Contract No. 1520012

AGREEMENT

BETWEEN

THE CITY OF PHILADELPHIA

AND

BICYCLE TRANSIT SYSTEMS, INC.

FOR A BICYCLE SHARING SYSTEM

CONFORMED

SEP 04 2014

TABLE OF CONTENTS

BACKGROUND INFORMATION 1

ARTICLE 1. INCORPORATION OF BACKGROUND INFORMATION 2

ARTICLE 2. DEFINITIONS, INTERPRETATION, REPRESENTATIONS AND WARRANTIES, AND COMMENCEMENT CONDITIONS 2

2.1 Definitions. 2
2.2 Interpretation. 9
2.2.1 Incorporation of Exhibits. 9
2.2.2 Order of Precedence. 9
2.2.3 Incorporation of Provider's Proposal. 9
2.2.4 Liquidated Damages. 9
2.3 Representations and Warranties. 9
2.3.1 Representations and Warranties of Provider 9
2.3.1.1 Existence and Powers 9
2.3.1.2 Due Authorization and Binding Obligation 9
2.3.1.3 No Conflict 9
2.3.1.4 No Litigation 9
2.3.1.5 No Legal Prohibition 11
2.3.1.6 No Indebtedness to the City 11
2.3.1.7 Business Privilege License. 11
2.3.1.8 Subcontractor Licensure; No Indebtedness to the City 11
2.3.2 Representations and Warranties of the City 11
2.3.2.1 Existence and Powers 12
2.3.2.2. Due Authorization and Binding Obligation. 12
2.3.2.3 No Conflict. 12
2.3.2.4 No Litigation. 12
2.3.2.5 System Funding. 12

2.4 Provider's Commencement Date Conditions. 12
2.4.1 Appointments. 12
2.4.2 Company Performance Security. 12
2.4.3 Required Insurance. 13
2.4.4 Financial Condition. 13
2.5 City Commencement Date Conditions. 13
2.5.1 Appointments. 13
2.5.2 Governmental Approvals. 13
2.5.3 Access to City Facilities. 13
2.5.4 Financial Assurances. 13
2.6 Commencement Date. 13

ARTICLE 3. TERM. 13

3.1 Initial Term. 13
3.2 Additional Terms. 13
3.3 City Control at End of Term and Upon Termination. 14

ARTICLE 4. DUTIES AND RESPONSIBILITIES OF PROVIDER AND THE CITY 14

4.1 Scope of Work. 14
4.1.1 Generally. 14
4.1.2 Services. 15
4.1.3 Performance Requirements and Schedule. 15
4.1.4 Standard Operations and Maintenance Procedures. 15
4.1.5 Warranties for the System. 15
4.2 Program Management. 15
4.2.1 General Manager. 15
4.2.2 City Manager. 15
4.2.3 Adequate Staffing. 16
4.2.4 Training. 16
4.2.5 Key Personnel. 16
4.2.6 Coordination with Sponsors, Advertisers, Partners and City Agents. 16

4.2.7 Payment and Transfer of System-Generated Funds. 16
4.2.8 Agreement Administration. 17
4.2.8.1 Monthly Meeting. 17
4.2.8.2 Modifications to Schedules. 17
4.2.8.3 Performance Requirement Assessment. 17
4.2.8.4 Administration Memoranda. 17
4.2.9 Customer Service Policies. 17
4.2.10 Call Center and Complaints. 17
4.2.10.1 Comments and Complaints. 18
4.2.10.2 Complaint Management and Resolution. 18
4.2.11 Rate Structure. 18
4.3 Relationship of the Parties. 18
4.3.1 Provider Responsibility for Quality Materials and Services. 18
4.3.2 Provider Responsibility for Change in Scope of Services. 19
4.4 Ownership of Equipment and Computer Hardware 19
4.4.1 City Ownership of Equipment. 19
4.4.2 City Ownership Rights. 19
4.4.3 New Equipment. 19
4.4.4 Identification of Equipment. 19
4.5 Deliverables. 20
4.5.1 Provider Deliverable Obligation. 20
4.5.2 City Rejection of Deliverables. 20
4.5.3 Partial or Incomplete Deliverables. 20
4.6 Ownership of Documents and Data 20
4.6.1 Property of the City. 20
4.6.1.2 Confidentiality of City Data. 21
4.6.2 User Information. 21
4.6.3 Copyright Ownership. 21
4.6.3.1 Works Made for Hire. 21
4.6.3.2 Copyright Pertaining to Deliverables. 21
4.7 Public Information. 22
4.8 Program Service Area Installations and Phasing. 22
4.8.1 Phase I. 22

4.8.2 Expansion Phase 22
4.8.3 Necessary Permits Obtained. 22
4.8.4 Damage to Streets or Sidewalks 22
4.8.5 Paving Penetrations. 22
4.9 Station Sites Approvals and Agreements. 22
4.9.1 Station Site Approval. 22
4.9.2 Site Agreements. 23
4.10 Software Licensing and Source Code. 23
4.10.1 Software Licenses. 23
4.10.2 Source Code Escrow. 23
4.10.2.1 Access to Escrow Materials. 23
4.10.2.2 Transfer of Escrow Agreement. 24
4.10.3 Trademark License. 24
4.11 Compliance with Payment Card Industry Data Security Standard 24

ARTICLE 5. COMPENSATION.

5.1 City Funding. 24
5.1.1 Initial City Funding. 24
5.1.2 Additional City Funding 25
5.1.3 Certification of Available Funds 25
5.2 Bicycle Share Fund. 25
5.2.1 System Launch Date Expenditures. 25
5.2.2 Post System Launch Date Operations, Maintenance and Renewal. 25
5.2.2.1 Certification of Available Funds. 26
5.2.3 System Expansion. 17
5.3 Term Year Budgets. 17
5.3.1 Term Year Budget Approval. 17
5.3.2 Management Fee. 17
5.4 Term Year Budget Adjustments 26
5.4.1 Over/Under Budget Variances 27
5.5 System Expansion. 27
5.6 Billing and Payments. 27

5.6.1 Billing and Payments from City Funds 27
5.6.1.1 Capital Funds Invoicing 27
5.6.1.2 Other Fund Invoicing 27
5.6.2 Billing and Payments from Bicycle Sharing Fund. 28
5.6.2.1 Billing and Payments for Operations, Maintenance and Renewal 28
5.7 Favorable Pricing. 28
5.8 Taxes 28

ARTICLE 6. PERFORMANCE STANDARDS.

6.1 Standard of Performance-General 29
6.2 Professional and Technical Accuracy. 29
6.3 Safety. 29
6.4 Licensing. 29
6.5 Standard of Performance-Program Management. 29
6.5.1 System Launch Date. 30
6.6 Performance Incentives. 30
6.7 Performance Failures and Liquidated Damages. 30
6.7.1 Compliance Required 30
6.8 Performance Excused. 30
6.8.1 Uncontrollable Circumstances. 30
6.8.2 Uncontrollable Circumstance Exclusions. 31
6.8.3 Weather-related System Shut Downs. 31
6.9 Documentation. 31

ARTICLE 7. INSURANCE, INDEMNIFICATION AND PERFORMANCE SECURITY 31

7.1 General Insurance Requirements. 31
7.1.1 Liability Not Limited by Insurance 32
7.2 Workers' Compensation and Employers' Liability. 32
7.3 General Liability Insurance. 32
7.4 Commercial Umbrella or Excess Insurance. 32
7.5 Automobile Liability Insurance. 33

7.6 **"All Risk" Property Insurance.** 33
7.7 **Professional Liability Insurance.** 33
7.8 **Evidence of Insurance Coverage.** 33
7.9 **Crime Insurance.** 34
7.10 **Indemnification.** 34
7.11 **Security for Performance.** 35
7.11.1 **Manufacturer's Commitment.** 35
7.11.1.1 Reporting Requirements. 35
7.11.1.2 Material Adverse Change. 35
7.11.2 **Payment Bonds.** 35
7.11.2.1 Form of Bonds and Surety Provider Requirements. 35

ARTICLE 8. EVENTS OF DEFAULT AND REMEDIES. 35

8.1 **Provider Events of Default.** 35
8.1.1 **Security for Performance.** 36
8.1.2 **Performance Requirements.** 36
8.1.3 **Failure to Achieve Commencement Date.** 36
8.1.4 **Abandonment.** 36
8.1.5 **Non-Compliance with General Terms and Conditions.** 36
8.1.6 **International Misrepresentation.** 36
8.1.7 **Chapter 17-1400.** 36
8.1.8 **Misappropriation.** 36
8.1.9 **Failure to Make Payments.** 36
8.1.10 **Insolvency.** 36
8.1.11 **Voluntary Bankruptcy.** 37
8.1.12 **Involuntary Bankruptcy.** 37
8.1.13 **Criminal Behavior.** 37
8.1.14 **Adverse Governmental Determinations.** 37
8.2 **City Events of Default.** 37
8.2.1 **Performance Requirements.** 37
8.2.2 **Failure to Achieve Commencement Date.** 37
8.2.3 **Non-Compliance with General Terms and Conditions.** 38

8.2.4 Intentional Misrepresentation. 38
8.2.5 Misappropriation. 38
8.2.6 Failure to Make Payments. 38
8.3 Notice and Cure. 38
8.3.1 City's Remedies for Provider Default. 38
8.3.2 For City Default. 38
8.4 Remedies. 39
8.4.1 City Remedies for Provider Default. 39
8.4.2 Termination or Suspension by City. 39
8.4.3 Specific Performance. 40
8.5 Provider's Remedies for City Default. 40
8.5.1 Termination or Suspension by Provider. 40
8.6 Concurrent Pursuit of Remedies; No Waiver. 41
8.7 Provider Responsibilities Upon Termination or Suspension. 41
8.7.1 Accrued Liabilities. 41
8.7.2 No Liability for Termination. 41
8.8 Payment of Provider Upon Termination or Suspension. 41

ARTICLE 9. GENERAL TERMS AND CONDITIONS 42

9.1 Subcontracts. 42
9.1.1 Subcontractor Requirements. 42
9.1.2 Subcontractor Bound 43
9.1.3 Assignment of Tax Refunds. 43
9.1.4 No Subcontractor Indebtedness. 43
9.1.5 Exclusionary Organizations. 44
9.1.6 Business Interests Requirements. 44
9.1.7 Provider Responsibility for Work. 44
9.1.8 Subcontracts Void 44
9.1.9 Subcontracts and Termination of Provider. 44
9.1.10 Non-Suspension; Debarment. 44
9.1.11 Subcontractor Payments. 45
9.2 Assignment. 45

9.2.1 Assignment by Provider. 45
9.2.2 Applicability in Case of Bankruptcy or Insolvency. 45
9.2.3 Assignment by the City. 46
9.3 No Waiver. 46
9.4 Nondiscrimination. 46
9.4.1 Chapter 17-400 of The Philadelphia Code: Exclusionary Private Organizations. 46
9.4.2 Limited English Proficiency. 46
9.4.3 Equal Benefits. 47
9.5 Salaries and Wages. 47
9.5.1 Philadelphia 21st Century Minimum Wage Standard. 47
9.5.2 Timely Payments. 48
9.6 Business Interests in Northern Ireland, Sudan and Iran 48
9.6.1 Northern Ireland Certification. 48
9.6.2 Sudan and Iran Certification. 48
9.6.3 Subcontractor Interests. 48
9.6.4 Cooperation with Director of Finance. 48
9.7 Business, Corporate, and Slavery Era Insurance Disclosure. 49
9.7.1 Affidavit. 49
9.7.2 False Certification. 49
9.8 Provider Integrity Provisions. 49
9.8.1 Provider Integrity. 49
9.8.2 No City Employee or Officer Benefit. 49
9.8.3 No Gratuity. 49
9.8.4 Inspector General Inquiries. 49
9.8.5 Violation of Integrity Provisions. 50
9.9 Audits, Inspection Rights and Records. 50
9.9.1 General. 50
9.9.2 Retention of Records. 50
9.9.3 Audits. 51
9.9.4 Availability of Records. 51
9.9.5 Confidential Records. 51
9.10 Right-to-Know. 51
9.11 Notices. 51
9.11 Economic Opportunity Plan. 52

9.11.1 EOP Required. **52**
9.11.2 EOP Disclosure Requirements. **52**
9.12 Approvals by City. **52**
9.12.1 Approval Not a Guarantee or Warranty. **52**
9.12.2 Approvals Under Applicable Law. **53**
9.13 Contributions and Other Mandatory Disclosures. **53**
9.13.1 Duty of Continuing Disclosures. **53**
9.13.2 Form and Manner of Disclosures. **54**
9.13.3 Failure of Subcontractor to Disclose. **54**
9.14 Participation by Other Local Government Agencies. **54**
9.15 The Americans with Disabilities Act. **55**

ARTICLE 10. MISCELLANEOUS PROVISIONS. **55**

10.1 Entire Agreement. **55**
10.2 Headings. **55**
10.3 Amendments; Waiver. **55**
10.4 Further Documents. **56**
10.5 Order of Precedence **56**
10.6 Governing Law and Venue **56**
10.7 Severability. **56**
10.8 Waiver of Jury Trial. **56**
10.9 Third Party Beneficiaries. **56**

LIST OF EXHIBITS AND SCHEDULES

Exhibit 1: Scope of Services and Schedules

Schedule 1: Components of the Equipment that Comprise the System

Schedule 2: Performance Requirements and Schedule

Schedule 3: Technical Specifications

Schedule 4: Software Included in the System, Performance Specifications, Rights

Schedule 5: Software and Intellectual Property Escrow

Schedule 6: Warranties

Schedule 7: Station Planning

Schedule 8: Procedures for Installation

Schedule 9: Performance Testing Prior to Operation

Schedule 10: System Expansion Protocols

Schedule 11: Website Performance Specifications

Schedule 12: Marketing Scope of Work

Schedule 13: Standard Operating Procedures

Schedule 14: Reporting Requirements and Asset Management

Schedule 15: Customer Service: Call Center and Policies

Schedule 16: Liquidated Damages.

Schedule 17: Key Personnel

Schedule 18: Rates

Schedule 19: Performance Incentives

Schedule 20: Protocol for Provider to Relinquish Operations of the System

Appendix A: Sample Inspection Checklists

Exhibit 2: System Costs and Budgets; Invoice and Payment Schedule

Exhibit 3: Manufacturer's Commitment

Exhibit 4: Provider's Proposal

Exhibit 5: Economic Opportunity Plan

AGREEMENT

This agreement is entered into as of the 15th day of July, 2014 ("Agreement Date") by and between Bicycle Transit Systems, Inc., a Delaware corporation with its principal place of business located at 117 West Allens Lane, Philadelphia, PA 19119 ("Provider"), and the City of Philadelphia (the "City"), acting through the Mayor's Office of Transportation and Utilities ("Department").

BACKGROUND INFORMATION

WHEREAS, the City is a municipal corporation and a body corporate and politic organized under the laws of the Commonwealth of Pennsylvania, having adopted the Philadelphia Home Rule Charter under the provisions of the First Class City Home Rule Act of April 21, 1949, P.L. 665; and

WHEREAS, the City is committed to promoting environmentally responsible transportation initiatives and to supporting alternative modes of transportation, including bicycles; and

WHEREAS, the City conducted a bicycle sharing system feasibility study for Philadelphia in 2009; and

WHEREAS, the City has evaluated the bicycle sharing systems that have been implemented in cities in the United States and in other countries; and

WHEREAS, the City has determined that a bicycle sharing system will enhance the existing public transportation system; and

WHEREAS, the City has determined that a bicycle sharing system can help reduce dependency on automobiles, particularly for short trips, thereby reducing traffic congestion, vehicle emissions, and the demand for parking; and

WHEREAS, the City commissioned a bicycle sharing system strategic business plan which was completed in June 2013; and

WHEREAS, the City issued a request for proposals in September 2013 and has evaluated the proposals of qualified providers of bicycle sharing systems; and

WHEREAS, the City has determined that the Provider can provide a bicycle sharing system that provides the best value for the City; and

WHEREAS, the Provider will provide all equipment and technology necessary for a bicycle sharing system and to assemble, install, develop, implement and operate such equipment and technology such that it operates together as a "System" (as defined herein), and to provide on-going operational support and maintenance of the System (collectively, the "Program"); and

WHEREAS, the Mayor and the Philadelphia City Council have committed Three Million Dollars ($3,000,000) of the City's Capital Funds to provide initial funding for the System; and

NOW, THEREFORE, the City and the Provider for good and valuable consideration, the receipt of which is acknowledged by the parties, and intending to be legally bound, agree as follows:

ARTICLE 1. INCORPORATION OF BACKGROUND INFORMATION

The Background Information set forth above is incorporated and made a part of this Agreement by reference.

ARTICLE 2. DEFINITIONS, INTERPRETATION, REPRESENTATIONS AND WARRANTIES, AND COMMENCEMENT CONDITIONS

2.1 Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

"ADA" means the applicable provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and any additional applicable federal, state and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

"Additional Term(s)" means the period of the Agreement as described in Section 3.2.

"Administration Memorandum" means a written document signed by the Parties in accordance with Section 4.2.8.4

"Advertising" means any printed matter, including, but not limited to, words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual messages or information, but in no event shall it include any textual information

that is required to be posted on any Equipment by any federal, state or local law, rule or regulation, or by this Agreement.

"Agreement" means this agreement, including all Exhibits and Schedules attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"Agreement Date" means the date that this Agreement has been fully executed by the Parties.

"Base" means a base component which rests on the ground and supports the Docks, Terminal, and Information Panel, as further described in the Exhibit 1, Schedule 3.

"B-cycle" means B-cycle, LLC, Provider's subcontractor for provision of Equipment and Software, and certain installation services.

"Bicycle" means a device propelled solely by human power, upon which a person may ride either on or astride a regular seat attached thereto, having two or more wheels in tandem, as further described in Exhibit 1, Schedule 1.

"Bicycle Sharing Fund" means the fund established by or for the City for the benefit of development, operation and maintenance of the System.

"Capital Funds" means funds restricted to the payment of certain eligible costs including but not limited to Equipment, Computer Hardware, Software , installation and related services.

"City" means the municipal government of Philadelphia, Pennsylvania.

"City Information" means data and other materials provided to the City as described in Section 4.6.1.

"City Manager" means the person designated by the City to be the primary contact for City and responsible for the day-to-day coordination with the Provider.

"Code" means the Philadelphia Code, a codification of ordinances regulating City contracts, businesses and individuals.

"Commencement Date" means the date that the City and the Provider have met the Commencement Date conditions that are set forth in Article 2.

"Computer Hardware" means the hardware necessary for the management of the System and

which facilitates the maintenance, repair, and redistribution of Bicycles and any other hardware required by Provider to operate the System.

"Data" means all data recorded, gathered, or produced by the System, including but not limited to User Information, whether gathered through the Website, social media, the Equipment, or customer service communications.

"Day" means calendar day.

"Deliverables" means the Provider's work provided under this Agreement in addition to providing the System, as defined herein, including, without limitation, Materials, Marketing Activity, outreach, events, reports, Data, Site Plans, meetings and coordination with the City, its agents, sponsors, advertisers and their brokers, but specifically excluding any of the Provider's intellectual property, books, records and other materials not paid for by the City.

"Department" means the Mayor's Office of Transportation and Utilities or other department designated by the City.

"Dock" or "Docking Point" means a locking mechanism contained on a Station designed to receive a Bicycle for locked storage, as further described in Exhibit 1, Schedule 1.

"Digital Platform Services Agreement" (or **"DPSA"**) is that certain agreement between B-cycle, LLC and Provider, which shall govern the terms, conditions and performance standards related to the Software.

"Equipment" means all physical components of the System, including without limitation Bicycles, Docks, Kiosks, Stations, platforms, Station batteries, Bicycle and Station spare parts and all necessary cables. Equipment does not include any vans or trucks.

"Escrow Agreement" means a Source Code Escrow Agreement as required in Section 4.10.2

"Escrow Materials" means, with respect to the Software, the source code of the Software and associated documentation.

"Event of Default" means those events enumerated in Section 8.1 and 8.2.

"Expansion Phase" means an addition to the System beyond Phase I.

"Fare Media" means access keys, fare cards, key fobs or other devices for rental of Bicycles, as further described in Exhibit 1, Schedule 1.

"General Manager" means a person appointed by the Provider responsible for the day-to-day management and administration of the Program.

"Governmental Approvals" means licenses, permits and other approvals as required by the City in its capacity of regulating business and other activities within the City's jurisdiction.

"Information Panel" means the printed material displayed inside of the Map Frame.

"Key Personnel" means those job titles and the persons assigned to those positions in accordance with the requirements of the RFP and as proposed by Provider and as identified in Exhibit 1, Schedule 17.

"Kiosk" means the payment terminal that provides Bicycle rental instructions, contains payment equipment (i.e. credit card device), and includes all other physical means necessary for the rental of Bicycles, as further described in Exhibit 1, Schedule 1.

"Liquidated Damages" means those damages identified in Section 2.2.4.

"Management Fee" means a portion of the budget that provides for compensation to Provider for effective and efficient management of the System. The Management Fee is identified in Section 5.3.2.

"Manufacturer" means B-cycle.

"Manufacturer's Commitment" means an Agreement between the City and the Manufacturer for ensuring the performance of the Agreement.

"Manufacturer's Defect" means Equipment with a manufacturer's defect, which will be repaired or replaced, as applicable, under warranty, provided such defects are discovered within the warranty period described in Exhibit 1, Schedule 6.

"Map Frame" or "Ad Panel" means a two-sided metal informational display unit, including translucent covering and lock.

"Marketing Activity" means promotions, events and advertising of the System directed at individuals and businesses, as well as reaching all customer bases through the Website and social media accounts.

"Materials" means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, and other data, computer tapes, computer software, and other tangible work product or materials prepared or developed by Provider in connection with the Services, or for Provider by a Subcontractor in connection with the Services, and supplied to the City by Provider or its Subcontractor pursuant to this Agreement.

"Membership" means a contractual relationship between a customer and the System entitling the customer the use of the System for a specified term in a streamlined fashion and a reduced cost compared to customers without a Membership.

"Party" means either the City or Provider.

"PCI" means Payment Card Industry, a business association that has developed certain standards, as further described in Section 4.11.

"Performance Incentive" means a component of Provider's compensation intended to provide a financial incentive for efficient and timely delivery and operations of System as more fully described in Section 6.6.

"**Permitted Transfer**" means those transfers set forth in Section 9.2.1.

"Person" means any individual, sole proprietorship, association, company, firm, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized at law.

"Phase I" means the initial System installation as defined in the Phase I Purchase Order.

"Phase I Equipment Purchase Order" means a Purchase Order of a specified quantity of Phase I Equipment.

"Phase I Equipment Purchase Order Date" means the date that the City submits the Purchase Order to Provider for the Phase I Equipment.

"Performance Requirements" means those requirements of for the delivery and installation of Equipment, System operations and maintenance, provision of Deliverables as identified in Exhibit 1, Schedule 2.

"Purchase Order" means a written order from the City or the agent for the Bicycle Sharing Fund to Provider consisting of Equipment, Services or Deliverables provided to the System

by Provider. Each Purchase Order must be signed by City or the agent for the Bicycle Sharing Fund and confirmed by Provider.

"Program" means the System, the operation and maintenance of the System, the provision of Deliverables in accordance with Exhibit 1 and other activities necessary or useful for the success of bicycle sharing in Philadelphia.

"Program Service Area" means the geographical boundaries for Phase I and Expansion Phases.

"Provider" means the Person identified in the first paragraph of this Agreement providing Services and Materials to the City under this Agreement.

"Rates" means the customer fees and charges specified in Exhibit 1, Schedule 18.

"Services" means the work Provider shall perform under this Agreement as described in the Agreement, Providers Proposal and as set forth in detail in Exhibits 1.

"Site" means a designated area on publicly or privately owned real property, which area contains one or more of each of the following items made available by Provider to perform the Services, Bicycles, Docks, Stations, Kiosks, Technical Platforms and Information Panels.

"Site Agreement" means a written confirmation that allows Provider to place a Station at a Site.

"Site Plan" means an illustration which shows the location of all Sites provided to the City for review and approval before installation, with distances and dimensions from the nearest property line, all relevant public or private easements, and at least two fixed objects.

"Software" means all the software used in the operation and maintenance of the System, including, but not limited to the Software described Exhibit 1, Schedule 4 to this Agreement, along with any enhancements, changes or modifications of such Software.

"Software Licensor" means the entity that owns the Software or is otherwise authorized to grant licenses for its use. There may be one or more Software Licensors providing Software under the Agreement.

"Sponsorship" means an arrangement for recognition of a Person in association with the System pursuant to which payments are received by or on behalf of the City that will be used to help defray the costs of the System.

"Standard Operating Procedures" or **"SOP"** means the System operations and maintenance procedures developed by Provider as set forth in Exhibit 1, Schedule 13.

"Station" means all Equipment related items except the Bicycles and Bicycle toolkits, including, without limitation, Access Keys, and shipping costs, as further described in the Scope of Services, Schedules 1 and 3.

"Subcontract" means an agreement made between Provider and a Subcontractor for providing for the completion of some part or parts of the Services or Materials by a Subcontractor.

"Subcontractor" means a Person performing under an agreement with Provider some part of the Services or Materials.

"Substantial Completion" means the date that documentation is submitted by Provider to the City that 90% of the Equipment from the Phase I Equipment Purchase Order has been installed and passed testing, as described in Schedule 9.

"System" means the bicycle sharing system developed under this Agreement, including all Equipment, Software, Technical Platform, Terminal, and Computer Hardware, operating together as an integrated whole to perform the functions described herein.

"System Launch Date" or **"System Launch"** means the date when at least 50 Stations and associated Equipment and Services are first made available to the Public for any phase of the Program.

"Task Order" means a written order to the Provider from the City with specific tasks to be completed and a not-to-exceed budget to be billed on a time and materials basis.

"Term" means the term of this Agreement, as described in Section 3.1.

"Term Year" means July 1 to June 30. For the first year, **"Term Year"** means a partial year ending on June 30.

"Terminal" means a Kiosk.

"Transition Plan" means Provider's plan for transition of System operation to a subsequent operator as set forth in Exhibit 1, Schedule 20.

"Uncontrollable Circumstances" means those circumstances identified in Section 6.8.1

"User" means any person who establishes a membership with the System.

"User Information" means any information provided to or gathered by the System with respect to individually identified users, including, without limitation, the user's profile (including

specific customer identification information), payment information and trip histories.

"Website" means the customer-facing and internal websites created by Provider for the System.

2.2 Interpretation

The term "include" (in all its forms) means, "include, without limitation" unless the context clearly states otherwise. All references in this Agreement to Articles, Sections, Exhibits or Schedules unless otherwise expressed or indicated are to the Articles, Sections, Exhibits or Schedules of this Agreement. Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement. Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders. All references to a number of days mean calendar days, unless indicated otherwise.

2.2.1 Incorporation of Exhibits. All Exhibits and Schedules referenced to or attached are made a part of this Agreement.

2.2.2 Order of Precedence. In the event of any conflict or inconsistency of terms among the various documents that at any given time, constitute this Agreement, the order of precedence that shall apply is as follows, with each listed document or type of document superseding and prevailing over any subsequently listed document or type of document, and with later-executed documents prevailing over earlier documents of the same type, each solely to the extent of any irreconcilable conflict or inconsistency of the terms and condition thereof: (i) the terms and conditions set forth in the Articles of this Agreement; (ii) the Scope of Services in Exhibit 1; and (iii) any other Exhibits or Schedules to this Agreement.

2.2.3 Incorporation of Provider's Proposal. Provider's Proposal is attached as Exhibit 4 for reference purposes only. This Agreement represents the entire Agreement between the Parties.

2.2.4 Liquidated Damages. This Agreement provides for the payment by the Provider of Liquidated Damages in certain circumstances of non-performance, breach and default. Each party agrees that the City's actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that would occur as a result of such non-performance, breach or default of Provider), and that the Liquidated Damages provided for in Exhibit 1, Schedule 16 with respect to each such circumstance are intended to place the City in the same economic position as it would have been in had the circumstance not occurred.

2.3 Representations and Warranties

2.3.1 Representations and Warranties of Provider. Provider makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Agreement. The representations, warranties, and covenants stated below shall continue throughout the Term of this Agreement. In the event said representations, warranties, and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or covenant is untrue or inaccurate.

2.3.1.1 Existence and Powers. The Provider is duly organized and validly existing as a corporation under the laws of Delaware and is authorized to do business in the Commonwealth of Pennsylvania, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

2.3.1.2 Due Authorization and Binding Obligation. The Provider has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Provider and constitutes the legal, valid and binding obligation of the Provider, enforceable against the Provider in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

2.3.1.3 No Conflict. Neither the execution nor the delivery by the Provider of this Agreement nor the performance by the Provider of its obligations hereunder (i) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Provider, (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of the Provider) or instrument to which the Provider is a party or by which the Provider or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (iii) will result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the properties or assets of the Provider.

2.3.1.4 No Litigation. There is no action, suit or other proceeding as of the Agreement Date, at law or in equity, before or by any court or governmental authority, pending or, to the Provider's best knowledge, threatened against the Provider which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Provider in connection with the transactions contemplated hereby.

2.3.1.5 No Legal Prohibition. The Provider has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Provider of this Agreement and the transactions contemplated hereby.

2.3.1.6 No Indebtedness to the City. Provider and any and all entities controlling Provider, under common control with Provider or controlled by Provider are not currently indebted to the City, and will not at any time during the Term of this Agreement (including any Additional Term(s)) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written Agreement or payment plan satisfactory to the City has been established. Provider shall remain current during the Term of this Agreement under all such Agreements and payment plans, and shall inform the City Manager in writing of Provider's receipt of any notices of delinquent payments under any such Agreement or payment plan within five (5) days after receipt. In addition to any other rights or remedies available to the City at law or in equity, Provider acknowledges that any breach or failure to conform to this representation, warranty and covenant may, at the option of the City, result in the withholding of payments otherwise due to Provider under this Agreement or any other Agreement with the City under which the City may then owe payment of any kind, and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments or the termination of this Agreement for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination), or both. In addition, Provider understands that false certification, representation or warranty by it is subject to prosecution under Pennsylvania Law, Title 18 Pa.C.S.A. § 4904.

2.3.1.7 Business Privilege License. If Provider is a "business" as defined in Section 19-2601 *et seq*. of the Code, Provider has and shall maintain during the Term of this Agreement, a valid, current business privilege license, issued by the City's Department of Licenses and Inspections, to do business in the City.

2.3.1.8 Subcontractor Licensure; No Indebtedness to the City. Each Subcontractor, if any shall maintain during the term of the Subcontract, a valid, current business privilege license to do business in the City, if required by law. To the best of Provider's knowledge, information and belief, the representations made in any Subcontract that Subcontractor is not indebted to the City are true and correct.

2.3.2 Representations and Warranties of the City. The City represents and warrants that:

2.3.2.1 Existence and Powers. The City is a body corporate and politic validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and

authority to enter into and perform its obligations under this Agreement.

2.3.2.2. Due Authorization and Binding Obligation. The City has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of City, enforceable against City in accordance with its terms.

2.3.2.3 No Conflict. Neither the execution nor the delivery by it of this Agreement, nor its performance of its obligations in connection with the transactions contemplated hereby nor its fulfillment of the terms or conditions hereof (i) conflicts with, violates or results in a breach of any Applicable Laws, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which City is a party or by which City or any of its properties or assets are bound, or constitutes a default thereunder.

2.3.2.4 No Litigation. There is no action, suit or other proceeding as of the Agreement Date, at law or in equity, before or by any court or governmental authority, pending or, to the City's best knowledge, threatened against the City which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of this Agreement or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

2.3.2.5 System Funding. The City is committed to actively pursuing funding for the support and expansion of the System including but not limited to sponsorships, advertising, grants, state and federal support, and to working with the Provider to increase the potential for revenues from memberships, occasional riders and other sources.

2.4 Provider's Commencement Date Conditions.

Promptly following the Agreement Date, and conditioned upon the City's completion of its Commencement Date Conditions as set forth in Section 2.5 the Provider shall satisfy the following conditions prior to the Commencement Date.

2.4.1 Appointments. Provider has appointed a General Manager in accordance with to Section 4.2.1

2.4.2 Company Performance Security. Provider or its subcontractor has delivered (i) the Payment Bond in accordance with Section 7.11 and (ii) the Manufacturer's Commitment.

2.4.3 Required Insurance. Provider has delivered evidence of the insurance for the Term as set forth in Article 7.

2.4.4 Financial Condition. Provider has delivered the most recent financial statements of the Manufacturer for the most recently completed fiscal year.

2.5 City Commencement Date Conditions

Following the Agreement Date and before the Commencement Date the City shall:

2.5.1 Appointments. The City has appointed a City Manager in accordance with Section 4.2.2.

2.5.2 Governmental Approvals. City has and shall continue to cooperate with and assist the Provider in obtaining all Governmental Approvals which the Provider is responsible for obtaining.

2.5.3 Access to City Facilities. The City has granted the Provider the right of access to the City Sites for the purposes of evaluating Sites for Station locations.

2.5.4 Financial Assurances. The City has delivered to Provider evidence of sufficient financial resources for compensation to the Provider for Equipment, Services and Deliverables.

2.6 Commencement Date. When the City has determined that the Commencement Date conditions have been met, the City shall provide a written notification to the Provider with a proposed Commencement Date. If the Provider agrees, the Provider shall countersign the Notice and return a copy to the City. If the Provider does not agree that the City has met its Commencement Date conditions, Provider shall deliver notice to the City within five (5) days identifying the conditions that have not been met.

ARTICLE 3. TERM

3.1 Initial Term

The Term of this Agreement is four (4) years from the Commencement Date.

3.2 Additional Terms

The City may, at its sole option, amend this Agreement to add on an annual basis up to three (3) successive one (1) year terms. The same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s) unless explicitly agreed to by the City in writing. The City shall give Provider one hundred and twenty (120) days prior written notice of its intent to amend this Agreement to add an Additional Term. To the extent that the City is directly funding the Provider's compensation under the Agreement, each Additional Term shall be subject to appropriation of funds by City Council for such Additional Term. There shall be no liability or

penalty to the City for electing not to amend the term of this Agreement to add Additional Terms. Each Additional Term of this Agreement shall be deemed to constitute a separate Agreement, whose term shall not exceed one (1) year. The City may not exercise its option to renew the Agreement if City is in default. As a condition to any Additional Terms, the Provider may require the City to demonstrate its capacity to fund Additional Terms.

3.3 City Control at End of Term and Upon Termination

Upon termination of the Agreement, whether for cause or the end of the Term, Provider shall promptly furnish to the City control of the System, including all of the components of the System as well as all applicable Equipment, Computer Hardware, the procedure for which is more fully set forth in Exhibit 1, Schedule 20. City acknowledges that the Equipment may include various Program vehicles acquired and financed by the Provider, and whose purchase cost has not been fully charged to the City. To the extent such vehicles and financing exist at termination, Provider will give the City the option of purchasing the vehicles for the amount of the remaining debt, or leaving those vehicles with the Provider. Provider shall be obligated promptly to cease performance and cede operational control of the System to either the City or a successor provider of the City's choosing. In the event of termination due to an Event of Default, the City shall follow the procedures more fully set forth in Article 8 of the Agreement.

ARTICLE 4. DUTIES AND RESPONSIBILITIES OF PROVIDER AND THE CITY

4.1 Scope of Work

4.1.1 Generally. As more fully set forth in Exhibit 1, the purpose of this Agreement is for Provider to provide, install, implement, operate and maintain a bicycle sharing System for use by the public. Subject to the terms and conditions of this Agreement, Provider must (i) provide to the City the System, including Bicycles, Stations, and Computer Hardware, and provide (or require its subcontractor to provide) to the City licenses for the Software, to enable use of the System by the City and the public as contemplated in this Agreement, (ii) install the Stations, at sites to be determined by the Provider in consultation with the City, subject to the terms of this Agreement, and deliver all Bicycles, and provide all integration services including Computer Hardware and Software to make the System fully operational, in compliance with the terms of this Agreement, (iii) provide all ancillary services for the launch and operation of the System, including developing a Website to be used by the public, Marketing Activity, training on the System for City personnel, (iv) operate, support and maintain the System, and (v) provide Deliverables .

4.1.2 Services. Provider must provide the Services described in the Exhibit 1, and work and

services not specifically delineated in this Agreement, but consistent with, and reasonably inferable to be within, the scope of this Agreement and necessary for the delivery and operation of the System. Provider shall provide all technical expertise, qualified personnel, tools, and Materials to safely and competently accomplish all of the Services. In performing the Services, Provider must at all times take appropriate advantage of and incorporate best business practices, unless expressly directed otherwise by City.

4.1.3 Performance Requirements and Schedule. All performance must be in accordance with Exhibit 1, Schedule 2. Provider shall complete all of its obligations hereunder in a timely manner and in accordance with the applicable dates set forth in the Performance Schedule. Regardless of any other express duties of Provider, City is relying on Provider to provide, and Provider must provide the expertise, assistance, and recommendations that are necessary to ensure the launch of the System and the delivery of a System that meets City's needs and requirements and accomplishes the objectives of the City within the timeframe specified herein.

4.1.4 Standard Operations and Maintenance Procedures. Procedures for operations and maintenance for the System are identified in Exhibit 1, Schedule 13. Modifications to this Schedule may be made only with prior review and consent of the City Manager.

4.1.5 Warranties for the System. Manufacturers' and Software Licensors' warranties shall be provided for all components of the System consistent with industry standards. The warranty period for all Equipment installed and tested prior to System Launch shall commence on the System Launch Date. The warranty period for Equipment installed after the System Launch Date shall commence upon the Provider's deployment of the Equipment in the System. For the term of the Agreement, Provider shall be responsible for all aspects of enforcing the performance on warranties on behalf of the City. Failure of Provider to take or facilitate timely action on the enforcement of warranties is a material failure of Provider's obligations. System warranties are identified in Exhibit 1, Schedule 6.

4.2 Program Management.

4.2.1 General Manager. Provider's General Manager shall have overall responsibility for day-to-day management and administration of the Equipment, Services and Deliverables provided under this Agreement and shall serve as the primary contact for the City with respect to this Agreement. The General Manager shall, at the request of City, attend meetings of the management personnel of the City related to this Agreement, the System or the Services.

4.2.2 City Manager. The City Manager shall serve as the primary point of contact for the Provider with respect to this Agreement. The performance by Provider of the Services is subject at all times to inspection and review by the City Manager. Where required in this Agreement, Provider shall obtain from the City Manager prior written approval of specified activities.

However, it shall be the responsibility of Provider to manage the details of the execution and performance of the Services under this Agreement.

4.2.3 Adequate Staffing. Provider shall assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services. The level of staffing may be revised from time to time, consistent with the agreed operating budget for effective and efficient operation of the Program.

4.2.4 Training. Provider is solely responsible for training its staff and ensuring that its workforce (including Subcontractors) is and remains capable of operating the system in a safe, efficient and reliable manner.

4.2.5 Key Personnel. Provider shall not reassign or replace Key Personnel without the prior written consent of the City. The City may at any time in writing notify Provider that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Provider must immediately implement a performance improvement plan to which the key person or persons in question will be subject. If the key person or persons fail to meet the minimum goals of the performance improvement plan within 30 days, then Provider will replace him or them in accordance with the terms of this Agreement. Key Personnel are identified in Exhibit 1, Schedule 17.

4.2.6 Coordination with Sponsors, Advertisers, Partners and City Agents. Provider shall cooperate with sponsors, advertisers, partners and City agents. Provider shall agree to provide assistance to sponsors, advertisers, partners and agents that are consistent with Provider's operation of the Program. Where Provider has determined that unanticipated costs have been or will be incurred by such cooperation, Provider shall notify the City and identify the costs. The City may authorize Term Year budget revisions as provided for in Section 5.4, if it determines that Provider should be compensated for these unanticipated costs.

4.2.7 Payment and Transfer of System-Generated Funds. Provider shall provide for the secure payment of fees by members and other users. Provider shall provide for the secure transfer of the funds from membership, user fees and other System-generated revenue, net of credit card fees, adjustments, and refunds and similar reductions back to users and members to the City's agent for the Bicycle Sharing Fund, or as otherwise directed by the City. Provider shall not use or retain any System-generated funds regardless of source without the written approval of the City.

4.2.8 Agreement Administration.

4.2.8.1 Monthly Meeting. The Provider shall meet with the City each month to review the contents of the monthly reports required to be prepared pursuant to the Agreement. The General Manager shall attend the monthly meetings, and all other meetings which the City may reasonably request, to review management, operational, maintenance, performance and planning matters arising out of the Agreement. The City, at its sole discretion, may determine from time to time, that a monthly meeting is not required.

4.2.8.2 Modifications to Schedules. The Parties may modify the Schedules by mutual agreement and in accordance with Section 4.2.8.4, provided that any such modifications do not materially increase the City's obligations or costs.

4.2.8.3 Performance Requirement Assessment. The Provider and the City shall work together to assess the adequacy of Performance Requirement levels and the associated Budget on a semi-annual basis or as requested by either Party.

4.2.8.4 Administration Memoranda. The principal formal tool for the administration of matters arising under the Agreement between the parties shall be an Administration Memorandum which shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the City and the Provider as to matters of interpretation and application of the Agreement, modifications to any Schedules and other management issues.

(i) Procedures. The Administration Memorandum shall be prepared by the City and shall be dated and signed by the General Manager and the City Manager. To the extent necessary, the Administration Memorandum shall additionally be signed by any Subcontractor.

(ii) Effect. The executed Administration Memoranda shall serve to guide the ongoing interpretation of this Agreement. Notwithstanding the foregoing, in the event of a conflict between Administration Memoranda and the Agreement, the Agreement shall control. Any change, alteration, revision or modification of this Agreement other than a modification of the Schedules shall be effectuated only through a formal written Agreement amendment authorized and approved the City and properly authorized by the Provider.

4.2.9 Customer Service Policies. Provider shall develop policies for the efficient, effective and fair treatment of customers. All policies and subsequent modifications of policies shall be provided to the City for review and approval prior to taking effect.

4.2.10 Call Center and Complaints.

Provider shall maintain a call center according to the specifications set forth in Exhibit 1, Schedule 15.

4.2.10.1 Comments and Complaints. Provider shall conspicuously post a notice on each Station advising the general public that they may direct their complaints and comments to Provider's call center and in writing to Provider's web site via email and to Provider's business address.

4.2.10.2 Complaint Management and Resolution. Pursuant to the customer service policies required in 4.2.9, Provider shall establish and maintain, prompt and efficient procedures for handling complaints received directly from the public and for handling complaints forwarded to Provider by the City, which procedures shall be consistent with all applicable laws, rules and regulations and the provisions of Agreement. Such procedures shall be set forth in writing and copies thereof shall be maintained at Provider's office and shall be available to City upon request.

4.2.11 Rate Structure. A schedule of customer rates is provided in Exhibit 1, Schedule 18. Any proposed modifications to customer rates, including the amounts of security deposit required, shall be supported with detailed information supporting the proposed change. All modifications to customer rates shall be approved by the City. Any increase in annual Membership rates shall require a minimum of sixty (60) days advance notification to current members.

4.3 Relationship of the Parties.

The Parties agree that Provider, and any agents and employees of Provider, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the City. Neither the Provider nor its employees or Subcontractors shall in any way represent that they are acting as employees, officials or agents of the City.

4.3.1 Notwithstanding the acceptance and approval by the City of any Equipment, Services performed or Deliverables provided, Provider shall continue to be responsible for the professional quality, technical accuracy and the coordination of all Materials and Services provided by Provider under this Agreement. Provider shall, without additional compensation, correct any errors, defects, deficiencies or omissions in Provider's Materials and Services. The City's review, approval or acceptance of, or payment for, any of the Equipment, Services and Deliverables required under this Agreement shall not constitute any representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed, approved or accepted and shall not be construed to operate as a waiver or estoppel of any of the City's rights or privileges under this Agreement or of any cause of action arising out of the performance of this Agreement. No Person shall have any right to rely in any way on the City's review, approval or acceptance of Provider's Equipment, Services or Deliverables. Provider shall be and remain liable in accordance with this Agreement and Applicable Law for all damages to the City caused by Provider or the Equipment Services or Deliverables provided by Provider. Review, approval or acceptance by the City or the Responsible Official under this Agreement shall not constitute

approval otherwise required by any City department, board, commission, or other regulatory agency in the exercise of such department's, board's, commission's or agency's independent regulatory authority or police powers under Applicable Law.

4.3.2 Provider Responsibility for Change in Scope of Services. Without limiting Provider's responsibility as set forth above, if any act or omission of Provider or error or deficiency or omission in the Equipment, Services or Deliverables provided by Provider requires any change in the Scope of Services or any portion thereof, Provider shall promptly complete such change at no additional cost to the City.

4.4 Ownership of Equipment and Computer Hardware.

4.4.1 City Ownership of Equipment. The City shall be the owner of City-purchased Equipment, including without limitation Bicycles, Docks, Terminals, Stations, Station batteries, Bicycle and Station spare parts and all necessary cables, wires and ancillary components meeting the technical specifications set forth in Exhibit 1, Schedule 3.

4.4.2 City Ownership Rights. Upon acceptance by the City of any element of the Equipment and Computer Hardware, including but not limited to Bicycles and Stations, the City shall be the owner of such Equipment and Computer Hardware provided under this Agreement free and clear of all liens, encumbrances, financing statements, and rights of third persons or entities. All owner rights and warranties shall be in the name and inure to the benefit of the City. Annually, or earlier upon request, Provider shall prepare and submit and deliver to the City an inventory list of all Equipment and supplies purchased by the City under this Agreement and all related documentation, such as, maintenance and service manuals and warranty information. The City shall have the right to perform a physical inventory of such Equipment at reasonable times with prior notice.

4.4.3 New Equipment. All Equipment, Computer Hardware and any components provided for the System shall be entirely new, except where described as not new. A serialization process must mark each Bicycle and Station of the Equipment. Provider must maintain and update a single, integrated electronic list of the City's Equipment and Computer Hardware serial numbers. Provider shall include the original manufacturer's warranty, which shall be transferred to the City.

4.4.4 Identification of Equipment. The Equipment and other components of the System shall at all times be clearly identified as property of the City of Philadelphia in accordance with Exhibit 1, Schedule 3.

4.5 Deliverables

4.5.1 Provider's Obligation for Deliverables. In carrying out the Services, the Provider must provide to the City various Deliverables as further described in Exhibit 1, provided however that in any instance in which the City does not meet its obligations, City and Provider agree to a corresponding adjustment in Provider's Deliverable obligations.

4.5.2 City Rejection of Deliverables. The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Provider has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Provider of its failure. If Provider does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the curable failure as an event of default.

4.5.3 Partial or Incomplete Deliverables. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose for the benefit of the City and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Provider of its obligations under this Agreement.

4.6 Ownership of Documents and Data

4.6.1 City Property. All Deliverables, Data, findings or other information (excluding any intellectual property rights or embodiment thereof owned, discussed by or created by Provider, Software Licensor(s) or Subcontractors as well as any of Provider's internal applications, program structures unrelated to the System, works of authorship unrelated to the System, books, and records, to which the City hereby irrevocably assigns to Provider any and all rights or interests), in any form prepared, assembled, gathered, or encountered by or provided to Provider pursuant to this Agreement (collectively, "City Information") are property of the City, including, as provided below, all copyrights, or other intellectual property rights inherent in their preparation, except as provided for in the DPSA. During performance of the Services, Provider is responsible for any loss or damage to the City Information while in Provider's possession. Any such lost or damaged City Information must be restored at the expense of the Provider. If not restorable, Provider must bear the cost of replacement, and of any loss suffered by the City on account of the destruction. The Provider shall inform City prior to the scheduled destruction of any City Information.

4.6.1.2 Confidentiality of City Data. All City Information shall be kept strictly confidential,

except (i) if it is or subsequently becomes available without Provider's breach of this agreement, (ii) is independently developed by Provider without use of City Information (iii) is already properly within the rightful possession of Provider prior to date of this Agreement, (iv) as specifically authorized by this Agreement or (v) as may be required by law. The Provider must not allow the City Information to be made available to any other individual or organization without the prior written consent of the City. Provider shall implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement.

4.6.2 User Information. User Information shall remain the property of the User. Provider shall keep individually identifiable User Information strictly confidential. Provider and Manufacturer may use sanitized and aggregated trip data for analysis purposes; provided, however, each of Provider's User terms, conditions and policies shall be in compliance with all applicable laws and regulations and shall be subject to prior written approval by the City.

4.6.3 Copyright Ownership

4.6.3.1 Work Made For Hire. Provider and the City intend that, to the extent permitted by law, the Deliverables produced by Provider under this Agreement (excluding any intellectual property rights or embodiment thereof owned or created by Provider, Software Licensors and Subcontractors, for example without limitation, their respective works and trademarks) are conclusively deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. 101 *et seq.,* and that the City will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

4.6.3.2 Copyright Pertaining to Deliverables. To the extent that any Deliverable does not qualify as a "work made for hire," Provider hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Agreement (excluding any intellectual property rights or embodiment thereof owned or created by Provider, Software Licensors and Subcontractors, for example without limitation, their respective works and trademarks), and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Provider will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. Provider warrants to the

City, its successors and assigns, that on the date of transfer Provider is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Provider further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other Agreements or subject to any other restrictions with respect to the Deliverables. Provider warrants that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

4.7 Public Information

The Provider and Subcontractors shall not issue any publicity news releases or grant press interviews with regard to the System without written consent of the City, except as may be required by law during or after the performance of this Agreement.

4.8 Program Service Area Installations and Phasing

4.8.1 Phase I. For Phase I of the Program, Provider shall install Equipment purchased in the Phase I Equipment Purchase Order.

4.8.2 Expansion Phase. For Expansion Phases of the Program, Provider shall, at the City's direction and to the extent the necessary and appropriate financial resources are obtained and available for the purpose, install additional Stations and provide Bicycles. Expansion is further described in Exhibit 1, Schedule 10.

4.8.3 Necessary Permits Obtained. Before installing any Equipment, Provider shall obtain all necessary permits, authorizations, approvals, consents, licenses, Site Agreements, and certifications required for the Equipment.

4.8.4 Damage to Streets or Sidewalks. Provider shall place or install all Equipment in such a manner to prevent any unplanned damage to any sidewalk or street paving. To the extent such unplanned damage occurs and upon notification by the City, Provider shall repair such damage not later than 72 hours after the occurrence.

4.8.5 Paving Penetrations. Provider may, with prior approval by the City, make such penetrations into the paving as necessary to protect the Equipment.

4.9 Station Sites Approvals and Agreements.

4.9.1 Station Site Approval. The Provider and City shall use their best efforts in the approval of Station sites including, but not limited to necessary permits and licenses.

4.9.2 Site Agreements. The Provider and the City shall work cooperatively to secure rights to sites on private property for the installation of services. All Site Agreements where the Provider is a party shall provide for assignment to the City of Provider's rights upon termination of the Agreement.

4.10 Software Licensing and Source Code

4.10.1 Software Licenses. In accordance with the DPSA, Provider shall obtain in the City's name as licensee or sub-licensee for City and its authorized users to access, use, and display (and permit authorized third party service providers, including the Provider, to access, use, and display) the Software, and any other software used in the System, purchased or described in this Agreement. Provider represents and warrants to the City that Provider has the authority and right to provide to the City the license rights to all Software embedded in the System or otherwise provided by Provider to the City in accordance with the terms and conditions of this Agreement. The terms of the licenses are set forth more fully in Exhibit 1, Schedule 4.

4.10.2 Source Code Escrow. This Agreement is contingent upon Provider requiring all Software Licensors to enter into mutually acceptable Escrow Agreement, as set forth in Exhibit 1, Schedule 5, with a trustee or escrow agent mutually acceptable to the City, Provider and Software Licensors, with both the City and Provider as beneficiaries. Each Escrow Agreement will provide that Software Licensor deposit, within 10 calendar days of the Launch Date, into trust the Escrow Materials to permit the City, or Provider as the case may be, to use the Escrow Materials once released to configure, install, and support the Software solely in conjunction with the System. Certain City required agreement language is attached as Exhibit 1, Schedule 5. The Source Code Escrow Agreement shall provide that the City, or Provider as the case may be, have access to the Escrow Materials from the escrow agent upon, including but not limited to (i) Software Licensor discontinues support for the Software; (ii) Software Licensor files a voluntary petition in bankruptcy or liquidation; (iii) Software Licensor proposes any dissolution, liquidation, reorganization, or recapitalization with its creditors; (iv) an involuntary petition in bankruptcy or liquidation is filed against Software Licensor or a receiver is appointed or takes possession of Software Licensor's property, and such petition or receiver is not dismissed or stayed within 90 days after such filing, appointment or taking possession; (v) Software Licensor makes an assignment for the benefit of creditors or is adjudicated as bankrupt; or (vi) Software Licensor takes any similar action under similar laws of any jurisdiction.

4.10.2.1 Access to Escrow Materials. Upon gaining access to the Escrow Materials pursuant to the Escrow Agreement, the City, or its third party consultants (subject to limitations in the sentence immediately following), and if applicable, Provider, will be entitled to modify, alter, adjust, translate or create derivative works from the Software solely as needed for City's own use

in support of the operations of the System (to the exclusion of any other use). Notwithstanding the preceding, the City may not provide access to the Escrow Materials to a third party that is a direct competitor of Software Licensor, namely an entity engaged in the implementation of bike-sharing systems.

4.10.2.2 Transfer of Escrow Agreement. Software Licensor shall be allowed to transfer the Escrow Agreement without the City's or Provider's authorization if (i) Software Licensor's transferee or assignee has sufficient rights to the source code to perform under the escrow, (ii) Software Licensor's transferee or assignee takes subject to all terms of the Escrow Agreement and this Agreement, and (iii) Software Licensor sends a written notice to Provider and the City of such assignment at least 30 days before the closing of any such transaction.

4.10.3 Trademark License. Provider will cause B-cycle to grant as a pass-through to the City, and hereby does grant to the City, a non-exclusive and non-transferable license to use B-cycle's common law and registered trademarks and trade names ("B-cycle Marks") in connection with the System to the extent necessary to inform the public that the Manufacturer of the Equipment is B-cycle, including to the extent necessary for the City's participation in B-cycle's reciprocity program. The City's use of B-cycle Marks shall be in compliance with B-cycle's corporate identity guidelines as may be amended by B-cycle from time to time.

4.11 Compliance with Payment Card Industry Data Security Standard.

Provider shall at all times during the Term of this Agreement be compliant with the PCI data security standards to the extent applicable to the operation of the System and shall be responsible for the security of the payment cardholder data in its possession. Provider shall provide City such information as the City may reasonably require regarding Provider's compliance with PCI requirements, including, at a minimum, an annual certificate of compliance by Provider with the PCI data security standards. In the event of Provider's non-compliance with the PCI data security standards, Provider will promptly perform at Provider's expense, all curative measures necessary to remedy such non-compliance. The City agrees to modify any terms of this Agreement as necessary to meet and to maintain compliance with PCI requirements.

ARTICLE 5. COMPENSATION

5.1. City Funding

5.1.1 Initial City Funding. The City will pay up to Three Million Dollars ($3,000,000) from City Capital Funds for the purchase of a portion of Phase I of the System, as described in Exhibit 1, Schedule 2, to be delivered by the Provider. The City shall provide a Purchase Order to the

Provider identifying the Equipment, Services and Deliverables that are authorized to be delivered and paid for with the City Capital Funds. Provider will invoice the City in accordance with the terms of the invoicing and payment schedule for City Capital Funds set forth in Exhibit 2.

5.1.2 Additional City Funding. The City may, at its sole discretion, provide additional compensation from City funds for Equipment, Services or Deliverables for any Term Year, provided that the City funds have been approved in a City budget for that period. The City shall provide a Purchase Order to the Provider describing the Equipment, Services or Deliverables that the City will fund. Provider shall not make expenditures based on the anticipated receipt of City funds by Provider until it has received the Purchase Order from the City. Provider will invoice the City in accordance with the terms of the invoicing and payment schedule set forth in Exhibit 2 or as mutually agreed to by the Parties.

5.1.3 Certification of Available Funds. Provider acknowledges that City-funded payments under this Agreement shall not exceed the amount certified by, or on behalf of, the City's Director of Finance as available for this Agreement or as subsequently provided for additional City funding. A copy of the form signed by the City's Office of the Director of Finance showing the amount of currently available funds will be attached to the fully executed Agreement returned to Provider.

5.2 Bicycle Share Fund

The City shall create and maintain a dedicated Bicycle Sharing Fund. The Bicycle Sharing Fund shall receive and hold for disbursement non-City funding received for the maintenance, operations and further expansion of the System. Such non-City funding may include Sponsorships, Advertising, donations, memberships and other fees and revenues. The Provider agrees to enter into such agreements as necessary with the City's agent for the disbursement of funds under terms and conditions no less favorable to the Provider than corresponding terms and conditions of this Agreement.

5.2.1 System Launch Date Expenditures. The Bicycle Sharing Fund shall provide a portion of the Phase I Equipment, Services and Deliverables from funds received by the Bicycle Sharing Fund as authorized by Purchase Orders issued for payment by the Bicycle Sharing Fund. The Bicycle Sharing Fund may provide funds for any City-authorized System expenditures prior to or after the System Launch Date.

5.2.2 Post System Launch Date Operations, Maintenance and Renewal. The Bicycle Sharing Fund shall provide operating, maintenance and renewal funding for the approved System budgets from funds received by the Bicycle Sharing Fund as described in Section 5.2. A Purchase Order shall be issued to the Provider for each Term Year based on the

approved final Term Year Budget.

5.2.2.1 Certification of Available Funds. The City shall or shall cause its agent to provide reasonable assurances to the Provider that the Bicycle Sharing Fund resources are available to pay for the operating maintenance and renewal services requested by the Purchase Order.

5.2.3 System Expansion. The Bicycle Sharing Fund may also contribute funding to System expansion subject to requirements of the Agreement in Section 5.5.

5.3 Term Year Budgets

5.3.1 Term Year Budget Approval. The Provider has submitted and City has approved Term Year Budgets for the Term Years as provided in Exhibit 2. The approved budgets provide for an initial system size of 70 stations and 700 bicycles. The budget for the Term Year shall be the approved amount, but shall provide for a pro-rata increase based on System expansion. The Provider shall submit a revised annual budget to the City at least 60 days prior to the end of the Term Year including all budget adjustments. The City shall review and each final Term Year budget shall be approved before the commencement of the Term Year. Final Term Year budgets may modified for unanticipated costs during the Term Year.

5.3.2 Management Fee. Each Term Year Budget shall include a Management Fee. Upon System Launch (50-70 Stations), the Management Fee shall commence and will be $14,375 per month. After the System has more than 70 Stations, the Management Fee will be calculated on a monthly basis based on total System size as follows: (a) $14,375 per month for the initial 50-70 stations, plus (b) For the 71st through the 100th stations, an additional Management Fee of $1,750 per station in the System per year ($145.83 per Station per month); plus, (c) for the 101st Station through the 200th Station, an additional Management Fee of $1,250 per Station in the System per year ($104.17 per Station per month). If during the term of this contract the station count exceeds 200, then the management fee shall be increased at the amount of $1,250 per station per year, or such other amount per station per year as the City and Provider agree in writing.

5.4 Term Year Budget Adjustments

In the event that projected operating and maintenance expenses exceed funds available for operations, the Parties agree to work together to (i) identify additional potential sources of revenue and/or (ii) adjust performance levels and associated budgets. The Provider shall not be responsible for funding operational deficits.

5.4.1 Over/Under Budget Variances. For the avoidance of doubt, if the Provider is able to operate the system for less than the Term Year Budget, then the Provider shall only charge

the City for the lesser amount expended. Similarly, if the Provider believes the operation of the system requires additional expenditures above the Term Year Budget, then the Provider must request approval from the City Manager for such expenditures, including the reasons and a calculation of the adjustment amount through the end of the current Term Year. If the City Manager agrees that the higher expenditures are appropriate and desirable, then the City Manager will deliver to Provider a written authorization and additional (or adjusted) Purchase Order amount for the Term Year.

5.5 System Expansion

The City, at its sole discretion, may direct the Provider to expand the System at any time in the increments identified in Exhibit 1, Schedule 10, provided that there is appropriated City Funding, or the total cash balance of the Bicycle Sharing Fund minus the cost of the proposed System expansion are greater than or equal to one-half of the adjusted budget for the following Term Year. All additions to the System shall be the property of the City of Philadelphia. For all requests for System expansion the Provider shall be issued an Expansion Purchase Order. System expansion schedules shall be subject to Manufacturer's lead times for the fulfillment of Equipment purchases.

5.6 Billing and Payments.

Provider shall direct all invoices to the City. Provider shall provide an original invoice to:

City of Philadelphia
Mayor's Office of Transportation and Utilities
Municipal Services Building 14th Floor
Philadelphia, PA 19102

Prior to the Commencement Date the City and the Provider shall deliver to the other Party electronic billing and payment information to expedite billing and payments.

Special reporting may be required for portions of the System purchased under this Section, and the City reserves the right to require reports for this portion of the System and other parts of the System funded directly by the City as separate from other parts of the System.

5.6.1 Billing and Payments from City Funds.

5.6.1.1 Capital Funds Invoicing. City Capital invoicing and payments shall be made in accordance with Exhibit 2 Section 1. and Section 3.

5.6.1.2 Other Fund Invoicing. If the City has authorized expenditures of City funds that are not

Capital Funds through a Purchase Order, Provider shall deliver, not more frequently monthly, an invoice for Equipment, Services or Deliverables actually provided to the System.

5.6.2 Billing and Payments from Bicycle Sharing Fund.

5.6.2.1 Billing and Payments for Operations, Maintenance and Renewal. On or about the 15th Day of each month, Provider shall submit an invoice for that month's budget-based expenses including Provider's Management Fee. The City will direct the agent for the Bicycle Sharing Fund to disburse an initial monthly payment to Provider equal to 75% of the invoice on the 1st Day of the following month. Within 30 Days of the end of each month, Provider shall submit a final invoice that includes a complete update of its expenditures for the Term Year, The City will review requests for additional payments (if any) upon receipt of such invoices and sufficient supporting documentation for the City to verify that the costs are eligible for funding. The City will cause the disbursement of funds within 30 days of receiving such final invoices.

5.7 Favorable Pricing

Provider must ensure that the City pays the lowest price paid for Equipment and Software by any direct or indirect customers of B-cycle using a bicycle share system of the same specifications purchased within 90 days of the City's purchases. If Provider offers to any such customers equipment and software with the same specifications purchased within 90 days of the City's purchase at a price materially lower or a discount materially greater than the applicable fees charged to City under this Agreement, then such fees shall be lowered by Provider to the extent necessary to match such lower price or greater discount (or, to the extent such fees have already been paid, Provider must promptly refund to City the difference between the fees already paid and the lower price for the time period during which such lower price has been in effect). Provider must notify City of the occurrence of such a lower price or greater discount as described in this section within thirty days after Provider's offering or providing such lower price or greater discount to another such customer.

5.8 Taxes

The City is not subject to federal, state or local sales or use taxes or federal excise tax. To the extent that any sales or use tax has been paid by Provider and then by the City as part of Provider's charges to the City, then Provider hereby assigns to the City all of its right, title and interest in any sales or use tax which may be refunded as a result of any materials, including any Materials, purchased or services, including any Services, rendered in connection with this Agreement and unless directed otherwise by the City, Provider shall not file a claim for any sales or use tax refund subject to this assignment. Provider authorizes the City, in its own name or the

name of Provider, to file a claim for a refund of any sales or use tax subject to this assignment.

ARTICLE 6. PERFORMANCE STANDARDS

6.1 Standard of Performance – General

Provider must perform all Services required of it under this Agreement with skill, care and diligence. Any review, approval, acceptance of Services or Deliverables or payment for any of the Services by the City does not relieve Provider of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. Exhibit 1, Schedule 13.

6.2 Professional and Technical Accuracy

Provider shall be responsible for the professional and technical accuracy of all Services performed, whether by the Provider or its Subcontractors or others on its behalf. In no event shall any review, approval, comment, or evaluation by the City relieve the Provider of any liability or responsibility under this Agreement, it being ultimately understood that the City is relying upon the Provider's skill, knowledge, and professional training and experience to complete the Services.

6.3 Safety

The Provider shall be responsible for initiating, maintaining, and supervising reasonable safety precautions and programs in connection with the performance of this Agreement. The Provider shall take all reasonable precautions for safety of, and shall provide reasonable and appropriate protection to prevent damage, injury, or loss to (i) employees on the Services and other persons who may be affected thereby and (ii) the Services and Equipment to incorporated therein. Provider shall develop and provide safety training for its employees.

6.4 Licensing.

Provider must be appropriately licensed to perform the Services, if required by law, and must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as may be required by law. Upon request of the City, Provider must provide copies of any such licenses.

6.5 Standard of Performance – Program Management

Provider shall ensure, absent Uncontrollable Circumstances, that the System is fully operational at all Stations consistent with service level commitments as set forth in Exhibit 1, Schedule 2 are

fully met. All Deliverables must be prepared in a form and content satisfactory to the City and delivered in a timely manner consistent with the requirements of this Agreement.

6.5.1 System Launch Date. Time is of the essence for the System Launch Date of Phase I, which date shall not be later than April 22, 2015.

6.6 Performance Incentives

The Provider may be entitled to compensation for meeting maintenance and performance objectives that exceed the base levels referenced in Section 6.5 of the Agreement. The Performance Incentives are attached in Exhibit 1, Schedule 19.

6.7 Performance Failures and Liquidated Damages

If Provider fails to comply with the System delivery requirements or the System maintenance and operating requirements set forth in Exhibit 1, Schedule 16, then Provider shall pay the Liquidated Damages as set forth therein.

6.7.1 Compliance Required. Notwithstanding the requirement for payment of Liquidated Damages, Provider shall not be excused for failures to comply with the maintenance and operating requirements set forth in Exhibit 1, Schedule 2. The City may require Provider to adopt and implement such modifications to its inspection, maintenance, repair or cleaning procedures as the City deems appropriate to ensure that the Equipment is maintained in a clean and safe condition.

6.8 Performance Excused

6.8.1 Uncontrollable Circumstances. The City, Provider and Manufacturer shall not be liable for any failure to perform or any damages due to Uncontrollable Circumstances. Uncontrollable Circumstances are an event or circumstance, or combination of events and circumstances, making the performance of an obligation impossible, more costly, or more time-consuming or that is outside the reasonable control of a party and not the result of a failure of such party to apply reasonable diligence. Subject to the foregoing, but not limiting its generality, each of the following is an Uncontrollable Circumstance: (i) naturally occurring events (excluding normal weather conditions for the location affected) such as underground movement, earthquakes, lightning, fire, tornadoes, hurricanes, floods, epidemics, and other acts of God; (ii) work stoppages, embargos, labor disputes, except labor disputes involving only employees, affiliates, or Subcontractors of the Party claiming the excuse of Uncontrollable Circumstance, ; (iii) failure of utility, internet or cellular service provided by a third party; (iv) public emergency; and (v) sabotage, acts of a declared public enemy or terrorist, extortion, war, blockage, insurrection,

riot, extraordinary acts of vandalism, or civil disturbance; (vi) material changes to law that make the services provided illegal or commercially unviable; (vii) governmental actions or restrictions.

6.8.2 Uncontrollable Circumstances Exclusions. Under no condition do any of the following constitute an Uncontrollable Circumstance: (i) changes in economic conditions, market conditions, interest rates, inflation rates, wage rates, commodity prices, currency values, or exchange rates; (ii) changes in financial condition; (iii) labor requirements or demands; (iv) changes in taxes or rates (except for City taxes); (v) failure to obtain any patent, license, or rights to use intellectual property; and (vi) failure of equipment, unless caused by an Uncontrollable Circumstance.

6.8.3 Weather-related System Shut Downs. Provider may also shut down the Stations and Bicycles for weather-related or other emergencies, in its reasonable discretion and with prior notice to the City. In its notice to the City, Provider shall state the expected duration of the shut-down and the factors that may cause the System to remain in a shut-down status.

6.9 Documentation

The Provider and its Subcontractors shall furnish the City, upon the City's request, with the documentation and information necessary for the City to determine the compliance with the standards for performance under the Agreement. The provisions of this Section are not intended to supersede or limit the provisions of the Agreement related to furnishing information or documents to the City including Exhibit 1, Schedule 14.

ARTICLE 7. INSURANCE, INDEMNIFICATION AND PERFORMANCE SECURITY

7.1 General Insurance Requirements

Unless otherwise approved by the City's Risk Management Division in writing, Provider shall procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider's performance of the Services and the delivery of Equipment and other Deliverables. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability and Umbrella Liability Insurance policies

and loss payee on the Property Insurance Policy. Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

7.1.1 Liability Not Limited by Insurance. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Agreement by Provider to the City, or to limit Provider's liability under this Agreement to the limits of the policies of insurance required to be maintained by Provider hereunder.

7.2 Workers' Compensation and Employers' Liability

Coverage must be in effect prior to the employment of any individuals by the Provider.

(i) Workers' Compensation: Statutory Limits
(ii) Employers' Liability: $100,000 Each Accident - Bodily Injury by Accident; $100,000 Each Employee - Bodily Injury by Disease; and $500,000 Policy Limit - Bodily Injury by Disease.
(iii) Other states insurance including Pennsylvania.

7.3 General Liability Insurance

(i) Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; $1,000,000 advertising injury; $2,000,000 general aggregate and $1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk warrants.
(ii) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).

7.4 Commercial Umbrella or Excess Insurance

Coverage must be in effect prior to commencing any installation activities. Aggregate limits for Automobile and General Liability may be satisfied through the umbrella coverage subject to policy requirements.

Provider shall maintain, with respect to its Services hereunder, Commercial Umbrella or Excess Insurance Policies for Bodily Injury and Property Damage Liability with a limit of $5,000,000 per occurrence and annual aggregate, over General Liability and Automobile Liability Limits.

7.5 Automobile Liability Insurance

(i) Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(ii) Coverage: Owned, non-owned, and hired vehicles.

7.6 "All Risk" Property Insurance

Coverage must be in effect prior to receipt of Equipment by Provider in Philadelphia.

(i) "All Risk" property insurance covering all improvements, betterments, equipment, trade fixtures, merchandise, business personal property and any other property in Provider's care, custody or control, in an amount equal to the agreed valuation replacement cost with no penalty for coinsurance.

(ii) Business interruption insurance covering loss of profits, rent and necessary continuing expenses for interruptions caused by any one occurrence covered by the insurance referred to in subsection (i) above, subject to a coverage limit of $1,000,000.

7.7 Professional Liability Insurance

(i) Limit of Liability: $500,000 with a deductible not to exceed $50,000

(ii) Coverage: Errors and omissions including liability assumed under Agreement

(iii) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under this Agreement shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least one (1) year after completion of the Services.

7.8 Evidence of Insurance Coverage. Certificates of insurance evidencing the required coverages must specifically reference the City Agreement number for which they are being submitted. The original certificates of insurance must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia
Office of the Director of Finance
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1579
(Fax No.: 215-683-1705).

A copy of the certificates of insurance shall be submitted to the Responsible Official at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City, but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City Agreement number and be submitted to the City's Risk Management Division at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Agreement at any time upon ten (10) days written notice to Provider.

7.9 Crime Insurance

When required by the City, Provider shall, at its sole cost and expense, obtain and maintain during the Initial Term and any Additional Term(s) of this Agreement, a fidelity bond in an amount equal to Dollars ($500,000, covering Provider's employees who have financial responsibilities related to the receipt and disbursement of funds under this Agreement. In lieu of a fidelity bond, Provider may obtain coverage for crime insurance with limits that are Dollars ($500,000). The fidelity bond or crime insurance, whichever is obtained by Provider, shall name the City and the Provider, as their interests appear, as joint beneficiaries. Evidence of the existence of the fidelity bond or crime insurance shall be submitted to the City prior to the commencement of Services in conformity with the requirements of Section 7.8 (Evidence of Insurance Coverage) above.

7.10 Indemnification

Provider shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all actual losses, costs (including, but not limited to, reasonable litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Provider's act or omission or negligence

or fault or the act or omission or negligence or fault of Provider's agents, Subcontractors, independent contractors, suppliers, employees or servants in connection with this Agreement, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay any Subcontractors and suppliers, any material breach of this Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret). In no event shall Provider's liability for consequential, indirect, or exemplary damages exceed fifty thousand dollars ($50,000).

7.11 Security for Performance

7.11.1 Manufacturer's Commitment. The Manufacturer's Commitment shall be provided on or prior to the Agreement Date and shall be maintained for 24 months after the System Launch Date in the form attached as Exhibit 3.

7.11.1.1 Reporting Requirements. Provider shall cause Manufacturer to deliver to the City, within one hundred twenty (120) days after the end of each fiscal year of Manufacturer, a copy of the annual financial statement of Manufacturer, which shall consist of an income statement and balance sheet which shall be prepared in accordance with generally accepted accounting principles consistently applied.

7.11.1.2 Material Adverse Change. If a material adverse change occurs in the financial condition of the Manufacturer, the Manufacturer (or Provider if known by it) shall promptly notify the City.

7.11.2 Payment Bonds. The Provider shall provide to the City a Payment Bond in the amount equal to the non-Equipment-related compensation to the Provider pursuant to this Agreement. The cost of such bonding will be in addition to the operational budget for the system. At the City's election and with appropriate advance notice to Provider, the City may make payments directly to suppliers and subcontractors of Provider. The term of the Payment Bond will be for a period of 12 months from the Commencement Date.

7.11.2.1 Form of Bonds and Surety Provider Requirements. The Payment Bond shall be:

(i) in the form approved by the City and

(ii) issued by a surety listed on the then-current annual "Surety List" promulgated by the Commonwealth Insurance Department.

ARTICLE 8. EVENTS OF DEFAULT AND REMEDIES

8.1 Provider Events of Default.

Each of the following shall be a Provider Event of Default under this Agreement, subject to the notice and cure provisions herein:

8.1.1 Security for Performance. The failure (i) of the Provider to obtain or maintain in full force and effect, or renew within thirty (30) days prior to expiration, any security instrument required by Section 7.11 as security for performance of this Agreement; or (ii) of the Manufacturer to comply with any of its material obligations under the Manufactu er's Commitment;

8.1.2 Performance Requirements. The repeated failure of the Provider to meet the Performance Requirements described in Exhibit 1, Schedule 2 (notwithstanding the payment by the Provider of Liquidated Damages or the performance of any other related obligation to be paid or performed in connection with any such failure), except as excused by Uncontrollable Circumstances or the City fault.

8.1.3 Failure to Achieve Commencement Date. The failure of the Provider to achieve the Commencement Date conditions set forth in Section 2.4 prior to or on the 60th day after the Agreement Date.

8.1.4 Abandonment. The abandonment or unexcused failure to operate all or a substantial portion of the System for five consecutive days in any Term Year;

8.1.5 Non-Compliance with General Terms and Conditions. Failure to comply in any material respect with the provisions of Article 9.

8.1.6 Intentional Misrepresentation. The intentional falseness or material inaccuracy of any warranty or representation of Provider contained in this Agreement or in any other document submitted to the City by Provider;

8.1.7 Chapter 17-1400. Any act, omission, or misrepresentation which renders the Provider ineligible for a City Agreement or renders the Agreement voidable under Chapter 17-1400 of the Code;

8.1.8 Misappropriation. Misappropriation by Provider of any funds provided under this Agreement or failure by Provider to notify the City upon discovery of any misappropriation;

8.1.9 Failure to Make Payments. The Provider fails, refuses or otherwise defaults in its duty to pay any undisputed amount required to be paid to Subcontractors or employees under this Agreement within 60 days following the due date for such payment;

8.1.10 Insolvency. The insolvency of the Provider or the Manufacturer as determined under the United States Bankruptcy Code;

8.1.11 Voluntary Bankruptcy. The filing by the Provider or the Manufacturer of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Provider or the Manufacturer to the filing of any bankruptcy or reorganization petition against the Provider or the Manufacturer under the Bankruptcy Code; or the filing by the Provider or the Manufacturer of a petition to reorganize the Provider or the Manufacturer pursuant to the Bankruptcy Code; in each case only if such bankruptcy, proceeding or other event, in the reasonable discretion of the City, renders Provider unable to continue to provide the Services in accordance with this Agreement; or

8.1.12 Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Provider or the Manufacturer or of a major part of the Provider's or Manufacturer's property, respectively, or the filing against the Provider or the Manufacturer of a petition to reorganize the Provider or the Manufacturer pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively; in each case only if such bankruptcy, proceeding or other event, in the reasonable discretion of the City, renders Provider unable to continue to provide the Services in accordance with this Agreement;

8.1.13 Criminal Behavior. A violation of law which results in a guilty plea, a plea of nolo contendere, or conviction for a criminal offense by Provider, its directors, or employees (i) directly or indirectly relating to this Agreement or the Services or Materials provided under this Agreement, whether or not such offense is ultimately adjudged to have occurred; or (ii) which adversely affects the performance of this Agreement;

8.1.14 Adverse Governmental Determinations. Debarment or suspension of Provider or any employee or Subcontractor of Provider under a federal, state or local law, rule or regulation.

8.2 City Events of Default

Each of the following shall be a City Event of Default under this Agreement, subject to the notice and cure provisions herein:

8.2.1 Performance Requirements. The repeated failure of the City, except as excused by Uncontrollable Circumstances or the Provider's fault, to meet the City's Performance Requirements as described in Exhibit 1, Schedule 2.

8.2.2 Failure to Achieve Commencement Date. The failure of the City to achieve the City Commencement Date conditions prior to or on the 60th day after the Agreement Date.

8.2.3 Non-Compliance with General Terms and Conditions. Failure to comply in any material respect with the provisions of Article 9.

8.2.4 Intentional Misrepresentation. The intentional falseness or inaccuracy of any warranty or representation of the City contained in this Agreement.

8.2.5 Misappropriation. Misappropriation by City of any funds due to Provider under this Agreement or failure by the City to notify the Provider upon discovery of any misappropriation.

8.2.6 Failure to Make Payments. The City fails, refuses or otherwise defaults in its duty to pay any undisputed amount required to be paid under this Agreement within 60 days following the due date for such payment.

8.3 Notice and Cure

8.3.1 City's Remedies For Provider Default. The City agrees that the City will not exercise any right or remedy because of any Provider Event of Default unless the City shall have first given written notice of the Provider Event of Default to Provider and Manufacturer, and Provider, within a period of ten (10) days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Provider Event of Default; or shall have failed to provide a plan reasonably acceptable to the City to correct the Provider Event of Default.

During the term of the Manufacturer's Commitment the Manufacturer may, at its sole option, provide assistance to Provider in correcting the Provider Event of Default within the ten (10) day cure period, or such additional cure period as the City may authorize.

No such notice from the City shall be required nor shall the City permit any period for cure if:

(i) Provider has temporarily or permanently ceased providing all material Services and Materials;

(ii) The Provider Event of Default creates an emergency which requires, as determined by the City in the City's reasonable discretion, immediate exercise of the City's rights or remedies.

Nothing contained in this Section shall limit the City's rights under this Article.

8.3.2 For City Default

Provider shall not exercise any right or remedy because of any City Event of Default unless the Provider shall have first given written notice of the City Event of Default to the City, within a period of ten (10) days thereafter, or such additional cure period as the Provider may authorize,

shall have failed to correct the City Event of Default; or shall have failed to provide a plan reasonably acceptable to the Provider to correct the City Event of Default.

8.4 Remedies

8.4.1 City Remedies for Provider Default In the event Provider has committed or permitted an Event of Default, has been notified thereof in accordance with Section 8.3.1 above, and failed to cure or provide a plan pursuant to 8.3.1, then the City may, but shall not be obligated to, with notice to Provider and without waiving or releasing Provider from any of its obligations under this Agreement:

(i) Require the Manufacturer to Perform this Agreement, in whole or in part, during the term of the Manufacturer's Commitment. Provider shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or Manufacturer) thereon from the date the City or its agent incurs such costs. The City shall not in any event be liable for inconvenience, expense or other damage incurred by Provider by reason of the Manufacturer's performance or paying such costs or expenses, and the obligations of Provider under this Agreement shall not be altered or affected in any manner by the City's exercise of its rights under this Section;

(ii) Following the term of the Manufacturer's Commitment, or if Manufacturer has failed to perform, perform (or cause a third party to perform) this Agreement, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the City. Provider, or if Manufacturer fails to perform, Manufacturer, shall be liable to the City for all sums paid by the City and reasonable expenses incurred by the City (or a third party)related to the Event of Default. The City shall not in any event be liable for inconvenience, expense or other damage incurred by Provider, or if Manufacturer has failed to perform, Manufacturer, by reason of the City's performance or paying such costs or expenses, and the obligations of Provider under this Agreement shall not be altered or affected in any manner by the City's exercise of its rights under this Section;

(iii) withhold payment of, or offset against, any funds payable to or for the benefit of Provider;

(iv) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Provider; or

(v) exercise any other right the City has or may have at law, in equity, or under this Agreement.

8.4.2 Termination or Suspension by City. In the event Provider has committed or permitted an Event of Default and the Provider and Manufacturer have been notified, and any applicable cure periods have expired, then the City may, but shall not be obligated to, without waiving or

releasing Provider from any of its obligations under this Agreement, terminate or suspend this Agreement in whole or in part. In the event of partial termination or suspension, Provider shall continue the performance of this Agreement to the extent not terminated or suspended. If this Agreement is terminated, the City shall issue a written termination notice to Provider and Manufacturer which shall set forth the effective date of the termination. During the term of the Manufacturer's Commitment a written termination notice shall serve as notice to the Manufacturer of its obligation to perform under the Manufacturer's Commitment, such performance to commence upon the effective date of the termination.

8.4.3 Specific Performance. The Services and Materials purchased from Provider are unique and not otherwise readily available. Accordingly, Provider acknowledges that, in addition to all other remedies to which the City is entitled, the City shall have the right, to the fullest extent permitted under Applicable Law, to enforce the terms of this Agreement without limitation, by a decree of specific performance or by injunction restraining a violation, or attempted or threatened violation, of any provision of this Agreement.

8.5 Provider's Remedies for City Default. In the event the City has committed or permitted an Event of Default and has been notified thereof in accordance with Section 8.3.2 above, and the cure period for any such Event of Default has expired, then the Provider may, but shall not be obligated to, without further notice to or demand on City and without waiving or releasing City from any of its obligations under this Agreement:

(i) City shall be liable to the Provider for reasonable sums paid by the Provider and reasonable expenses incurred by the Provider consistent with Purchase Orders issued by the City, including reasonable pre-paid or committed costs (for example, funds required to terminate a lease).

(ii) withhold services for, payment of, or offset against, any funds payable to or for the benefit of City;

(iii) increase Provider's fees under this Agreement consistent with Provider's reasonable costs related to the City Event of Default;

(iv) delay or modify Services or deadlines under this Agreement consistent with Provider's delay or inconvenience due to the City Event of Default, without recourse from the City;

(v) exercise any other right the Provider has or may have at law, in equity, or under this Agreement.

8.5.1 Termination or Suspension by Provider. In the event City has committed or permitted an Event of Default and the City has been notified, and any applicable cure periods have expired, then the Provider may, but shall not be obligated to, without waiving or releasing City from any of its obligations under this Agreement, terminate or suspend this Agreement in whole or in part. In the event of partial termination or suspension, City shall continue the performance of this

Agreement to the extent not terminated or suspended. If this Agreement is terminated, the Provider shall issue a written termination notice to City and Manufacturer which shall set forth the effective date of the termination.

8.6 Concurrent Pursuit of Remedies; No Waiver.

Either Party may exercise any or all of the remedies set forth in this Article each of which may be pursued separately or in conjunction with such other remedies as either Party may determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Agreement. The rights and remedies of the City as described in this Article and as described elsewhere in this Agreement shall not be exclusive and are in addition to any other rights or remedies available to the City under this Agreement at law or in equity.

8.7 Provider Responsibilities Upon Termination or Suspension

Upon the City's delivery of a termination notice or a suspension notice under any provision of this Agreement, Provider and its agents, employees and Subcontractors, shall, as set forth more fully in Schedule 20, (i) take immediate action in an orderly manner to discontinue Services and Materials, and demobilize work forces to minimize the incurrence of costs; and (ii) upon request by the City by notice to Provider, collect, assemble and transmit to the City all Materials in such state of completion as may exist as of the effective date of the termination or suspension. All such Materials shall be clearly labeled and indexed to the satisfaction of the City Manager and delivered to the City Manager by Provider on or before the date set forth in the termination notice for delivery of the Materials or, if no such date is set forth in the termination notice, then before the effective date of termination set forth in the termination notice. Provider waives and releases any and all right to any retaining or charging liens or similar right or remedy in favor of Provider.

8.7.1 Accrued Liabilities. The City's termination or suspension of this Agreement shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.

8.7.2 No Liability for Termination. There shall be no liability, cost or penalty to the City for termination or suspension of this Agreement.

8.8 Payment of Provider upon Termination or Suspension

Upon termination or suspension of this Agreement by the City for a Provider Event of Default, Provider shall be entitled to payment of such an amount, to be determined by the City and

subject to audit, as shall compensate it for the work satisfactorily performed prior to the termination date; provided, however, that:

(i) No allowance shall be included for termination expenses or for anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Services; and

(ii) The City shall deduct from any amount due and payable to Provider prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Services and Materials required to be performed by Provider under this Agreement, including the expense of engaging another provider for this purpose, and such other reasonable damages, costs, losses and expenses of the City as may be incurred or result from such termination for a Provider Event of Default; and

(iii) In the event of termination or suspension of this Agreement by the City for the City's convenience, Provider shall be paid such an amount as shall compensate Provider for the portion of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of termination. The City shall not pay Provider any amount for Provider's termination or suspension expenses or anticipated profits, unabsorbed or underabsorbed overhead or unperformed Services and Materials not satisfactorily delivered. In the event of termination of this Agreement for convenience, Provider shall be entitled to reimbursement for its continuing expenses related to long-term facility leases, vehicle financing, subcontractor commitments and similar arrangements made in good faith anticipation of the contract and services continuing to end of term.

ARTICLE 9. GENERAL TERMS AND CONDITIONS

9.1 Subcontracts.

Except as identified in this Agreement, Provider shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Agreement, in whole or in part, without on each occasion first obtaining the written consent of the City Manager.

9.1.1 Subcontractor Requirements. Provider shall submit to the City Manager copies of all proposed Subcontract(s) to be entered into by Provider, along with Provider's written request for the City's consent. All such Subcontracts must specify that:

(i) Work performed by Subcontractor shall be in conformity with the terms of this Agreement;

(ii) Nothing contained in such Subcontract shall be construed to impair the rights of the City under this Agreement;

(iii) The City's consent to or approval of any Subcontract shall not create any obligation of the City to any Subcontractor;

(iv) Nothing contained in such Subcontract, or under this Agreement, shall create any obligation of the City to Subcontractor;

(v) The City shall be expressly designated a third party beneficiary of the Subcontract.

9.1.2 Subcontractor Bound by Agreement. Subcontractor shall be bound by the applicable terms, covenants and conditions as Provider under this Agreement; including, without limitation, confidentiality, maintenance and preservation of records, and audit by government representatives, under this Agreement.

9.1.3 Assignment of Tax Refunds. Subcontractor shall, effective on the date of the Subcontract, presently, fully and unconditionally assign, transfer and set over to the City all of Subcontractor's right, title and interest in and to any sales and use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or this Agreement, and Subcontractor shall covenant and agree that, (i) other than as directed by the City, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (ii) the City, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by this assignment.

9.1.4 No Subcontractor Indebtedness. Subcontractor shall not be indebted to the City (to satisfy this requirement, Provider shall include the following in all Subcontracts that are entered into for work to be performed pursuant to this Agreement).

"Subcontractor hereby certifies and represents that Subcontractor and Subcontractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City and will not at any time during the term of the Agreement, including any extensions or renewals thereof, be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to Subcontractor for services rendered in connection with the Agreement and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to Subcontractor and/or the termination of Subcontractor for default (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination)."

9.1.5 Exclusionary Organizations. Subcontractors shall comply with 9.4.1. Provider shall include Section 9.4.1 with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Agreement.

9.1.6 Business Interests Requirements. Subcontractors shall comply with Sections 9.6 and 9.7. Provider shall include Sections 9.6 and 9.7 in all Subcontracts that are entered into for work to be performed pursuant to this Agreement.

9.1.7 Provider Responsibility for Work. No permitted Subcontract shall relieve Provider of any obligation under this Agreement. Provider shall be as fully responsible for the acts and omissions of its Subcontractors and Persons either directly or indirectly employed or retained by them as it is for the acts and omissions of Provider and Persons directly or indirectly employed or retained by Provider.

9.1.8 Subcontracts Void. Any purported Subcontract made in violation of this Section or of any other Section in this Agreement shall be null and void.

9.1.9 Subcontracts and Termination of Provider. In the event that the City has exercised its right to terminate this Agreement, under the early termination or for cause, all as set forth in Article 8, the City shall have the right, at its election, to take over and operate the System, either directly or through third parties. Provider shall ensure that all its Subcontractors agree, at City's option, to either (i) authorize the transfer to the City of the supply and/or license Agreement that such Subcontractor has with Provider for the purpose of the Program or (ii) negotiate in good faith a direct supply and/or license Agreement with the City for the provision of the goods and services such Subcontractor previously provided to the City through Provider. Provider shall further ensure (in its Agreement with B-cycle that if the City chooses option (ii) immediately preceding, B-cycle will offer the same terms on license rights and support that the City has under this Agreement.

9.1.10 Non-Suspension; Debarment.

Provider and all of the individuals acting on Provider's behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or the federal government, or any department, agency or political subdivision of any of the foregoing. If Provider cannot so warrant, then Provider shall submit to the Responsible Official a full, complete written explanation as to why Provider cannot so warrant. Provider shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of Pennsylvania Office of Inspector General for investigation of Provider's compliance with the terms of this or any other Agreement between Provider and the City which results in the suspension or debarment of Provider. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Provider

shall not be responsible for costs of investigations which do not result in Provider's suspension or debarment.

9.1.11 Subcontractor Payments. All payments to Subcontractors shall be made in accordance with the subcontracts or as otherwise provided for in this Agreement. Upon the City's reasonable request, Provider will make available for City's inspection payment receipts from the Subcontractors confirming that Subcontractor payments are being kept current. The City may make reasonable inquiries to all Subcontractors regarding the timing of payments by Provider to the Subcontractors. Failure to make timely payments to Subcontractors may result in the City withholding payments to the Provider until unpaid and overdue invoices have been paid.

9.2 Assignment

9.2.1 Assignment by Provider. Provider shall not assign this Agreement, or any part of this Agreement, or delegate performance of this Agreement, without obtaining the prior written consent of the City, provided, however, that the City's consent shall not be required in the event of any transfer by Provider to (i) any entity controlling, controlled by or under common control of Provider, (ii) any successor to Provider by merger, asset sale, consolidation or reorganization, provided that at least one Key Personnel remains in control of Provider ("Permitted Transfer"). Provider shall send the City written notice of any Permitted Transfer. Such notice shall be for informational purposes only, and shall contain information regarding the identity of the successor and the effective date of the transaction. In assignments where written consent is required, the decision whether to consent to an assignment, the timing of consent (if any), and conditions to such consent, if any, shall each be at the City's sole discretion. Any consent to the assignment of any monies to be paid under this Agreement shall not relieve Provider from the faithful performance of any of its obligations under this Agreement or change any of the terms and conditions of this Agreement. Any purported assignment in violation of this provision shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Agreement. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Agreement. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section (Assignment by Provider), an assignment includes the acquisition of Provider, or a controlling interest therein, through a corporate or other merger, and the appointment of a receiver or bankruptcy trustee, and the transfer of this Agreement or Provider in any bankruptcy or other insolvency proceeding.

9.2.2 Applicability in Case of Bankruptcy or Insolvency. A receiver or trustee of or for Provider in any federal or state bankruptcy, insolvency or other proceedings concerning Provider shall comply with the requirements set forth in Section 9.2.1 above.

9.2.3 Assignment by the City. The City may, assign its rights and obligations under this

Agreement, without the consent of the Provider, to another Governmental Body if such assignee assumes, and is legally and financially capable of discharging, the duties and obligations of the City hereunder.

9.3 No Waiver

The failure of Provider or the City to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of Provider or the City.

9.4 Nondiscrimination

This Agreement is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Agreement, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. Nor shall Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section the City may, in addition to any other rights or remedies available under this Agreement, at law or in equity, suspend or terminate this Agreement.

9.4.1 Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations. Provider agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

9.4.2 Limited English Proficiency. Provider understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to Services provided under this Agreement on the basis of that limitation. As a condition of accepting and executing

this Agreement, Provider shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (i) to Provider, (ii) to the benefits, services, activities and programs provided in connection with this Agreement, (iii) to the City, or the Commonwealth of Pennsylvania, and (iv) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Agreement are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through agreements with outside contractors.

9.4.3 Equal Benefits. (a) Unless Provider is a government agency, this is a "Service Agreement" as that term is defined in Section 17-1901(4) of the Code. If the Service Agreement is in an amount in excess of $250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits the Provider extends to spouses of its employees to life partners of such employees. Provider certifies that (i) it is in compliance with the requirements of Chapter 17-1900, (ii) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900, and (iii) such employment benefits are currently, or will be made available within the time required by Section 17-1902(2), or that the Provider does not provide employment benefits to the spouses of married employees.

9.5 Salaries and Wages

9.5.1 Philadelphia 21st Century Minimum Wage Standard. This Agreement is subject to Chapter 17-1300 of The Philadelphia Code, "Philadelphia 21st Century Minimum Wage and Benefits Standard," and all regulations and procedures adopted thereunder and in effect on the Effective Date of this Agreement. Provider will comply with the requirements of Chapter 17-1300 of the Philadelphia Code as they exist on the date when the Provider entered into this Agreement or as they exist on the date when any amendment is executed to this Agreement. The Provider will promptly provide to the City documents and information verifying its compliance with the requirements of Chapter 17-1300. The Provider will notify its affected employees with regard to the wages that are required to be paid pursuant to Chapter 17-1300. The Office of Labor Standards may grant a partial or total waiver of Section 17-1300 based on the specific stipulated reasons elaborated in Section 17-1304 of the Philadelphia Code.

9.5.2 Timely Payments. Provider and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. The Parties acknowledge that this clause is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

9.6 Business Interests in Northern Ireland, Sudan and Iran

In accordance with Section 17-104 of the Philadelphia Code, Provider by execution of this Agreement certifies and represents that:

9.6.1 Northern Ireland Certification. Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) does not have, and will not have at any time during the Term (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland, unless Provider has implemented the fair employment principles embodied in the MacBride Principles, and no product to be provided by Provider will originate in Northern Ireland, unless the Provider has implemented the fair employment principles embodied in the MacBride Principles; and

9.6.2 Sudan and Iran Certification. Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) does not, and will not at any time during the Term (including any extension thereof), do any business in Iran or Sudan, and no product to be provided under this Agreement were, are or will be manufactured by an entity doing business in Iran or Sudan, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies.

9.6.3 Subcontractor Interests. In the performance of this Agreement, Provider agrees that it will not utilize any suppliers or Subcontractors at any tier: (i) Who have or whose parent(s, subsidiary(ies), exclusive distributor(s) or company affiliate(s) have any investments, licenses, franchises, management agreements or operations in Northern Ireland, or who will provide products originating in Northern Ireland unless said supplier or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles; or (ii) Who do or whose parent(s), subsidiary(ies), exclusive distributor(s) or company affiliate(s) do business in Iran or Sudan during the Term, or who will provide products manufactured by an entity doing business in Iran or Sudan, as applicable, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies.

9.6.4 Cooperation with Director of Finance. Provider agrees to cooperate with the City's Director of Finance in any manner, which such Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Philadelphia Code. Provider expressly understands and agrees that any false certification or representation in connection with

this section and/or any failure to comply with the provisions of this section shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise Applicable Law (including, but not limited to, Section 17-104 of the Philadelphia Code or equity). In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. S. C. A. § 4904.

9.7 Business, Corporate, and Slavery Era Insurance Disclosure

9.7.1 Affidavit. In accordance with Section 17-104 of the Philadelphia Code, Provider, after execution of the Agreement agrees to complete an affidavit certifying and representing that Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of Provider or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

9.7.2 False Certification. Provider expressly understands and agrees that any false certification or representation in connection with this paragraph and/or any failure to comply with the provisions of this paragraph shall constitute a substantial breach of the Agreement entitling the City to all rights and remedies provided in the Agreement and otherwise available in law (including, but not limited to, Section 17-104 of the Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A § 4904.

9.8 Provider Integrity Provisions

9.8.1 Provider Integrity Required. Provider shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of Applicable Laws or requirements that govern contracting with the City.

9.8.2 No City Employee or Officer Benefit. Provider shall not, in connection with this Agreement or any other contract with the City, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of City.

9.8.3 No Gratuity. Provider shall not, in connection with this Agreement or any other contract

with the City, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of City.

9.8.4 Inspector General Inquiries. Provider, upon the inquiry or request of the Inspector General of the

City or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form necessary for a determination by the Inspector General as to the contractor's integrity or responsibility, as those terms are defined by City's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractors business or financial records, documents or files of any type or form, which refer to or concern this Agreement. Such information shall be retained by the Provider for a period of five (5) years beyond the termination of the Agreement unless otherwise provided by law.

9.8.5 Violation of Integrity Provisions. For violation of any of the above provisions, the City may terminate this and any other Agreement with the Provider, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, and claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and the City may debar and suspend the Contractor from doing business with the City. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the City may have under the law, statute, regulation, or otherwise.

9.9 Audits, Inspection Rights and Records

9.9.1 General. Provider shall certify that all materials, equipment and labor charged to the City are accounted for and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement.

9.9.2 Retention of Records. The Provider shall retain, and shall provide the City and its representatives access, to all records, books of account, correspondence, instructions, shop drawings, receipts, vouchers, memoranda, and similar data and documentation pertaining to the Agreement for a period of five (5) years following final payment, or earlier termination of the Agreement, of for such longer period as may be required by law; however, if any litigation, claim or audit is commenced prior to the expiration of said five(5)-year period, then records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the record shall be retained for such longer period.

9.9.3 Audits. From time to time during the performance of the work under the Agreement, and for a period of five (5) years after the completion of the wok under the Agreement, the City may audit any and all aspects of the Provider's performance under the Agreement, including but not limited to its billing and invoices. Audits may be conducted by representatives, agents or contractors of the City, including, without limitation, the City Controller. If requested by the City, the Provider shall submit all vouchers, or invoices presented for payment pursuant to this Agreement, all cancelled checks, work papers, books, records and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of

expenditures or fees incurred pursuant to this Agreement. All books, invoices, vouchers, records, reports, cancelled checks and other materials related to Provider's obligations under this Agreement shall be subject to periodic review or audit by the City.

9.9.4 Availability of Records. The Provider shall make available within the City at reasonable times during the performance of work hereunder and for period set forth above in this paragraph, all records pertaining to the Agreement for the purpose of inspection, audit or reproduction by any authorized representative of the City (including any agent or contractor and the City Controller), the Commonwealth Auditor General, and any other federal or state auditors, as may be applicable, at no additional cost to the City.

9.9.5 Confidential Records. Provider may, by a written statement signed by a representative of the Provider, assert that a record or document provided by Provider pursuant to this Agreement contains a trade secret or confidential proprietary information. If Provider provides such a written statement, the City will endeavor to maintain the record as confidential to the extent permitted by Applicable Law.

9.10 Right-To-Know

The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Agreement.

9.11 Notices

All notices from either party to the other shall be effective only if in writing and signed by the party giving notice and given by being delivered personally or sent electronically or by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

If to Provider:

Bicycle Transit Systems, Inc.
Attn: Alison M. Cohen
117 West Allens Lane
Philadelphia, PA 19119

With a copy (which shall not constitute notice) to:

Hangley Aronchick Segal Pudlin & Schiller
One Logan Square, 27th Floor
Philadelphia, PA 19103
Attn: Michele S. Fenkel, Esquire

If to City:

City of Philadelphia
Mayor's Office of Transportation and Utilities
Municipal Services Building 14th Floor
Philadelphia, PA 1910

And

City of Philadelphia
Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
Attention: City Solicitor

9.11 Economic Opportunity Plan

9.11.1 EOP Required. In accordance with the Philadelphia Code Section 17-1600 et seq., as it exists on the Effective Date, the City has established a requirement for Economic Opportunity Plan(s) ("EOP") for this Agreement. The EOP attached hereto as Exhibit 5 (Economic Opportunity Plan) constitutes the entire EOP approved by the Office of Economic Opportunity for this Agreement. Provider agrees to comply with and abide by the EOP attached to this Agreement as Exhibit 5 (Economic Opportunity Plan).

9.11.2 EOP Disclosure Requirements. In accordance with Section 17-1402(f) of the Philadelphia Code, Provider shall during the Term of the Agreement, disclose the name and title of each City officer or employee who directly or indirectly advised the Provider, any officer, director or management employee of the Provider, or any person representing the Provider that a particular Person could be used by the Provider to satisfy any goals established in the Agreement for participation of minority, women, disabled or disadvantaged business enterprises. The Provider shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the City, and the form shall be signed and filed with the Department within five Business Days after the Provider as so advised. The Department of the City receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

9.12 Approvals by the City

9.12.1 Approval Not a Guarantee or Warranty. The City's review, approval or acceptance under this Agreement of plans and specifications and any other document, work, matter, or thing, shall not constitute a representation, warranty or guaranty by the City as to the substance,

accuracy, or quality of such document, matter, or thing. At all times, Provider, its officials, officers, employees, agents, contractors and subcontractors, must each use their own independent judgment as to the substance, accuracy and quality of all such documents, work, matter, and other things.

9.12.2 Approvals Under Applicable Law. No consent, approval, or agreement of the City under this Agreement shall be deemed a consent, approval or agreement of any City board, agency, department, or commission whose consent, approval, or agreement is or may be required under Applicable Law, including but not limited to the City of Philadelphia Department of Licenses and Inspections, the Fairmount Park Commission, the City of Philadelphia Historical Commission, and the City of Philadelphia Art Commission. The decisions of any City board, agency, department or commission required under Applicable Law regarding any matter arising under this Agreement shall be governed solely by Applicable Law.

9.13 Contributions and Other Mandatory Disclosures

Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Agreement, and any Additional Term, by Provider, any Subcontractor, or any party from which a contribution can be attributed to the Provider or Subcontractor, that would render the Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Agreement under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid Agreement contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Agreement voidable at the City's option, and, as to contributions made by or attributable to Provider, shall make the Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Provider allowed under the Agreement, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Agreement. The rights and remedies of the City as described in this Section, and as described elsewhere in this Agreement, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Agreement at law or in equity.

9.13.1 Duty of Continuing Disclosures. Provider shall, during the term of the Agreement, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Provider, or any Subcontractor or Subcontractor utilized by Provider in connection with this Agreement, has made, or any individual or entity has made if such contributions can be attributed to Provider, or such Subcontractor or Subcontractor pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any

political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

9.13.2 Form and Manner of Disclosures. Such disclosure shall be made on a form provided by the Department awarding the Agreement, and the form shall be signed and filed with such Department within five (5) business days of the contribution. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Provider or of a Subcontractor.

9.13.3 Failure of Subcontractor to Disclose. It shall not be a violation of this Section if Provider fails to disclose a contribution made by a Subcontractor because the Provider was unable to obtain such information from the Subcontractor, provided the Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(i) Entering into a written agreement with the Subcontractor for such Subcontractor's services, before the filing of the application for the Agreement, and before the Subcontractor communicated with a City department or office, official or employee on behalf of the Provider;

(ii) Including in such agreement a provision requiring the Subcontractor to provide the Provider in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Provider if the Subcontractor fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Subcontractor by or on behalf of the Provider as of the date of such termination;

(iii) Communicating regularly with the Subcontractor concerning the Subcontractor's obligations to provide timely information to permit the Provider to comply with the provisions of Chapter 17-1400; and

(iv) Invoking the termination provisions of the written agreement in a full and timely manner.

9.14. Participation by Other Local Government Agencies

Other local government agencies may be eligible to participate in this Agreement pursuant to the terms and conditions of this Agreement if such agencies are authorized, by law or their governing bodies, to execute such agreements, and if such authorization is allowed by the City, and if such purchases have no net adverse effect on the City, and result in no diminished services from the Operator to the City. The City will not be responsible for payment of any amounts owed by any other Local Government Agencies, and will have no liability for the acts or omissions of any other Local Government Agency.

9.15 The Americans with Disabilities Act

Provider understands and agrees that, pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. § 35.101 *et seq.,* no individual with a disability shall, on the basis of the disability be excluded from participation in the Agreement or from activities or services provided under the Agreement. As a condition of accepting and executing the Agreement, Provider shall comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§ 12101-12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable to: (i) the Provider; (iii) the benefits, services, activities, facilities and programs provided in connection with the Agreement; (iii) the City or the Commonwealth; and the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, (d) if any funds for payments or otherwise under the Agreement are provided by the federal government and its benefits, services, activities, facilities and programs the benefits. Without limiting the applicability of the preceding sentence, Provider shall comply with the "General Prohibition Against Discrimination," 28 C.F.R. Part 35,130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 Entire Agreement. This Agreement, when executed, together with the Exhibits and Schedules attached hereto or to be attached hereto, as provided for by this Agreement shall contain all the agreements, conditions, understandings, undertakings, representations, covenants, promises and warranties made between the Parties hereto with respect to the subject matter hereof and supersedes all prior negotiations and proposals (either written or oral).

10.2 Headings. Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

10.3 Amendments; Waiver. Except as provided in Section 4.2.7 for the modification of Schedules, this Agreement may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written amendment signed by the Parties or as elsewhere provided in this Agreement. Except to the extent that the Parties may have otherwise agreed in writing in an amendment, no waiver, whether express or implied, by either Party of any provision of the Agreement shall be deemed: (i) to be a waiver by that Party of any provision in the Agreement; or (ii) to be a waiver by that Party of any breach by the other Party of its obligations under the Agreement. Any forbearance by a Party in seeking a remedy for any noncompliance or breach

fully met. All Deliverables must be prepared in a form and content satisfactory to the City and delivered in a timely manner consistent with the requirements of this Agreement.

6.5.1 System Launch Date. Time is of the essence for the System Launch Date of Phase I, which date shall not be later than April 22, 2015.

6.6 Performance Incentives

The Provider may be entitled to compensation for meeting maintenance and performance objectives that exceed the base levels referenced in Section 6.5 of the Agreement. The Performance Incentives are attached in Exhibit 1, Schedule 19.

6.7 Performance Failures and Liquidated Damages

If Provider fails to comply with the System delivery requirements or the System maintenance and operating requirements set forth in Exhibit 1, Schedule 16, then Provider shall pay the Liquidated Damages as set forth therein.

6.7.1 Compliance Required. Notwithstanding the requirement for payment of Liquidated Damages, Provider shall not be excused for failures to comply with the maintenance and operating requirements set forth in Exhibit 1, Schedule 2. The City may require Provider to adopt and implement such modifications to its inspection, maintenance, repair or cleaning procedures as the City deems appropriate to ensure that the Equipment is maintained in a clean and safe condition.

6.8 Performance Excused

6.8.1 Uncontrollable Circumstances. The City, Provider and Manufacturer shall not be liable for any failure to perform or any damages due to Uncontrollable Circumstances. Uncontrollable Circumstances are an event or circumstance, or combination of events and circumstances, making the performance of an obligation impossible, more costly, or more time-consuming or that is outside the reasonable control of a party and not the result of a failure of such party to apply reasonable diligence. Subject to the foregoing, but not limiting its generality, each of the following is an Uncontrollable Circumstance: (i) naturally occurring events (excluding normal weather conditions for the location affected) such as underground movement, earthquakes, lightning, fire, tornadoes, hurricanes, floods, epidemics, and other acts of God; (ii) work stoppages, embargos, labor disputes, except labor disputes involving only employees, affiliates, or Subcontractors of the Party claiming the excuse of Uncontrollable Circumstance, ; (iii) failure of utility, internet or cellular service provided by a third party; (iv) public emergency; and (v) sabotage, acts of a declared public enemy or terrorist, extortion, war, blockage, insurrection,

riot, extraordinary acts of vandalism, or civil disturbance; (vi) material changes to law that make the services provided illegal or commercially unviable; (vii) governmental actions or restrictions.

6.8.2 Uncontrollable Circumstances Exclusions. Under no condition do any of the following constitute an Uncontrollable Circumstance: (i) changes in economic conditions, market conditions, interest rates, inflation rates, wage rates, commodity prices, currency values, or exchange rates; (ii) changes in financial condition; (iii) labor requirements or demands; (iv) changes in taxes or rates (except for City taxes); (v) failure to obtain any patent, license, or rights to use intellectual property; and (vi) failure of equipment, unless caused by an Uncontrollable Circumstance.

6.8.3 Weather-related System Shut Downs. Provider may also shut down the Stations and Bicycles for weather-related or other emergencies, in its reasonable discretion and with prior notice to the City. In its notice to the City, Provider shall state the expected duration of the shut-down and the factors that may cause the System to remain in a shut-down status.

6.9 Documentation

The Provider and its Subcontractors shall furnish the City, upon the City's request, with the documentation and information necessary for the City to determine the compliance with the standards for performance under the Agreement. The provisions of this Section are not intended to supersede or limit the provisions of the Agreement related to furnishing information or documents to the City including Exhibit 1, Schedule 14.

ARTICLE 7. INSURANCE, INDEMNIFICATION AND PERFORMANCE SECURITY

7.1 General Insurance Requirements

Unless otherwise approved by the City's Risk Management Division in writing, Provider shall procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider's performance of the Services and the delivery of Equipment and other Deliverables. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability and Umbrella Liability Insurance policies

and loss payee on the Property Insurance Policy. Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

7.1.1 Liability Not Limited by Insurance. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Agreement by Provider to the City, or to limit Provider's liability under this Agreement to the limits of the policies of insurance required to be maintained by Provider hereunder.

7.2 Workers' Compensation and Employers' Liability

Coverage must be in effect prior to the employment of any individuals by the Provider.

(i) Workers' Compensation: Statutory Limits
(ii) Employers' Liability: $100,000 Each Accident - Bodily Injury by Accident; $100,000 Each Employee - Bodily Injury by Disease; and $500,000 Policy Limit - Bodily Injury by Disease.
(iii) Other states insurance including Pennsylvania.

7.3 General Liability Insurance

(i) Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; $1,000,000 advertising injury; $2,000,000 general aggregate and $1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk warrants.
(ii) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).

7.4 Commercial Umbrella or Excess Insurance

Coverage must be in effect prior to commencing any installation activities. Aggregate limits for Automobile and General Liability may be satisfied through the umbrella coverage subject to policy requirements.

Provider shall maintain, with respect to its Services hereunder, Commercial Umbrella or Excess Insurance Policies for Bodily Injury and Property Damage Liability with a limit of $5,000,000 per occurrence and annual aggregate, over General Liability and Automobile Liability Limits.

7.5 Automobile Liability Insurance

(i) Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(ii) Coverage: Owned, non-owned, and hired vehicles.

7.6 "All Risk" Property Insurance

Coverage must be in effect prior to receipt of Equipment by Provider in Philadelphia.

(i) "All Risk" property insurance covering all improvements, betterments, equipment, trade fixtures, merchandise, business personal property and any other property in Provider's care, custody or control, in an amount equal to the agreed valuation replacement cost with no penalty for coinsurance.

(ii) Business interruption insurance covering loss of profits, rent and necessary continuing expenses for interruptions caused by any one occurrence covered by the insurance referred to in subsection (i) above, subject to a coverage limit of $1,000,000.

7.7 Professional Liability Insurance

(i) Limit of Liability: $500,000 with a deductible not to exceed $50,000

(ii) Coverage: Errors and omissions including liability assumed under Agreement

(iii) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under this Agreement shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least one (1) year after completion of the Services.

7.8 Evidence of Insurance Coverage. Certificates of insurance evidencing the required coverages must specifically reference the City Agreement number for which they are being submitted. The original certificates of insurance must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia
Office of the Director of Finance
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1579
(Fax No.: 215-683-1705).

A copy of the certificates of insurance shall be submitted to the Responsible Official at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City, but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City Agreement number and be submitted to the City's Risk Management Division at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Agreement at any time upon ten (10) days written notice to Provider.

7.9 Crime Insurance

When required by the City, Provider shall, at its sole cost and expense, obtain and maintain during the Initial Term and any Additional Term(s) of this Agreement, a fidelity bond in an amount equal to Dollars ($500,000, covering Provider's employees who have financial responsibilities related to the receipt and disbursement of funds under this Agreement. In lieu of a fidelity bond, Provider may obtain coverage for crime insurance with limits that are Dollars ($500,000). The fidelity bond or crime insurance, whichever is obtained by Provider, shall name the City and the Provider, as their interests appear, as joint beneficiaries. Evidence of the existence of the fidelity bond or crime insurance shall be submitted to the City prior to the commencement of Services in conformity with the requirements of Section 7.8 (Evidence of Insurance Coverage) above.

7.10 Indemnification

Provider shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all actual losses, costs (including, but not limited to, reasonable litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Provider's act or omission or negligence

or fault or the act or omission or negligence or fault of Provider's agents, Subcontractors, independent contractors, suppliers, employees or servants in connection with this Agreement, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay any Subcontractors and suppliers, any material breach of this Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret). In no event shall Provider's liability for consequential, indirect, or exemplary damages exceed fifty thousand dollars ($50,000).

7.11 Security for Performance

7.11.1 Manufacturer's Commitment. The Manufacturer's Commitment shall be provided on or prior to the Agreement Date and shall be maintained for 24 months after the System Launch Date in the form attached as Exhibit 3.

7.11.1.1 Reporting Requirements. Provider shall cause Manufacturer to deliver to the City, within one hundred twenty (120) days after the end of each fiscal year of Manufacturer, a copy of the annual financial statement of Manufacturer, which shall consist of an income statement and balance sheet which shall be prepared in accordance with generally accepted accounting principles consistently applied.

7.11.1.2 Material Adverse Change. If a material adverse change occurs in the financial condition of the Manufacturer, the Manufacturer (or Provider if known by it) shall promptly notify the City.

7.11.2 Payment Bonds. The Provider shall provide to the City a Payment Bond in the amount equal to the non-Equipment-related compensation to the Provider pursuant to this Agreement. The cost of such bonding will be in addition to the operational budget for the system. At the City's election and with appropriate advance notice to Provider, the City may make payments directly to suppliers and subcontractors of Provider. The term of the Payment Bond will be for a period of 12 months from the Commencement Date.

7.11.2.1 Form of Bonds and Surety Provider Requirements. The Payment Bond shall be:

(i) in the form approved by the City and

(ii) issued by a surety listed on the then-current annual "Surety List" promulgated by the Commonwealth Insurance Department.

ARTICLE 8. EVENTS OF DEFAULT AND REMEDIES

8.1 Provider Events of Default.

Each of the following shall be a Provider Event of Default under this Agreement, subject to the notice and cure provisions herein:

8.1.1 Security for Performance. The failure (i) of the Provider to obtain or maintain in full force and effect, or renew within thirty (30) days prior to expiration, any security instrument required by Section 7.11 as security for performance of this Agreement; or (ii) of the Manufacturer to comply with any of its material obligations under the Manufacturer's Commitment;

8.1.2 Performance Requirements. The repeated failure of the Provider to meet the Performance Requirements described in Exhibit 1, Schedule 2 (notwithstanding the payment by the Provider of Liquidated Damages or the performance of any other related obligation to be paid or performed in connection with any such failure), except as excused by Uncontrollable Circumstances or the City fault.

8.1.3 Failure to Achieve Commencement Date. The failure of the Provider to achieve the Commencement Date conditions set forth in Section 2.4 prior to or on the 60th day after the Agreement Date.

8.1.4 Abandonment. The abandonment or unexcused failure to operate all or a substantial portion of the System for five consecutive days in any Term Year;

8.1.5 Non-Compliance with General Terms and Conditions. Failure to comply in any material respect with the provisions of Article 9.

8.1.6 Intentional Misrepresentation. The intentional falseness or material inaccuracy of any warranty or representation of Provider contained in this Agreement or in any other document submitted to the City by Provider;

8.1.7 Chapter 17-1400. Any act, omission, or misrepresentation which renders the Provider ineligible for a City Agreement or renders the Agreement voidable under Chapter 17-1400 of the Code;

8.1.8 Misappropriation. Misappropriation by Provider of any funds provided under this Agreement or failure by Provider to notify the City upon discovery of any misappropriation;

8.1.9 Failure to Make Payments. The Provider fails, refuses or otherwise defaults in its duty to pay any undisputed amount required to be paid to Subcontractors or employees under this Agreement within 60 days following the due date for such payment;

8.1.10 Insolvency. The insolvency of the Provider or the Manufacturer as determined under the United States Bankruptcy Code;

8.1.11 Voluntary Bankruptcy. The filing by the Provider or the Manufacturer of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Provider or the Manufacturer to the filing of any bankruptcy or reorganization petition against the Provider or the Manufacturer under the Bankruptcy Code; or the filing by the Provider or the Manufacturer of a petition to reorganize the Provider or the Manufacturer pursuant to the Bankruptcy Code; in each case only if such bankruptcy, proceeding or other event, in the reasonable discretion of the City, renders Provider unable to continue to provide the Services in accordance with this Agreement; or

8.1.12 Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Provider or the Manufacturer or of a major part of the Provider's or Manufacturer's property, respectively, or the filing against the Provider or the Manufacturer of a petition to reorganize the Provider or the Manufacturer pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively; in each case only if such bankruptcy, proceeding or other event, in the reasonable discretion of the City, renders Provider unable to continue to provide the Services in accordance with this Agreement;

8.1.13 Criminal Behavior. A violation of law which results in a guilty plea, a plea of nolo contendere, or conviction for a criminal offense by Provider, its directors, or employees (i) directly or indirectly relating to this Agreement or the Services or Materials provided under this Agreement, whether or not such offense is ultimately adjudged to have occurred; or (ii) which adversely affects the performance of this Agreement;

8.1.14 Adverse Governmental Determinations. Debarment or suspension of Provider or any employee or Subcontractor of Provider under a federal, state or local law, rule or regulation.

8.2 City Events of Default

Each of the following shall be a City Event of Default under this Agreement, subject to the notice and cure provisions herein:

8.2.1 Performance Requirements. The repeated failure of the City, except as excused by Uncontrollable Circumstances or the Provider's fault, to meet the City's Performance Requirements as described in Exhibit 1, Schedule 2.

8.2.2 Failure to Achieve Commencement Date. The failure of the City to achieve the City Commencement Date conditions prior to or on the 60th day after the Agreement Date.

8.2.3 Non-Compliance with General Terms and Conditions. Failure to comply in any material respect with the provisions of Article 9.

8.2.4 Intentional Misrepresentation. The intentional falseness or inaccuracy of any warranty or representation of the City contained in this Agreement.

8.2.5 Misappropriation. Misappropriation by City of any funds due to Provider under this Agreement or failure by the City to notify the Provider upon discovery of any misappropriation.

8.2.6 Failure to Make Payments. The City fails, refuses or otherwise defaults in its duty to pay any undisputed amount required to be paid under this Agreement within 60 days following the due date for such payment.

8.3 Notice and Cure

8.3.1 City's Remedies For Provider Default. The City agrees that the City will not exercise any right or remedy because of any Provider Event of Default unless the City shall have first given written notice of the Provider Event of Default to Provider and Manufacturer, and Provider, within a period of ten (10) days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Provider Event of Default; or shall have failed to provide a plan reasonably acceptable to the City to correct the Provider Event of Default.

During the term of the Manufacturer's Commitment the Manufacturer may, at its sole option, provide assistance to Provider in correcting the Provider Event of Default within the ten (10) day cure period, or such additional cure period as the City may authorize.

No such notice from the City shall be required nor shall the City permit any period for cure if:

(i) Provider has temporarily or permanently ceased providing all material Services and Materials;

(ii) The Provider Event of Default creates an emergency which requires, as determined by the City in the City's reasonable discretion, immediate exercise of the City's rights or remedies.

Nothing contained in this Section shall limit the City's rights under this Article.

8.3.2 For City Default

Provider shall not exercise any right or remedy because of any City Event of Default unless the Provider shall have first given written notice of the City Event of Default to the City, within a period of ten (10) days thereafter, or such additional cure period as the Provider may authorize,

shall have failed to correct the City Event of Default; or shall have failed to provide a plan reasonably acceptable to the Provider to correct the City Event of Default.

8.4 Remedies

8.4.1 City Remedies for Provider Default In the event Provider has committed or permitted an Event of Default, has been notified thereof in accordance with Section 8.3.1 above, and failed to cure or provide a plan pursuant to 8.3.1, then the City may, but shall not be obligated to, with notice to Provider and without waiving or releasing Provider from any of its obligations under this Agreement:

(i) Require the Manufacturer to Perform this Agreement, in whole or in part, during the term of the Manufacturer's Commitment. Provider shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or Manufacturer) thereon from the date the City or its agent incurs such costs. The City shall not in any event be liable for inconvenience, expense or other damage incurred by Provider by reason of the Manufacturer's performance or paying such costs or expenses, and the obligations of Provider under this Agreement shall not be altered or affected in any manner by the City's exercise of its rights under this Section;

(ii) Following the term of the Manufacturer's Commitment, or if Manufacturer has failed to perform, perform (or cause a third party to perform) this Agreement, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the City. Provider, or if Manufacturer fails to perform, Manufacturer, shall be liable to the City for all sums paid by the City and reasonable expenses incurred by the City (or a third party)related to the Event of Default. The City shall not in any event be liable for inconvenience, expense or other damage incurred by Provider, or if Manufacturer has failed to perform, Manufacturer, by reason of the City's performance or paying such costs or expenses, and the obligations of Provider under this Agreement shall not be altered or affected in any manner by the City's exercise of its rights under this Section;

(iii) withhold payment of, or offset against, any funds payable to or for the benefit of Provider;

(iv) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Provider; or

(v) exercise any other right the City has or may have at law, in equity, or under this Agreement.

8.4.2 Termination or Suspension by City. In the event Provider has committed or permitted an Event of Default and the Provider and Manufacturer have been notified, and any applicable cure periods have expired, then the City may, but shall not be obligated to, without waiving or

releasing Provider from any of its obligations under this Agreement, terminate or suspend this Agreement in whole or in part. In the event of partial termination or suspension, Provider shall continue the performance of this Agreement to the extent not terminated or suspended. If this Agreement is terminated, the City shall issue a written termination notice to Provider and Manufacturer which shall set forth the effective date of the termination. During the term of the Manufacturer's Commitment a written termination notice shall serve as notice to the Manufacturer of its obligation to perform under the Manufacturer's Commitment, such performance to commence upon the effective date of the termination.

8.4.3 Specific Performance. The Services and Materials purchased from Provider are unique and not otherwise readily available. Accordingly, Provider acknowledges that, in addition to all other remedies to which the City is entitled, the City shall have the right, to the fullest extent permitted under Applicable Law, to enforce the terms of this Agreement without limitation, by a decree of specific performance or by injunction restraining a violation, or attempted or threatened violation, of any provision of this Agreement.

8.5 Provider's Remedies for City Default. In the event the City has committed or permitted an Event of Default and has been notified thereof in accordance with Section 8.3.2 above, and the cure period for any such Event of Default has expired, then the Provider may, but shall not be obligated to, without further notice to or demand on City and without waiving or releasing City from any of its obligations under this Agreement:

(i) City shall be liable to the Provider for reasonable sums paid by the Provider and reasonable expenses incurred by the Provider consistent with Purchase Orders issued by the City, including reasonable pre-paid or committed costs (for example, funds required to terminate a lease).

(ii) withhold services for, payment of, or offset against, any funds payable to or for the benefit of City;

(iii) increase Provider's fees under this Agreement consistent with Provider's reasonable costs related to the City Event of Default;

(iv) delay or modify Services or deadlines under this Agreement consistent with Provider's delay or inconvenience due to the City Event of Default, without recourse from the City;

(v) exercise any other right the Provider has or may have at law, in equity, or under this Agreement.

8.5.1 Termination or Suspension by Provider. In the event City has committed or permitted an Event of Default and the City has been notified, and any applicable cure periods have expired, then the Provider may, but shall not be obligated to, without waiving or releasing City from any of its obligations under this Agreement, terminate or suspend this Agreement in whole or in part. In the event of partial termination or suspension, City shall continue the performance of this

Agreement to the extent not terminated or suspended. If this Agreement is terminated, the Provider shall issue a written termination notice to City and Manufacturer which shall set forth the effective date of the termination.

8.6 Concurrent Pursuit of Remedies; No Waiver.

Either Party may exercise any or all of the remedies set forth in this Article each of which may be pursued separately or in conjunction with such other remedies as either Party may determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Agreement. The rights and remedies of the City as described in this Article and as described elsewhere in this Agreement shall not be exclusive and are in addition to any other rights or remedies available to the City under this Agreement at law or in equity.

8.7 Provider Responsibilities Upon Termination or Suspension

Upon the City's delivery of a termination notice or a suspension notice under any provision of this Agreement, Provider and its agents, employees and Subcontractors, shall, as set forth more fully in Schedule 20, (i) take immediate action in an orderly manner to discontinue Services and Materials, and demobilize work forces to minimize the incurrence of costs; and (ii) upon request by the City by notice to Provider, collect, assemble and transmit to the City all Materials in such state of completion as may exist as of the effective date of the termination or suspension. All such Materials shall be clearly labeled and indexed to the satisfaction of the City Manager and delivered to the City Manager by Provider on or before the date set forth in the termination notice for delivery of the Materials or, if no such date is set forth in the termination notice, then before the effective date of termination set forth in the termination notice. Provider waives and releases any and all right to any retaining or charging liens or similar right or remedy in favor of Provider.

8.7.1 Accrued Liabilities. The City's termination or suspension of this Agreement shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.

8.7.2 No Liability for Termination. There shall be no liability, cost or penalty to the City for termination or suspension of this Agreement.

8.8 Payment of Provider upon Termination or Suspension

Upon termination or suspension of this Agreement by the City for a Provider Event of Default, Provider shall be entitled to payment of such an amount, to be determined by the City and

subject to audit, as shall compensate it for the work satisfactorily performed prior to the termination date; provided, however, that:

(i) No allowance shall be included for termination expenses or for anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Services; and

(ii) The City shall deduct from any amount due and payable to Provider prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Services and Materials required to be performed by Provider under this Agreement, including the expense of engaging another provider for this purpose, and such other reasonable damages, costs, losses and expenses of the City as may be incurred or result from such termination for a Provider Event of Default; and

(iii) In the event of termination or suspension of this Agreement by the City for the City's convenience, Provider shall be paid such an amount as shall compensate Provider for the portion of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of termination. The City shall not pay Provider any amount for Provider's termination or suspension expenses or anticipated profits, unabsorbed or underabsorbed overhead or unperformed Services and Materials not satisfactorily delivered. In the event of termination of this Agreement for convenience, Provider shall be entitled to reimbursement for its continuing expenses related to long-term facility leases, vehicle financing, subcontractor commitments and similar arrangements made in good faith anticipation of the contract and services continuing to end of term.

ARTICLE 9. GENERAL TERMS AND CONDITIONS

9.1 Subcontracts.

Except as identified in this Agreement, Provider shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Agreement, in whole or in part, without on each occasion first obtaining the written consent of the City Manager.

9.1.1 Subcontractor Requirements. Provider shall submit to the City Manager copies of all proposed Subcontract(s) to be entered into by Provider, along with Provider's written request for the City's consent. All such Subcontracts must specify that:

(i) Work performed by Subcontractor shall be in conformity with the terms of this Agreement;

(ii) Nothing contained in such Subcontract shall be construed to impair the rights of the City under this Agreement;

(iii) The City's consent to or approval of any Subcontract shall not create any obligation of the City to any Subcontractor;

(iv) Nothing contained in such Subcontract, or under this Agreement, shall create any obligation of the City to Subcontractor;

(v) The City shall be expressly designated a third party beneficiary of the Subcontract.

9.1.2 Subcontractor Bound by Agreement. Subcontractor shall be bound by the applicable terms, covenants and conditions as Provider under this Agreement; including, without limitation, confidentiality, maintenance and preservation of records, and audit by government representatives, under this Agreement.

9.1.3 Assignment of Tax Refunds. Subcontractor shall, effective on the date of the Subcontract, presently, fully and unconditionally assign, transfer and set over to the City all of Subcontractor's right, title and interest in and to any sales and use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or this Agreement, and Subcontractor shall covenant and agree that, (i) other than as directed by the City, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (ii) the City, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by this assignment.

9.1.4 No Subcontractor Indebtedness. Subcontractor shall not be indebted to the City (to satisfy this requirement, Provider shall include the following in all Subcontracts that are entered into for work to be performed pursuant to this Agreement).

"Subcontractor hereby certifies and represents that Subcontractor and Subcontractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City and will not at any time during the term of the Agreement, including any extensions or renewals thereof, be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to Subcontractor for services rendered in connection with the Agreement and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to Subcontractor and/or the termination of Subcontractor for default (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination)."

9.1.5 Exclusionary Organizations. Subcontractors shall comply with 9.4.1. Provider shall include Section 9.4.1 with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Agreement.

9.1.6 Business Interests Requirements. Subcontractors shall comply with Sections 9.6 and 9.7. Provider shall include Sections 9.6 and 9.7 in all Subcontracts that are entered into for work to be performed pursuant to this Agreement.

9.1.7 Provider Responsibility for Work. No permitted Subcontract shall relieve Provider of any obligation under this Agreement. Provider shall be as fully responsible for the acts and omissions of its Subcontractors and Persons either directly or indirectly employed or retained by them as it is for the acts and omissions of Provider and Persons directly or indirectly employed or retained by Provider.

9.1.8 Subcontracts Void. Any purported Subcontract made in violation of this Section or of any other Section in this Agreement shall be null and void.

9.1.9 Subcontracts and Termination of Provider. In the event that the City has exercised its right to terminate this Agreement, under the early termination or for cause, all as set forth in Article 8, the City shall have the right, at its election, to take over and operate the System, either directly or through third parties. Provider shall ensure that all its Subcontractors agree, at City's option, to either (i) authorize the transfer to the City of the supply and/or license Agreement that such Subcontractor has with Provider for the purpose of the Program or (ii) negotiate in good faith a direct supply and/or license Agreement with the City for the provision of the goods and services such Subcontractor previously provided to the City through Provider. Provider shall further ensure (in its Agreement with B-cycle that if the City chooses option (ii) immediately preceding, B-cycle will offer the same terms on license rights and support that the City has under this Agreement.

9.1.10 Non-Suspension; Debarment.

Provider and all of the individuals acting on Provider's behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or the federal government, or any department, agency or political subdivision of any of the foregoing. If Provider cannot so warrant, then Provider shall submit to the Responsible Official a full, complete written explanation as to why Provider cannot so warrant. Provider shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of Pennsylvania Office of Inspector General for investigation of Provider's compliance with the terms of this or any other Agreement between Provider and the City which results in the suspension or debarment of Provider. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Provider

shall not be responsible for costs of investigations which do not result in Provider's suspension or debarment.

9.1.11 Subcontractor Payments. All payments to Subcontractors shall be made in accordance with the subcontracts or as otherwise provided for in this Agreement. Upon the City's reasonable request, Provider will make available for City's inspection payment receipts from the Subcontractors confirming that Subcontractor payments are being kept current. The City may make reasonable inquiries to all Subcontractors regarding the timing of payments by Provider to the Subcontractors. Failure to make timely payments to Subcontractors may result in the City withholding payments to the Provider until unpaid and overdue invoices have been paid.

9.2 Assignment

9.2.1 Assignment by Provider. Provider shall not assign this Agreement, or any part of this Agreement, or delegate performance of this Agreement, without obtaining the prior written consent of the City, provided, however, that the City's consent shall not be required in the event of any transfer by Provider to (i) any entity controlling, controlled by or under common control of Provider, (ii) any successor to Provider by merger, asset sale, consolidation or reorganization, provided that at least one Key Personnel remains in control of Provider ("Permitted Transfer"). Provider shall send the City written notice of any Permitted Transfer. Such notice shall be for informational purposes only, and shall contain information regarding the identity of the successor and the effective date of the transaction. In assignments where written consent is required, the decision whether to consent to an assignment, the timing of consent (if any), and conditions to such consent, if any, shall each be at the City's sole discretion. Any consent to the assignment of any monies to be paid under this Agreement shall not relieve Provider from the faithful performance of any of its obligations under this Agreement or change any of the terms and conditions of this Agreement. Any purported assignment in violation of this provision shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Agreement. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Agreement. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section (Assignment by Provider), an assignment includes the acquisition of Provider, or a controlling interest therein, through a corporate or other merger, and the appointment of a receiver or bankruptcy trustee, and the transfer of this Agreement or Provider in any bankruptcy or other insolvency proceeding.

9.2.2 Applicability in Case of Bankruptcy or Insolvency. A receiver or trustee of or for Provider in any federal or state bankruptcy, insolvency or other proceedings concerning Provider shall comply with the requirements set forth in Section 9.2.1 above.

9.2.3 Assignment by the City. The City may, assign its rights and obligations under this

Agreement, without the consent of the Provider, to another Governmental Body if such assignee assumes, and is legally and financially capable of discharging, the duties and obligations of the City hereunder.

9.3 No Waiver

The failure of Provider or the City to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of Provider or the City.

9.4 Nondiscrimination

This Agreement is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Agreement, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. Nor shall Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section the City may, in addition to any other rights or remedies available under this Agreement, at law or in equity, suspend or terminate this Agreement.

9.4.1 Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations. Provider agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

9.4.2 Limited English Proficiency. Provider understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to Services provided under this Agreement on the basis of that limitation. As a condition of accepting and executing

this Agreement, Provider shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (i) to Provider, (ii) to the benefits, services, activities and programs provided in connection with this Agreement, (iii) to the City, or the Commonwealth of Pennsylvania, and (iv) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Agreement are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through agreements with outside contractors.

9.4.3 Equal Benefits. (a) Unless Provider is a government agency, this is a "Service Agreement" as that term is defined in Section 17-1901(4) of the Code. If the Service Agreement is in an amount in excess of $250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits the Provider extends to spouses of its employees to life partners of such employees. Provider certifies that (i) it is in compliance with the requirements of Chapter 17-1900, (ii) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900, and (iii) such employment benefits are currently, or will be made available within the time required by Section 17-1902(2), or that the Provider does not provide employment benefits to the spouses of married employees.

9.5 Salaries and Wages

9.5.1 Philadelphia 21st Century Minimum Wage Standard. This Agreement is subject to Chapter 17-1300 of The Philadelphia Code, "Philadelphia 21st Century Minimum Wage and Benefits Standard," and all regulations and procedures adopted thereunder and in effect on the Effective Date of this Agreement. Provider will comply with the requirements of Chapter 17-1300 of the Philadelphia Code as they exist on the date when the Provider entered into this Agreement or as they exist on the date when any amendment is executed to this Agreement. The Provider will promptly provide to the City documents and information verifying its compliance with the requirements of Chapter 17-1300. The Provider will notify its affected employees with regard to the wages that are required to be paid pursuant to Chapter 17-1300. The Office of Labor Standards may grant a partial or total waiver of Section 17-1300 based on the specific stipulated reasons elaborated in Section 17-1304 of the Philadelphia Code.

9.5.2 Timely Payments. Provider and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. The Parties acknowledge that this clause is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

9.6 Business Interests in Northern Ireland, Sudan and Iran

In accordance with Section 17-104 of the Philadelphia Code, Provider by execution of this Agreement certifies and represents that:

9.6.1 Northern Ireland Certification. Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) does not have, and will not have at any time during the Term (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland, unless Provider has implemented the fair employment principles embodied in the MacBride Principles, and no product to be provided by Provider will originate in Northern Ireland, unless the Provider has implemented the fair employment principles embodied in the MacBride Principles; and

9.6.2 Sudan and Iran Certification. Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) does not, and will not at any time during the Term (including any extension thereof), do any business in Iran or Sudan, and no product to be provided under this Agreement were, are or will be manufactured by an entity doing business in Iran or Sudan, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies.

9.6.3 Subcontractor Interests. In the performance of this Agreement, Provider agrees that it will not utilize any suppliers or Subcontractors at any tier: (i) Who have or whose parent(s, subsidiary(ies), exclusive distributor(s) or company affiliate(s) have any investments, licenses, franchises, management agreements or operations in Northern Ireland, or who will provide products originating in Northern Ireland unless said supplier or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles; or (ii) Who do or whose parent(s), subsidiary(ies), exclusive distributor(s) or company affiliate(s) do business in Iran or Sudan during the Term, or who will provide products manufactured by an entity doing business in Iran or Sudan, as applicable, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies.

9.6.4 Cooperation with Director of Finance. Provider agrees to cooperate with the City's Director of Finance in any manner, which such Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Philadelphia Code. Provider expressly understands and agrees that any false certification or representation in connection with

this section and/or any failure to comply with the provisions of this section shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise Applicable Law (including, but not limited to, Section 17-104 of the Philadelphia Code or equity). In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. S. C. A. § 4904.

9.7 Business, Corporate, and Slavery Era Insurance Disclosure

9.7.1 Affidavit. In accordance with Section 17-104 of the Philadelphia Code, Provider, after execution of the Agreement agrees to complete an affidavit certifying and representing that Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of Provider or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

9.7.2 False Certification. Provider expressly understands and agrees that any false certification or representation in connection with this paragraph and/or any failure to comply with the provisions of this paragraph shall constitute a substantial breach of the Agreement entitling the City to all rights and remedies provided in the Agreement and otherwise available in law (including, but not limited to, Section 17-104 of the Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A § 4904.

9.8 Provider Integrity Provisions

9.8.1 Provider Integrity Required. Provider shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of Applicable Laws or requirements that govern contracting with the City.

9.8.2 No City Employee or Officer Benefit. Provider shall not, in connection with this Agreement or any other contract with the City, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of City.

9.8.3 No Gratuity. Provider shall not, in connection with this Agreement or any other contract

with the City, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of City.

9.8.4 Inspector General Inquiries. Provider, upon the inquiry or request of the Inspector General of the

City or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form necessary for a determination by the Inspector General as to the contractor's integrity or responsibility, as those terms are defined by City's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractors business or financial records, documents or files of any type or form, which refer to or concern this Agreement. Such information shall be retained by the Provider for a period of five (5) years beyond the termination of the Agreement unless otherwise provided by law.

9.8.5 Violation of Integrity Provisions. For violation of any of the above provisions, the City may terminate this and any other Agreement with the Provider, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, and claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and the City may debar and suspend the Contractor from doing business with the City. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the City may have under the law, statute, regulation, or otherwise.

9.9 Audits, Inspection Rights and Records

9.9.1 General. Provider shall certify that all materials, equipment and labor charged to the City are accounted for and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement.

9.9.2 Retention of Records. The Provider shall retain, and shall provide the City and its representatives access, to all records, books of account, correspondence, instructions, shop drawings, receipts, vouchers, memoranda, and similar data and documentation pertaining to the Agreement for a period of five (5) years following final payment, or earlier termination of the Agreement, of for such longer period as may be required by law; however, if any litigation, claim or audit is commenced prior to the expiration of said five(5)-year period, then records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the record shall be retained for such longer period.

9.9.3 Audits. From time to time during the performance of the work under the Agreement, and for a period of five (5) years after the completion of the wok under the Agreement, the City may audit any and all aspects of the Provider's performance under the Agreement, including but not limited to its billing and invoices. Audits may be conducted by representatives, agents or contractors of the City, including, without limitation, the City Controller. If requested by the City, the Provider shall submit all vouchers, or invoices presented for payment pursuant to this Agreement, all cancelled checks, work papers, books, records and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of

expenditures or fees incurred pursuant to this Agreement. All books, invoices, vouchers, records, reports, cancelled checks and other materials related to Provider's obligations under this Agreement shall be subject to periodic review or audit by the City.

9.9.4 Availability of Records. The Provider shall make available within the City at reasonable times during the performance of work hereunder and for period set forth above in this paragraph, all records pertaining to the Agreement for the purpose of inspection, audit or reproduction by any authorized representative of the City (including any agent or contractor and the City Controller), the Commonwealth Auditor General, and any other federal or state auditors, as may be applicable, at no additional cost to the City.

9.9.5 Confidential Records. Provider may, by a written statement signed by a representative of the Provider, assert that a record or document provided by Provider pursuant to this Agreement contains a trade secret or confidential proprietary information. If Provider provides such a written statement, the City will endeavor to maintain the record as confidential to the extent permitted by Applicable Law.

9.10 Right-To-Know

The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Agreement.

9.11 Notices

All notices from either party to the other shall be effective only if in writing and signed by the party giving notice and given by being delivered personally or sent electronically or by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

If to Provider:

Bicycle Transit Systems, Inc.
Attn: Alison M. Cohen
117 West Allens Lane
Philadelphia, PA 19119

With a copy (which shall not constitute notice) to:

Hangley Aronchick Segal Pudlin & Schiller
One Logan Square, 27th Floor
Philadelphia, PA 19103
Attn: Michele S. Fenkel, Esquire

If to City:

City of Philadelphia
Mayor's Office of Transportation and Utilities
Municipal Services Building 14th Floor
Philadelphia, PA 1910

And

City of Philadelphia
Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
Attention: City Solicitor

9.11 Economic Opportunity Plan

9.11.1 EOP Required. In accordance with the Philadelphia Code Section 17-1600 et seq., as it exists on the Effective Date, the City has established a requirement for Economic Opportunity Plan(s) ("EOP") for this Agreement. The EOP attached hereto as Exhibit 5 (Economic Opportunity Plan) constitutes the entire EOP approved by the Office of Economic Opportunity for this Agreement. Provider agrees to comply with and abide by the EOP attached to this Agreement as Exhibit 5 (Economic Opportunity Plan).

9.11.2 EOP Disclosure Requirements. In accordance with Section 17-1402(f) of the Philadelphia Code, Provider shall during the Term of the Agreement, disclose the name and title of each City officer or employee who directly or indirectly advised the Provider, any officer, director or management employee of the Provider, or any person representing the Provider that a particular Person could be used by the Provider to satisfy any goals established in the Agreement for participation of minority, women, disabled or disadvantaged business enterprises. The Provider shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the City, and the form shall be signed and filed with the Department within five Business Days after the Provider as so advised. The Department of the City receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

9.12 Approvals by the City

9.12.1 Approval Not a Guarantee or Warranty. The City's review, approval or acceptance under this Agreement of plans and specifications and any other document, work, matter, or thing, shall not constitute a representation, warranty or guaranty by the City as to the substance,

accuracy, or quality of such document, matter, or thing. At all times, Provider, its officials, officers, employees, agents, contractors and subcontractors, must each use their own independent judgment as to the substance, accuracy and quality of all such documents, work, matter, and other things.

9.12.2 Approvals Under Applicable Law. No consent, approval, or agreement of the City under this Agreement shall be deemed a consent, approval or agreement of any City board, agency, department, or commission whose consent, approval, or agreement is or may be required under Applicable Law, including but not limited to the City of Philadelphia Department of Licenses and Inspections, the Fairmount Park Commission, the City of Philadelphia Historical Commission, and the City of Philadelphia Art Commission. The decisions of any City board, agency, department or commission required under Applicable Law regarding any matter arising under this Agreement shall be governed solely by Applicable Law.

9.13 Contributions and Other Mandatory Disclosures

Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Agreement, and any Additional Term, by Provider, any Subcontractor, or any party from which a contribution can be attributed to the Provider or Subcontractor, that would render the Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Agreement under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid Agreement contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Agreement voidable at the City's option, and, as to contributions made by or attributable to Provider, shall make the Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Provider allowed under the Agreement, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Agreement. The rights and remedies of the City as described in this Section, and as described elsewhere in this Agreement, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Agreement at law or in equity.

9.13.1 Duty of Continuing Disclosures. Provider shall, during the term of the Agreement, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Provider, or any Subcontractor or Subcontractor utilized by Provider in connection with this Agreement, has made, or any individual or entity has made if such contributions can be attributed to Provider, or such Subcontractor or Subcontractor pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any

political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

9.13.2 Form and Manner of Disclosures. Such disclosure shall be made on a form provided by the Department awarding the Agreement, and the form shall be signed and filed with such Department within five (5) business days of the contribution. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Provider or of a Subcontractor.

9.13.3 Failure of Subcontractor to Disclose. It shall not be a violation of this Section if Provider fails to disclose a contribution made by a Subcontractor because the Provider was unable to obtain such information from the Subcontractor, provided the Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(i) Entering into a written agreement with the Subcontractor for such Subcontractor's services, before the filing of the application for the Agreement, and before the Subcontractor communicated with a City department or office, official or employee on behalf of the Provider;

(ii) Including in such agreement a provision requiring the Subcontractor to provide the Provider in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Provider if the Subcontractor fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Subcontractor by or on behalf of the Provider as of the date of such termination;

(iii) Communicating regularly with the Subcontractor concerning the Subcontractor's obligations to provide timely information to permit the Provider to comply with the provisions of Chapter 17-1400; and

(iv) Invoking the termination provisions of the written agreement in a full and timely manner.

9.14. Participation by Other Local Government Agencies

Other local government agencies may be eligible to participate in this Agreement pursuant to the terms and conditions of this Agreement if such agencies are authorized, by law or their governing bodies, to execute such agreements, and if such authorization is allowed by the City, and if such purchases have no net adverse effect on the City, and result in no diminished services from the Operator to the City. The City will not be responsible for payment of any amounts owed by any other Local Government Agencies, and will have no liability for the acts or omissions of any other Local Government Agency.

9.15 The Americans with Disabilities Act

Provider understands and agrees that, pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. § 35.101 *et seq.,* no individual with a disability shall, on the basis of the disability be excluded from participation in the Agreement or from activities or services provided under the Agreement. As a condition of accepting and executing the Agreement, Provider shall comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§ 12101-12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable to: (i) the Provider; (iii) the benefits, services, activities, facilities and programs provided in connection with the Agreement; (iii) the City or the Commonwealth; and the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, (d) if any funds for payments or otherwise under the Agreement are provided by the federal government and its benefits, services, activities, facilities and programs the benefits. Without limiting the applicability of the preceding sentence, Provider shall comply with the "General Prohibition Against Discrimination," 28 C.F.R. Part 35,130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 Entire Agreement. This Agreement, when executed, together with the Exhibits and Schedules attached hereto or to be attached hereto, as provided for by this Agreement shall contain all the agreements, conditions, understandings, undertakings, representations, covenants, promises and warranties made between the Parties hereto with respect to the subject matter hereof and supersedes all prior negotiations and proposals (either written or oral).

10.2 Headings. Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

10.3 Amendments; Waiver. Except as provided in Section 4.2.7 for the modification of Schedules, this Agreement may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written amendment signed by the Parties or as elsewhere provided in this Agreement. Except to the extent that the Parties may have otherwise agreed in writing in an amendment, no waiver, whether express or implied, by either Party of any provision of the Agreement shall be deemed: (i) to be a waiver by that Party of any provision in the Agreement; or (ii) to be a waiver by that Party of any breach by the other Party of its obligations under the Agreement. Any forbearance by a Party in seeking a remedy for any noncompliance or breach

by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

10.4 Further documents. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

10.5 Order of Precedence. If any conflicts or discrepancies should arise in the terms and conditions of this Agreement or the interpretation thereof and the attached Schedules and Exhibits, the terms of this Agreement shall control.

10.6 Governing Law and Venue. This Agreement shall be deemed to have been made in Philadelphia, Pennsylvania. The Agreement and all disputes arising under the Agreement shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth without regard to the choice of law doctrine theory. Any suit brought to enforce any of the rights and obligations under this Agreement shall be brought in the state or federal court situated in Philadelphia, Pennsylvania.

10.7 Severability. In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable.

10.8 Waiver of Jury Trial. The Parties hereby mutually waive any rights that either may have to request a jury trial in any proceeding at law or in equity in any court of competent jurisdiction.

10.9 Third Party Beneficiaries. Nothing in the Agreement, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of the Agreement. The Agreement shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of the Agreement.

[Signature Pages, Exhibits and Schedules follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:

Shelley R. Smith, City Solicitor

By: _____
Chief Deputy City Solicitor

CITY OF PHILADELPHIA, acting through its Procurement Department

By: _____
Hugh Ortman

Commissioner

Bicycle Transit Systems, Inc.

By: _____

President + CEO

ATTESTED: _____
CHRISTOPHER D. CASSARD
Corp. Secretary

		DATE 8/28/2014

TO THE LAW DEPARTMENT: The attached bid and award described below is referred to you for certification as to form, and where annual surety bond is on file, to have Contractor post satisfactory bond.

CONTRACTOR Bicycle Transit Systems, Inc.	FINANCE CONTR. NO. 15 20012	LAW DEPT. NO. 15 20012
	AMT. OF CONTRACT $3,000,000.00	ANN. SURETY BOND
DESCRIPTION Bike Share Program	PERIOD COVERED 7/1/2014 - 6/30/2018	

ENDORSEMENT

OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION Examined: Pat Preston PP 8-28-14 *(For the Director of Finance)* *(Date)*	OFFICE OF THE CITY CONTROLLER Examined: *(For the City Controller)* *(Date)*

This contract approved as to availability of funds under the budget and appropriations pursuant to section 8-200 (2) (d) of the Home Rule Charter.

Patricia L Preston 8-28-14 *(For the Director of Finance)* *(Date)*	*(For the City Controller)* *(Date)*

DOCUMENT NO.	ACCOUNT CODE					DEPARTMENT OR AGENCY	AMOUNT CHARGEABLE TO ACCOUNT
	FUND	DEPT	ELEMENT	SUB ELEMENT	CLASS		
MDXX15000548 01	210	10	65	01	0639P	MANAGING DIRECTOR	$2,994,000.00
						TOTAL	$2,994,000.00

Partial Certification.

71-361

Exhibits for Agreement #1520012

EXHIBIT 1

SCOPE OF SERVICES AND SCHEDULES

EXHIBIT 1: Scope of Services and Schedules 1

SCHEDULE 1: Components of the Equipment that Comprise the System 4

SCHEDULE 2: Performance Requirements and Schedule 5

SCHEDULE 3: Technical Specifications 11

SCHEDULE 4: Software Included in the System, Performance Specifications, Rights.. 14

SCHEDULE 5: Software and Intellectual Property Escrow 17

SCHEDULE 6: Warranties 19

SCHEDULE 7: Station Planning 21

SCHEDULE 8: Procedures for Installation 29

SCHEDULE 9: Performance Testing Prior to Operation 30

SCHEDULE 10: System Expansion Protocols 32

SCHEDULE 11: Website Performance Specifications 33

SCHEDULE 12: Marketing Scope of Work 35

SCHEDULE 13: Standard Operating Procedures 39

SCHEDULE 14: Reporting Requirements and Asset Management 44

SCHEDULE 15: Customer Service: Call Center and Policies 48

SCHEDULE 16: Liquidated Damages 49

SCHEDULE 17: Key Personnel 51

SCHEDULE 18: Rates 52

SCHEDULE 19: Performance Incentives 53

SCHEDULE 20: Protocol for Provider to Relinquish Operations of the System 56

APPENDIX A: Sample Inspection Checklists 59

EXHIBIT 1: Scope of Services and Schedules

The City of Philadelphia and the Provider are partnering to develop, install, and operate a new form of public transportation: an exceptional Bicycle sharing System that will increase mobility and accessibility for residents, employees, students, and visitors alike.

The following summarizes, for reference purposes only, the Services that will be delivered by the Provider pursuant to this goal and under this Agreement. The following does not control interpretation of the agreement. All schedules to this Exhibit are fully incorporated by reference.

I. **The System**. The Provider will deliver to the City the Bicycle sharing System, which shall include:
   A. All components of the System listed in Schedule 1.
   B. All the technical and functional specifications for each item of Equipment listed in Schedule 3.
   C. All the Software and associated Software performance specifications and Software rights listed in Schedule 4.
   D. The source code Escrow Agreement, under which the Software Provider has placed the source code for the Software in escrow with a trustee, pursuant to Section 4.10 of the Agreement, as in Schedule 5.
   E. The warranties for the System as a whole and for each element of Equipment, as included in Schedule 6.

II. **Start-Up Services.** Prior to provision and installation of the System, the Provider will perform start-up Services, including the following:

   A. The Provider will develop and make operational, on a timeline pursuant to Schedule 2, a Website, the performance specifications for which are described in Schedule 11.

   B. The Provider will perform pre-launch and ongoing marketing services to promote the bicycle sharing Program as described in Schedule 12.

III. **Development and Installation of the System.** The Provider will plan and install the System. To do so, the Provider will:
   A. Follow procedures for Station planning, siting, moving, and resizing, as specified in Schedule 7.
   B. Follow procedures for Station installation as set forth in Schedule 8.

   C. Follow procedures for performance testing of the each element of the System and the System as a whole prior to installation in a manner set

forth in Schedule 9.

D. Provider will make the System at these Stations available for use by the public as agreed with the City, pursuant to the Schedule in Exhibit 2. Ownership and risk of loss of the Equipment will pass to the City upon acceptance.

E. Following initial System Launch, should the City wish to expand the System, the Provider will follow expansion procedures established in Schedule 10 along with planning procedures for expansion established in Schedule 7, unless otherwise agreed in writing by the Parties.

IV. **Post-Launch Operations, Support and Maintenance.** The date when Equipment and Services are first made available to the Public for any phase of the Program is known as the System Launch Date. After the System Launch Date, the Provider will operate, maintain, and support the System and program by delivering the following Services:

A. The Provider will operate the System at all Sites at which it has been accepted for the duration of this Agreement. All features of the System, which are described in the Agreement and in the Schedules, will be fully operational, and the warranties described in Schedule 6 shall apply.

B. The Provider will operate and maintain the System and Equipment in accordance with the Standard Operating Procedures described in Schedule 13. According to these procedures, the Provider will deliver a range of services including inspection, cleaning, maintenance, rebalancing, emergency and weather response, marketing, and customer service.

C. The Provider will offer all System users and the public at-large with customer service according to Schedule 15. The Provider will staff and make fully operational a call-center for the duration of the Agreement.

D. So that the City may monitor the performance and management of the System and its assets, the Provider will report a variety of information to the City in accordance with Schedule 14. This will include performance metrics, membership, ridership, impacts, operations, incidents, finances, and other information requested by the City.

V. **Standards of Performance, Liquidated Damages, and Incentives.** Throughout the Term of this Agreement, the City will monitor the Provider's performance and award financial incentives or assess Liquidated Damages

accordingly.

A. Schedule 2 establishes Performance Requirements.

B. Schedule 16 establishes a scheme by which Liquidated Damages may be assessed.

C. Schedule 19 establishes a Performance Incentive structure.

VI. **Other.** Important aspects of System management are additionally established in the following Schedules:

A. Schedule 17 includes a list of Key Personnel that the Provider has committed for the performance of this Agreement.

B. Schedule 18 designates initial rates and customer fees associated with System usage.

C. Schedule 20 establishes procedures for the transition of the System and all associated management and operations to a subsequent operator upon the termination of the Agreement at the end of the Term or due to Provider Event of Default.

SCHEDULE 1: Components of the Equipment that Comprise the System

Bicycle

- B-cycle Bicycle

B-cycle Station

- Kiosk
- Dock
- Base Plate
- Information Panel(s)
- Solar Assembly (as applicable)
- RFID and Fare Media Reader

Additional Equipment

- Fare Media
- Bicycle Tracking Technology (as applicable)
- B-cycle Proprietary Tools
- B-cycle Proprietary Replacement Parts

SCHEDULE 2: Performance Requirements and Schedule

Performance Requirements

Repeated failure to meet the following performance requirements is material to the performance of the Agreement.

The performance requirements in this schedule will remain in place unless Provider or City make a specific request for amendment and provide information supporting this change.

For the performance requirements identified below with *, the first six months of operations will be used to calibrate required service levels. After this period, the City and Provider will examine how existing performance requirements affect the customer experience, resources, and other considerations. The City and Provider will then determine required performance levels for the remainder of the Agreement, and develop a schedule for annual review of selected performance requirements.

#	REQ.	DESCRIPTION	LEVEL	UNIT	SOURCE
1	**Stations Full or Empty***	Percent of time that Stations are either full or empty out of total Station operation time between 6am and midnight should not be greater than 6.5%.	≤ 6.5%	% of full/empty time out of Station operation hours	Provider database
2	**Critical Stations- Full or Empty***	The City, with input from Provider, shall designate Stations or groups of Stations that are crucial to the bike transit network (e.g., those near transit hubs). The maximum instances per month that all operational docks in each critical Station or Station group should be either full or empty for longer than 20 minutes between the hours of 6AM and midnight shall be 15.	≤15	Instances that critical Stations or critical Station groups are empty/full for more than 20 minutes per month	Provider database
3	**Bikes in Good Repair**	Each month, Provider and City conduct joint field checks at a minimum of 3	≥90%	Bicycles checked during	Joint monthly field-checks

		randomly selected Stations and at least 30 Bicycles. 90% of Bicycles inspected must meet or exceed expectations. Criteria could include air in tires, brake functioning, light functioning, fastener tightness, gear functioning, seat range of adjustment, and cleanliness. A sample checklist is included in Appendix A for reference purposes.		monthly inspections that meet or exceed expectations	
4	**Station Cleanliness**	City and Provider shall conduct joint field checks on at least 10% of existing System Stations. Checks shall be conducted randomly, half of which shall be Stations that have been cleaned within the last 36 hours. A sample checklist is attached in Appendix A for reference purposes.	≥90%	Stations cleaned within 36 hours that meet or exceed expectations	Joint monthly field-checks
5	**Instances of Website Downtime**	Subject to the Digital Platform Service Agreement, excluding planned maintenance, or Uncontrollable Circumstances, critical website functions should not be down for more than 15 minutes between 6AM and midnight more than three times per month. Critical web functions include access to: system map and real-time dock/bike availability, transaction processing, subscriber account information, membership terms and pricing, and customer service contact information.	≤3	Instances the website lacks critical functionality for 15 minutes or more per month	Provider
6	**Kiosk**	Subject to Digital Platform Service Agreement, and	≤6	Hours a single Kiosk is not	Provider

	Downtime	excluding City-requested planned or emergency shutdowns or Uncontrollable Circumstances, Kiosks must be fully functional. Functionality includes all communication and transaction systems. No single Kiosk should be down for more than 6 hours per month. Time excludes major upgrades provided that City and customers have been given advance notice (including via signs on affected Stations) of at least one week.		functional in a month	
7	**Use of Stations Integral to Accessibility Goals**	The first year of operations, the Provider shall establish a baseline ratio of the trips made to and from select stations in low-income residential census tracts *compared to* trips made to and from select stations in other residential census tracts. At the end of the first year, the Provider and City shall establish future goals for this ratio, which shall be revisited annually and may be tied to management efficiency incentives. Stations included in this metric shall be selected by the City.	TBD	TBD	Provider database
8	**Ridership Demographics Integral to Accessibility Goals**	The first year of operations, the Provider shall establish a baseline ratio of the percentage of system annual and monthly members who fit a definition of low-income *compared to* the average percentage of low-income residents of the census tracts that host bike sharing stations.	TBD	TBD	Provider database

		At the end of the first year, the Provider and City shall establish future goals for this ratio, which shall be revisited annually and may be tied to management efficiency incentives. The definition of low-income shall be provided by the City.			
9	**% Stations Inspected**	Stations shall be inspected as per Standard Operating Procedures and litter shall be removed from Stations at least twice per week.	≥95%	Percentage of Stations inspected twice in a week	Provider databases
10	**% Bicycles Maintained**	Provider shall conduct Bicycle Maintenance on every bicycle at least once every calendar month in accordance with B-cycle's bicycle maintenance checklist.	95%	Bicycles undergoing Maintenance per calendar month	Provider database
11	**Notification Response**	Station cleaning and maintenance must take place within 48 hours of discovery or notification by the City.	TBD	Percentage of notifications addressed within 48 hours in a month	Dated letters or electronic communication s that include Provider photo documentation of Station condition before and after Provider activity.
12	**Calls Answered Within 30 Seconds***	Customer calls shall be answered by a customer service representative within 30 seconds between 7AM and 10PM.	≥90%	Percent of customer calls received per month	Provider customer service records.
13	**Percentage of Email Answered within 24**	Customer and client e-mails to designated e-mail addresses shall be answered within 24 hours.	≥95%	Percentage of e-mails received per month	Provider customer service and client-relations

	hours				records
14	**Percentage of First Call Issues Resolved***	The percentage of issues resolved during the first call made regarding an issue shall be at least 70%	≥70%	Percentage of all unique issues identified through calls that month	Provider customer service and client-relations records
15	**Memberships Mailed within 72 hours**	Membership packets shall be placed in the mail within 72 hours during the business week, which includes 9AM Monday to 5PM Friday, excluding holidays.	≥95%	Percentage of mailings out of memberships purchased per month	Provider customer service and client-relations records
16	**Annual Bicycle Refurbishment**	Annually, all bicycles will be refurbished, cleaned, retouched with paint, and supplied with new stickers on an as-needed basis, in accordance with B-cycle's annual bicycle maintenance guidelines.	100%	Bicycles undergoing refurbishment per year	Provider database
17	**Reports**	Provider will furnish City with all reports on the agreed upon schedule.	100%	Percent of reports delivered on time	Receipt of report by City

Performance Schedule

Failure to achieve the following Deliverables by the specified dates is material to the performance of the Agreement.

Deliverable	Date
Site Guidelines, presented to City for review and approval	Seven days after Commencement Date
Marketing Plan and Procedures, developed and presented to City for approval	Three months after Commencement Date
Standard Operating Procedures, developed and presented to City for approval	Six months after Commencement Date
Successful Test of Membership Portal Integrated with B-cycle	Five months after Commencement Date
Informational Website (includes all web functions except for membership sales and live Station map) Launched	Three months after naming and branding guidelines provided by City
Membership sales begin (online, through call center, and wherever else they will be sold)	Two months before System Launch Date
Phase I Equipment Purchase Order Part I (color not final)	August 4, 2014
Phase I Equipment Purchase Order Part II (final station configurations)	January 1, 2015
Color of Bicycle and Stations Approved by City	October 15, 2014
Color Scheme of Bicycle and Stations Confirmed by City	October 29, 2014
Bicycle Specifications Confirmed by City	July 1, 2014
System Launch Date (30 Stations are installed and functional)	April 22, 2015. Alternatively, if Equipment color is not confirmed by October 29, then within 14 days of color confirmation, Manufacturer will agree to a new System Launch Date.
Substantial Completion; Initial Launch Period Concludes (90 % of Stations ordered in Phase I Equipment Purchase Order are installed and functional)	60 days after System Launch Date

SCHEDULE 3: Technical Specifications

Stations

i. Overall Dimensions – Varies dependent upon number of docks, configuration, solar or A/C.

ii. Sub-Components – See below for subcomponents specs.

   a. Kiosk

      i. Dimensions TBD

      ii. Primary Specifications

         1. Display: Back-lit color touchscreen
         2. Paint: Powder coat
         3. Power Options:

            a. Solar powered (single 135-watt panel with battery backup)
            b. A/C (110 vac, 60 hz, 3 amps)
            c. Combination of solar and A/C as backup

      iii. Alternative Power Varieties

         1. Battery backup – Solar powered stations include battery backup
         2. AC & Solar Combination

   b. Dock

      i. Dimensions TBD

      ii. Primary Specifications

         1. Paint: Powder coat
         2. Dual locking proprietary locking mechanism

      iii. Alternate Varieties

         1. B-cycle system docks can be single-sided and double-sided.

   c. Solar Assembly

      i. Dimensions

         1. 57.7" x 26" panel + casing
         2. Height installed on kiosk: TBD

      ii. Primary specifications for standard panel

         1. Photovoltaic panel

            a. 140W; 18.3V max power voltage
            b. IEC61215, TUV certification
            c. UL 1703 certification

   d. Base Plate

      i. Dimensions : TBD

ii. Primary Specifications: TBD

e. Information Panels

i. Dimensions: TBD

ii. Primary Specifications

1. Shatter-resistant, tempered, safety glass
2. Aluminum extruded frame

iii. Backlit panels available at extra cost on AC powered stations only

Bicycles

1.0 B-cycle at Launch

1. Component Specifications

i. Wheels – Shimano Dynamo generator hub with alloy rims (front). Shimano 3-speed internal gear hub with alloy rims (rear).

ii. Tires – Puncture resistant Bontrager hard case with reflective sidewalls and sealant filled tubes.

iii. Brakes – Shimano IM40 all-weather internal brake system with handlebar levers.

iv. Drive system

1. Shifters: Shimano twist shifter
2. Rear: Shimano Nexus 3-speed internal gear hub
3. Crank: 38T alloy
4. Chain: KMC Rustproof ½ x 1/8" heavy duty
5. Pedals: Platform

v. Seat – Seamless Bontrager all-weather saddle

vi. Lights – Spanniinga 3W 10 Lux LED front and rear lights that run off the bicycle's Dynamo hub. Lights remain illuminated for approximately four minutes after a B-cycle stops, ensuring safe illuminations when the rider stops at a traffic light.

vii. Fender – Low profile metal

2. Features

i. Basket type:

1. Small front basket
2. Rear Pannier (not quoted)

ii. Color – Custom color requires at least 6 months lead time.

iii. Locking Mechanism - Dual locking proprietary locking mechanism from dock to fork.

1. Secondary cable lock can be built into basket (not quoted)

iv. Serial number – Each B-cycle contains a bike serial number, bike ID number and bar code, in addition to the RFID tag

3. Other Items
    a. RFID Reader – B-cycle uses RFID readers in each dock to read the annual membership cards to check out a B-cycle bike at a dock. Additionally, B-cycle provides a "mobile" RFID reader that can be used to check-in/check-out bikes at a Virtual Kiosk, which allows the system operator to check bikes in and out using only a computer with an internet connection.
    b. Membership Cards – B-cycle membership cards are given to annual members. Options:
        i. Credit card sized (customizable. Min. order 1,000)
        ii. Fob sized (customizable. Min. order 1,000)

Bicycle 2.0: Under Development, Final Specifications TBD

a. Step-thru aluminum frame
b. Spring-loaded cargo caddy
c. Integrated front and rear LED lights
d. Black polycarbonate fenders
e. Fully enclosed cables & chain
f. Wheels – Shimano Dynamo generator hub with alloy rims (front). Shimano 3-speed internal gear hub with alloy rims (rear).
g. Tires – Puncture resistant Bontrager hard case with reflective sidewalls and sealant filled tubes.
h. Brakes – Shimano IM40 all-weather internal brake system with handlebar levers.
i. Drive system
    a. Shifters: Shimano twist shifter
    b. Rear: Shimano Nexus 3-speed internal gear hub
    c. Crank: 38T alloy
    d. Chain: KMC Rustproof ½ x 1/8" heavy duty
    e. Pedals: Platform
j. Seat – Seamless Bontrager all-weather saddle

<u>Note</u>: B-cycle 2.0 Station and Bikes are under development and specifications are subject to change. This exhibit will be finalized on Equipment Delivery.

SCHEDULE 4: Software Included in the System, Performance Specifications, Rights

The B-cycle bike sharing Software system includes the following:

Digital Platform

The Provider and City's use of the digital platform is subject to the DPSA. The DPSA is an appendix to Schedule 4.

Community Website

The City and Provider are not required to use the B-cycle community website platform. The platform has the following features:

1. Customizable, Multi-lingual, Sitefinity CMS platform;
2. Static information pages (what is B-cycle, how you use it, safety information etc.);
3. Provides a station and interactive map and real-time station information such as bike and dock availability, etc.;
4. FAQ page and ability to download items (map, brochure, etc.);
5. Ability to communicate safety messaging throughout website;
6. Interactive content and tools;
7. Local news and events published via live, relevant Twitter feeds;
8. Social media integration;
9. Online subscription purchases, renewals, and upgrades with ability to offer discounts and promotion codes with ability to sign liability waiver;
10. Ability to offer multiple discounts to specific groups (students, senior citizens, military, etc.);
11. Hooks to established social networking sites (links and live feeds);
12. Password-protected member portal with personalized data;
    i. Individual profile information ;
    ii. Ride and payment history ;
    iii. Health and environmental impact;
    iv. Leader board ;
    v. User population ranking.

Back-End Operations Management & Reporting

The back-end operations management and reporting platform will have the following specifications.

1. Tiered, role-based access;

2. Ability to manage system and kiosk functions remotely from the office or from a personal computer with internet access. Remote capabilities include: disable system or a kiosk, lock down a bike so that a user cannot rent it, adjust hours of operation of the system or of a kiosk;
3. Subscriber and member management (including bulk-loading) ;
4. Ability to track system use and performance in real time;
5. Inventory management (kiosks, RFID cards, bikes, docks, etc.) ;
6. Configurable notifications (maintenance events, overdue bikes, etc.);
7. Fulfillment process support;
8. Rebalancing, maintenance and issue tracking (including reporting capabilities);
9. Program personalization and configuration (notifications, subscription types and pricing);
10. Virtual kiosk management – mobile bike check ins/outs, off-site maintenance ;
11. Ability to lock down bicycles remotely;
12. Ability to collect email addresses, telephone numbers, addresses, zip codes and other pertinent information;
13. Ability to limit the number of membership and walk-up rentals that can be purchased using one credit card;
14. Pull different metrics concerning the following data:
    i. Total users (and types of subscriptions);
    ii. Trip characteristics;
    iii. Miles traveled;
    iv. Calories burned;
    v. Carbon emissions reduced;
    vi. Real time distribution of bikes;
    vii. Maintenance;
    viii. Financial ;
    ix. Real time availability;
    x. Gallons of gas saved;
    xi. Vehicle miles reduced.

Virtual Kiosk

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

bike.

Mobile Applications

Mobile applications will:

- Be available for Apple and Android platforms;
- Contain location-based dock and bike locator (bikes and open docks relative to user's GPS coordinates);
- Facilitate delivery of outbound system-generated text alerts (overdue bike warnings, etc.).

In addition, open API (subject to B-cycle's API terms and conditions) shall be made available to the public. . At minimum, the following data shall be open:

- Program ID;
- Name of Program;
- Map Center;
- Kiosk Identification;
- Kiosk Location (latitude and longitude);
- Bicycles available in real time;
- Docks available in real time;
- Total number of docks per Kiosk;
- Hours of operation;
- Time zone;
- Status of Kiosk (active, unavailable, coming soon, partial service, temporary event);

Kiosk/Station and Payment Processing

- Encrypted credit card processing through Authorize.net
- Kiosk uses a Fit PC and carrier-proprietary air card or Feeney modem
- Kiosk PC runs Windows 7 embedded software and firewall

Software Updates

Midnight through 6am Sunday through Thursday, with 24 hours of advance notice to City.

- All standard software updates included in annual/dock licensing fee
- Custom software development available at agreed pricing and timeline
- Non-standard pricing structures = custom development

SCHEDULE 5: Software and Intellectual Property Escrow

At City's sole expense, the parties will cooperate in good faith to locate a suitable and mutually agreeable escrow agent to hold a copy of the source code for the Software used to provide the Service ("Source Code") upon the terms and conditions outlined below.

1. City will pay all costs and fees relating to the creation and maintenance of the escrow, including all fees charged by the escrow agent. B-cycle will provide the Source Code to the escrow agent upon execution of an Escrow Agreement between the parties and an escrow agent which is agreeable to both City and B-cycle ("Escrow Agreement"). During the Term of the Agreement, B-cycle will provide updated versions of the Source Code, if any (excluding source code in development or testing stages), to the escrow agent within thirty (30) days after B-cycle makes such updates generally available to its other Cities. The Escrow Agreement will provide that the escrow agent will release the Source Code to City only upon the occurrence of the following conditions (each a "Releasing Event"):

(a) if B-cycle has availed itself, or been subjected by any third party, to a proceeding in bankruptcy, which proceeding has not been dismissed within thirty (30) days, in which B-cycle is the named debtor; in which a receiver has been appointed for B-cycle; or any other proceeding involving insolvency or the protection of B-cycle from creditors; or

(b) if B-cycle has ceased its on-going business operations, or has clearly manifested its intent to permanently cease or has ceased providing the Services for a period of thirty (30) continuous days.

(c) if B-cycle is sold or acquired by another entity that decides not to support any Software used by the City of Philadelphia, or insists upon software changes that are not acceptable to the City.

2. City will give written notice by certified mail to the escrow agent and B-cycle if it claims the occurrence of a Releasing Event. The Escrow Agreement will provide that unless B-cycle files, within ten (10) days, an affidavit executed by a responsible executive clearly refuting the occurrence of the Releasing Event, then the escrow agent will deliver to City within the next five (5) business days the Source Code. If City disputes any claims in such affidavit, City may seek adjudication by a neutral third-party arbitrator that a Releasing Event has occurred, and B-cycle will agree to all aspects of the arbitration process and the third-party arbitrator selected by City.

3. Subject to the terms and conditions of this Escrow Agreement, upon release of the Source Code to City, B-cycle hereby grants to City a non-exclusive, non-transferable,

non-assignable license to use, copy and modify such Source Code solely as necessary to continue to use and maintain the Services provided by B-cycle to City under the Agreement and consistent with all obligations and limitations set forth therein, including restrictions on disclosure of Confidential Information. Further, City will use the Source Code strictly in accordance with the following conditions:

(a) City may use the Source Code only to make modifications to the Source Code that are necessary to support and maintain the provision of Services for the uses expressly provided in this Agreement or as required by law and for no other purpose. City will not make copies of the Source Code except as necessary to support and maintain the provision of the Services as provided in the preceding sentence, and will not authorize anyone else to make copies of the Source Code. All copies of the Source Code will be marked with a restrictive legend identifying the Source Code as confidential and proprietary to B-cycle and prohibiting any unauthorized use or reproduction;

(b) City will allow use of or access to the Source Code only by employees and contractors of City who have a need to use the Source Code for exercise of City rights with respect to the Source Code set forth herein and who have signed nondisclosure agreements containing terms at least as restrictive as those set forth in this Agreement;

(c) City will not allow use of or access to the Source Code by any third parties except as provided above, and when provided with access to the Source Code, will maintain and use the Source Code only in reasonably secure facilities. For Source Code that is useable or stored on any computer equipment (whether a multi-user system, network, stand-alone computer or otherwise), the equipment will have password-based access control, with each user having a unique user identification and associated password;

(d) City will maintain a record of (1) all employees, contractors, and other personnel who use or have access to the Source Code, (2) the number of copies made, if any, of the Source Code, and (3) the computer equipment and storage media on which the Source Code is used or stored, and will provide such record(s) to B-cycle upon request.

SCHEDULE 6: Warranties

Provider's General Responsibilities

For all Equipment purchased, or otherwise acquired in accordance with the terms of this Agreement, Provider shall complete, submit to the seller and/or manufacturer, and retain copies of all documents required to maintain all seller's and manufacturer's warranties.

Provider shall, at all times, follow and strictly comply with the manufacturer's requirements, warranties, and recommendations for assembly, maintenance, storage, repair, and replacement of all Equipment.

Provider shall promptly comply with all recalls of Equipment, whether issued by a manufacturer, government agency, or other entity.

Warranty Claims

Promptly upon the discovery by Provider, or receipt of a report by Provider, of any seller's or manufacturer's defect in the Equipment, Provider shall submit a warranty claim to the appropriate persons or entities and diligently pursue a claim therefore. Provider shall retain copies of such claims and all documents related thereto.

Equipment Warranty Terms

Set forth below are the warranty terms of the Equipment Manufacturer. Provider must diligently inspect all Equipment for any "Defects" during the warranty period for any piece of Equipment.

The B-cycle Bicycles have a five-year frame warranty and one-year parts warranty, excluding theft, vandalism, accident, or misuse. The B-cycle Station comes with a manufacturer's one-year parts and service warranty, excluding theft, vandalism, accident, or misuse.

B-cycle 2.0

The Parties acknowledge that Provider's subcontractor, B-cycle, at City's request, will be launching its newest technology platform in the City of Philadelphia on the System Launch Date (currently referred to by the parties as B-cycle 2.0) which consists primarily of a new station design. The Parties further acknowledges that: (1) the anticipated launch of the bike share System in Philadelphia in the spring of 2015 will be the first public launch and use of B-cycle 2.0 Station (and first public use of the B-cycle 2.0 in subsequent phases); and (2) it is not unusual for unanticipated issues to manifest themselves in the initial stages of a product introduction for use by the public. Therefore, the Parties agree that it shall not be a breach of this Agreement, or any warranty made to

the City under this Agreement or any other agreement which may relate to the Equipment, in the event that such unanticipated issues with B-cycle 2.0 may arise; provided, Provider shall work as expeditiously as reasonably possible with B-cycle, and at no cost to the City, to correct any such unanticipated issues in a timely manner.

SCHEDULE 7: Station Planning

It is the mutual objective of the City and the Provider to maximize usage and revenue of the System. The City will have final approval of Site selection, relocation, and Station size. The Planning Schedule may be adjusted by mutual agreement.

City Policies and Guidelines

Within 1 day of Commencement Date, the City shall provide Provider with the City planning regulations, policies and guidance relating to the installation and operation of bike share Stations.

The City shall, to the greatest extent possible, provide the Provider with the following GIS data:

- Aerial photograph

- Polygons
    - Building footprints
    - Parcel boundaries (with property ownership data)
    - Easements
    - Sidewalks
    - Impervious surface
    - Historic Districts
    - Social equity target zones

- Points
    - Bikesharephilly suggestion points
    - City priority bike share locations
    - Utility, traffic and light poles
    - Manhole and underground utility vault locations
    - Storm drain inlets
    - Existing bike parking
    - Transit stops (bus, subway, etc.)
    - Street trees
    - Universities
    - Schools
    - Parks

- Lines
    - Centerlines with street name
    - Streetcar lines

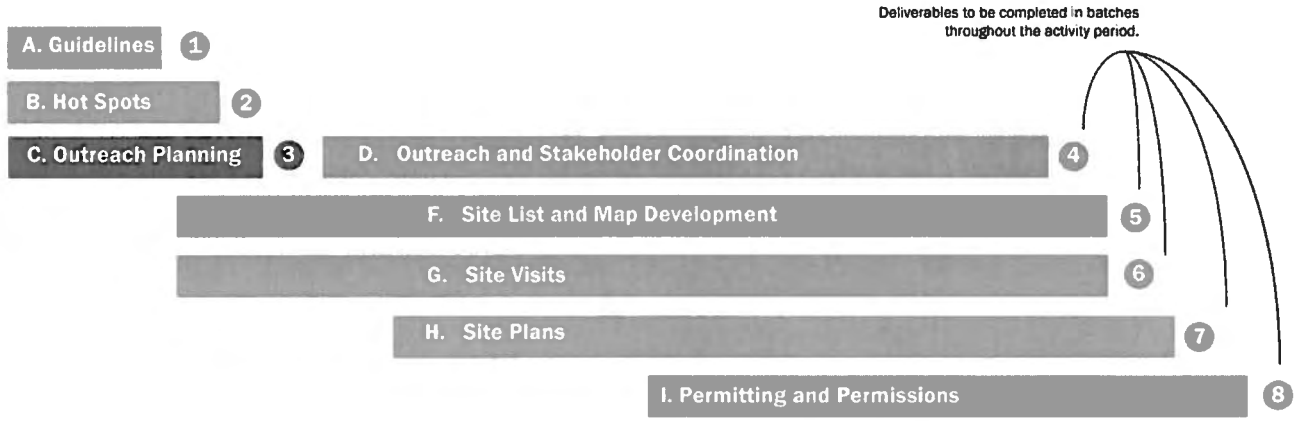
- Bicycle facilities
- Curb lines
- Driveways
- Trails

Station Location

Table 1 below summarizes the activities required for initial Station Location (lettered below) as well as expected Deliverables.

Table 1

Conceptual Timeline for Site Planning



Activities

A. Site Planning Guidelines Development
B. Hot Spot List and Map Development
C. Outreach Plan Developed
D. Outreach and Stakeholder Coodination
E. Site List and Map Development
F. Site Visits
G. Site Plans
H. Permitting Documents Prepared

Deliverables

1. Site Planning Guidelines
2. Hot Spot List and Map
3. Outreach Plan
4. Site Summaries
5. Site List and Map
6. Site Photos and Descriptions (for Site Plans)
7. Site Plans
8. Permitting Documents

Work* Undertaken By:

Provider

City

Provider and City

*notwithstanding mutual consultation

A. Site Guidelines

Within 7 days of the contract Commencement Date, Provider in consultation with the City shall provide bike share Station Site guidelines ("Guidelines") to the City for review. The Guidelines will detail footprint requirements, clearance requirements, solar requirements, the types and layouts of configurations available for bike sharing stations, and an outline of installation procedures related to installing a Station. The City will either approve or return the Guidelines with comments within 7 days of receipt.

B. Hot Spot List and Map

The City and Provider shall determine preferred areas, or "hot spots" for bike share stations. Factors that will be considered in determining each hot spot shall include: nearby uses, expected ridership, transit connections, the City's social accessibility goals, connection to bicycle infrastructure, and expressions of interest. Identifying hot spots will consist of identifying intersections or block segments that will ultimately host one bike share Station.

Within 1 day of contract Commencement Date the City will communicate its most current list of likely candidates to host a bike share Station to the Provider as well as a list of priority locations to achieve network and social accessibility goals. The Provider should use this information and suggestions made on http://bikesharephillymap.info/ along with its proprietary models and professional judgment to create a draft Hot Spot List and map for Phase 1 of deployment within 14 days of the Commencement Date.

The Hot Spot List shall include at least 200 hot spots in anticipation of around 75 Stations for Phase 1 Launch. The draft list shall seek to maximize utility for System customers as well as minimize operational costs for each Station and for the System as a whole. The draft list shall include, and identify, hot spots intended to serve likely hosts as well as the priority locations identified previously by the City. The list shall also include information about land ownership detail where relevant. The Provider shall propose Station size ranges for all hot spots on the Hot Spot List. The Provider shall also provide a map showing all proposed hot spots.

The City will review and make revisions to the draft Hot Spot List and map within 7 days of receipt. The resulting final Hot Spot List and map will include the City's estimation of the type and amount of outreach and other coordination required for each Station hot spot.

C. Outreach Plan

Concurrent to the development of the Station Hot Spot List, the City and Provider shall work to develop a plan to conduct public outreach related to bike share Station Site planning ("Outreach Plan"). The goals of public outreach are to:

- Gain local insights into locations for stations to minimize conflicts with existing uses and activities;
- Engage the public and increase excitement about bike share and familiarity with a new mode of transportation;
- Provide strategies to effectively address the concerns of nearby residents, businesses and institutions.

The Outreach Plan should include the following elements:

- A scope of work which includes an estimate of the number and type of outreach and stakeholder coordination efforts required to meet the goals stated above. The scope of work should outline the approximate amount of time required on an average per-site basis and an assumption on the total amount of time required.
- A matrix listing all stations on the Station Hot Spot List and identifying needed and appropriate outreach for each.
- A list of tasks to be conducted by the City and the Provider to meet the goals of the Outreach Plan.
- A timeline and action plan for the completion of Outreach Plan related tasks.
- A budget that forecasts the approximate costs for completing the tasks outlined in the Outreach Plan.

D. Public Outreach and Stakeholder Coordination

The City shall work with the Provider to organize and convene meetings and conduct activities as specified in the Outreach Plan ("Public Outreach"). The Public Outreach period is expected to last approximately 60 days. For Stations where no Public Outreach is required, the Provider shall begin Site visits as soon as preliminary agreement to do so is reached with the property owner.

The City and Provider shall work together to define the scope of each public meeting. The City shall take primary responsibility for convening public meetings. The Provider shall be responsible for collecting, analyzing, and summarizing feedback about proposed Sites at meetings with the public and

stakeholders ("Site Summaries"). The Provider is also responsible for revising the Site List, Site Map, and future Site Plans accordingly (see below). After each public meeting, the Provider shall have 14 days to produce summaries of the meeting (" Meeting Summaries"), and to update the Site List and Site Map (see below).The City and Provider may mutually agree to modify the tasks associated with the Public Outreach.

E/F. Site List and Map Development; Site Visits

The Provider shall visit each hot spot in the field and identify at least one possible Site (footprint) for each Station. These possible Sites shall be aggregated onto a Site List and Site Map.

It will be the responsibility of the Provider to:

- Determine the ownership of or title to the underlying real estate (this does not include exhaustive property boundary survey or property records research);
- Utilize guidance from the City to verify whether the placement and use of a bike share Site are permissible under zoning and other applicable ordinances and regulations.

The City shall make arrangements with each private property owner for Sites proposed on private property. A decision-making representative from each private property owner shall attend the field visits on their property.

The Provider will determine whether the Site provides sufficient solar power and cellular coverage to operate a Station of the proposed size. If the Site is not sufficient, the Provider will identify an alternate Site in close proximity that will provide sufficient power. Alternately, the Provider may make arrangements with all relevant authorities to acquire power from the electrical grid.

After incorporating input from the Public Outreach, Provider and City shall mutually agree to changes to the Site List and Map. Within 15 days of completion of Public Outreach, Provider shall submit a Final Site List and Map. The City shall review and make revisions to the Final Site List and Map within 21 days of submittal.

G. Site Planning

Following approval of the Final Site List and Map, the Provider shall prepare one Site Plan for each Station. Each Site Plan shall include:

- Station name (subject to sponsorship requirements);

- Brief description of adjacent uses and activities;
- Station size and description – number of docking points, layout (e.g., back-to-back);
- Property ownership;
- Map-view on an aerial photo;
- The Station footprint overlaid on a street-level photo, with approximate measurements of the station from both visible infrastructure around each site;
- Proposed changes to the area, or markings or safety installations around the Station; and
- Location of Kiosk and solar array.

These drawings need not be sealed by an engineer.

Site Plans shall be prepared on a geographic area basis for presentation to the City, neighborhood organizations, institutions and civic leaders. Provider shall submit all draft Site Plans within 60 days of approval of Final Site List and Map.

One round of revisions to each Site Plan may be requested by the City. In the event of unforeseen circumstances (such as emergency public works or changes in agreements with private property owners), the City may request additional revisions. Revisions to Site Plans shall be completed no later than 14 days after requests for revisions has been made.

H. Permitting and Permissions

It shall be the responsibility of the Provider to obtain all permits and permissions necessary to place a bike share Site at such location. Prior to performing work on any Site, Provider shall obtain from the property owner(s) of public and private property, and from all applicable government entities, all rights and permissions to install, maintain, repair, replace, remove, and use all Sites and Equipment, and provide the services. Such rights and permissions further shall provide access by the public at large to the Site(s) and Equipment located thereon. The City shall make best efforts to assist Provider through all permitting processes and waive all City-controlled permit fees. Provider shall submit all materials for permitting no later than 7 days following approval of all Final Site Plans.

Planning Schedule

For avoidance of doubt, the table below summarizes the site planning process:

Deadline (Days following Contract Commencement)	Milestone
1	City provides GIS data and City policies to Provider
7	Provider submits Guidelines
14	City reviews and comments on Guidelines
14	Provider submits draft Hot Spot List
21	City provides comments on draft Hot Spot List
24	City produces Outreach Plan
97	Public Outreach substantially completed
111	Provider finalizes Site List and Map and Site Summaries
132	City approves Site List and Map
191	Provider has submitted all Site Plans
198	Provider has submitted all documents for Permitting, excepting for plans subject to revision

Station Relocation or Resizing

Through the course of operating the System the Provider or the City may recognize the need to move a Station or increase or decrease the size of a particular Station to satisfy customer demand or for other reasons. Moves and changes in size shall be conducted on a quarterly basis or coordinated with installation of new Equipment. Relocation and resizing will be conducted after Provider conducts and the City reviews the Station grading process described in the Standard Operating Procedures outlined in Schedule 13.

The City may request the moving or resizing of Stations at any time during the calendar year. Upon such a request from the City, Provider will prepare and present a plan to the City for removing or re-sizing the Station within 14 days of notification. The re-sizing plan will include a schedule for removing or re-sizing and must be approved by the City before implementation. Such relocations and related effort will be subject to reimbursement to Provider. The budget in Exhibit 2 includes 10 Stations per year moved or resized. Additional instances may be reimbursed above the Term Year budget.

System Expansion

At any time during the term of the agreement the City may elect to expand the System either through the purchase of new Stations, expanded Stations, or new Bicycles. When the City elects to undertake System expansion, the City will identify with the Provider the amount of funds available and an approximate number of Stations sought

for the expansion. Within 21 days of receipt of this information, the Provider shall submit a Draft Expansion Site List. Within 45 days of approval of the Draft Expansion Site List, Provider shall submit a Proposed Expansion Site Map. This map shall include a footprint of each proposed Station based on the field visits. It shall also include a list of each proposed Station name as well as proposed number of docking points, layout and Kiosk location for each Station. The City and the Provider shall work together to identify the appropriate amount and type of Public Outreach appropriate for each of the Sites proposed in the Proposed Expansion Site List and the Provider shall draft a budget accordingly. Following any public input period, the Provider will synthesize any input from that period and the City shall request any changes as appropriate and work with the Provider, and approve the Final Expansion Site Map within 7 days of submittal. Provider shall submit a purchase order for the expansion Equipment and follow additional procedures outlined in Schedule 10.

SCHEDULE 8: Procedures for Installation

Provider's General Responsibilities

The Provider shall deliver installation Services related to installing the initial phase, as well as the expansion, of the Philadelphia Bicycle Sharing System. These Services shall include:

- Equipment procurement
- Assistance with Site planning
- Station assembly
- Bicycle assembly
- On-street Station installation

Documentation

Prior to the installation of any Station, Provider shall work with the City and all relevant departments to produce all necessary documentation required for placing the new Station.

Construction or Modifications

Provider shall perform any construction/modification to proposed Sites consistent with the Final Site Plans. The Provider will manage this work. Prior to performing any work, the Provider will prepare a proposed budget. The Provider will conduct this work on a reimbursable basis. Where appropriate, the City may assign site preparation or construction work to City forces or other on-call contractors. In this event, the Provider shall be responsible for providing all necessary drawings and diagrams to the City or its designee.

Schedules and Notification

The Provider shall provide the City with a schedule of Equipment to be installed on a weekly basis. The Provider shall provide a weekly report of Equipment actually installed.

On a weekly basis, or on a schedule otherwise agreed to by the City, after submitting the weekly report of Equipment installation to the City, and with City approval, the Provider shall provide electronic notification to members of the System of new Station availability.

SCHEDULE 9: Performance Testing Prior to Operation

Provider's General Responsibilities

Prior to System Launch or expansion, the Provider will provide performance tests of the each element of the System and the System as a whole, as described below.

If the City determines that the System or any component thereof fails the tests, Provider will promptly make such changes as are necessary to fix any problems, and will re-perform the tests for the City. Such procedures will be repeated until the City accepts the System as performing with, at minimum, the specifications described below. If the City does not accept the System as performing within System Specifications at that Site, the Provider will move the Station to a new Site, or if no new Site is reasonably available, provide a full refund to the City of any money that it has been paid for such System components, and this Agreement will terminate as to such Site. Provided, however, no refund shall be payable to the City unless the Site had first been certified by B-cycle as having adequate surface conditions, solar exposure and cellular coverage, prior to initial installation.

Stations

Prior to deployment, each Station is programmed with a unique identification number, latitude and longitude and Station name. Once these elements are programmed in the Kiosk, it is connected through the cellular data network to the back end servers. System diagnosis tests are run to ensure the station is fully operational, these are performed from both the server side, and from the terminal user interface. These tests include but are not limited to the touch screen, card reader, printer and modem. Each Kiosk must successfully pass all connection and diagnostics test before it can leave the warehouse for installation.

The Kiosk is then connected to a series of Docks to test Bicycle activity. Bicycles are rented and returned to ensure all Stations are ready to operate on the street.

Docks

Docks are programmed electronically and then tested with a Bicycle. Each Dock must have two different Bicycles successfully inserted and removed before it can leave the warehouse for installation.

Bicycles

Bicycles are subject to quality and safety tests by mechanics. Once Bicycles have passed these tests, they will have their RFID chips programmed with a unique number. This process doubles as a physical test that the Bicycle can be docked and un-docked. No

Bicycle will be deployed unless it has passed these tests and have been programmed.

Credit Card Processing

Transactions are initiated with multiple card types from a random sampling of Kiosks and from the public Website. Transaction flow is verified from card swipe to credit card processor to bank.

RFID Cards

RFID Cards must be programmed and tested by attempting to check out a Bicycle from an active station prior to mailing out any member cards to users.

Software

Failover and backup processes of the Software are tested to ensure proper functionality. All stations are checked to ensure that the physical data (number of Docks, number of Bicycles, solar readings) matches what is being reported in the back end Software system and on the System maps.

Web Site and Mobile App

Account creation, editing, trip history and billing are testing by initiating accounts for all subscription types via the public Website and initiating rentals with member cards. Public map on the Website and mobile app is tested against visual checks of the real time Station inventory.

SCHEDULE 10: System Expansion Protocols

At any time during the term of the agreement the City may elect to expand the System either through the purchase of new Stations, expanded Stations, or new Bicycles. The City and Provider will follow planning procedures for expansion outlined in Schedule 7.

Available Funds

The City must execute a Purchase Order to place an order for new Equipment. This Purchase Order must have funding sources identified in order to be considered valid. Valid funding sources include City funds, funds granted by third parties, or funding held in escrow. Funding in escrow must not include funds due to the Provider for Performance Incentives.

Expansion Timeline

Upon receiving a Purchase Order for Equipment, the Provider will have 6 weeks to install the Equipment, unless the City explicitly agrees in writing to a different installation period. The Provider will notify the City when the Equipment has been received.

Upon notification of the receipt of Equipment, the Provider shall outline a System expansion installation plan that meets the approval of the City. Once the installation plan is finalized, the Provider will have one week to begin the installation. Installation of all Stations shall be completed at a rate of no fewer than 3 Stations per day until all Stations are installed. If extenuating circumstances prevent installation of all Stations in a timely manner, the Provider shall notify the City within 24 hours of the onset of delay and shall propose a remedy that shall be approved by the City. If the installation schedule does not occur in a timely manner as described in this Schedule 10, penalties may be levied according to Schedule 16.

SCHEDULE 11: Website Performance Specifications

Public-facing Website

The Provider shall develop a Website that meets the following performance specifications regarding public and customer-facing use.

Provide Information

- Provide information on how to join and use the System;
- Provide information regarding options for purchasing rides and memberships without a credit card or bank account;
- Provide an interactive system map showing at minimum Stations, attractions and amenities, bicycle infrastructure, and Dock/Bicycle availability;
- Provide image and video content on rider safety and use of Bicycle and bicycle sharing infrastructure;
- Provide personalized customer pages that provide information such as payment history, ride history, distance traveled and health impacts.

Media

- Hooks to established social networking sites (links and live feeds);
- Links to news articles or other media coverage;

Accept and Manage Memberships

- Accept payment online for all membership options, including monthly installment plans, casual memberships and discounted passes;
- Allow users to manage their bike share memberships with actions to include processing for automatic monthly payments/fees and allowing users to re-activate those memberships for which payment has lapsed;

Data Security

- Provide for data security for data including but not limited to: financial data, user profiles and contact information; user payment methods, user trips.

Internal Website

The Provider shall develop a Website that meets the following performance specifications regarding internal (City and Provider) use.

- Provide access to registration and travel data to the City and its designees, while still providing for data security;
- Facilitate real-time communication with Stations to track Bicycle and Dock

availability;

- Provide view-only access to back-end operations, management, and reporting platform to the City and its designees.

SCHEDULE 12: Marketing Scope of Work

The Provider shall work with the City, any sponsors, and the City's designated partners to market the bike share System to increase ridership and advance the Program's goals of social accessibility.

Marketing Plan and Budget

The Provider will develop a Marketing Plan and associated budget for each year of the Agreement. This plan will be reviewed by the City and its designated sponsorship broker ("Sponsorship Broker") and approved by the City. The Provider will implement the City-approved Marketing Plan within the allocated budget.

A minimum of 1% of yearly sales income (from memberships/passes and usage fees) should be used for marketing the Bike Share System.

Marketing Plan Components

The Marketing Plan shall include:

- Marketing strategy, objectives, and priorities;
- Announcement press conference;
- Demonstration project Website and viral social media campaign;
- Launch event and press conference;
- Membership advertisement campaign;
- Sustaining PR/marketing campaign;
- Media campaigns;
- Media policy;
- Neighborhood-scale marketing (i.e., marketing at and near stations);
- Strategy for data collection and analysis;
- Metrics for success and plan for reporting;

Social and Financial Accessibility

The Marketing Plan shall also include plans for cooperating with the City and its community partners surrounding outreach and programming to make bike sharing accessible to low-income residents. Provider's efforts will include but are not limited to:

- Collaborating with City and its partners to initiate and develop procedures and programs for issuing bike share memberships to individuals without credit cards or bank accounts;
- Collection and analysis of data regarding trips made by bike share members who obtained their memberships without a credit card or bank

account;
- Direct distribution of non-credit card/non-bank account memberships and monthly payment memberships;
- Other strategies mutually agreed upon by City and Provider.

Marketing Events

The Provider will plan and execute at least one event to gain awareness, publicity and drive membership pre-sale sign up for the Philadelphia Bicycle Sharing System in the months leading up to the System Launch Date.

The Provider will plan and execute a citywide launch event to create excitement around the bike share to be approved by the City no less than 30 days before the event.

Restrictions

The Provider shall not publish any marketing materials concerning the System without the prior written approval of the City.

Advertising Media

Advertising Media may include, but is not limited to the following:

- Bicycle and Station color scheme;
- Fare Media;
- Decals on Kiosks, Bicycles, and Station header;
- Rates schematic;
- Website;
- Welcome kit – letterhead, letter, envelope, activation instructions;
- Information cards and brochures for selling memberships;
- Event kit – tent, signage, banners;
- System map;
- Social media – including Facebook and Twitter logos;
- Bike Share System advertising posters to be displayed between selling periods.
- Other media and assets as defined by the City of Philadelphia, Provider or Sponsorship Broker

Bicycle fender and basket decals, as well as advertising panels, are expected to be purchased by sponsors and/or advertisers. It is the responsibility of the Provider to update, refresh, and otherwise maintain the appearance Bicycle fender and basket decals, advertising panels and other branded System assets. The Provider shall account for the costs of replacing these assets and issue an invoice to the City of

Philadelphia for the costs of materials and labor for the work.

Responsibilities in the Case that a Title Sponsor is Secured

In the event that a Sponsorship and/or Naming Rights Agreement exist, the following shall apply: The City shall provide Provider with the selected service name, and all System-wide conditions related to logo, color scheme, and any other branding information required by the City, including, without limitation, all such requirements set forth in the Sponsorship Agreements and/or the Grant Agreements as of that date. The Provider shall work with the City of Philadelphia and its Sponsorship Broker to develop all advertising media, marketing materials and any other collateral materials required to fulfill the obligations pursuant to any agreement between the City and a title or naming sponsor.

Responsibilities Given No Title Sponsorship

In the event that a Sponsorship and/or Naming Rights Agreement does not exist, the City may assign the following tasks to the Provider, who will propose a schedule and budget for each item.

Creative Agency

Engagement of a marketing and design agency ("creative agency") subject to approval by the City.

System Naming

The Provider will develop a creative brief for the naming of the Philadelphia Bike Share System. Phase 1 will involve a meeting with the City and key stakeholders to develop ideas for naming the system. Provider will then issue names to creative agency for further development and legal clearance.

System Logo

Once a name has been determined, Provider will move to Logo Design. With consideration of and while incorporating any City requirements, Provider will hold a design charrette meeting with the City's decision makers wherein initial concepts and suggestions will be brainstormed and collected for the service name and color scheme. After that meeting, Provider will develop and deliver to the City up to three (3) draft brand concepts for a service name and color scheme (based on the design charrette), logo, and any other branding elements relevant to the System. Of these individual concepts, the City will choose one for the design development. Using this choice, Provider will provide a maximum of two (2) revisions/modifications for review and approval by the City. The City shall approve, in writing, the chosen name, logo, color scheme, and branding. All

branding information shall be the property of the City.

Branding and Design

Following approval, Provider will develop brand standards and create design templates for all system elements, including but not limited to the Advertising Media and collateral listed above

SCHEDULE 13: Standard Operating Procedures

The Provider agrees to operate and maintain the System in accordance with standard operations and maintenance procedures ("Standard Operating Procedures" or "SOP"), which are to be developed by the Provider and approved by the City prior to System Launch. The SOP must document how the Provider will conduct day-to-day and special operations and maintain Equipment on a continuous basis. Repeated failure to operate and maintain the System according to the SOP will be a default under this Agreement. The SOP can be modified at any time by the Provider, with changes subject to review and approval from the City.

Maintenance Log and Notification

The Provider shall maintain a log of all inspections and maintenance, both preventive and routine, conducted on Bicycles and Stations. This maintenance log shall be maintained electronically and be made available in real time or historically to the City upon request.

The detection, in any manner, by any Provider employee of any defect in Equipment or Program shall be recorded immediately in the Provider database for remediation.

SOP Components

The SOP shall include the following:

- Inspection, Cleaning, and Maintenance of Equipment, including "break-fix" "break-fix" obligations for all Equipment;
- Rebalancing;
- Station Resizing and Relocation;
- Customer Service Policies and Call Center Obligations;
- Replacement, Upgrade and Warranty Procedures;
- Special Event, Inclement Weather, and Emergency Practices;
- Technical Issue Response and Issue Tracking;
- Procedures for Reclaiming Lost or Stolen Bicycles;
- Any other issues identified by the City or Provider.

Required Procedures

The following procedures must be included in the SOP:

Bicycle Maintenance

Provider shall conduct Bicycle maintenance at least once per Bicycle every thirty days. Bicycle Maintenance will include all elements of the appropriate B-Cycle Maintenance Manual. To the degree possible, Provider employees will repair all Bicycles in the field.

All Bicycles that cannot be repaired in the field will be recorded in the Provider maintenance database for immediate removal and repair. During monthly Bicycle, maintenance, provider shall, at a minimum, conduct the following checks, and repair or replace all necessary elements:

A. Check frame for dirt, grease, deformation, cracks, and proper alignment;
B. Check tightness and alignment of handlebars, headset bearings, and full handlebar range of motion (left to right);
C. Check handlebar covers and instruction stickers for damage;
D. Check wheels for trueness, broken or bent spokes and hub or axle tightness;
E. Check tires for damage and wear;
F. Check tire pressure, and add air as needed to reach recommended Pounds per Square Inch measurement;
G. Check tightness of seat, seat post quick-release, and see that seat post moves freely in full range of motion (up and down);
H. Check basket for height, tightness, and litter or other substances;
I. Check lights (front and rear) for function;
J. Lubricate and clean chain and check chain tension;
K. Check pedals and cranks for tightness;
L. Check brake function (front and rear);
M. Check grips for wear and brake levers for tightness and damage;
N. Check for correct gears and shifter function through all gears;
O. Check fenders (front and rear) for damage, and clean outside of fenders;
P. Check that all reflectors on wheels, seat and basket are present, clean, properly oriented, and undamaged;
Q. Check kickstand for correct function;
R. Check bell for tightness and correct function;
S. Check front basket for tightness, damage and dirt or other substances;
T. Brief test ride to ensure overall correct function of Bicycle;
U. Perform Bicycle cleaning and polishing; and
V. Perform rust prevention and abatement.

Station and Bicycle Cleaning

When undertaking station and bicycle cleaning according to the performance standards listed in Schedule 2, Provider shall use its best efforts to clean all visible dirt, ink, paint, litter or any other substance on Stations and Bicycles. Station and Bicycle cleaning procedures shall include, but not be limited to, the following:

A. Graffiti, Scratchiti and Sticker Removal

i. Provider will remove all graffiti, scratchiti and stickers. If graffiti, scratchiti and stickers cannot be removed with commercially available cleaners, the Equipment may be restored, painted, coated, or filled with an appropriate material.
ii. If an occurrence of graffiti or scratchiti cannot be cleaned within the allocated timeframes because of technical limitations, Provider will notify the City Manager and provide a specific timeline for cleaning and refurbishment, subject to approval.
iii. In the event of a targeted vandalism campaign, Provider will immediately contact the City Manager and provide a specific timeline for cleaning and refurbishment, subject to approval.

B. Station Cleaning
i. Remove litter (all visible trash) from the Station and surrounding area up to 4' around the Station in all directions;
ii. Wipe down Station and all interfaces (screens, keypads, map) with cleaner.
iii. Clean advertising panel of dirt, paint, litter or any other substance.
iv. Cleaning shall include snow, ice and salt removal as needed during winter months.

C. Bicycle Cleaning
i. Inspect and clean all Bicycles that have visual indication of dirt or damage.

Station Inspection

i. On the schedule listed in the performance standards in Schedule 2, Provider will inspect all Station components (Kiosk and Docks) for functionality (including transactions and communications) and record all defects in the Provider maintenance database for immediate repair or removal as necessary; and
ii. Check each Dock's functionality including but not limited to the locking mechanism and electromechanical elements;
iii. Check physical Station connections;
iv. Record and/or report needed maintenance and cleaning in the Provider maintenance database for necessary follow-up.

Station Deactivation or Removal, Reactivation or Replacement

To accommodate public works and other events, a Station must be removed the later of

(i) 4 business days after notification by the City or (ii) 24 hours before event start, or, alternatively, by an alternative timeline approved by the City.

Every station must be replaced within 24 hours or reactivated within 12 hours after the end of the event or emergency, or on an alternative timeline agreed to by the City.

Emergency Station Repair or Removal

In the event of an emergency, Stations must be repaired or removed as soon as possible, but no later than 12 hours after notification by City, unless an alternative timeline for work has been provided and approved.

In the event of large scale emergencies, Provider will immediately contact the City Manager and provide a specific timeline for Station repair or removal. The City Manager shall approve the timeline.

Station deactivation shall be appropriately determined by Provider by selecting one of the following options:

1. Suspend all Kiosk and Station transaction capabilities and lock any Bicycles present in their Docks. Additional Bicycles may be returned but not removed;
2. Suspend all Kiosk and Station transaction capabilities and lock any Bicycles present in their Docks.
3. Suspend all Kiosk and Station transaction capabilities and remove any Bicycles present from their Docks. Additional Bicycles may not be returned.

Inclement Weather

Provider and the City will determine procedures for System shutdown and reopening due to inclement weather.

For Stations in pedestrian areas (sidewalk, parks, pedestrian plazas etc.), Provider must remove snow and ice up to the midpoint of the sidewalk and in no instance less than 4 feet in all directions by which pedestrians may access the station, its Kiosk, Docks or Bicycles.

For Stations in the roadway, Provider must remove snow and ice up 4 feet in all directions by which pedestrians may access the station, including Bicycles but not including places cleaned by City snow plows.

For Stations on private property, snow removal shall be addressed in the individual license agreements with the property owner.

If an occurrence of heavy snow, salt or ice causes this timeframe to not be met, Provider will contact the City Manager and provide a specific time line for snow and ice removal, subject to City approval.

Station Sizing and Relocation

The SOP will establish a Station grading system to evaluate Stations for potential resizing and relocation. Stations will be evaluated on a combination of use characteristics and operational characteristics. Stations will be ranked by the following use characteristics:

- Revenue, measured as sum of casual memberships purchased, user fees incurred for trips starting and ending at the Station;
- Ridership, measured as total trips beginning and ending at the Station.

Stations will also be graded on a quarterly basis as based on operational criteria as A, B, or C:

- Rebalancing required;
- Accessibility by truck;
- Other factors such as safety, pedestrian traffic and incidences of graffiti/vandalism.

User characteristics and operational characteristics will be evaluated together, and when indicated, remedies will be considered for improving Station performance. The following criteria and remedies shall be followed by the City and Provider.

- Any Station in the bottom 10% of use, ridership and with a C grade for operation criteria shall be considered for re-location.
- Any Station in the bottom 10% of use and ridership and with a B grade for operational criteria shall be considered for an action plan. The action plan could include marketing and outreach, relocation to a nearby but more applicable location, re-sizing or the addition of nearby Stations. If a Station has a grade of B and remains in the bottom 10% for 2 consecutive quarters then shall be considered for relocation.
- Any Station that is in the bottom 10% but has a grade of A shall be considered for an action plan if remains in the bottom 10% for 2 consecutive quarters and shall be considered for relocation if it remains in the bottom 10% for 2 quarters following the implementation of the action plan.

The City and Provider shall work together to determine whether a specific Station should be altered or moved; Stations shall not be removed in their entirety if non-contiguous areas of service will result.

SCHEDULE 14: Reporting Requirements and Asset Management

So that the City may monitor the performance and management of the System and its assets, the Provider will report to the City a variety of information on a monthly, and annual, and ongoing basis in accordance with this schedule. In addition, the Provider will manage City assets and report upon their status according to the provisions below.

Monthly Reporting Requirements

Each month, the Provider will provide monthly reports that report performance against the performance metrics as described in Schedule 2.

In addition, the Provider and City will agree to monthly or periodic reports that may include information such as:

Membership

- YTD counts and demographics (may include: age, household income, race/ethnicity, zip code, TBD) of active and registered pass holders by type at the end of the reporting month;
- YTD counts of unique casual passes initiated at the end of the reporting month by type;
- Count, demographics of new pass holders by type and method of purchase who signed up during the reporting month, by week/month;
- Number and demographics of pass holder cancellations and/or expirations of registered pass holders by type during the reporting month;

Ridership

- Trips per day by pass holder type;
- Total trips per month and YTD per pass holder type;
- Average number of trips per day of week and hour of the day for weekdays and weekends during the reporting month;
- Average duration of trips by pass holder type;
- Average and total length of trips (straight line distance) by pass holder type;
- Peak rider flows to and from each Station (within a one hour period);
- Distribution of trip origins and destinations by Station.

Impacts

- Total and average calories burned per week and month by pass holder type, based on total and average trip durations;
- Carbon emissions (CO_2 equivalents) avoided per month. Based on

calculation using total miles traveled (straight line distance), reasonable estimates of resident and visitor mode shares, fuel economy averages, and estimations of emissions generated through rebalancing and other operations efforts.

- Average carbon emissions avoided per pass holder by type for the month.

Rebalancing Operations

- Number of Bicycles rebalanced per day;
- List of Stations with most intensive rebalancing needs;
- Bicycles in service per day;
- List of full/empty instances (Station, start time, end time, date);
- Count of full/empty instances per Station by day/month;
- Breakdown of full/empty instances by duration and location;
- Percentages of time Stations were full and empty;
- Additional time granted when Stations were full;

Station Maintenance Operations

- Number of active Stations;
- Count and location of Station visits by technicians for normal maintenance;
- List of all Station malfunctions (Station, start/end date/time, event);
- List of all Dock malfunctions (Station, start/end date/time, event);
- Percentage of time Stations were available to provide rentals for all pass holder types by Station;
- System wide average for percentage of time Stations were available to provide rentals for all pass holder types.

Bicycle Maintenance Operations

- Count of Bicycles inspected per day/month;
- Count of Bicycles on which maintenance was performed per day/month;
- Average time per repair;
- Breakdown of repair types (minor, major, annual overhaul);
- Breakdown of the cause of repair needs (normal wear, crash, warranty failure, vandalism);
- Monthly average of ratio of deployed bikes to docks.

Incident Reporting

- List of all incidents (crash, vandalism, theft, police action) with date, time, location, and summary of outcomes;
- Stolen/missing Bicycle list and status.

Customer Service Reporting

- Number of calls/emails received by complaint/comment type and total;
- Average time to answer calls made to Call Center for the month and YTD;
- Number of calls unanswered by the Call Center per day and time;
- Average duration of Call Center calls for the month and YTD;
- First call resolution percentage for the month and YTD Customer Outreach;
- Web site analytics, including page hits, source pages, and time spent on pages;
- Facebook, Twitter, and other social media posts count and summary.

Financial Performance

- Operating costs and operating revenues;
- Capital expenditures;

Annual Reporting Requirements

The Provider shall prepare an annual report that provides annualized information on all the above relevant to operations in prior years.

Ongoing Reporting Requirements

- The Provider shall notify the City Manager via email or traditional mail within 48 hours of its awareness of any Bicycles stolen.
- Other custom reports shall be furnished to the City upon request.

City Asset Management

The Provider is responsible managing the City's System assets in a way that is consistent with the City's asset management procedures:

- The Provider will maintain an up-to-date asset inventory identifying the location of each piece of Equipment, with the exception of Bicycles. For the purposes of inventorying, Docks shall be considered part of Stations and not tracked separately.
- For City-owned Equipment of at least $500 in value, the Provider will incorporate a unique City identification number into company record-keeping and inventory;
- Once a year the Provider will generate a report for the City Procurement Office accounting for all pieces of inventory with a City identification number;
- Provider shall report lost or stolen assets with a City identification number to the City Procurement Office within 3 months, or prior to year-end reporting, whichever is sooner;
- Provider shall file a police report for lost or stolen property with a City

identification number within 3 months, or prior to year-end reporting, whichever is sooner.

SCHEDULE 15: Customer Service: Call Center and Policies

Call Center Description

The Provider shall provide all subscribers, and the public at large, with a toll-free telephone number for the Provider's call center situated within the city limits of Philadelphia. The call center shall be in operation from 7AM to 10PM, seven (7) days per week, and three hundred sixty-five (365) days per year. From 10PM to 7AM, customers will be able to reach a staff member for emergency assistance. Emergency assistance shall be defined in the Philadelphia SOP.

Expected Responsiveness

Telephone answering time shall not exceed thirty (30) seconds. The time to transfer the call to a knowledgeable customer service representative (including hold time) shall not exceed an additional thirty (30) seconds. The Provider shall ensure that call centers can serve customers in both English and fluent Spanish, at minimum.

Call Center Staff

Call center operators shall be fully competent and knowledgeable of the City and able to answer questions and provide information concerning, among other things, membership subscription process, billing, crashes, comments, complaints, malfunction problems, and Station location. The call center manager shall be knowledgeable about the Philadelphia region.

Bicycle Switching Policy

To minimize abuse of the System, no fare media shall be allowed to check out a Bicycle from a Station to which a Bicycle assigned to the same fare media was just returned until at least 2 minutes have passed.

SCHEDULE 16: Liquidated Damages

System Launch Delayed – Provider at Fault

In the event of delayed System Launch, Provider may be required to pay liquidated damages in accordance with the standards established in this schedule. For each day that the System Launch is late due to Provider action or inaction, the City shall deduct from funds retained by the City in accordance with Exhibit 2 the following percentages. Once System Launch delay has reached ten days, the City shall deduct 1% from City-retained funds for each additional day that the System Launch is delayed. For example, if System launches 12 days after the day it had been planned to launch, the City will deduct 2% from retainage.

Liquidated damages will not commence for 30 days if the System Launch delay is caused solely by station functionality related to the changes associated with B-cycle 2.0.

Should the System Launch on time with at least 50 fully operational Stations, then no liquidated damages shall be assessed.

Substantial Completion Delayed—Provider at Fault

If Substantial Completion has not been reached by the 60th day following System Launch Date due to Provider action or inaction, City shall deduct 1% from City-retained funds for each additional day that the System is delayed.

The penalties for System Launch delay and Substantial Completion delay are not additive.

System Shut-Down

If 30% or more of the System (as a percentage of Stations) is shut down between the hours of 6AM and Midnight due to mechanical, Software, or Provider error for 6 or more consecutive hours (excluding planned maintenance or Uncontrollable Circumstances), during a single calendar month, the Provider's Management Fee shall be reduced according to the table below.

Consecutive Hours	LD for 1 instance	LD for 2 instances	LD For 3 Instances	More than 3 instances
6-18	$3000	$6000	$12,000	In Default

Failure to Deliver Required Performance Levels

Should the Provider fail to deliver selected performance levels, identified below, liquidated damages shall be assessed as a portion of the Provider's Management Fee

according to the table below. For the first six months of operations, no Liquidated Damages will be assessed for failure to deliver performance levels.

List of performance requirements in Schedule 2 subject to Liquidated Damages:

1. Critical Stations Full/Empty (Performance Requirement #2)
2. Bikes in Good Repair (Performance Requirement #3)
3. Station and Bicycle Cleanliness (Performance Requirement #4)
4. Instances of Website Downtime (Performance Requirement #5)
5. Station Downtime (Performance Requirement #6)
6. % Stations Inspected (Performance Requirement #9)
7. % Bicycles Maintained (Performance Requirement #10)
8. Notification Response (Performance Requirement #11)
9. Reports (Performance Requirement #16)

Performance Levels Not Met

# Performance Levels not Achieved in a Month	Proportion of Management Fee Received	# Months Affected
3	75%	1
4-6	55%	1
7-8	35%	1
9	15%	1

SCHEDULE 17: Key Personnel

Positions in bold represent the "Key Personnel" as defined in the Agreement:

Bicycle Transit Systems President & CEO, Alison Cohen, will oversee all aspects of Philadelphia's bike share System. The President & CEO will be the media representative for Bicycle Transit Systems, and will work closely with the City to develop media and communications strategies and policies for the Program. The President & CEO will oversee the General Manager to ensure compliance with all internal policies and procedures including but not limited to human resources policies, accounting and expenditure reporting and insurance compliance.

General Manager, Peter Hoban, will act as the first point of communication at Bicycle Transit Systems for the City. The General Manager is responsible for overall Program success including administration, operations, Marketing Activity, customer service and client service.

Reporting to the General Manager are the Finance & Administrative Manager, Operations Manager, Sales & Marketing Manager, and Customer Service Manager. The General Manager will be responsible for the selection and recruitment of all key staff and will ensure compliance with all job safety and training policies. The General Manager will ensure all Sales and Marketing activities are targeted to achieve the goals of the Philadelphia Bike Share System and are delivered on time and within budgets. The General Manager will oversee all operations and call center activities to ensure all service levels are met and requisite reports are provided to the City as per this agreement. These direct reports shall not be "Key Personnel" as defined in the Agreement.

Sales & Marketing Manager will undertake all aspects of local marketing.

Community Access Manager will undertake all aspects of programming to increase bike share accessibility for low-income Philadelphians.

SCHEDULE 18: Rates

During the Term of the Agreement, City or Provider may propose a rate structure and any changes thereto; the City shall have final approval over the Bicycle rental rates.

Unless agreed upon by both Parties, rates may not change by more than 10% for any individual rate change within 6 months of the last change.

SCHEDULE 19: Performance Incentives

The Provider may be awarded Performance Incentives annually based on the Provider's demonstrated ability to deliver users of the System with exceptional customer service.

On an annual basis the City shall set aside up to 10% of the System's operating surplus as an available Performance Incentive. The System's operating surplus for the purpose of awarding Performance Incentives is calculated as follows:

	Net Sponsorship, Advertising & related revenues
+	Net Membership & other rider fees
-	Bicycle Sharing Fund administrative fees
-	Provider's actual operating expenses (including management fee)

The City will assess Provider performance against five customer service benchmarks monthly. It will award points for meeting, exceeding, and greatly exceeding expectations. The five customer service benchmarks are:

1. Performance Requirement #1 (Schedule 2) – Stations Full or Empty
2. Performance Requirement #2 (Schedule 2) – Critical Stations Full or Empty
3. Performance Requirement #3 (Schedule 2) – Bikes in Good Repair
4. Performance Requirement #4 (Schedule 2) – Station and Bicycle Cleanliness
5. Secret shopper evaluation

The Performance Incentive will be awarded to the Provider for delivering customer service. The Provider may receive 100%, 50% or no Provider Incentive based on a point system as further described in this Exhibit.

Points will be awarded monthly according to the following table:

		Meets Expectations		**Exceeds Expectations**		**Greatly Exceeds Expectations**	
	Benchmark	Standard	Points Earned per Month	Standard	Points Earned per Month	Standard	Points Earned per Month
1	Stations full or empty (percent of operating hours)	6.5%	0.50	6%	0.75	5	1.00
2	Instances of Critical Stations Full/Empty (>20 m)	15	0.50	10	0.75	5	1.00
3	Bikes in Good Repair	90%	0.50	95%	0.75	100%	1.00
4	Station and Bicycle Cleanliness	*TBD*	0.50	*TBD*	0.75	*TBD*	1.00
5	Secret Shopper	*TBD*	0.50	*TBD*	0.75	*TBD*	1.00

The Provider will report its performance against the first four customer service benchmarks as per monthly reporting requirements (Schedule 14). Prior to or near System Launch, the City shall establish a "secret shopper" program to evaluate the quality of customer service provided to Users via phone and e-mail. The City and Provider shall agree to a framework for assessing customer service quality. The secret shopper criteria shall include questions about:

- Station Location
- Membership options
- Rider fees
- Other topics as agreed upon by City and Provider

During at least the first two months of operations, no performance points will be awarded while the draft criteria and thresholds below are tested. At the end of trial period, the City will finalize criteria and thresholds, with input from the Provider.

If after 12 months of customer service point awards the Provider has earned 56 points, 100% of the available Performance Incentive shall be paid to the Provider from the Bicycle Sharing Fund. If after 12 months of customer service point awards the Provider has earned 45 points, 50% of the available Performance Incentive shall be paid to the Provider. There shall be no pro-rated payments based on earnings of 46-55 points.

Performance Incentive will not be available to the Provider if there are nine or more months in which performance has not met expectations across all benchmarks, or if there are four months in which performance has not been meet in any single benchmark.

Modifications to this framework may be made by the City in consultation with the Provider on an annual basis.

SCHEDULE 20: Protocol for Provider to Relinquish Operations of the System

It is in the City's interest to provide uninterrupted service to users and members of the System. This schedule outlines the transition of System operations and maintenance upon termination of the Agreement, whether at the end of the Term, or in the event of a termination due to a Provider Event of Default under Article 8 of this Agreement.

The following transition procedures must be followed unless an alternate plan is adopted by the City:

Transition Plans

No later than 18 months following the Commencement Date of this Agreement, the Provider shall provide the City with the Provider's plan for the transition of System operation and maintenance to the City or to a subsequent operator (the "Transition Plan"). The Transition Plan must be reviewed and approved by the City. The Transition Plan must contain a clear strategy to transfer control of all items that are not Provider's property.

At a minimum, the Transition Plan must address the orderly transfer of each of the following unless otherwise expressly specified by the City, with all Parties acknowledging that Provider's internal books, records, applications, program structures, trade secrets and works of authorship are specifically excluded:

1) City-owned Physical Assets
    a. Existing inventory of equipment that comprises the System, spare parts, related tools, fixtures and facilities.
    b. Leases on equipment and facilities
    c. Any other physical assets of City's bike sharing System
2) City owned intellectual property assets including but not limited to
    a. Control of the System back end and the B-Cycle digital platform
    b. User website
    c. System back end portal
3) Any software owned by the City and related to System back end
    a. Data generated by the System back end
    b. User Information
    c. Reports
    d. Budgets
    e. Operations schedules
    f. Call logs
    g. Repair reports

h. Marketing Materials
i. Site Plans and permits, related materials

4) All agreements and plans not expressly identified as intellectual property of the Provider
    a. Information on the operation of the System including records of the Standard Operating Procedures and all other agreements related to service levels and procedures
    b. Transfer of leases, Equipment and other assets specifically related to the operation of the System
    c. Timeline for each operation within the Transition Plan developed to eliminate breaks in service for System users.

Transition In the Event of Default

In the event the City elects to terminate the Agreement, in whole or in part, due to a Provider Event of Default, the Provider shall be responsible for implementing the Transition Plan prior to the effective date of termination, in coordination with the City and the subsequent operator.

During the term of the Manufacturer's Commitment, in the event the City elects to terminate the Agreement, in whole or in part, due to a Provider Event of Default, the Manufacturer shall perform the Agreement as required by the Manufacturer's Commitment, and shall be the subsequent operator for purposes of this section.

In the event of termination, in whole or in part, due to a Provider Event of Default, any non-compete clauses placed into any contracts with the Provider related to the operation of the System in Philadelphia shall be deemed to be null and void.

Upon the issuance of a termination notice, the Provider is obliged to provide the City and the subsequent operator immediate and unrestricted access to all aspects of operations, all subject to any restrictions or obligations under any leases, contracts or under law. This shall include:

1. Access to all facilities and vehicles associated with the provision of bike sharing Services, provided that the City assume any remaining payment obligations in connection therewith.
2. Access to all records associated with the provision of bike sharing Services, with all Parties acknowledging that Provider's internal books, records, applications, program structures, trade secrets and works of authorship are specifically excluded.

3. Access to all Software including passwords to the back-end software, Website, operator accounts for all roles ascribed to the Provider
4. An accounting of all physical assets of the System

APPENDIX A: Sample Inspection Checklists

The following checklists, described in Schedule 2, are for reference purposes only.

Station Inspection Checklist

Station Name:	
Date:	
Time:	

#	Task				Notes
1.	Station clean of graffiti	A	B	C	
2.	Station clean from trash	A	B	C	
3.	Station clean of gum or other sticky mess	A	B	C	
4.	Advertising and information panels clean	A	B	C	
5.	Kiosk user interface clean	A	B	C	
6.	Bollards and base plates clean of dirt	A	B	C	
7.	Overall Station appearance	A	B	C	

Bicycle Inspection Checklist

Station Name:	
Bike Number:	
Date:	
Time:	

#	Task				Notes
1.	Bicycle clean of graffiti	A	B	C	
2.	Seat and handlebars clean of gum or other sticky mess	A	B	C	
3.	Tires inflated to adequate pressure	A	B	C	
4.	Brakes correctly adjusted and functional	A	B	C	
5.	Drive train operating smoothly	A	B	C	
6.	Front and rear lights functional	A	B	C	
7.	Pedals, handle bar and kick stand secure	A	B	C	
8.	Seat post adjuster	A	B	C	
9.	Overall bicycle appearance	A	B	C	

EXHIBIT 2

SYSTEM COSTS AND BUDGETS; INVOICE AND PAYMENT SCHEDULE

If the City and Provider mutually agree to adjust the schedule for Deliverables in this Exhibit, invoicing and payment may be adjusted accordingly.

1. Phase I Capital Budget and Payments

A. Phase I Capital Budget

	700 Bikes, 75 Stns, 1425 Docks
	TOTAL INSTALLED COST
Cost of 700 bikes, including spares, shipping	$ 733,688
Cost of 70 stations, including spares, integrated software, and website for customers	$ 3,036,306
Bikeshare system planning cost (incurred Jul2014 - Jan2015)	$ 542,383
Bikeshare system installation cost (incurred Feb2015 - Apr2015)	$ 484,364
TOTAL INSTALLED SYSTEM COST	$ 4,806,741

BUDGET:

1 - Includes Final B-Cycle 2.0 prices.
2 - Includes Final City selections of steel base, basket with ad panel.
3 - Does NOT include final solar weight costs and related shipping.

B. Payment for Phase I Equipment, Planning and Installation

1. *Phase I Equipment.* The City shall submit in writing to the Provider the number of Stations, Bicycles and Docking Points desired for the Phase I Equipment Purchase Order Part I. Upon submittal of the Phase I Equipment Purchase Order Part I and written confirmation by Provider in the form of an invoice, the City will make the first payment for 10% of Phase I Equipment costs to the Provider. The City will

make subsequent payments upon receipt of an invoice and documentation that specific milestones have been met in the manufacture, delivery or testing of the Equipment by Provider and B-Cycle in accordance with the table below.

Equipment Payment Milestones	% Total Cost	Estimated Date
1. Phase I Equipment Purchase Order Part I (color not final; Bicycle and Station quantities)	10%	August 2014
2. Back-end of System is available	10%	October 2014
3. Phase I Equipment Purchase Order II (Station configuration)	20%	January 2015
4. Bicycles shipped to Philadelphia for assembly	10%	January 2015
5. 40% of Station Order Assembled	20%	March 2015
6. Stations shipped to Philadelphia for installation	20%	March 2015
7. Substantial Completion & Final Inspection	10%	April 2015

2. *Phase I Planning.* Following the Commencement Date, the City shall issue Task Orders for the tasks described in Schedule 7 and for other aspects of System Planning. Following issuance of the Task Order, Provider shall perform the services listed in Schedule 7 related to the task, and invoice the City based on completed progress, according to the table below.

System Planning Payment Milestones	% Total Cost	Estimated Date
1. 25% of all assigned planning tasks completed	25%	*see below*
- Spare parts ordered - Bike specifications defined - Under coat decals approved - Site guidelines submitted by Provider to City - Hot Spot Map completed - Phase I Equipment Purchase Order I (color not final)		- July 2014 - July 2014 - July 2014 - July 2014 - July 2014 - August 2014
2. 50% of all assigned planning tasks completed	25%	*see below*
- Outreach substantially completed		- October 2014

- Site List and Map and Summaries submitted - B-cycle station test begins		- October 2014 - October 2014
3. 90% of all assigned planning tasks completed	40%	*see below*
- Site Plans submitted - SOPs complete		- January 2015 - January 2015
4. 100% of all assigned planning tasks completed	10%	*see below*
- Installation of Phase I Stations substantially completed		- May 2015

3. *Phase I Implementation.* The Provider will invoice the City for implementation services based on completed progress, according to the table below. Installation of Phase I Stations and related equipment and modification/installation of Software may commence at any time following the completion of the Station and Bicycle ordering.

Implementation Payment Milestones	% Total Cost	Estimated Date
1. 25% of all installation tasks completed	25%	*see below*
- Provider facilities secured - Website launched		- February 2015 - February 2015
2. 50% of all installation tasks completed	25%	*see below*
- Bikes delivered - Stations delivered		- March 2015 - March 2015
3. 75% of all installation tasks completed	25%	*see below*
- Bikes assembled - Stations assembled		- April 2015 - April 2015
4. 100% of all installation tasks completed	15%	*see below*
- Station installation - System launch		- April 2015 - April 2015
5. Installation of Phase I Stations Substantially Completed	10%	May 2015

2. Operations Budget

The Operations Budget for Year 1 below covers the fiscal year ending in June 2015 for an anticipated Launch Date of April 22, 2015 with 700 Bicycles and 75 Stations. Each subsequent fiscal year's budget is based on a System of 700 Bicycles and 75 Stations. Annual budgets shall be submitted in accordance with Section 5.3 of the Agreement.

	OPERATIONS		TOTAL YEAR 1
	2015 May	2015 Jun	TOTAL YEAR 1
OPERATING EXPENSES:			
Total Personnel Costs	87,212	87,212	174,425
Total Facility Costs	3,192	3,192	6,383
Total Vehicle Costs	8,000	6,400	14,400
Total Supplies & Spares	3,903	3,903	7,805
Total Operations Expenses	580	580	1,160
Total IT & Communications (excl. Call Center)	19,506	19,506	39,013
Total Call Center Operations	4,800	800	5,600
Total Office & Administrative costs	1,200	1,200	2,400
Total Professional Fees (incl. BTS central support)	15,250	15,250	30,500
Total Marketing (non-Personnel)	8,000	8,000	16,000
Total Insurance	2,544	2,544	5,087
Depreciation & amortization	3,938	3,938	7,875
TOTAL OPERATING EXPENSES	158,124	152,524	310,648
TOTAL OTHER EXPENSE	685	685	1,370
TOTAL MANAGEMENT FEE	14,958	14,958	29,917
TOTAL OPERATING FEES	173,767	168,167	341,935

3. System Expansion

A. Expansion Equipment

The City shall submit in writing to the Provider the number of Stations, Bicycles and Docking Points desired for any Expansion Equipment Purchase Order. Within 5 days, Provider shall submit a firm quote for the Expansion Equipment Fee, including delivery and installation. Based on the firm quote, the City shall submit the Expansion Equipment Purchase Order to the Provider. Within 5 days of receipt of the Expansion Equipment Purchase Order from the City, Provider will submit its Purchase Order to the Equipment Manufacturer.

Upon submittal of an Expansion Equipment Purchase Order the City will make an initial payment of 30% of the total Expansion Equipment Purchase Order cost to the Provider. The City will make subsequent payments upon receipt of documentation that specific milestones have been met in the manufacture, deliver or testing of the Equipment by B-Cycle. Such milestones shall be described in the Expansion Equipment Purchase Order.

B. Additional Site Planning

As additional site planning is required for system relocation and expansion, the City shall issue Task Orders for the tasks, as needed and as described in Schedule 7.

Each Task Order shall include a not-to-exceed budget. Following issuance of the Task Order, Provider shall perform the services listed in Schedule 7 related to the task, and invoice the City on a monthly basis with progress on each task.

Upon the City's reasonable request at any time during the planning process, Provider will make available for City's inspection payment receipts from the subcontractors confirming subcontractor payments are being kept current.

EXHIBIT 3

MANUFACTURER'S COMMITMENT

From

B-Cycle, LLC

to

THE CITY OF PHILADELPHIA

MANUFACTURER'S COMMITMENT

THIS MANUFACTURER'S COMMITMENT is made and dated as of [_____], 2014, between B-CYCLE, LLC, a limited liability corporation organized and existing under the laws of Delaware (together with any permitted successors and assigns hereunder, the " Manufacturer"), and the City of Philadelphia ("City").

RECITALS

The City and Bicycle Transit Systems, Inc ("Provider"), have entered into the Agreement for a Bicycle Sharing System, dated [_____], 2014 ("Agreement"), for the siting, delivery, installation, set-up, operation, management and maintenance of the City's Bicycle Sharing System to be located in Philadelphia, Pennsylvania (the "System"); and

The Provider is purchasing the manufactured components of the System from the Manufacturer; and

The City will enter into the Agreement only if the Manufacturer guarantees the performance by the Provider of all of the Provider's responsibilities and obligations under the Agreement as set forth in this commitment agreement (the "Commitment").

In order to induce the execution and delivery of the Agreement by the City and in consideration thereof, the Manufacturer agrees as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS. For the purposes of this Commitment, the following words and terms shall have the respective meanings set forth as follows.

"Obligations" means the covenants and agreements of the Provider pursuant to the terms of the Agreement.

"Transaction Agreement" means the Agreement, together with any schedules or exhibits attached thereto and any amendments which are agreed to in writing by the Manufacturer

1.2. INTERPRETATION. In this Commitment, unless the context otherwise requires:

(A) References Hereto. The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Commitment, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Commitment.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Commitment shall be solely for convenience of reference and shall not constitute a part of this Commitment, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Commitment constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Commitment. Nothing in this Commitment is intended to confer on any person other than the Manufacturer, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Commitment.

(F) Counterparts. This Commitment may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Commitment.

(G) Applicable Law. This Commitment shall be governed by and construed in accordance with the applicable laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of law.

(H) Severability. If any clause, provision, subsection, Section or Article of this Commitment shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provisions, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Commitment shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Manufacturer's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE MANUFACTURER

2.1 REPRESENTATIONS AND WARRANTIES OF THE MANUFACTURER. The Manufacturer hereby represents and warrants that:

(A) Existence and Powers. The Manufacturer is duly organized and validly existing as a corporation under the laws of Delaware, with full legal right, power and authority to enter into and perform its obligations under this Commitment.

(B) Due Authorization and Binding Obligation. The Manufacturer has duly authorized the execution and delivery of this Commitment, and this Commitment has been duly executed and delivered by the Manufacturer and constitutes the legal, valid and binding obligation of the

Manufacturer, enforceable against the Manufacturer in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or by general equity principals of reorganization and other similar laws affecting creditors' rights generally.

(C) No Conflict. Neither the execution or delivery by the manufacturer of this Commitment nor the performance by the Manufacturer f its obligations hereunder (1) to the Manufacturer's knowledge conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Manufacturer, or (2) conflicts with, violates or results in a material breach of any term or condition of the Manufacturer's corporate charter or by-laws or any judgment, decree, agreement or instrument to which the Manufacturer is a party or by which the Manufacturer or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (3) to the Manufacturer's knowledge will result in the creation or imposition of any natural encumbrance of any nature whatsoever upon any of the properties or assets of the Manufacturer except as permitted hereby or by any Transaction Agreement.

(D) No Governmental Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required of the Manufacturer for the valid execution and delivery by the Manufacturer of this Commitment, except such as shall have been duly obtained or made.

(E) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the Manufacturer's knowledge, threatened against the Manufacturer which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Commitment.

(F) No Legal Prohibition. The Manufacturer has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Manufacturer of this Commitment.

(G) Consent to Agreements. The Manufacturer is fully aware of the terms and conditions of the Agreement.

(H) Consideration. This Commitment is made in furtherance of the purposes for which the Manufacturer has been organized, and the assumption by the Manufacturer of the obligations hereunder will result in a material benefit to the Manufacturer.

(I) Report of Financial Condition. Manufacturer will make available to the City, starting on the effective date of this Commitment and thereafter within one hundred twenty (120) days after the end of each fiscal year of Manufacturer, a copy of the annual financial statements of Manufacturer, which statements shall consist of an income statement and balance sheet which will be prepared in accordance with generally accepted accounting principles consistently applied.

(J) Reasonable Assurances of Financial Condition. Upon the City's request, Manufacturer shall provide assurances to the City that its financial condition has not materially diminished.

Manufacturer shall provide such commercially reasonable documentation as may be necessary to establish that its financial condition has not materially diminished.

ARTICLE 3
COMMITMENT COVENANTS

3.1. COMMITMENT TO CITY. The Manufacturer hereby absolutely, presently, irrevocably and unconditionally guarantees to the City for the benefit of the City the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Manufacturer's obligations as set forth herein, the Manufacturer shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Commitment.

3.2. RIGHT OF CITY TO PROCEED AGAINST MANUFACTURER. This Commitment shall constitute an assurance of performance of the Obligations, and the Manufacturer specifically agrees that in the event of a Default, (as defined in the Agreement) by the Provider after notice to Manufacturer and Provider and cure periods which result in a failure by Provider to perform any Obligation under the Agreement, subject to the Manufacturer's right to perform under the Agreement in place of the Provider, the City shall have the right to proceed first and directly against the Manufacturer under this Commitment and without proceeding against the Provider or exhausting any other remedies against the Provider which the City may have. Without limiting the foregoing, the Manufacturer agrees that it shall not be necessary, and that the Manufacturer shall not be entitled to require, as a condition of enforcing the liability of the Manufacturer hereunder, that the City (1) file suit or proceed to obtain a personal judgment against the Provider or any other person that might be liable for any part of the Obligations, (2) make any other effort to obtain performance of the Obligations from the Provider other than providing the Provider with any notice and right to cure of such performance as may be required by the terms of the Agreement or required to be given to the Provider under Applicable Law, (3) foreclose against or seek to realize upon any security for the Obligations, or (4) exercise any other right or remedy to which the City is or may be entitled in connection with the Obligations or any security therefore or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Provider or to the enforcement of remedies under the Agreement. Upon any unexcused failure by the Provider in the performance of any Obligation and the giving of such notice or demand, if any, to the Provider and Manufacturer as may be required in connection with such Obligation and this Commitment , the liability of the Manufacturer shall be effective and shall immediately be performed. Notwithstanding the City's right to proceed directly against the Manufacturer, the City (or any successor) shall not be entitled to more than a single full performance of the obligations in regard to any breach or non-performance thereof.

3.3. COMMITMENT ABSOLUTE AND UNCONDITIONAL.

(A) The obligations of the Manufacturer hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect for a period of 24 months after the Launch Date (as defined in the Agreement), and except as provided in Section 3.4 hereof, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the

Manufacturer may have against the Provider, the City or any other person. Without limiting the foregoing, the obligations of the Manufacturer hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of the Manufacturer):

(1) any exercise or failure, omission or delay by the City in the exercise of any right, power or remedy conferred on the City with respect to this Commitment or the Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(2) provided that the Manufacturer has given its prior written consent thereto, any permitted transfer or assignment of rights or obligations under the Agreement or under any other Transaction Agreement by any party thereto (other than a permitted assignment to a replacement operator in the event of a termination of the Provider pursuant to the Agreement), or any permitted assignment, conveyance or other transfer of any of their respective interests in the System under any of the Transaction Agreements;

(3) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the City or any other person in any Transaction Agreement or in the System;

(4) provided the Manufacturer has given its prior written consent thereto, any amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreements;

(5) any failure of title with respect to all or any part of the respective interests of any person in the System;

(6) except as permitted by Sections 4.1 or 4.2 hereof, any sale or other transfer by the Manufacturer or any affiliate of any of the capital stock or other interest of the Manufacturer or any affiliate in the Provider now or hereafter owned, directly or indirectly, by the Manufacturer or any affiliate, or any change in composition of the interests in the Provider;

(7) any failure on the part of the Provider for any reason to perform or comply with any agreement with theManufacturer;

(8) any failure of the Provider to mitigate damages resulting from any default by the Provider or the Manufacturer under any Transaction Agreement;

(9) provided Manufacturer has given its prior written consent thereo, the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(10) any legal disability or incapacity of any party to the Transaction Agreements; or

(11) the fact that entering into any Transaction Agreement by the Provider or the Manufacturer was invalid or in excess of the powers of such party.

(B) Notwithstanding anything to the contrary expressed in thisCommitment, nothing in this Commitment shall be deemed to amend, modify, clarify, expand or reduce the Provider's rights, benefits, duties or obligations under the Agreement. To the extent that any of the matters specified in subparagraphs (1) through (13) would provide a defense to, release, discharge or otherwise affect the Provider's Obligations, theManufacturer's obligations under this Commitment shall be treated the same.

3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS. Notwithstanding any provision contained herein to the contrary, the Manufacturer shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Provider may have under the Agreement or under Applicable Law (other than bankruptcy or insolvency of the Provider and other than any defense which the Provider has expressly waived in the Agreement), and the obligations of the Manufacturer hereunder are subject to such counterclaims, set-offs or deductions which the Provider is permitted to assert pursuant to the Agreement if any.

3.5. WAIVERS BY THE MANUFACTURER.

(A) The Manufacturer hereby unconditionally and irrevocably waives:

(1) notice from the City of its acceptance of thisCommittment;

(2) notice of any of the events referred to in Section 3.3 hereof except to the extent that notice is required to be given as a condition to the enforcement of Obligations;

(3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against theManufacturer.;

(4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;

(5) any right to require a proceeding first against the Provider;

(6) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Provider) or security;

(7) any requirement that the Provider be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

(8) the requirement of, or the notice of, the filing of claims by the City in the event of the receivership or bankruptcy of the Provider; and

(9) all demands upon the Provider or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Manufacturer in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

3.6 PAYMENT OF COSTS AND EXPENSES. The Manufacturer agrees to pay the City on demand all reasonable costs and expenses, legal or otherwise (including counsel fees), directly incurred by or on behalf of the City in successfully enforcing by legal proceeding the observance of the covenants, agreements and obligations contained in this Commitment against the Manufacturer, other than the costs and expenses that the City incurs in performing any of its obligations under the Agreement, or other applicable Transaction Agreement where such obligations are a condition to performance by the Provider of its Obligations.

3.7. SUBORDINATION OF RIGHTS. The Manufacturer agrees that any right of subrogation or contribution which it may have against the Provider as a result of any performance hereunder is hereby fully subordinated to the rights of the City hereunder and under the Transaction Agreements and that the Manufacturer shall not recover or seek to recover any payment made by it hereunder from the Provider until the Provider and the Manufacturer shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under thisCommittment.

3.8. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Manufacturer to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (1) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Manufacturer from its other obligations under thisCommittment , (2) give rise to separate and independent causes of action against the Manufacturer and (3) apply irrespective of any indulgence granted from time to time by the City. The Manufacturer agrees that this Commitment shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Provider is rescinded or must be otherwise restored by the City, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Agreement, or any applicable Transaction Agreement or the Provider's enforcement of such terms under Applicable Law.

3.9. TERM. This Commitment shall remain in full force and effect from the date of execution and delivery hereof until the second anniversary of the Launch Date.

ARTICLE 4
GENERAL COVENANTS

4.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. Consolidation, Merger, Sale or Transfer. The Manufacturer covenants that during the term of this Commitment it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it ; provided, however, that the Manufacturer may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (if other than theManufacturer) (a) assumes in writing all the obligations of the Manufacturer hereunder and, if required by law, is duly qualified to do business in the Commonwealth of Pennsylvania, and (b) delivers to the City and opinion of counsel to the effect that its obligations under this Commitment are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section 4.1, the provisions of this Section 4.1 shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section 4.1. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Manufacturer from its liability hereunder unless a successor entity has assumed responsibility for this Commitment as provided in this Section.

4.2. ASSIGNMENT. Without the prior written consent of the City, which shall not be unreasonably withheld, this Commitment may not be assigned by the Manufacturer, except pursuant to Section 4.1 hereof.

4.3. CONSENT TO JURISDICTION. The Manufacturer irrevocably: (1) agrees that any suit, action or other legal proceeding arising out of this Commitment shall be brought in the courts of the Commonwealth of Pennsylvania; (2) consents to the jurisdiction of such court in any such suit, action or proceeding; (3) waives any objection which it may have to the laying of the jurisdiction of any such suit, action or proceeding in any of such courts; and (4) waives its right to a trial by jury in any suit, action or proceeding in any of such courts.

4.4. BINDING EFFECT. This Commitment shall inure to the benefit of the City and its permitted successors and assigns and shall be binding upon the Manufacturer and its successors and assigns.

4.5. AMENDMENTS, CHANGES AND MODIFICATIONS. This Commitment may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the City and of the Manufacturer.

4.6. LIABILITY. It is understood and agreed to by the City that nothing contained herein shall create any obligation of or right to look to any director, officer, employee or stockholder of the Manufacturer (or any affiliate thereof) for the satisfaction of any Obligations hereunder, and no judgment, order or execution with respect to or in connection with this Commitment shall be taken against any such director, officer, employee or stockholder.

4.7. NOTICES. Any notices or communications required or permitted hereunder shall be in writing and shall be sufficiently given if faxed (with acknowledgment of receipt and followed by mailing of hardcopy), delivered in person, or sent by overnight courier to the following addresses, or to such other addresses as any of the recipients may from time to time designate by notice given in writing.

If to theManufacturer:

President
B-cycle, LLC
801 West Madison St
Waterloo, WI 53594

If to the City:

Deputy Mayor
Transportation and Utilities
Municipal Services Building
14th Floor
Philadelphia, Pennsylvania 19107

(*Signature Page Follows*)

IN WITNESS WHEREOF, the Manufacturer has caused this Commitment to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

B-cycle, LLC

By:_____
Printed Name: Robert Burns
Title: President

SEAL

Accepted and Agreed to by:

THE CITY OF PHILADELPHIA

By:_____
Rina Cutler
Deputy Mayor, Transportation & Utilities

Approved as to Form:
Law Department

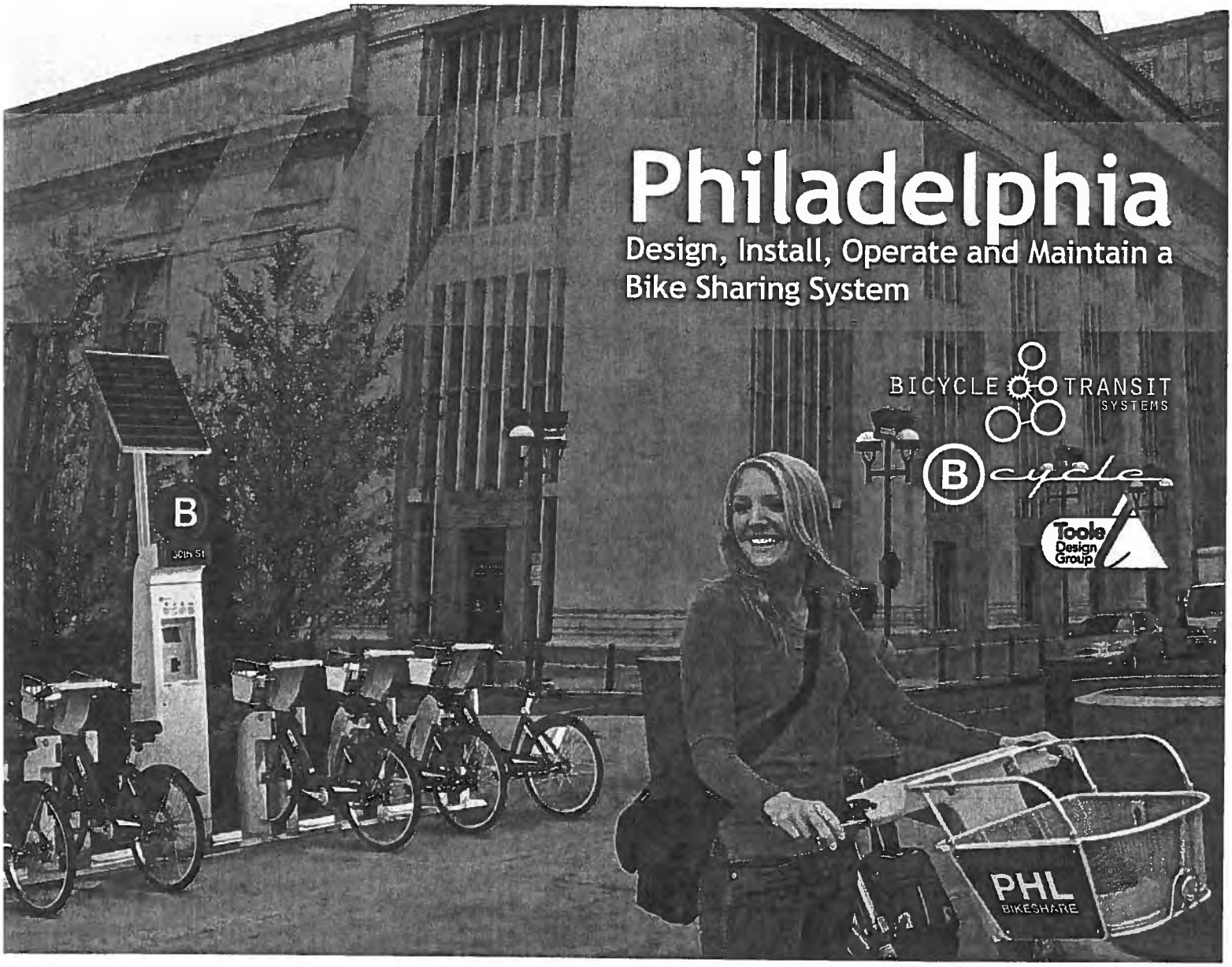
_____
J.Barry Davis
Chief Deputy City Solicitor

EXHIBIT 4

Provider's Proposal

Philadelphia

Design, Install, Operate and Maintain a Bike Sharing System



BICYCLE TRANSIT SYSTEMS

Bcycle

Toole Design Group

December 5, 2013

Aaron Ritz, Bicycle & Pedestrian Programs Planner
Mayor's Office of Transportation and Utilities
1401 JFK Blvd., Suite 1430
Philadelphia, PA 19102

BICYCLE TRANSIT SYSTEMS

RE: Design, Install, Operate and Maintain a Bike Sharing System in the City of Philadelphia

Dear Mr. Ritz:

Bicycle Transit Systems, Inc. (Bike Transit), B-Cycle and Toole Design Group (TDG) and our partners are pleased to submit this proposal to **Design, Install, Operate and Maintain a Bike Sharing System in the City of Philadelphia.** We have reviewed your Request for Proposals and have carefully assembled a team to provide the City of Philadelphia with a team that is Philadelphia-based, yet unmatched in its world-class operations, equipment and planning.

Bike Transit is a new Philadelphia-based company consisting of a unique group of people who have worked together launching bike share systems in large urban environments. Led by **Alison Cohen**, who was born and raised and resides in Philadelphia, Bike Transit has brought together the small group of people with the talent and experience to create the world's best bike share operations company. The team of Cohen, Chris Cassard, Peter Hoban, Brodie Hylton and Danny Quarrell have been the heart and soul of some of the largest and most successful bike share launches, including Washington DC, Boston, New York and Chicago. They have undertaken hiring, financing, deployment, staffing, marketing, development of standard operating procedures, planning, data collection and reporting for all of these and many other systems. In addition, we are pleased to include Parry Burnap, former Executive Director of Denver Bikesharing, as an advisor to our team during the launch process.

Bike Transit has chosen to team with **B-Cycle** for this important project because it is a strong, proven, long-lasting product with 26 systems, a low rate of theft and vandalism, proven backend software that works reliably, and a team of hard-working people who live by the premise of underpromising and overdelivering. B-Cycle is owned by Trek Bicycles, a large stable company committed to cycling and to spreading bike share around the world.

The teams from Bike Transit and B-Cycle have collectively launched and operated almost every bike share system in the United States, as well as international systems in Australia and South America. **TDG** is a leader in bike share siting, planning and feasibility and has done significant work in Philadelphia, including the Philadelphia Pedestrian and Bicycle Master Plan, as well as the Bikeshare Strategic Business Plan. Between our teams, we have launched and operated 33 bike share systems with 17,000 bikes in communities of all sizes, from Spartanburg to New York City, from nonprofit systems to federally funded systems to privately sponsored and owned systems. Our people have broken ground on all fronts - the first large-scale bike share system in the US (Denver), the three largest bike share systems in the US (NYC, Chicago, Washington DC), the bike share system that successfully operated through massive flooding (Boulder B-Cycle), the management and operations team that has survived hurricanes, earthquakes and snowstorms. We have undertaken all aspects of operating bike share on many scales and in different communities, from sponsorship to marketing to customer service, system planning, rebalancing, station maintenance, bike maintenance, snow removal, emergency response, coordinating with dozens of different agencies.

We look forward to discussing this exciting project with you. Thank you for your consideration of our team.

Alison M. Cohen, President and CEO
Bicycle Transit Systems, Inc.

1 TABLE OF CONTENTS

Cover Letter

ONE: TABLE OF CONTENTS

TWO: EXECUTIVE SUMMARY
Executive Summary 2

THREE: RESPONDENT PROFILE
Respondent Profile 4

FOUR: DESCRIPTION OF RESPONDENT AND PROPOSAL TEAM
Business Background 5

FIVE: UNDERSTANDING OF SCOPE OF WORK
E-1:Implementation Plan 7
E-2 Operations Plan 15
E-2 Call Center 28
E-3: Maintenance 32
E-4: Rebalancing and Fleet Management 37
E-5: Marketing Plan and Personnel 41
E-6: Stations 46
E-7: Bicycles 51
E-8: Station Computer Unit 55
E-9: Central Computer System Including Operating System 60
E-10: Website and Mobile Application 68
E-11: Data Security, Format, Accessibility 74

SIX: PROJECT UNDERSTANDING
Project Understanding 75

SEVEN: STATEMENT OF QUALIFICATIONS
Proposed Team 77
Key Personnel 79
Project Experience 89

EIGHT: REFERENCES
References 95

NINE: PROPOSED SUBCONTRACTORS
Proposed Subcontractors 96

TEN: REQUESTED EXCEPTIONS TO CONTRACT TERMS
Requested Exceptions to Contract Terms 97

ELEVEN: SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM
Solicitation for Participation and Commitment Form 98

TWELVE: TAX AND REGULATORY STATUS AND CLEARANCE STATEMENT
Tax and Regulatory Status and Clearance Statement 102

THIRTEEN: DISCLOSURE OF LITIGATION; AND ADMINISTRATIVE PROCEEDINGS
Disclosure of Litigation; and Administrative Proceedings 105

FOURTEEN: STATEMENT OF FINANCIAL CAPACITY
Statement of Financial Capacity 106

FIFTEEN: LOCAL BUSINESS ENTITY OR LOCAL IMPACT CERTIFICATION
Local Business Entity or Local Impact Certification 111

SIXTEEN: DISCLOSURE REQUIREMENTS
Disclosure Requirements 114

SEVEN: DEFAULTS
Defaults 114

EIGHTEEN: STATEMENT OF ANTICIPATED JOB CREATION
Statement of Anticipated Job Creation 115

APPENDICES
Appendix 1: **Sample Reports from Nice Ride** ... a1.1
Appendix 2: **Maintenance Manual** a2.1

2 EXECUTIVE SUMMARY

The team consisting of Bicycle Transit Systems, Inc. (Bike Transit), B-Cycle and Toole Design Group (TDG) is the most experienced, innovative, local and reliable team to design, install, operate and maintain a bike share system in the City of Philadelphia. The team brings a deep understanding of the challenges faced by other cities in launching and operating systems, and is starting afresh to avoid such challenges. We bring everything Philadelphia needs to implement a world-class bike share system: Planning, Equipment and Operations.

TEAM PROFILE

Bicycle Transit Systems, or Bike Transit, is a brand new Philadelphia-based bike share operations company that has taken the best and brightest from bike share operations to come together to do it better. The team is led by Alison Cohen, who was born, raised and resides in Philadelphia. The Bike Transit team of Chris Cassard, Peter Hoban, Brodie Hylton and Danny Quarrell have launched almost every big-city bike share system in the US, including DC, Boston, New York, Chicago and San Francisco.

B-Cycle, LLC is a well-established, stable, yet ground-breaking bike share company that grew out of Trek Bicycles. B-Cycle has 26 systems with over 3,500 bikes on two continents. Managing so many different systems is a very complex undertaking, and B-Cycle has established the well-tested hardware and software to support these systems. B-Cycle systems include Denver, Boulder, Madison, San Antonio, Salt Lake City, Charlotte, Kansas City, Omaha, Fort Lauderdale and Houston, and most recently, Santiago, Chile.

Toole Design Group, LLC (TDG) is the leading bike and pedestrian planning company in the United States. TDG wrote the original Philadelphia Pedestrian and Bicycle Master Plan, as well as the 2012 Philadelphia Pedestrian and Bicycle Master Plan update. TDG also authored the Philadelphia Bike Share Strategic Business Plan, and is completing studies and business plans for many cities around the US, including Las Vegas, Cleveland, Birmingham, Raleigh and Rochester. TDG has also undertaken a planning role in the bike share implementation for Alexandria, VA and Montgomery County, MD, including site planning and wayfinding. TDG is a certified Woman Owned Business with the Pennsylvania Unified Certification Program.

Our team also includes four local companies: Rodriguez Consulting, SK Designworks, Alpha Office Solutions and PhillyTemps who will help create the bike share system for Philadelphia.

Site Planning

TDG completed the Philadelphia Bike Share Strategic Business Plan in Spring 2013. through this work and its other projects in Philadelphia, TDG deeply understands the neighborhoods and related system metrics that will be covered by the Philadelphia Bike Share System. TDG, with the help of Rodriguez Consulting, will lead the

site planning and permitting process, going from its demand map and phasing plan created for the Strategic Business Plan, creating siting guidelines, and doing fieldwork to identify the specific sites. Rodriguez will lead the fieldwork and obtain all permits.

Equipment

With 26 bike share systems worldwide, B-cycle's equipment is the most reliable and tested system in the United States. Even with its stability, B-Cycle continues to innovate and improve all aspects of the system each day.

The B-cycle station was designed to be highly configurable for the urban environment. Station siting does not require the ripping up of any pavement and stations can be single-sided, double-sided, bolted to the pavement or non-bolted. The B-station was designed to be both iconic and to fit well within an urban environment.

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

B-cycle is excited to work with the City of Philadelphia to customize the bike and station for the City and sponsor(s) of the system.

Operations

Bike Transit undertakes all aspects of operations, including system implementation, bike maintenance, station maintenance, rebalancing, customer service and marketing.

Bike Transit will develop, market and operate the system with the following key philosophies in mind:

- World class professional
- Local
- Customer-oriented
- Cost-efficient
- Start small and scale up as needed

It is Bike Transit's goal to launch the system professionally and efficiently and, once the system is up and running, deliver a seamless customer experience. However, we also understand from the business perspective that the system must be self-sustaining financially with no public funding for operations. Therefore, it is crucial that operations are cost-efficient.

Business Model

The Bike Transit business plan is based on efficiency, transparency and scalability. Bike Transit proposes the following business model for operation of the Philadelphia Bike Share system. It is designed to achieve the following goals:

1. Maximum transparency to true operational costs for the system
2. City of Philadelphia realizes cost efficiencies by Bike Transit both from the beginning and with system expansion
3. Align incentives for high service levels, high membership and high ridership between Bike Transit and the City
4. Create a buffer for potential revenue shortfall to ensure financial sustainability of system
5. Allow Bike Transit a reasonable, but limited, return for its risk and investment
6. Allow for re-investment of all excess revenue back into the system

We propose that the City create an Sustainability Reserve account prior to system Go-Live from sponsorhip and advertising sales. Once the system is operating, Bike Transit will cover its operational costs plus a return from the System Revenue and Sustainability Reserve account. Our estimates show that for every 100 bikes, the projected per-dock-per-month cost decreases approximately 1%. In this way, the Philadelphia Bike Share system will quantitatively see the cost efficiencies as the system scales up, and Bike Transit is committed to recognizing such efficiencies.

3 RESPONDENT PROFILE

Bicycle Transit Systems
117 West Allens Lane
Philadelphia, PA 19119
www.bicycletransitsystems.com
p 617.548.8812
EIN# 46-3871132

Alison Cohen, President and CEO
Bicycle Transit Systems
117 West Allens Lane
Philadelphia, PA 19119
p 617.548.8812
acohen@bicycletransitsystems.com

B-cycle, LLC
801 West Madison Street
Waterloo, WI 53594
www.bcycle.com
p 920.478.2191

Bob Burns, President
p 920.478.2191 x12654
bburns@bcycle.com

Toole Design Group, LLC
8484 Georgia Avenue, Suite 800
Silver Spring, MD 20196
www.tooledesign.com
p 301.927.1900
f. 301.927.2800

RJ Eldridge, Director of Planning
p 301.927.1900 x107
reldridge@tooledesign.com

4 DESCRIPTION OF RESPONDENT AND PROPOSAL TEAM

Bicycle Transit Systems Inc. (Bike Transit) is a new Philadelphia-based company consisting of a unique group of people who have worked together launching bike share systems in large urban environments. Led by Alison Cohen, Bike Transit has brought together the small group of people with the talent and experience to create the world's best bike share operations company. Our team consists of Chris Cassard (Finance), Peter Hoban (Launch), Brodie Hylton (Operations) and Danny Quarrell (IT). Bike Transit is registered to do business in Pennsylvania and Philadelphia. It was just incorporated in October 2013, and its sole mission is to launch and manage bike share systems worldwide.

B-cycle, LLC is a joint venture between Trek Bicycle Corporation, Humana Inc., and Crispin Porter + Bogusky. These three partners came together in 2008 with a shared vision: create a movement to revolutionize transportation, improve health, and get more people out of cars and on bikes. To achieve this vision, B-cycle, LLC was formed with the express purpose of bringing bike share to the United States. This initial goal was realized on April 20, 2010 with the launch of Denver B-cycle - the first large-scale U.S. bike share system. Since that time, B-cycle has implemented bike share systems in more than 25 cities across the United States. In October 2013, B-cycle launched its first international system in Santiago, Chile.

Toole Design Group (TDG) is the nation's leading engineering, planning, and landscape architecture firm specializing in multi-modal transportation. With offices throughout the U.S., TDG has a reputation for developing cost-effective, practical solutions that move people efficiently, while improving the health and quality of life of the community. TDG believes that walking and bicycling are fundamental forms of transportation that should be available to everyone. TDG's job is to help communities plan, build and retrofit their transportation systems so that walking and bicycling are safe, efficient, healthy and enjoyable forms of travel. TDG creates spaces that meet the needs of all users, regardless of whether they ride a bike, walk, use a wheelchair, drive a car, or board a transit vehicle. This is more than making a living - TDG lives this philosophy on a daily basis. Over 80% of TDG staff bicycle, walk and use transit to get to work each day.

Full Bicycle Transit Proposal Dated December 5, 2013

Not Reproduced Here

Available in City of Philadelphia ACIS

EXHIBIT 5: Economic Opportunity Plan

City of Philadelphia
Economic Opportunity Plan

Bike Share

I. Introduction, Definitions and Diversity Practices

A. Chapter 17-1600 of The Philadelphia Code requires the development and implementation of "Economic Opportunity Plan(s)" for certain classes of contracts and covered projects as defined in Section 17-1601. The Economic Opportunity Plan ("Plan") memorializes the Applicant's best and good faith efforts to provide meaningful and representative opportunities for Minority Business Enterprises ("MBEs"), Woman Business Enterprises ("WBEs") and Disabled Business Enterprises ("DSBEs") (collectively, "M/W/DSBEs" which also includes firms designated as Disadvantaged Business Enterprises or "DBEs"[1]) and an appropriately diverse workforce in connection with the contract or covered project.

This Notice of Contracting Opportunity (hereinafter, "NOCO") and any resulting contract are subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, by submission of its proposal, a responsive and responsible Applicant makes a legally binding commitment to abide by the provisions of this Plan which include Applicant's commitment to exercise its best and good faith efforts throughout the contract term to provide meaningful and representative contracting opportunities for M/W/DSBEs and to employ an appropriately diverse workforce which should include minority and female persons in all phases of any contract awarded under this NOCO. By submission of this Plan, Applicant agrees that it shall and shall cause all its professional services providers and consultants retained by Applicant (collectively, the "Participants" and each a "Participant") to use their best and good faith efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the contract. This Plan expressly applies to all contracts awarded by the successful Applicant and subcontracts awarded by its Participants. The objectives set forth in this Plan shall be incorporated in all requests for proposals and solicitations and communicated to all Participant levels.

B. For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity ("OEO"). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency[2] or identified in the OEO Registry will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at www.phila.gov/oeo/directory. If Applicant is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

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[1] "DBE" or "Disadvantaged Business Enterprise" means a socially and economically disadvantaged minority or woman owned business that is certified under 49 C.F.R. Part 26. If applicant makes solicitation(s) and commitment(s) with a DBE, applicant shall indicate which category, MBE or WBE, is submitted for counting.
[2] A list of "OEO approved certifying agencies" can be found at www.phila.gov/oeo

C. Neither Applicant nor any Participant shall discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, or handicap in the award and performance of contracts pertaining to this NOCO. Applicant is required to submit a statement summarizing current and past practices relating to its diversity practices. Attachment "A" to this Plan is provided for this purpose and should be submitted with Applicant's proposal although the City reserves the right to request it at any time prior to contract award.

Applicant and its Participant(s) hereby verify that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, are true and correct and are notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. Applicant and its Participants also acknowledge that if awarded a contract/subcontract resulting from this NOCO, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) if, in the course of the contract/subcontract, Applicant and/or its Participant(s) fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

II. Goals

For this Plan, the term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and achieve an appropriately diverse workforce. Best and Good Faith Efforts are rebuttably presumed met, when a Applicant makes commitments within the M/W/DSBE Participation Ranges established for this Proposal and commits to employ a diverse workforce.

A. M/W/DSBE Participation Ranges

As a benchmark for the Applicant's expression of its Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, the following participation ranges have been developed. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable on this contract through the exercise of Applicant's Best and Good Faith Efforts. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

PROPOSAL	MBE	WBE
Bike Share RFP	3% -7 %	3% - 7%

B. Employment Goals

Applicant agrees to exhaust its Best and Good Faith Efforts to employ an appropriately diverse workforce which includes minority persons and females at all tiers of employment and management. Applicant shall also cause its Participants to employ an appropriately diverse workforce. For this Plan, an appropriately diverse workforce is one which reflects the local availability of professionals possessing the requisite education, licenses, where appropriate, and skills to work on this project.

Local Residents Goals for Construction and Operations
50%

III. Applicant Responsiveness and Responsibility

A. Applicant shall identify all its M/W/DSBE commitments and evidence its agreement to employ a diverse workforce on the form entitled, "M/W/DSBE Participation and Workforce Commitments." The Applicant's identified commitment to use an M/W/DSBE on this form constitutes a representation by Applicant, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Applicant has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Applicant further represents that if Applicant is awarded the contract, Applicant will subcontract with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, Applicant shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. Applicant is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases. In the event the Successful Applicant's contract is increased by change order and/or modification, or amendment, it shall be the responsibility of the Successful Applicant to apply its Best and Good Faith Efforts to the amended amount in order to maintain any participation ranges committed to on the total dollar amount of the contract at the time of contract completion.

1. Commercially Acceptable Function

An Applicant that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with the NOCO), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the Applicant receives towards the participation ranges. For example, a Applicant using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character described by the NOCO and required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

B. Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Any change in commitment, including but not limited to termination of the subcontract, reduction in the scope of committed work, substitutions for the listed firms, changes or reductions in the listed dollar/percentage amounts, must be pre-approved in writing by OEO. Throughout the term of the contract, Applicant is required to continue its Best and Good Faith Efforts.

C. **In the event Applicant does not identify on the M/W/DSBE Participation and Workforce Commitments Form that it has made M/W/DSBE commitments within the participation ranges established for this NOCO and/or does not agree to employ a diverse workforce as described herein, Applicant must complete and submit a *Documentation of Best and Good Faith Efforts Form* ("BGFE Form"), documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the contract and to employ a diverse workforce.** The submission of the BGFE Form is an element of proposal responsiveness and failure to include this form may result in the rejection of the Proposal. The BGFE Form must include at a minimum, certification and documentary evidence that the following actions were taken:

1. Solicitation directed to both qualified M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Applicant must provide a list of all certification directories used for soliciting participation for this NOCO. Applicant must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and

2. Applicant provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation; and

3. Applicant negotiated in good faith with interested M/W/DSBEs. An Applicant using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of the Plan into consideration; and

4. Documentation of the following:

i. Any commitments to use M/W/DSBEs in its proposal for subcontracted services and materials supply even when Applicant would otherwise prefer to self-perform/supply these items; and

ii. Correspondence between the Applicant and any M/W/DSBE(s) related to this Proposal; and

iii. Attendance logs and/or records of any scheduled pre-proposal meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

i. Any arms length business assistance provided to interested M/W/DSBEs; and

ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and

iii. Telephone logs of communications related to this NOCO; and

iv. Notification of and access to proposal documents at the Applicant's office or other office locations for open and timely review; and

v. Applicant sought assistance from the Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation to perform employment outreach; and

vi. Applicant published its policy of nondiscrimination in the hiring, retention and promotion of employees; and

vii. Any agreement with a training program that targets the employment of minority persons, disabled persons and women.

IV. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate the responsiveness of the Applicant's Plan to these requirements. OEO reserves the right to request further documentation and/or clarifying information at any time prior to the award of the contract which may result in Applicant's amendment of its M/W/DSBE Participation and Workforce Commitments Form or BGFE Form.

B. Administrative Reconsideration

1. If the OEO determines that the Applicant has not made sufficient Best and Good Faith Efforts, the Applicant will be notified that its proposal is nonresponsive and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that the Applicant did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all proposals as deemed in the best interest of the City.

V. Compliance and Monitoring of Best and Good Faith Efforts

A. The Successful Applicant shall file a hard copy of this Plan, as certified below by OEO, with the Chief Clerk of City Council within fifteen (15) days of receiving a Notice of Award. The Plan shall be filed with:

Michael Decker, Chief Clerk of City Council
Room 402 City Hall
Philadelphia, Pennsylvania 19107

The Successful Applicant also agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Successful Applicant must provide as required and maintain the following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments.

B. Prompt Payment of M/W/DSBEs

1. The Successful Applicant shall within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, the Successful Applicant agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

2. Each month of the contract term and at the conclusion of the contract, the Successful Applicant shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the Plan.

C. Oversight Committee

1. For this project, the City, in its sole discretion, may establish a Project Oversight Committee consisting of representatives from the Applicant's company and the City ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.

2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed.

VI. Remedies and Penalties for Non-Compliance

A. The Successful Applicant agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the contract. It is further agreed and understood that in the event the City determines that the Successful Applicant hereunder has failed to comply with these requirements the City may, in addition to remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies below, which shall be deemed cumulative and concurrent:

1. Withhold payment(s) or any part thereof until corrective action is taken.

2. Terminate the contract, in whole or in part.

3. Suspend/Debar the successful Applicant from proposing on and/or participating in any future City contracts for a period of up to three (3) years.

4. Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City.)

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this NOCO nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in any contract resulting from this NOCO. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of any contract resulting from this NOCO except such rights or remedies that the M/W/DSBE

subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

President and CEO 5/30/2014

SIGNATURE OF APPLICANT AND TITLE DATE

Angela Dowd-Burton / Int. 6/4/2014

ANGELA DOWD-BURTON, DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY[3] DATE

[*See Forms on following pages; these Forms, as completed by Applicant, must be submitted with the Application as a matter of Responsiveness and Responsibility*]

[3] Pursuant to Section 17-1603 (2) of The Philadelphia Code, the representative of the City of Philadelphia's Office of Economic Opportunity, the "certifying agency", certifies that the contents of this Plan are in compliance with Chapter 17-1600.

BICYCLE TRANSIT SYSTEMS

STATEMENT OF DIVERSITY PRACTICES, POLICIES AND PAST ACHIEVEMENTS

This statement is made in compliance with Chapter 17-1603 entitled Equal Opportunity Plan: Contents.

1. Bicycle Transit Systems (Bike Transit) is committed to providing equal economic and employment opportunities to in relation to the Philadelphia Bike Share Program. Bicycle Transit Systems is a new Philadelphia based Company which does not currently have any employees. However, Bike Transit will become an equal opportunity employer and intends to employ a diverse workforce which is representative of the population demographics of Philadelphia. Bike Transit acknowledges the importance of providing economic opportunity to Minority, Woman and Disabled Businesses (M/W/DSBE's). Bike Transit identified and partnered with local M/W/DSBE's in the preparation of its proposal to the City of Philadelphia for the Bike Share program. Bike Transit intends to engage the identified M/W/DSBE's upon execution of the Philadelphia Bike Share Contract.

2. Bike Transit is in the process of establishing its operations and as yet not all managerial nor rank-and-file positions have been filled. For positions not yet filled (approximately 20), we intend to make efforts to appoint individuals of appropriate diversity to reflective the population of Philadelphia. Below is a table of our current and expected management structure:

Classification	Position	Race	Gender	Residential Status
Board of Directors	Chairman (1)	White	Male	Portland OR
	Director (1)	White	Female	Philadelphia PA
Management	General (1)	White(AUS)	Male	Philadelphia PA
	Marketing (1)	White	Male	Philadelphia PA
	Customer Service* (1)			
	Operations* (1)			
	Finance/Admin* (1)			
General Workforce	Marketing* (1)			
	Customer Service* (5)			
	Operations* (10)			
	Finance/Admin* (1)			

Bracketed number indicates anticipated number of FTE employees
** Indicates positions yet to be filled*

BICYCLE TRANSIT SYSTEMS

3. Bike Transit has used its professional network to identify and solicit its current M/W/DSBE's partners. For future identification and solicitation, Bike Transit intend to broaden its working relationships with M/W/DSBE's by accessing the OEO registry online at: www.phila.gov/oeo/directory.

4. Bike Transit is a new company and to this point has not had significant operational expenditures, however of the total disbursements since inception, 11% have been with M/W/DSBE's. The largest of these has been for Toole Design Group(TDG). TDG provided marketing and graphic design work on a time and materials basis. TDG is listed in the City of Philadelphia's Office of Economic Opportunity Registry.

5. Bike Transit is a privately owned company with five shareholders. One of the largest percentage holders is a woman, who is also the President and CEO. Through her leadership and with the united and full support of the other four owners, Bicycle Transit Systems intends to professionally advance women and minorities within the organization. In addition, Bike Transit has identified that participation in bike sharing, and biking in broader terms, is not representative of the population and we intend to engage in education and outreach programs that help address this.

This statement is for, and on behalf of Bicycle Transit Systems Inc.

Alison Cohen

President and CEO

Date: 5/30/2014