property, as well as to contain limited advertising; and,

WHEREAS, over the last decade, the City has provided significant assistance in the establishment of Madison 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, in entering into a new operating agreement, Trek desires for B-Cycle to take over the operating agreement and will assign its interests to the Privilege Agreement to B-Cycle, which is acceptable to the City; and,

WHEREAS, it is the best interests of both the City and B-Cycle (the “Parties”) to enter into a new operating agreement for Madison B-Cycle program.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the City and B-Cycle 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) (which is incorporated herein by reference), for the purposes of this Operating Agreement the following definitions shall apply:
 - a. Madison B-Cycle. The City-sponsored bicycle-sharing program operated by B-Cycle 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.
2. Purpose. The purpose of this Operating Agreement is to set forth the terms and conditions for B-Cycle’s operation of Madison B-Cycle bicycle-sharing program. This Operating Agreement will also serve as the mechanism to recognize the City’s acceptance of the assignment of the Privilege Agreement from Trek to B-Cycle.
3. Term. This Operating Agreement, unless earlier terminated or amended as provided for herein, is effective as of January 1, 2021 and shall expire on December 31, 2030.
4. Renewal. No earlier than July 1, 2030 and no later than December 31, 2030, and upon the mutual agreement of the Parties, this Operating Agreement may be renewed for one ten (10) year term from January 1, 2031 through December 31, 2041. The renewal shall be on the same terms and conditions of this Operating Agreement, unless otherwise agreed to in writing by the Parties. B-Cycle shall give notice in writing to the City of its desire to renew

this Operating Agreement by the mailing or personal delivery of a notice of renewal to the City Attorney at the address specified in Section 16.

5. B-Cycle's Responsibilities.

- a. Madison B-Cycle Operation. During the term of this Operating Agreement, B-Cycle agrees to operate a bicycle-sharing program in the City. B-Cycle will own the program and all of its facilities, and be responsible for all operations related thereto.
- b. Winter Operations. B-Cycle is authorized to operate Madison B-Cycle between December 15 and March 15, subject to the following conditions:
 - (1) Madison B-Cycle shall be responsible for all snow and ice removal responsibilities associated with any stations that remain operational.
 - (2) Madison B-Cycle is encouraged to work with adjoining private property owners or tenants to plan for snow removal activity around the B-Cycle station.
 - (3) Madison B-Cycle will abide by all snow and ice related ordinances, and, in its removal activity, will ensure that it does not create any visual hazards that may be a hazard to motorists, pedestrians or bicyclists. Operational stations in the right-of-way must be snow and ice free by noon the day after the snow or ice has accumulated on the station pad, and no snow may be deposited into the right-of-way at any location. If necessary for public safety purposes, Madison B-Cycle will be responsible for hauling snow off-site.
 - (4) Madison B-Cycle accepts the risks of winter operations, including, specifically, any damage that may occur to Madison B-Cycle property from City snow removal activity.
 - (5) Madison B-Cycle is encouraged to participate in the City's snow team meetings and work with City staff to coordinate removal activity during snow emergencies.
 - (6) Madison B-Cycle shall address any site-specific concerns of City staff relating to operational stations located on City property, or adjacent to sidewalks maintained by the City.
 - (7) If necessary in the interests of public safety, Madison B-Cycle agrees to temporarily or permanently close any operational site. Should this occur, operations at the site may not resume until authorized by City staff.
- c. Reporting Requirements. Upon request, B-Cycle will provide a report on Madison B-Cycle's performance each year.

d. Fees, Revenues and Related Financial Matters.

- (1) Application and Permit Fee. B-Cycle 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. B-Cycle 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. B-Cycle 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, B-Cycle shall be entitled to connect to the City's electrical supply.
- (2) Connection Costs. B-Cycle 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 or utility costs.
- (3) Payment for Electrical Service. B-Cycle shall be responsible for any metered connections to the electrical supply. For each kiosk that is connected to the City's electrical supply, B-Cycle agrees to pay a flat rate of \$40 for the entire operating year's electrical service, which amount may be adjusted consistent with updated utility rates.
- (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 B-Cycle'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. B-Cycle agrees to abide by all ordinances and policies of the City in the operation of Madison B-Cycle, 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 B-Cycle is found to be in violation of any City ordinance or policy, the City shall notify B-Cycle. 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 B-Cycle to contact the City to request clarification.

- g. Program Expansion. If, during the course of this Operating Agreement, B-Cycle desires to expand facility locations to property located outside of the municipal boundaries of the City, it may do so. 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. B-Cycle 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. B-Cycle 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.

6. City Responsibilities.

- a. Madison B-Cycle Operation. The City recognizes that B-Cycle's operation of Madison B-Cycle 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 accepting the assignment of the Privilege Agreement to B-Cycle from Trek, the City is recognizing its commitment to Madison B-Cycle. In addition to the financial contribution as set forth below, the City is also committed to providing B-Cycle with staff assistance, as needed, in locating Madison B-Cycle facilities and operating Madison B-Cycle. However, in no event is the City to assume any active role or responsibility for the operations of Madison B-Cycle, which shall remain entirely with B-Cycle, nor shall the City be financially responsible for Madison B-Cycle beyond the City contribution noted below.
- b. City Contribution. In recognition of its commitment to Madison B-Cycle, the City agrees to make annual contributions of one dollar (\$1) to B-Cycle for the operation of Madison B-Cycle, which amount shall be deducted by B-Cycle from the annual electrical service payments due as set forth above in Subsection 5.e.

7. Signage Limitations.

- a. General Limitations. B-Cycle agrees that as it relates to all signage on Madison B-Cycle 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. B-

Cycle 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 B-Cycle 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 Madison B-Cycle and/or the 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. B-Cycle agrees that, other than signs and logos related to B-Cycle, Trek or Madison B-Cycle, signs on Madison B-Cycle bicycles may only be displayed on those panels identified on Attachment A, pursuant to the dimensions set forth therein.
- e. Content Guidelines. B-Cycle 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 B-Cycle’s Sponsorship and Advertising Guidelines,” attached hereto as Attachment B.
- 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 B-Cycle. 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 B-Cycle 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 Operating Agreement shall relieve B-Cycle from compliance with all applicable state, local and federal laws.
 - i. Changes to Sign Code and Policies. B-Cycle 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 B-Cycle in this process, and B-Cycle 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.
 - 8. Assignment of the Privilege Agreement. By entering into this Operating Agreement, the City accepts the assignment of the Privilege Agreement from Trek to B-Cycle, and B-Cycle agrees to be bound by the terms thereof. This Operating Agreement shall be considered the Operating Agreement under Section 1.b. of the Privilege Agreement. This Operating Agreement shall not be effective until Trek has assigned the Privilege Agreement to B-Cycle, or a replacement Privilege Agreement is entered into by B-Cycle.
 - 9. Indemnification and Insurance.
 - a. Indemnification. B-Cycle 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 B-Cycle'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. B-Cycle will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated. B-Cycle shall not commence operations under this Operating 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. B-Cycle's coverage shall be primary and non-contributory, and list the City of Madison, its officers, officials, agents and employees as additional insureds. B-Cycle 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. B-Cycle 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. B-Cycle shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. B-Cycle 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. B-Cycle 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. B-Cycle shall provide the certificate(s) to the City at the time of signing this Operating Agreement, or sooner. B-Cycle 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. B-Cycle 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. B-Cycle shall have no right to operate Madison B-Cycle or allow the public's use of the facilities of Madison B-Cycle, 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 B-Cycle equipment such that the bicycles may not be used by the public until such time as B-Cycle can satisfy the insurance requirements of this Section. Should this occur, B-Cycle 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.
- (6) Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City Finance Department
Attention: Risk Manager
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703-3345

10. Default and Termination.

- a. Except where specifically provided for elsewhere in this Operating Agreement, in the event B-Cycle shall default in any of the covenants, agreements, commitments, or conditions herein contained, or if any of the conditions set forth below in Subsection b shall occur, and any such default shall continue unremedied for a period of fifteen (15) business days after written notice thereof to B-Cycle, 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 B-Cycle, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of B-Cycle under this contract.

- b. It shall be a default if any of the following conditions occur:
- (1) If B-Cycle makes an assignment of its property for the benefit of creditors.
 - (2) If B-Cycle petitions a court to be adjudged bankrupt, or is adjudged bankrupt.
 - (3) If a petition in bankruptcy shall be filed in any court against B-Cycle for more than thirty (30) days.
 - (4) If B-Cycle 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 B-Cycle' property or to wind up or liquidate its affairs.
 - (6) If B-Cycle 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) B-Cycle shall admit in writing its inability to pay its debts as they become due.
 - (8) If any final judgment shall be rendered against B-Cycle and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final.
 - (9) If B-Cycle shall abandon the operation of Madison B-Cycle and its facilities.
11. Impossibility of Performance. Neither City nor B-Cycle 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, pandemic, or by reason of any other matter or condition beyond the control of either party.
12. Relationship of Parties. In the operation of Madison B-Cycle, neither B-Cycle nor its agents shall act as officers, employees, or agents of the City and B-Cycle 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 B-Cycle or B-Cycle's agents any authority, of any kind, to bind the City in any respect whatsoever. It is further agreed that B-Cycle, B-Cycle, and Madison B-Cycle are not employees or representatives of the City, and that any persons who B-Cycle utilizes and provides for services under this Operating Agreement are employees of B-Cycle and are not employees of the City. In addition, it is agreed that by granting B-Cycle the right to use certain City properties for the purposes set forth herein and in the Privilege Agreement, that the City is not granting B-Cycle the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec. 135.02(1), between the City and B-Cycle arising from this Operating Agreement. The Parties both acknowledge that

this Operating Agreement does not create a dealership under Wis. Stat. Ch. 135 nor is it the intent of the Parties to do so.

13. Title to be Retained by B-Cycle. Except as provided for in the Privilege Agreement, B-Cycle shall retain title to and ownership of all Madison B-Cycle facilities.
14. Assignment and Subcontracting. B-Cycle shall not assign this Operating Agreement or any interest therein without the prior written agreement of the City.
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 e-mailed, or personally delivered or sent, postage prepaid, by depositing the same in United States mail addressed as follows:

City: City of Madison
City Attorney's Office
210 Martin Luther King, Jr. Blvd., Room 401
Madison, WI 53703-3345
attorney@cityofmadison.com

B-Cycle: Morgan Ramaker
Executive Director, B-Cycle LLC
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, B-Cycle agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. B-Cycle 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, sexual orientation, gender identity or national origin.
19. Nondiscrimination Based on Disability. B-Cycle 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. B-Cycle 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 Operating 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 B-Cycle 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 B-Cycle 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 B-Cycle represent and warrant that he or she have been duly authorized to bind the City and B-Cycle and sign this Operating Agreement on their behalf.
26. Counterparts; Electronic Delivery. This Operating Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Operating Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Operating Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed

copies or counterparts of this Operating Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties hereto, whether or not a hard copy is also delivered. Copies of this Operating Agreement, fully executed, shall be as valid as an original.

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.

FOR B-CYCLE LLC

Morgan Ramaker, Executive Director

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Eric Veum, Risk Manager

Date

Approved as to form:

Michael R. Haas, City Attorney

Date

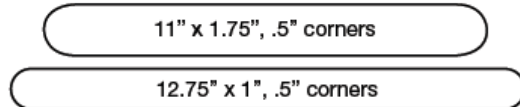
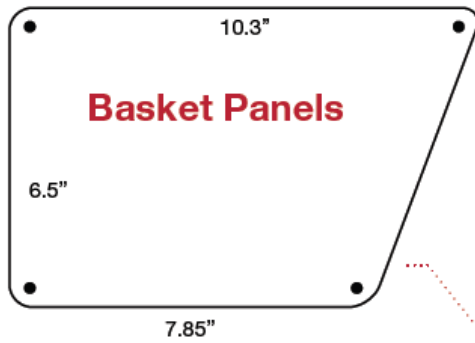
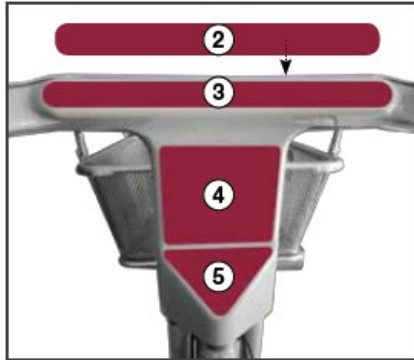
Execution of this Agreement by Madison is authorized by Resolution Enactment No. RES 20-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2020.

ATTACHMENT A

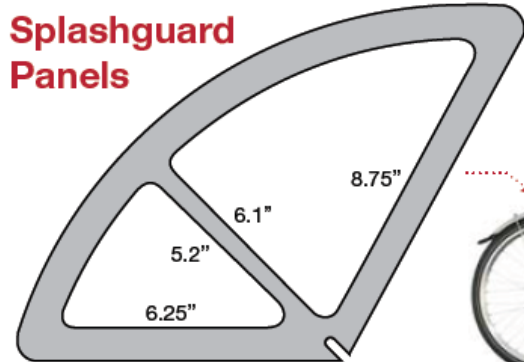
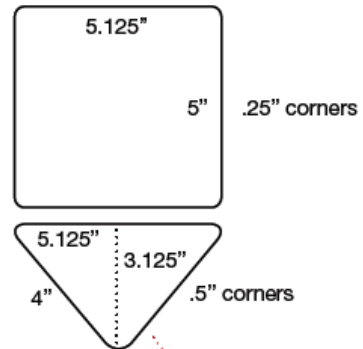
Bicycle-Sharing Program Bicycle Sponsorship Panels

BIKE PANELS

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



Handlebar, Throat & Shroud Panels



ATTACHMENT B

Madison B-Cycle's Sponsorship and Advertising Guidelines

I. Introduction.

The bicycle-sharing program equipment and bicycles under Madison B-Cycle 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 Madison B-Cycle, Trek will be soliciting sponsors willing to provide financial sponsorship for Madison B-Cycle 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 Madison B-Cycle, including obtaining sponsorship and advertising necessary to support the program. However, under Section 7.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 B-Cycle 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 B-Cycle 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 Madison B-Cycle 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.