

LICENSE AND SPONSORSHIP AGREEMENT

THIS LICENSE AND SPONSORSHIP AGREEMENT ("Agreement") is made and entered into this [22] day of [June], 2016 by and between Jackson County, MO, located at 415 East 12<sup>th</sup> Street, Kansas City, MO 64106, and Bike Share KC, d.b.a. Kansas City B-cycle, a Missouri nonprofit corporation ("Bike Share"), located at 3269 Gillham Road, Suite C, Kansas City, MO 64109.

## RECITALS

WHEREAS, Jackson County is the owner of that certain real property, together with the improvements located thereon, located at as more particularly described on Exhibit A, attached hereto and incorporated herein (collectively, the "Property");

WHEREAS, Bike Share owns and operates a bicycle sharing system for Kansas City, MO (the "Bike Sharing System");

WHEREAS, Bike Share desires to locate a microprocessor controlled locking bicycle rack and kiosk with bicycles (collectively, the "Bike Station") on the portion of the Property shown on Exhibit B, attached hereto and incorporated herein (the "Licensed Area");

WHEREAS, Bike Share has requested and Jackson County has agreed to grant Bike Share a license to use certain portions of the Licensed Area, subject to the terms herein;

WHEREAS, Jackson County desires to host the Bike Station to be located within the Licensed Area; and

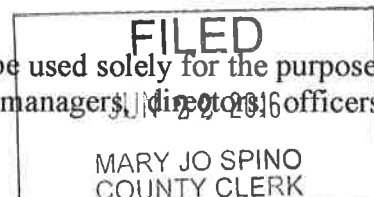
WHEREAS, Bike Share desires to obtain sponsorships in connection with the Bike Sharing System and Jackson County desires to provide a sponsorship in connection with the Bike Sharing System on the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Jackson County and Bike Share agree as follows:

1. **License to Use the Bike Station within the Licensed Area.**

(a) Grant of License. Jackson County hereby grants Bike Share and the Permitted Users (as defined in Section 1(b) below), subject to the terms and conditions of this Agreement, a non-exclusive license (the "License") to install, maintain, upgrade, repair, replace and use the Bike Station in the Licensed Area; together with the rights, appurtenant to the License, to enter upon such area of the Property as is reasonably necessary to exercise the License and Bike Share's other rights, and to perform and observe Bike Share's obligations, under this Agreement.

(b) Use Restrictions. The Licensed Area shall be used solely for the purposes set forth in Section 1(a) by Bike Share, its members, managers, directors, officers,



employees, agents, contractors, subcontractors, guests or invitees (each, a “**Permitted User**” and, collectively, the “**Permitted Users**”), and Jackson County shall not materially interfere or alter Bike Share’s use and enjoyment of the same.

(c) When the bike trail is deemed to be too wet or conditions are unsuitable for riding by Jackson County, Bike Share agrees to turn off the bike station until notified by Jackson County that bicycles are allowed back on the trail. Jackson County also reserves the right to close the station for special events impacting the bicycle trail.

2. **Site Preparation.** At no cost or expense to Bike Share, Jackson County shall be responsible for preparing the Licensed Area for the installation of the Bike Station in accordance with the site readiness criteria set forth in Exhibit C, attached hereto and incorporated herein.

3. **Installation of Bike Station.** At no cost or expense to Jackson County, Bike Share or its contractor shall be responsible for installing the Bike Station within the Licensed Area. Upon completion of the installation of the Bike Station, a description of the footprint including the dimensions thereof shall be added to Exhibit B and deemed a part thereof and a rendering of the Bike Station shall be attached as Exhibit D and incorporated herein.

4. **General Maintenance and Repair.** Jackson County agrees, at its sole cost, to repair and maintain the improved surfaces of the Licensed Area in good condition, including but not limited to cleaning, sweeping, trash removal, and snow and ice removal (each as needed). Bike Share agrees, at its sole cost, to repair and maintain the Bike Station in safe working order and good condition.

5. **Surrender.** Upon the expiration or earlier termination of this Agreement, Bike Share must remove the Bike Station and repair any damage caused to the Licensed Area by Bike Share or any Permitted Users, ordinary wear and tear excepted. This Section 6 shall survive the expiration or earlier termination of this Agreement.

6. **Sponsorship Terms.** Jackson County and Bike Share hereby agree that Jackson County shall be a Sponsor of the Bike Sharing System (the “**Sponsorship**”) during the Term (as defined below).

(a) Grant of Sponsorship Rights and Benefits. In connection with the Sponsorship, Bike Share hereby grants to Jackson County the nonexclusive rights and benefits set forth on Exhibit E.

(b) The Sponsorship Fees and Services. In consideration for the Sponsorship and the rights and benefits provided to the Sponsor as set forth in Section 7(a) above, Jackson County shall pay the fees and provide the services set forth on Exhibit F.

(c) Third Party Sponsorships. Jackson County acknowledges that Bike Share desires to obtain sponsorships from third parties (each, a “**Third Party Sponsorship**”) in connection with the Bike Sharing System and agrees that Bike Share shall have the right

to place and display within the Licensed Area certain names, trademarks, service marks and logos of any person (collectively, the “**Third Party Marks**”) under any Third Party Sponsorship; provided, however, Bike Share shall not place or display such Third Party Marks within the Licensed Area without Jackson County’s prior written consent, which consent shall not be unreasonably withheld.

**7. Trademark License.**

(a) Trademark Rights. Jackson County and Bike Share each acknowledge that the other party owns certain names, trademarks, service marks, and logos which are identified on Exhibit G (collectively, the “**Marks**”), and each owns certain merchandising rights in and to their respective Marks, and all goodwill associated with the Marks.

(b) License Grant. Each of Jackson County and Bike Share grants to the other party a nonexclusive, nontransferable, royalty free license to use its Marks during the Term, subject to the terms and conditions of this Agreement, solely in connection with the Sponsorship.

(c) Use of the Marks.

(i) Each of Jackson County and Bike Share may make reference to each other and may display the Marks as well as photographs or graphic images of activities related to the Sponsorship.

(ii) Jackson County and Bike Share shall agree to guidelines governing the use of the other party’s Marks in promotional or advertising materials. The parties shall not unreasonably withhold approval of guidelines or uses of the Marks. Such use may be subject to such reasonable conditions as either party may impose, including but not limited to, conditions affording each party adequate protection of its Marks. Under no circumstances will promotions which reflect unfavorably upon either party, or which are prohibited or restricted by law, rule, regulation, or executive order, such as “lotteries” or similar contests involving prize, chance and consideration, be approved by Bike Share.

(iii) Upon termination or expiration of this Agreement, both parties shall cease all use of the Marks of the other party as soon as practicable, but, in any event, within 30 days, unless the particular media which has been approved requires a longer lead time, but in no event longer than 90 days.

(d) Limitations of Trademark License. Neither party is granted any right or license under this Agreement to sell or otherwise distribute for sale, any of the promotional advertising material or items related thereto, unless specifically set forth herein. If a party desires to sell or distribute for sale any of such materials or other merchandising or novelty items bearing the Marks of the other party, then it shall request permission to do so from the other party and, if granted, the parties shall negotiate in good faith such a separate licensing agreement covering such materials or items before they may be sold or distributed for sale..

8. **Term and Termination; Effect of Termination.** Unless earlier terminated pursuant to this Section 9 hereof, the term of this Agreement shall commence on the date hereof and continue for five (5) calendar years from such date (the "**Term**"). Subject to the terms of this Agreement, a party terminating this Agreement under Section 9(b) may pursue any other remedy provided in law or in equity for damages incurred by such party. All indemnities and releases shall survive termination hereof.

(a) Termination for Convenience. Notwithstanding anything in this Agreement to the contrary, either Jackson County or Bike Share may, at any time, and without penalty, terminate this Agreement upon ninety (90) days prior written notice to the other party.

(b) Termination for Cause. Notwithstanding anything in this Agreement to the contrary, either party may terminate this Agreement immediately upon notice to the other party as follows:

(i) If the other party commits a material breach of this Agreement and fails to cure said breach after receiving thirty (30) days' notice in writing of the alleged breach from the aggrieved party.

(ii) If the other party shall be unable to pay its liabilities when due, or shall make any assignment for the benefit of creditors, or shall file a petition under any federal or state bankruptcy statute, or file a voluntary petition in bankruptcy, or be adjudicated bankrupt or insolvent, or if any receiver is appointed for its business or property, or if the trustees in bankruptcy or insolvency shall be appointed under the laws of the United States government or of the several states.

9. **Insurance.** Bike Share agrees to carry, at its expense, from the date on which Bike Share completes installation of the Bike Station within the Licensed Area comprehensive general liability insurance with limits in an amount not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate, and personal property insurance in an amount adequate to cover the full replacement cost of the Bike Station in the event of loss. Each policy required to be maintained herein shall name Jackson County as an additional insured thereunder.

10. **Waiver of Subrogation.** Jackson County and Bike Share each hereby waive (to the extent of insurance proceeds collected) any and all rights of recovery, claim, action or cause of action against the other, its agents, officers, or employees for any damage that may occur to the Property, including but not limited to the Licensed Area, and/or any personal property of such party therein by reason of any cause which is insured against under the terms of any insurance policies referred to herein or self-insured, regardless of cause or origin, including negligence. The parties agree that no insurer shall hold any rights of subrogation against such other party, and that their respective insurance policies shall be endorsed or otherwise written to provide that no insurer shall hold any rights of subrogation against such other party. This Section 11 shall survive the expiration or earlier termination of this Agreement.

11. **Indemnification.** Subject to Section 11 above, each party (in the capacity of “**Indemnitor**”) hereby agrees to indemnify, defend and hold the other party (in the capacity of “**Indemnitee**”) harmless from and against all costs, expenses, claims, suits, causes of action, liabilities, losses, fines, penalties, charges, judgments, injuries and damages, including, without limitation, reasonable attorneys’ fees and costs (collectively, “**Indemnified Costs**”) relating to or resulting (a) from any breach by the Indemnitor of this Agreement and (b) from bodily injuries, including death, and from injury or destruction of tangible property occurring on the Licensed Area or in other portions of the Property and arising out of such Indemnitor’s acts, omissions, use or control thereof, except to the extent caused by the negligent or intentional act or omission of the Indemnitee, its members, managers, directors, officers, employees, agents, contractors, subcontractors, guests or invitees. The Indemnitor shall be promptly notified of any suits, proceedings, claims or demands for which the Indemnitee requests indemnification. The Indemnitor shall assume the entire defense thereof and the Indemnitee shall cooperate fully with the Indemnitor in such defense. This Section 12 shall survive the expiration or earlier termination of this Agreement.

12. **Waiver of Consequential Damages.** Each party waives the right to special, indirect, consequential and punitive damages, including lost profits. This Section 13 shall survive the expiration or earlier termination of this Agreement.

13. **Independent Status.** The parties hereto acknowledge and agree that each of Jackson County and Bike Share are independent contractors and this Agreement shall not establish any relationship of partnership, joint venture, employment, franchise, or agency between Jackson County and Bike Share. Neither Jackson County nor Bike Share shall have the power to bind the other or incur obligations on the other’s behalf without the other’s prior written consent.

14. **Miscellaneous.**

(a) **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties, as well as their respective successors in interest, whether by merger, reorganization or acquisition.

(b) **Assignment.** Neither party shall assign or transfer its rights, nor delegate its obligations under this Agreement to any third party without the prior written approval of the other party, which may be withheld for any or no reason, with the exception that such assignment may be made without obtaining consent to (i) any affiliate of a party, or (ii) any entity (or its affiliate) acquiring all or substantially all of the assets or stock, by merger or otherwise, of a party or any affiliate of a party. For purposes of this provision, “affiliate” shall mean any entity controlling, controlled by or under common control with the referenced party.

(c) **Entire Agreement.** This Agreement contains the entire understanding between the parties and supersedes all prior agreements between the said parties, whether written or oral, no representation, inducement, promises or agreements or otherwise, which are not embodied herein, shall be of any force or effect. This Agreement may not

be amended or otherwise modified except by written agreement executed and authorized by all parties.

(d) Notices. Any notices required by any provision of this Agreement shall be made in writing and delivered by (i) United States registered or certified mail, postage prepaid, (ii) reputable overnight courier, (iii) facsimile transmission or (iv) by electronic mail transmission in uneditable electronic format (i.e. Adobe PDF) with written confirmation of receipt. Such notice shall be effective three (3) days after the mailing thereof by registered or certified mail, one (1) business day after the mailing thereof by overnight courier, and on the day of confirmed delivery by facsimile transmission. Each party shall give notice to the other party in the event of any change of address. Rejection or refusal to accept delivery or the inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of notices as of the date such notice was deposited in the mail or delivered to the courier or transmitted via confirmed facsimile. Notices shall be addressed to the addresses set forth on the respective signature page hereto.

(e) Headings. The headings and captions in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of this Agreement.

(f) Counterparts. This Agreement may be executed in multiple counterparts each of which shall be deemed an original and together will constitute one and the same instrument.

(g) Facsimile Signatures. This Agreement may be executed by facsimile signatures which shall be binding as originals on the parties hereto.

(h) Governing Law, Venue. This Agreement shall be governed by and interpreted under the laws of the State of Missouri. Any action regarding this Agreement shall be filed in the Circuit Court of Jackson County, Missouri without regard to any statute or rule of law which would suggest or require another venue.

(i) Survival. The provisions of the Agreement, and the obligations of the parties which, by their own terms, contemplate actions to be performed after termination, including but not limited to, payment of fees and other consideration, the terms of this Agreement regarding Indemnification, Effect of Termination, Governing Law, Venue, and Trademarks shall survive the termination.

*[signature page follows]*

**IN WITNESS WHEREOF**, this Agreement has been executed as of the date and year first above written. The parties agree to be bound by either electronic or telecopied signatures and agree that the other party may rely on their telecopied or electronic signature.

**Jackson County:**

APPROVED AS TO FORM:

Jackson County, Missouri

By W. Stephen Nixon

W. Stephen Nixon, County Counselor

By Frank White, Jr.

Frank White, Jr., County Executive

ATTEST:

By Mary Jo Spino

Mary Jo Spino, Clerk of the Legislature


**JACKSON COUNTY'S NOTICE ADDRESS:**

Jackson County, Missouri  
415 East 12<sup>th</sup> Street  
Kansas City, MO 64106

*[Bike Share's signature page follows]*

**BIKE SHARE:**

BikeShareKC,  
a Missouri nonprofit corporation

By:   
Name: Eric Rogers  
Title: Executive Director

**BIKE SHARE'S NOTICE ADDRESSES:**

*If to Bike Share:*

BikeShareKC  
4741 Central St  
Suite 161  
Kansas City, MO 64112

Attention: Eric Rogers  
Email: [eric.rogers@bikewalkkc.org](mailto:eric.rogers@bikewalkkc.org)  
Facsimile: 816-867-8048

*with required copies to:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: Station Manager  
Email: [info@bikewalkkc.org](mailto:info@bikewalkkc.org)  
Facsimile: \_\_\_\_\_



**REVENUE CERTIFICATE**

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of \$7,173.00 which is hereby authorized.

June 17, 2016  
Date

  
Chief Financial Officer  
Account No. 003-1608-58060

PC 16082016001

EXHIBIT A

THE PROPERTY

Shelter 14 at Longview Lake

Installation is in the area shown below.

Station Site Layout



\*Kiosk located on west side of concrete pad, closest to the trail. Pad dimensions 16'x17'x6''.



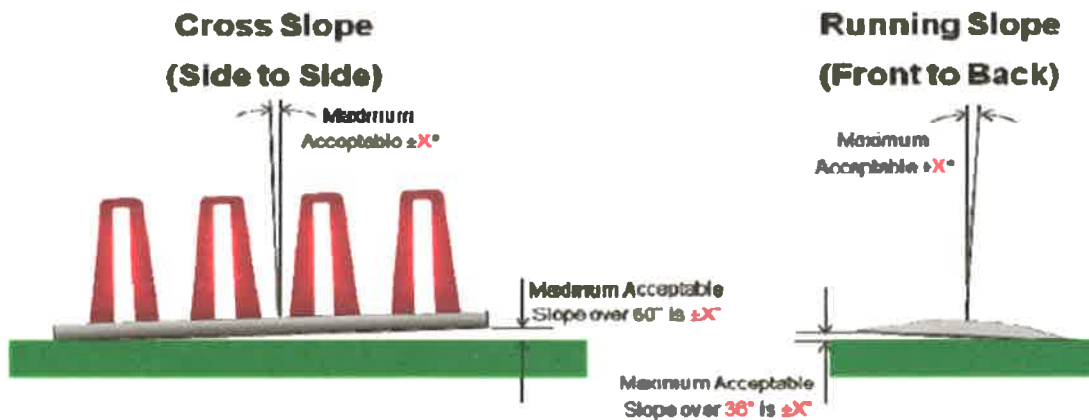
## EXHIBIT C

### SITE READINESS CRITERIA

Site prep will not require access to local electric supply since the station will be solar powered. Jackson County will supply site preparation of a level concrete pad.

#### OTHER CONSIDERATIONS

- Allowable foundational material
  - o Bolted stations must be anchored into materials such as cement, stone, or brick that is securely anchored to the ground. Asphalt is not an acceptable material.
- Allowable ground slope/grade
  - o Cross Slope – is the angle perpendicular to the direction of travel or usage
  - o Running Slope – is the steepness measured parallel to the direction of travel or usage



- Allowable ground undulation



- Allowable ground flatness
  - o Maximum ground variation or flatness is constrained by ADA trip hazard guidelines, which states that a rise larger than 1/2" requires a ramp with maximum grade of 1:12
  - o Therefore, in order to ensure that the gap between the ground and the base is less than 1/2", the grade variation must be less than 1/2" (or ±1/4")
  - o If flatness of site is outside of spec, special measures can be employed to avoid a tripping hazard (i.e., locally filling the low spot)

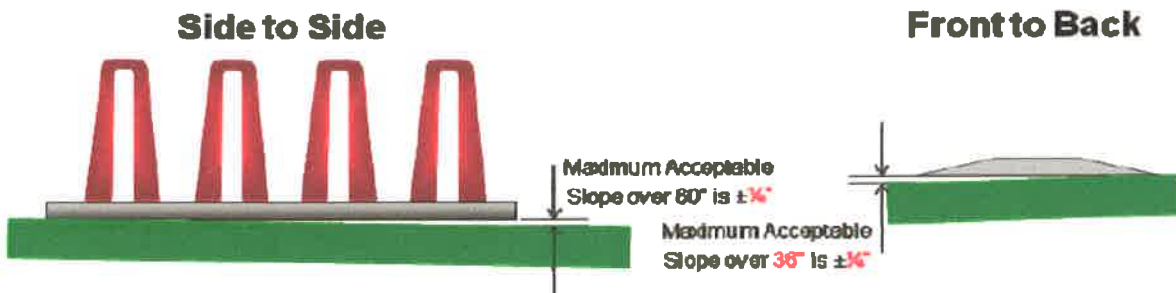


EXHIBIT D

RENDERING OF BIKE STATION

[To be attached upon completion.]

## EXHIBIT E

### SPONSORSHIP RIGHTS AND BENEFITS

- Station and 10 bikes
- Free annual training sessions for staff
- 25" x 28" ad placement on any station in the system\*
- Basket ads on 10 bikes\*
- Naming rights to the station
- Tier 1 station maintenance and bike inventory

EXHIBIT F

SPONSORSHIP FEES AND SERVICES

\$7,173 year one, payable upon execution of this agreement.



EXHIBIT G

TRADEMARKS

[Insert details of each parties' trademarks]

