

City Commission

Enid Weisman, Mayor
Denise Landman, Vice Mayor
Enbar Cohen, Commissioner
Teri Holzberg, Commissioner
Marc Narotsky, Commissioner
Robert Shelley, Commissioner
Howard Weinberg, Commissioner



City Manager

Eric M. Soroka, ICMA-CM

City Clerk

Ellisa L. Horvath, MMC

City Attorney

Weiss Serota Helfman
Cole & Bierman

CITY COMMISSION MEETING AGENDA

JUNE 7, 2016

6:00 p.m.

**Aventura Government Center
19200 West Country Club Drive
Aventura, Florida 33180**

- 1. CALL TO ORDER/ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. AGENDA:** Request for Deletions/Emergency Additions
- 4. SPECIAL PRESENTATION:**
 - Employee Service Award
- 5. RESOLUTION – PUBLIC HEARING:**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, APPROVING WITH CONDITIONS A REQUEST TO VACATE A PORTION OF THE PUBLIC RIGHTS OF WAY OF NE 29TH COURT, NE 201ST TERRACE, NE 27TH COURT, AND A PORTION OF THE NE 203RD STREET FRONTAGE ROAD LEGALLY DESCRIBED IN THE ATTACHED EXHIBIT "A;" AUTHORIZING THE CITY MANAGER TO ENTER INTO A PERPETUAL ROAD MAINTENANCE AGREEMENT; RESERVING CERTAIN EASEMENTS TO THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

6. CONSENT AGENDA: Matters included under the Consent Agenda are self-explanatory and are not expected to require discussion or review. Items will be enacted by one motion. If discussion is desired by any member of the Commission, that item must be removed from the Consent Agenda and considered separately. If the public wishes to speak on a matter on the consent agenda they must inform the City Clerk prior to the start of the meeting. They will be recognized to speak prior to the approval of the consent agenda.

A. APPROVAL OF MINUTES:

- May 3, 2016 Commission Regular Meeting

B. A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA DECLARING CERTAIN PROPERTY LISTED UNDER THE ASSETS OF THE CITY AS SURPLUS TO THE NEEDS OF THE CITY; DESCRIBING THE MANNER OF DISPOSAL; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

C. A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AUTHORIZING THE CITY MANAGER TO EXECUTE THE ATTACHED TRAFFIC CONTROL JURISDICTION AGREEMENT BETWEEN BISCAYNE LAKE GARDENS SERVICE CORP. AND THE CITY OF AVENTURA; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

D. A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AWARDED AND LETTING A BID/CONTRACT FOR RFP NO. 16-11-13-2, TO PROVIDE CITY WIDE BICYCLE SHARING SYSTEM, TO B-CYCLE, LLC, AUTHORIZING THE CITY MANAGER TO EXECUTE THE ATTACHED PURCHASE AGREEMENT, INTELLECTUAL PROPERTY LICENSE AGREEMENT, DIGITAL PLATFORM SERVICES AGREEMENT AND SERVICE AGREEMENT; AUTHORIZING THE CITY MANAGER TO TAKE NECESSARY AND EXPEDIENT ACTION TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

E. A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND OTHERWISE ENTER INTO THE ATTACHED INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF AVENTURA AND MIAMI-DADE COUNTY FOR PARTICIPATION IN THE MUNICIPAL PARKING FINES REIMBURSEMENT PROGRAM; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

7. ZONING HEARINGS - QUASI-JUDICIAL PUBLIC HEARINGS: Please be advised that the following items on the Commission's agenda are quasi-judicial in nature. If you wish to object or comment upon any of these items, please inform the Mayor when she requests public comments. An opportunity for persons to speak on each item will be made available after the applicant and staff have made their presentations on each item. All testimony, including public testimony and evidence, will be made under oath or affirmation. Additionally, each person who gives testimony may be subject to cross-examination. If you refuse either to be cross-examined or to be sworn, your testimony will be given its due weight. The general public will not be permitted to cross-examine witnesses, but the public may request the Commission to ask questions of staff or witnesses on their behalf. Persons representing organizations must present evidence of their authority to speak for the organization. Further details of the quasi-judicial procedures may be obtained from the Clerk. **None**

8. **ORDINANCE - FIRST READING/PUBLIC HEARING:** None
9. **ORDINANCE - SECOND READING/PUBLIC HEARING:**

AN ORDINANCE OF THE CITY OF AVENTURA, FLORIDA; AMENDING THE CITY CODE BY AMENDING CHAPTER 30 "ENVIRONMENT", BY CREATING ARTICLE VIII "DRONE REGULATIONS AND PRIVACY PROTECTIONS", BY CREATING SECTION 30-210 "DRONE RESTRICTIONS AT PUBLIC GATHERINGS"; TO REGULATE AND RESTRICT DRONE USE IN AND OVER OUTDOOR PUBLIC GATHERINGS, AND BY CREATING SECTION 30-211 "PROTECTION OF PRIVACY FROM DRONE USE" TO PROVIDE FOR A CODE ENFORCEMENT MECHANISM CONCERNING ANY USE OF A DRONE THAT VIOLATES INDIVIDUAL PRIVACY AS PROTECTED BY SECTION 934.50, FLORIDA STATUTES; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR PENALTY; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

10. **REPORTS**
11. **PUBLIC COMMENTS**
12. **OTHER BUSINESS:** None
13. **ADJOURNMENT**

FUTURE MEETINGS*

**COMMISSION WORKSHOP – JUNE 21, 2016 AT 9 AM
EXECUTIVE CONFERENCE ROOM (5TH FLOOR)**

**COMMISSION MEETING – JULY 12, 2016 AT 6 PM
COMMISSION CHAMBER**

**COMMISSION WORKSHOP – JULY 21, 2016 AT 9 AM
EXECUTIVE CONFERENCE ROOM (5TH FLOOR)**

*Meeting dates and times are subject to change. Please check the City's website for the most current schedule.

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Office of the City Clerk, 305-466-8901, not later than two days prior to such proceeding. One or more members of the City of Aventura Advisory Boards may be in attendance and may participate at the meeting. Anyone wishing to appeal any decision made by the Aventura City Commission with respect to any matter considered at such meeting or hearing will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Agenda items may be viewed at the Office of the City Clerk, City of Aventura Government Center, 19200 W. Country Club Drive, Aventura, Florida, 33180. Anyone wishing to obtain a copy of any agenda item should contact the City Clerk at 305-466-8901.

CITY OF AVENTURA

OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: City Commission

FROM: Eric M. Soroka, ICMA-CM, City Manager 

DATE: May 11, 2016

SUBJECT: **Resolution Approving the Vacation of Public Roadways Within Biscayne Lake Gardens Condominium**

June 7, 2016 City Commission Meeting Agenda Item 5

RECOMMENDATION

It is recommended that the City Commission adopt the attached Resolution vacating public roadways within Biscayne Lake Gardens Condominium back to Biscayne Lake Gardens Condominium and providing for a Perpetual Road Maintenance Agreement.

BACKGROUND

Biscayne Lake Gardens requested that the City convey the existing City roadways located in the development back to the condominium. At the November Workshop Meeting, the City Commission authorized the City Administration to pursue the request as it would improve safety to the condominium and reduce the City's maintenance costs in the future. A map of the roadways is attached. The Perpetual Road Maintenance Agreement requires Biscayne Lake Gardens to maintain the roadways, sidewalks, landscape buffers and other improvements.

The City's Charter requires that a Public Hearing be held on the vacation of public roadways.

If you have any questions, please feel free to contact me.

EMS/act

Attachment

CCO1936-16

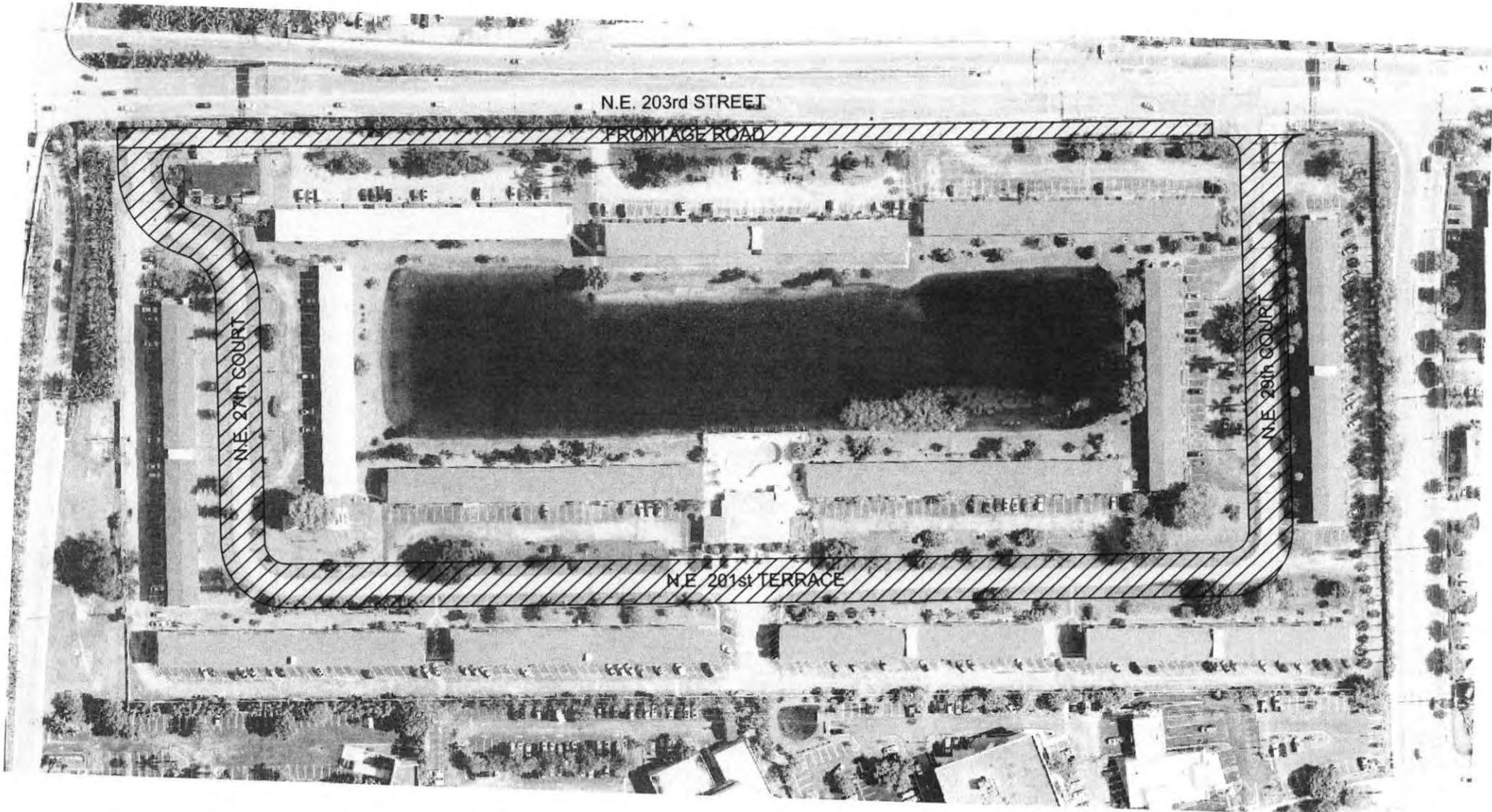
N.E. 203rd STREET

FRONTAGE ROAD

N.E. 27th COURT

N.E. 28th COURT

N.E. 201st TERRACE



RESOLUTION NO. 2016-__

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, APPROVING WITH CONDITIONS A REQUEST TO VACATE A PORTION OF THE PUBLIC RIGHTS OF WAY OF NE 29TH COURT, NE 201ST TERRACE, NE 27TH COURT, AND A PORTION OF THE NE 203RD STREET FRONTAGE ROAD LEGALLY DESCRIBED IN THE ATTACHED EXHIBIT "A;" AUTHORIZING THE CITY MANAGER TO ENTER INTO A PERPETUAL ROAD MAINTENANCE AGREEMENT; RESERVING CERTAIN EASEMENTS TO THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, by an Interlocal Agreement between the City of Aventura ("**City**") and Metropolitan Dade County ("**County**") approved by the City on October 16, 1996 ("**Interlocal Agreement**"), the County transferred to the City all of the County's public roads within the corporate limits of the City other than NE 203 Street west of Biscayne Boulevard; and

WHEREAS, included in the public roads transferred to the City were the public rights-of-way known as NE 29th Court, NE 201st Terrace, NE 27th Court, and a portion of the NE 203rd Street frontage road (collectively, the "**ROWs**"), which ROWs are more particularly described in attached Exhibit "A;" and

WHEREAS, Biscayne Lake Gardens Service Corp., a Florida corporation not for profit ("**Applicant**"), has requested that the City vacate and abandon the ROWs so that Applicant can operate and maintain the ROWs as private roads for the benefit of the properties abutting the ROWs and thereby provide Applicant's residents with a more secure, private and safe development; and

WHEREAS, the City Commission deems it advisable and in the best interest of the City to vacate and abandon the ROWs subject to Applicant's agreement to enter into a Perpetual Road Maintenance Agreement in the form attached as Exhibit "B," and subject to a reservation by City of easements in the ROWs for landscape maintenance of City

property, and for the installation, maintenance, repair, and replacement of any public utilities in the ROWs; and

WHEREAS, Applicant has executed the Perpetual Road Maintenance Agreement attached as Exhibit "B;" and

WHEREAS, the City Commission held a public hearing on June 7, 2016 to vacate the ROWs; and

WHEREAS, the City Commission has determined that no federal, state, or county rights-of-way are involved or affected; that granting the request for vacation of the ROWs will not be detrimental to the public health, safety and welfare; and that the ROWs are not needed by the City or the public.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Vacation and Abandonment. The ROWs known as NE 29th Court, NE 201st Terrace, NE 27th Court, and a portion of the NE 203rd Street frontage road, as legally described on Exhibit "A," are hereby vacated, abandoned, discontinued, and closed, and all rights of the City and the public in and to the ROWs are hereby renounced and disclaimed, subject to the conditions stated in this Resolution.

Section 3. Reservation of Easements. The City hereby reserves the following easements in the ROWs:

A. A perpetual easement for pedestrian and vehicular ingress, egress and access for landscape maintenance of any City property; and

B. A perpetual easement for the installation, maintenance, repair, and replacement of any public utilities in the ROWs, including, without limitation, stormwater and wastewater facilities; together with an easement for ingress, egress and access to such utilities.

Section 4. Approval of Maintenance Agreement. The Perpetual Road Maintenance Agreement attached as Exhibit “B” is approved by the Commission, and the City Manager is authorized to execute the Agreement on behalf of the City, and to make any changes to the Agreement which may be required by the City Manager or the City Attorney.

Section 5. Amendment of Official Maps. The City Manager is directed to amend the official maps of the City in accordance with the action taken herein.

Section 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Enbar Cohen	_____
Commissioner Teri Holzberg	_____
Commissioner Marc Narotsky	_____
Commissioner Robert Shelley	_____
Commissioner Howard Weinberg	_____
Vice Mayor Denise Landman	_____
Mayor Enid Weisman	_____

PASSED AND ADOPTED this 7th day of June, 2016.

ENID WEISMAN, MAYOR

ATTEST:

ELLISA L. HORVATH, MMC
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

CITY ATTORNEY

This instrument prepared by:

Gail D. Serota, Esq.
Weiss Serota Helfman Cole and Bierman, P.L.
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134

Folio Numbers:	28-1234-024-0001	28-1234-031-0001
28-1234-001-0420	28-1234-025-0001	28-1234-032-0001
28-1234-020-0001	28-1234-026-0001	28-1234-033-0001
28-1234-021-0001	28-1234-027-0001	28-1234-034-0001
28-1234-022-0001	28-1234-030-0001	28-1234-035-0001

Biscayne Lake Gardens Perpetual Road Maintenance Agreement

This Road Maintenance Agreement ("**Agreement**") dated _____ is between the **CITY OF AVENTURA**, a Florida municipal corporation ("**City**"), whose mailing address is 19200 West Country Club Drive, Aventura, FL 33180, and **BISCAYNE LAKE GARDENS SERVICE CORP.**, a Florida not for profit corporation ("**BLGSC**"), whose mailing address is 2865 NE 201 Terrace, Aventura, Florida 33180.

RECITALS:

City is the owner of the following rights-of-way in the City of Aventura (collectively, "**ROWS**"):

- NE 203rd Street frontage road
- NE 29th Court
- NE 201st Terrace
- NE 27th Court

Sketches and legal descriptions of the real property underlying the ROWs are attached as **Exhibit A** to this Agreement ("**Property**").

BLGSC serves as the master association for the owners of the following condominium developments, cooperatives, and property owners whose property abuts the ROWs (collectively, the "**Abutting Owners**"):

- Biscayne Lake Gardens Condominium No. 1, Inc., a Florida not-for-profit corporation;
- Biscayne Lake Gardens Condominium No. 2, Inc., a Florida not-for-profit corporation;
- Biscayne Lake Gardens Condominium No. 3, Inc., a Florida not-for-profit corporation
- Biscayne Lake Gardens Building "A" Corp, Inc., a Florida not-for-profit corporation;
- Biscayne Lake Gardens Building "B", Inc., a Florida not-for-profit corporation;
- Biscayne Lake Gardens Building "J" Inc., a Florida not-for-profit corporation; and
- Biscayne Lake Gardens Development Corp., a dissolved Florida corporation

By letter dated August 1, 2015, BLGSC asked City to convey its ROWs to BLGSC so that BLGSC could make the ROWs private roads and thereby provide its residents with a more secure, private and safe development.

City is unable to convey its ROWs to BLGSC, but City has agreed to vacate the ROWs so that the Property underlying the ROWs will revert to ownership by the Abutting Owners, provided that BLGSC agrees to be responsible for the ongoing maintenance, repair and replacement of the ROWs.

BLGSC has agreed to enter into a maintenance agreement for the ROWs upon vacation of the City's interest in the ROWs.

AGREEMENT

1. **Defined Terms.** Terms used in this Agreement are defined in the paragraphs where they are first used. The following terms appear throughout this Agreement and have the meanings set forth below.
 - 1.1. **Governmental Approval.** Any license, permit, certificate, consent, authorization, or other document issued by a Governmental Authority.
 - 1.2. **Governmental Authority.** Any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them.
 - 1.3. **Governmental Requirement.** Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued.
2. **Effective Date of Agreement.** This Agreement will become effective upon adoption by the City of a Resolution vacating the ROWs ("**Resolution**"). The date of adoption of the Resolution will be the "**Effective Date**" of the Agreement.
3. **Term of Agreement.** This Agreement will remain in effect in perpetuity unless terminated by a written agreement signed by both parties and recorded in the public records of Miami-Dade County, Florida.
4. **ROWs to Become Private.** Upon adoption of the Resolution, the land underlying the ROWs will become private property, owned in fee simple by the Abutting Owners.
5. **Maintenance Obligations.** BLGSC agrees to be responsible for the maintenance, repair, replacement, and insurance of the ROWs from and after the Effective Date.
 - 5.1. **Maintenance Standards.** BLGSC agrees to maintain the ROWs, including all sidewalks, roadways, landscape buffers, and other

improvements in accordance with all applicable Governmental Requirements.

5.2. **Governmental Approvals.** BLGSC will obtain all required Governmental Approvals before performing any work in the ROWs.

6. **Assumption of Liability.** BLGSC acknowledges that because the ROWs will be private roads, BLGSC or the Abutting Owners will be responsible for any claims, demands, damages, and losses, including claims for personal injury and property damage (collectively, "**Claims**") which may be asserted by a party in connection with the ROWs. BLGSC hereby expressly assumes liability for any such Claims.

7. **Reservation of Easements.** BLGSC acknowledges that City's vacation of the ROWs is subject to reservation of the following easements in favor of the City:

7.1. **Landscape Maintenance Easement.** An easement in favor of the City for ingress, egress and access to the ROWs for maintenance and replacement of landscaping along the publicly dedicated portions of NE 203 Street.

7.2. **Utility Easements.** An easement under, across and over the ROWs for the installation, maintenance, repair and replacement of any utility lines currently installed or to be installed in the future by City or any utility provider providing service to any of the Abutting Owners, together with an easement for ingress, egress and access to the utility lines.

8. **Title Matters.** BLGSC acknowledges that the Property contained within the ROWs is subject to all easements, conditions, covenants and agreement of record. City has made no representation as to the condition of title to the Property underlying the ROWs.

9. **BLGSC's Authority.** BLGSC represents to City that (i) it has full right and authority to enter into this Agreement on behalf of the Abutting Owners, and to perform its obligations and agreements hereunder, and (ii) that the person executing the Agreement on behalf of BLGSC is duly authorized to do so.

10. **Indemnification.** BLGSC agrees to indemnify City and hold City harmless against any claims which may be asserted by any Abutting Owner in connection with this Agreement.

11. **Dissolution of BLGSC.** In the event that BLGSC is dissolved for any reason, or fails to fulfill its obligations under this Agreement, the Abutting Owners agree to be jointly and severally liable for all of the obligations undertaken by BLGSC in the Agreement. The Abutting Owners join in and consent to this Agreement to acknowledge their joint and several liability under this Agreement.

12. **Traffic Enforcement.** Upon request by the City's police department, BLGSC, acting on behalf of the Abutting Owners, agrees to enter into an agreement on the City's standard form authorizing the City to provide traffic enforcement services in the ROWs.

13. **Miscellaneous Provisions.**

- 13.1. **Amendments.** No amendment to this Agreement will be binding on any party unless in writing and signed by both parties.
- 13.2. **Attorneys' Fees.** In the event either party to the Agreement institutes legal proceedings in connection with the Agreement, the prevailing party will be entitled to recover all reasonable attorneys' fees and expenses and court costs, including, without limitation, all paralegal fees, and all fees, taxes, costs and expenses incident to trial, appellate, bankruptcy and post-judgment proceedings.
- 13.3. **Counterparts.** This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. This Agreement is effective only after execution and delivery by the parties.
- 13.4. **Entire Agreement.** This Agreement and the exhibits attached to it constitute the sole agreement of the parties with respect to its subject matter. Any prior written or oral agreements, promises, negotiations, representations or communications not expressly set forth in the Agreement are of no force or effect.
- 13.5. **Governing Law.** The Agreement will be construed in accordance with, and governed by the laws of, the State of Florida.
- 13.6. **Recording.** Either City or BLGSC may record this Agreement in the Public Records of Miami-Dade County, Florida.
- 13.7. **Successors and Assigns.** The provisions of the Agreement are binding upon the parties and their respective successors and assigns

14. Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO (a) THE AGREEMENT, INCLUDING ANY EXHIBITS, OR SCHEDULES ATTACHED TO THE AGREEMENT; (b) ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION WITH THE AGREEMENT; OR (c) THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT. THIS WAIVER SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE AGREEMENT.

IN WITNESS WHEREOF, BLGSC and City have executed this Agreement on the dates set forth below their respective signatures.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

Witnesses:

Signature: _____

Print name: _____

Signature: _____

Print name: _____

BLGSC:

BISCAYNE LAKE GARDENS SERVICE CORP., a Florida not for profit corporation

By: _____
Frank Pravder, President

Date: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me on _____ by Frank Pravder, as President of Biscayne Lake Gardens Service Corp., a Florida not for profit corporation, on behalf of the corporation He is [] personally known to me or [] produced a valid driver's license as identification.

SEAL

Notary Public, State of Florida

Print name: _____

My commission expires: _____

Witnesses:

Signature: _____

Print name: _____

Signature: _____

Print name: _____

CITY:

CITY OF AVENTURA, a Florida municipal corporation

By: _____

Eric M. Soroka, ICMA-CM, City Manager

Date: _____

ATTEST:

Ellissa L. Horvath, MMC, City Clerk

APPROVED AS TO LEGAL FORM AND SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF AVENTURA ONLY:

By: Weiss Serota Helfman Cole & Bierman, P.L., City Attorney

By: _____

JOINDER AND CONSENT OF ABUTTING OWNERS

The undersigned parties (the "Abutting Owners") hereby join in and consent to the attached Biscayne Lake Gardens Perpetual Road Maintenance Agreement and agree to be bound by the terms and conditions of the Agreement. The Agreement will be a covenant running with the land and will be binding on the Abutting Owners and their respective successors and assigns.

This agreement has been signed by each of the Abutting Owners with the exception of Biscayne Lake Gardens Development Corp. on the date set forth below each Abutting Owner's signature.

[SEE SIGNATURE BLOCKS FOR ABUTTING OWNERS ON FOLLOWING PAGES]

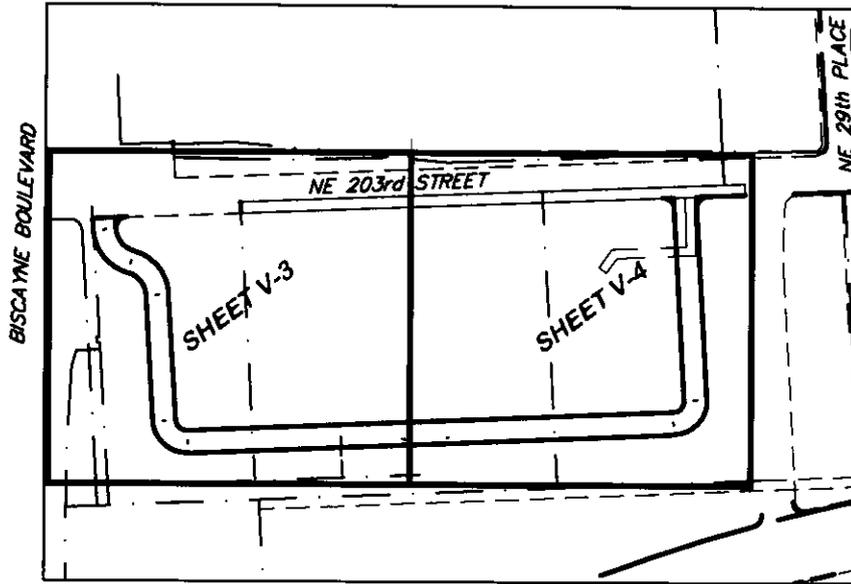
Exhibit A

**Sketches and Legal Descriptions of Land Underlying Rights-of-Way in
Biscayne Lake Gardens**

See following pages for three separate legal descriptions

FOR: CITY OF AVENTURA

SKETCH AND DESCRIPTION RIGHT OF WAY VACATION



NOTES:

BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED BEARING AND ARE REFERENCED TO THE NORTH LINE OF THE (S 1/2), OF THE (SW 1/4), OF SECTION 34, TOWNSHIP 51 SOUTH, RANGE 42 EAST, WHICH BEARS NORTH 87°36'16" EAST.

THIS SKETCH AND DESCRIPTION CONSISTS OF 4 SHEETS AND EACH SHEET SHALL NOT BE CONSIDERED FULL, VALID AND COMPLETE UNLESS ATTACHED TO THE OTHERS.

CERTIFICATE:

WE HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION AND OTHER PERTINENT DATA SHOWN HEREON, OF THE ABOVE DESCRIBED PROPERTY WAS MADE ON THE GROUND, CONFORMS TO THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN THE STATE OF FLORIDA, AS OUTLINED IN CHAPTER 5J-17, (FLORIDA ADMINISTRATIVE CODE) AS ADOPTED BY DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES AND THAT SAID SURVEY IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

LEGEND

- L. ARC LENGTH
- M.D.C.R. MIAMI-DADE COUNTY RECORDS
- O.R.B. OFFICAL RECORD BOOK
- P.B. PLAT BOOK
- PG. PAGE
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- R. RADIUS
- Δ CENTRAL ANGLE
- ⊙ CENTERLINE

CRAVEN THOMPSON & ASSOCIATES, INC.
LICENSED BUSINESS NUMBER #271

RAYMOND YOUNG
PROFESSIONAL SURVEYOR AND MAPPER NO 5799
STATE OF FLORIDA

THE SKETCH OF SURVEY AND REPORT OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND RAISED SEAL OR A VALID ELECTRONIC SIGNATURE OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

G:\2001\010103.188_BISCAYNE LAKE GARDENS\DRAWINGS\010103.188_SD_ROW VAC 1

THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.

The undersigned and CRAVEN THOMPSON & ASSOCIATES, INC. make no representations or guarantees as to the information reflected hereon pertaining to easements, rights-of-way, set back lines, reservations, agreements and other similar matters, and further, this instrument is not intended to reflect or set forth all such matters. Such information should be obtained and confirmed by others through appropriate title verification. Lands shown hereon were not abstracted for right-of-way and/or easements of record.

UPDATES and/or REVISIONS	DATE	BY	CK'D

CRAVEN • THOMPSON & ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYOR'S
3083 N.W. 53RD STREET, FORT LAUDERDALE, FLORIDA 33308 FAX: (954) 738-8409 TEL.: (954) 738-8400
FLORIDA LICENSED ENGINEERING, SURVEYING & MAPPING BUSINESS No. 271
MATERIAL SHOWN HEREON IS THE PROPERTY OF CRAVEN THOMPSON & ASSOCIATES, INC. AND SHALL NOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. COPYRIGHT (C) 2018

JOB NO.: 01-0103-188	SHEET 1 OF 4 SHEETS
DRAWN BY: RY	F.B. N/A PG. N/A
CHECKED BY: TCS	DATED: 11-13-15

RIGHT OF WAY VACATION

LEGAL DESCRIPTION: (AS DESCRIBED IN O.R.B. 4914, PG. 229; M.D.C.R.)

A PORTION OF TRACT 1, BLOCK 13 AND A PORTION OF TRACTS 1 AND 2, BLOCK 14, OF SECTION 34, TOWNSHIP 51 SOUTH, RANGE 42 EAST, OF TOWN OF HALLANDALE, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK "B", AT PAGE 13, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; ALSO DESCRIBED AS THAT PORTION OF THE N 1/2 OF THE S 1/2 OF THE SW 1/4 OF SAID SECTION 34 LYING 25.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCE AT THE NORTHWEST CORNER OF THE E 1/2 OF THE NE 1/4 OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 34; THENCE RUN EASTERLY, ALONG THE NORTH LINE OF THE E 1/2 OF THE NE 1/4 OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 34, FOR A DISTANCE OF 25.00 FEET; THENCE RUN SOUTHERLY, ALONG A LINE THAT IS 25.00 FEET EASTERLY OF AND PARALLEL WITH THE WEST LINE OF THE E 1/2 OF THE NE 1/4 OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 34, FOR A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING OF THE AFOREMENTIONED CENTERLINE; THENCE CONTINUE ALONG THE LAST DESCRIBED LINE FOR A DISTANCE OF 25.91 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE RUN SOUTHEASTERLY, ALONG THE ARC OF SAID CIRCULAR CURVE BEING CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 80.00 FEET, THROUGH A CENTRAL ANGLE OF 71°02'04", FOR A DISTANCE OF 99.18 FEET TO A POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE RUN SOUTHEASTERLY, ALONG THE ARC OF SAID CIRCULAR CURVE BEING CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 80.00 FEET, THROUGH A CENTRAL ANGLE OF 71°02'04", FOR A DISTANCE OF 99.18 FEET TO A POINT OF TANGENCY ON A LINE THAT IS 133.00 FEET EASTERLY OF AND PARALLEL WITH THE WEST LINE OF THE E 1/2 OF THE NE 1/4 OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 34; THENCE RUN SOUTHERLY, ALONG THE LAST DESCRIBED LINE FOR A DISTANCE OF 280.49 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE RUN SOUTHERLY AND EASTERLY, ALONG THE ARC OF SAID CIRCULAR CURVE BEING CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 89°02'53", FOR A DISTANCE OF 77.71 FEET TO THE POINT OF TANGENCY ON A LINE THAT IS 133.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTH LINE OF THE N 1/2 OF THE S 1/2 OF THE SW 1/4 OF SAID SECTION 34; THENCE RUN EASTERLY, ALONG THE LAST DESCRIBED LINE FOR A DISTANCE OF 1073.49 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE RUN EASTERLY AND NORTHERLY, ALONG THE ARC OF SAID CIRCULAR CURVE BEING CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 50.00 FEET, THROUGH A CENTRAL ANGLE OF 90°47'48", FOR A DISTANCE OF 79.24 FEET TO A POINT OF TANGENCY ON A LINE THAT IS 133.00 FEET WESTERLY OF AND PARALLEL WITH THE WEST LINE OF THE EAST 219.50 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SW 1/4 OF SAID SECTION 34; THENCE RUN NORTHERLY, ALONG THE LAST DESCRIBED LINE FOR A DISTANCE OF 452.49 FEET TO THE POINT OF INTERSECTION WITH A LINE THAT IS 25.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE N 1/2 OF THE S 1/2 OF THE SW 1/4 OF SAID SECTION 34 AND THE END OF THE HEREON DESCRIBED CENTERLINE.

ALSO: THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE SOUTHEAST, TANGENT TO A LINE THAT IS 25.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE N 1/2 OF THE S 1/2 OF THE SW 1/4 OF SAID SECTION 34, AND TANGENT TO A LINE THAT IS 108.00 FEET WESTERLY OF AND PARALLEL WITH THE WEST LINE OF THE EAST 219.50 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SW 1/4 OF SAID SECTION 34.

ALSO: THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE SOUTHWEST, TANGENT TO A LINE THAT IS 25.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE N 1/2 OF THE S 1/2 OF THE SW 1/4 OF SAID SECTION 34, AND TANGENT TO A LINE THAT IS 158.00 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF THE EAST 219.50 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SW 1/4 OF SAID SECTION 34.

ALSO: THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE SOUTHEAST, TANGENT TO A LINE THAT IS 25.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE N 1/2 OF THE S 1/2 OF THE SW 1/4 OF SAID SECTION 34, AND TANGENT TO A LINE THAT IS 50.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE S 1/2 OF THE NE 1/4 OF THE SW 1/4 OF THE SW 1/4 OF SAID SECTION 34;

SAID LANDS SITUATE IN THE CITY OF AVENTURA, MIAMI-DADE COUNTY, FLORIDA. CONTAINING 109,703 SQUARE FEET OR 2.518 ACRES MORE OR LESS.

G:\2001\010103.188_BISCAYNE LAKE GARDENS\DRAWINGS\010103.188_SD_ROW VAC 1



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JOB NO.: 01-0103-188

SHEET 2 OF 4 SHEETS

DRAWN BY: RY

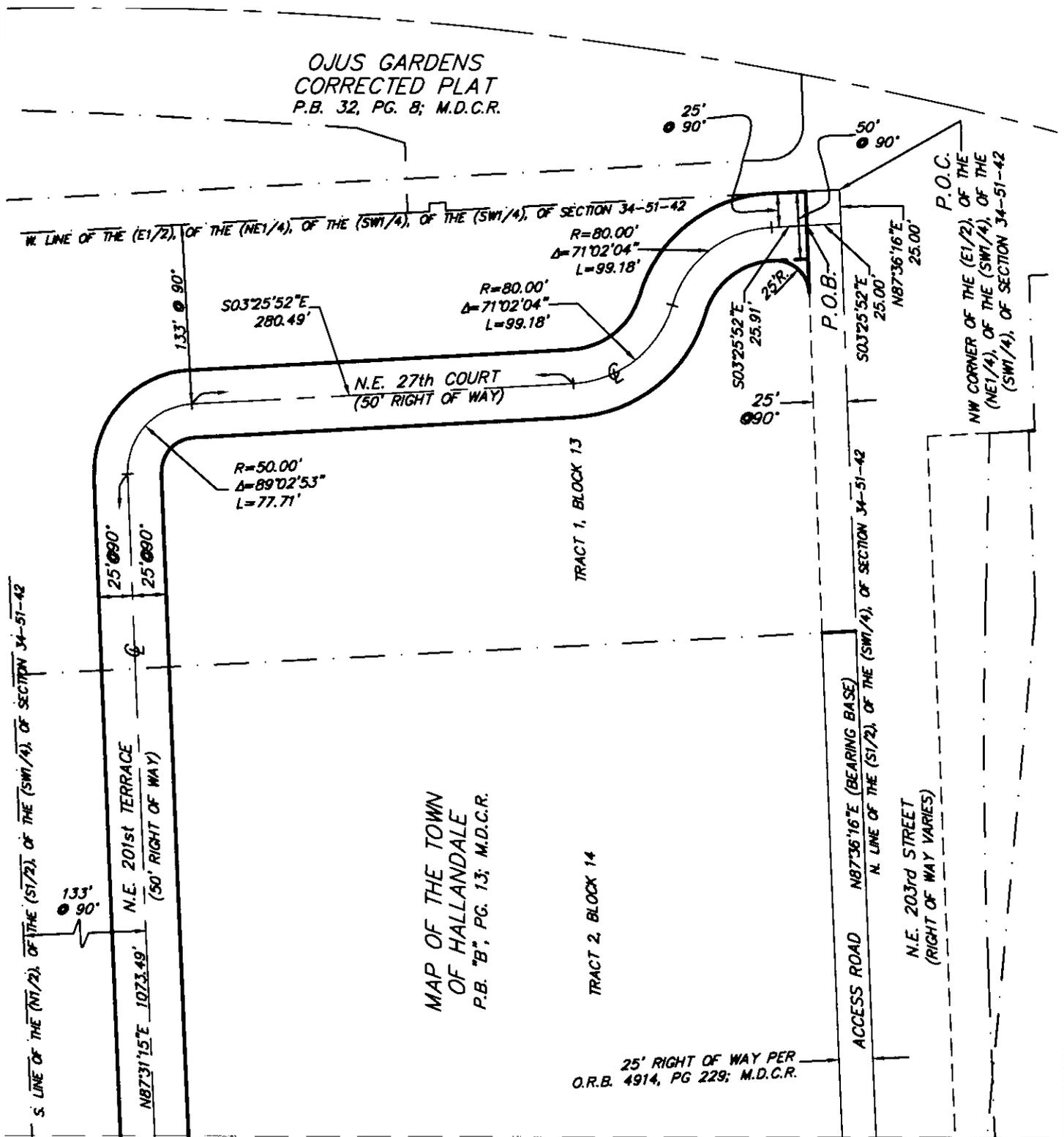
F.B. N/A PG. N/A

CHECKED BY: TCS

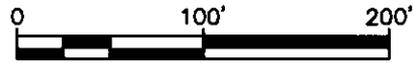
DATED: 11-13-15

RIGHT OF WAY VACATION

*OJUS GARDENS
CORRECTED PLAT
P.B. 32, PG. 8; M.D.C.R.*



MATCHLINE SEE SHEET 4 OF 4



GRAPHIC SCALE IN FEET

G:\2001\010103.188_BISCAYNE LAKE GARDENS\DRAWINGS\010103.188_SD_ROW VAC 1

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JOB NO.: 01-0103-188	SHEET 3 OF 4 SHEETS
DRAWN BY: RY	F.B. N/A PG. N/A
CHECKED BY: TCS	DATED: 11-13-15

FOR: CITY OF AVENTURA

SKETCH AND DESCRIPTION RIGHT OF WAY VACATION

LEGAL DESCRIPTION:

A PORTION OF THE RIGHT OF WAY FOR NE 203rd STREET DEEDED TO DADE COUNTY, FLORIDA AS DESCRIBED IN OFFICIAL RECORDS BOOK 4024, PAGE 695 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

A PORTION OF THE NORTH 25 FEET OF TRACTS 1 AND 2, BLOCK 14 OF SECTION 34, TOWNSHIP 51 SOUTH, RANGE 42 EAST, MAP OF THE TOWN OF HALLANDALE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK "B", PAGE 13, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT 1; THENCE SOUTH 87°36'16" WEST ALONG THE NORTH LINE OF THE SOUTHEAST ONE QUARTER (SE1/4), OF THE SOUTHWEST ONE QUARTER (SW1/4), OF SAID SECTION 34, A DISTANCE OF 408.19 FEET; THENCE SOUTH 02°23'14" EAST, A DISTANCE OF 6.91 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 02°23'14" EAST, A DISTANCE OF 18.09 FEET; THENCE SOUTH 87°36'16" WEST ALONG THE SOUTH BOUNDARY OF THAT DEDICATED RIGHT OF WAY AS DESCRIBED IN OFFICIAL RECORDS BOOK 4024, PAGE 695 OF SAID PUBLIC RECORDS, SAID LINE LYING 25 FEET SOUTH OF AND PARALLEL WITH, WHEN MEASURED AT RIGHT ANGLES TO, SAID NORTH LINE, A DISTANCE OF 924.42 FEET; THENCE NORTH 03°17'07" WEST ALONG THE WEST BOUNDARY OF SAID TRACT 2, A DISTANCE OF 18.46 FEET; THENCE NORTH 87°37'38" EAST ALONG THE BACK OF THE EXISTING 2 FOOT CURB AND GUTTER ALONG THE NORTH SIDE OF THE ACCESS ROAD FOR NE 203rd STREET, A DISTANCE OF 924.71 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF AVENTURA, MIAMI-DADE COUNTY, FLORIDA. CONTAINING 16,892 SQUARE FEET OR 0.388 ACRES MORE OR LESS.

NOTES:

BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED BEARING AND ARE REFERENCED TO THE NORTH BOUNDARY OF TRACT 1, BLOCK 14, MAP OF THE TOWN OF HALLANDALE, PLAT BOOK "B", PAGE 31, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, ALSO KNOWN AS THE NORTH LINE OF THE (SE 1/4), OF THE (SW 1/4) OF SECTION 34, TOWNSHIP 51 SOUTH, RANGE 42 EAST, WHICH BEARS SOUTH 87°36'16" WEST.

THIS SKETCH AND DESCRIPTION CONSISTS OF 2 SHEETS AND EACH SHEET SHALL NOT BE CONSIDERED FULL, VALID AND COMPLETE UNLESS ATTACHED TO THE OTHER.

CERTIFICATE:

WE HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION AND OTHER PERTINENT DATA SHOWN HEREON, OF THE ABOVE DESCRIBED PROPERTY WAS MADE ON THE GROUND, CONFORMS TO THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN THE STATE OF FLORIDA, AS OUTLINED IN CHAPTER 5J-17, (FLORIDA ADMINISTRATIVE CODE) AS ADOPTED BY DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES AND THAT SAID SURVEY IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

LEGEND

L	ARC LENGTH
M.D.C.R.	MIAMI-DADE COUNTY RECORDS
O.R.B.	OFFICIAL RECORD BOOK
P.B.	PLAT BOOK
PG.	PAGE
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
R	RADIUS
Δ	CENTRAL ANGLE

CRAVEN THOMPSON & ASSOCIATES, INC.
LICENSED BUSINESS NUMBER #271

RAYMOND YOUNG
PROFESSIONAL SURVEYOR AND MAPPER NO 5799
STATE OF FLORIDA

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THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.

The undersigned and CRAVEN-THOMPSON & ASSOCIATES, INC. make no representations or guarantees as to the information reflected hereon pertaining to easements, rights-of-way, set back lines, reservations, agreements and other similar matters, and further, this instrument is not intended to reflect or set forth all such matters. Such information should be obtained and confirmed by others through appropriate title verification. Lands shown hereon were not abstracted for right-of-way and/or easements of record.

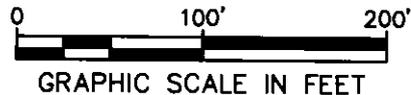
UPDATES and/or REVISIONS	DATE	BY	CK'D



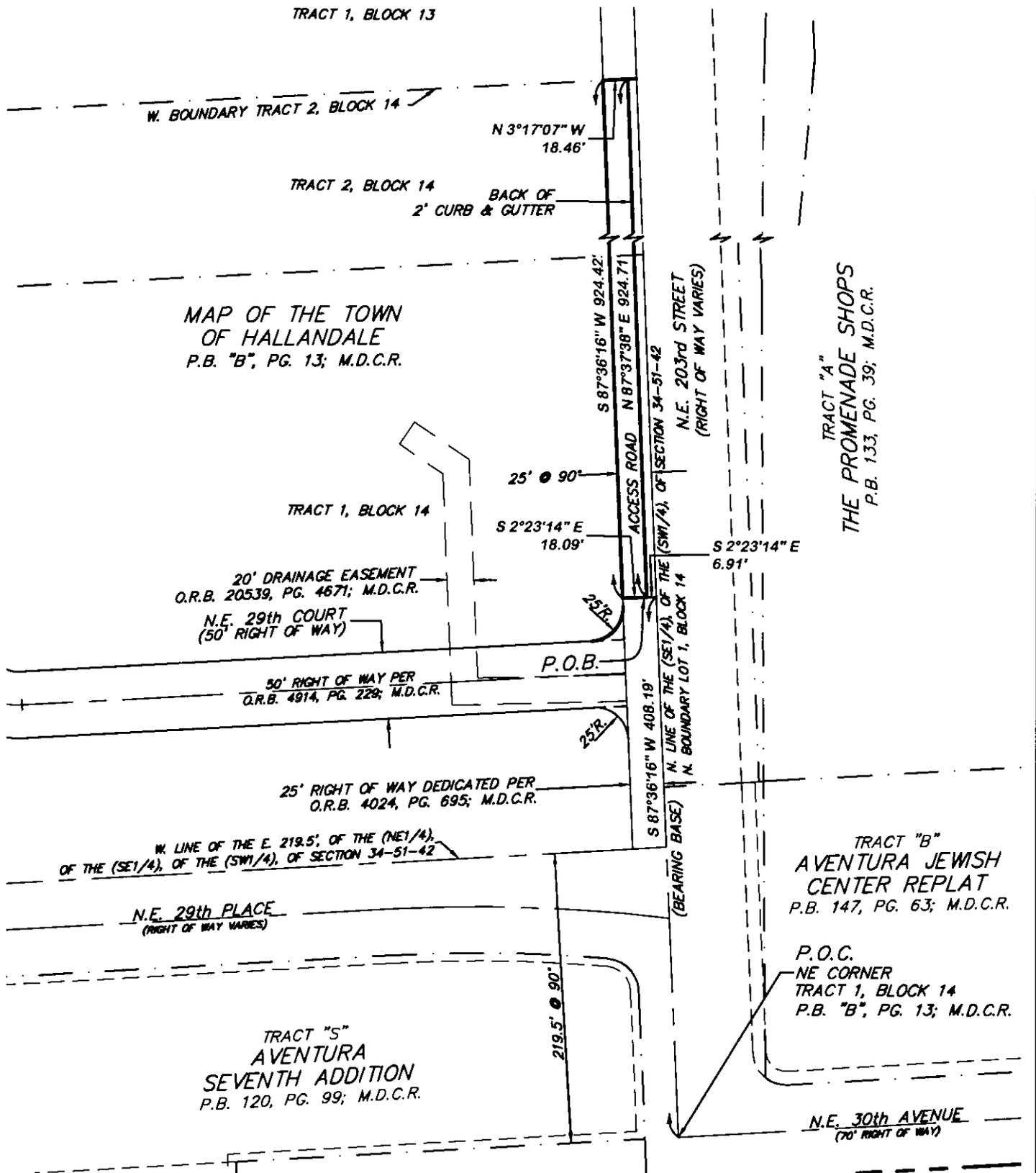
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JOB NO.: 01-0103-188	SHEET 1 OF 2 SHEETS
DRAWN BY: RY	F.B. N/A PG. N/A
CHECKED BY: TCS	DATED: 11-13-15

RIGHT OF WAY VACATION



TRACT 1, BLOCK 13



MAP OF THE TOWN
OF HALLANDALE
P.B. "B", PG. 13; M.D.C.R.

TRACT "A"
THE PROMENADE SHOPS
P.B. 133, PG. 39; M.D.C.R.

TRACT "B"
AVENTURA JEWISH
CENTER REPLAT
P.B. 147, PG. 63; M.D.C.R.

TRACT "S"
AVENTURA
SEVENTH ADDITION
P.B. 120, PG. 99; M.D.C.R.

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JOB NO.: 01-0103-188

SHEET 2 OF 2 SHEETS

DRAWN BY: RY

F.B. N/A PG. N/A

CHECKED BY: TCS

DATED: 11-13-15

FOR: CITY OF AVENTURA

SKETCH AND DESCRIPTION RIGHT OF WAY VACATION

LEGAL DESCRIPTION:

A PORTION OF TRACT 1, BLOCK 13 OF SECTION 34, TOWNSHIP 51 SOUTH, RANGE 42 EAST, MAP OF THE TOWN OF HALLANDALE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK "B", PAGE 13, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT 3; THENCE SOUTH 03°17'07" EAST ALONG THE EAST BOUNDARY OF SAID TRACT 3, A DISTANCE OF 6.55 FEET TO A POINT ON THE BACK OF THE EXISTING 2 FOOT CURB AND GUTTER ALONG THE NORTH SIDE OF THE ACCESS ROAD FOR NE 203rd STREET; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE SOUTH 03°17'07" EAST, A DISTANCE OF 18.46 FEET; THENCE SOUTH 87°36'16" WEST ALONG A LINE 25.00 FEET SOUTH OF AND PARALLEL WITH, WHEN MEASURED AT RIGHT ANGLES TO, THE NORTH BOUNDARY OF SAID TRACT 3 SAID NORTH BOUNDARY ALSO BEING THE NORTH LINE OF THE EAST ONE HALF (E1/2), OF THE NORTHEAST ONE QUARTER (NE1/4), OF THE SOUTHWEST ONE QUARTER (SW1/4), OF SAID SECTION 34, A DISTANCE OF 327.49 FEET; THENCE NORTH 03°25'52" WEST ALONG THE WEST LINE OF THE EAST ONE HALF (E1/2), OF THE NORTHEAST ONE QUARTER (NE1/4), OF THE SOUTHWEST ONE QUARTER (SW1/4), OF SAID SECTION 34, A DISTANCE OF 22.55 FEET; THENCE NORTH 87°33'24" EAST, A DISTANCE OF 70.77 FEET; THENCE NORTH 89°34'21" EAST, A DISTANCE OF 112.84 FEET; THENCE NORTH 87°42'52" EAST, A DISTANCE OF 144.06 FEET TO THE POINT OF BEGINNING, THE LAST THREE (3) DESCRIBED COURSES LYING ALONG THE BACK OF SAID 2 FOOT CURB AND GUTTER.

SAID LANDS SITUATE IN THE CITY OF AVENTURA, MIAMI-DADE COUNTY, FLORIDA. CONTAINING 6,605 SQUARE FEET OR 0.152 ACRES MORE OR LESS.

NOTES:

BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED BEARING AND ARE REFERENCED TO THE NORTH BOUNDARY OF TRACT 3, BLOCK 13, MAP OF THE TOWN OF HALLANDALE, PLAT BOOK "B", PAGE 13, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, ALSO KNOWN AS THE NORTH LINE OF THE (E 1/2), OF THE (SE 1/4), OF THE (SW 1/4), OF SECTION 34, TOWNSHIP 51 SOUTH, RANGE 42 EAST, WHICH BEARS SOUTH 87°36'16" WEST.

THIS SKETCH AND DESCRIPTION CONSISTS OF 2 SHEETS AND EACH SHEET SHALL NOT BE CONSIDERED FULL, VALID AND COMPLETE UNLESS ATTACHED TO THE OTHER.

CERTIFICATE:

WE HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION AND OTHER PERTINENT DATA SHOWN HEREON, OF THE ABOVE DESCRIBED PROPERTY WAS MADE ON THE GROUND, CONFORMS TO THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN THE STATE OF FLORIDA, AS OUTLINED IN CHAPTER 5J-17, (FLORIDA ADMINISTRATIVE CODE) AS ADOPTED BY DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES AND THAT SAID SURVEY IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

LEGEND

- L ARC LENGTH
- M.D.C.R. MIAMI-DADE COUNTY RECORDS
- O.R.B. OFFICAL RECORD BOOK
- P.B. PLAT BOOK
- PG. PAGE
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- R RADIUS
- Δ CENTRAL ANGLE

CRAVEN THOMPSON & ASSOCIATES, INC.
LICENSED BUSINESS NUMBER #271

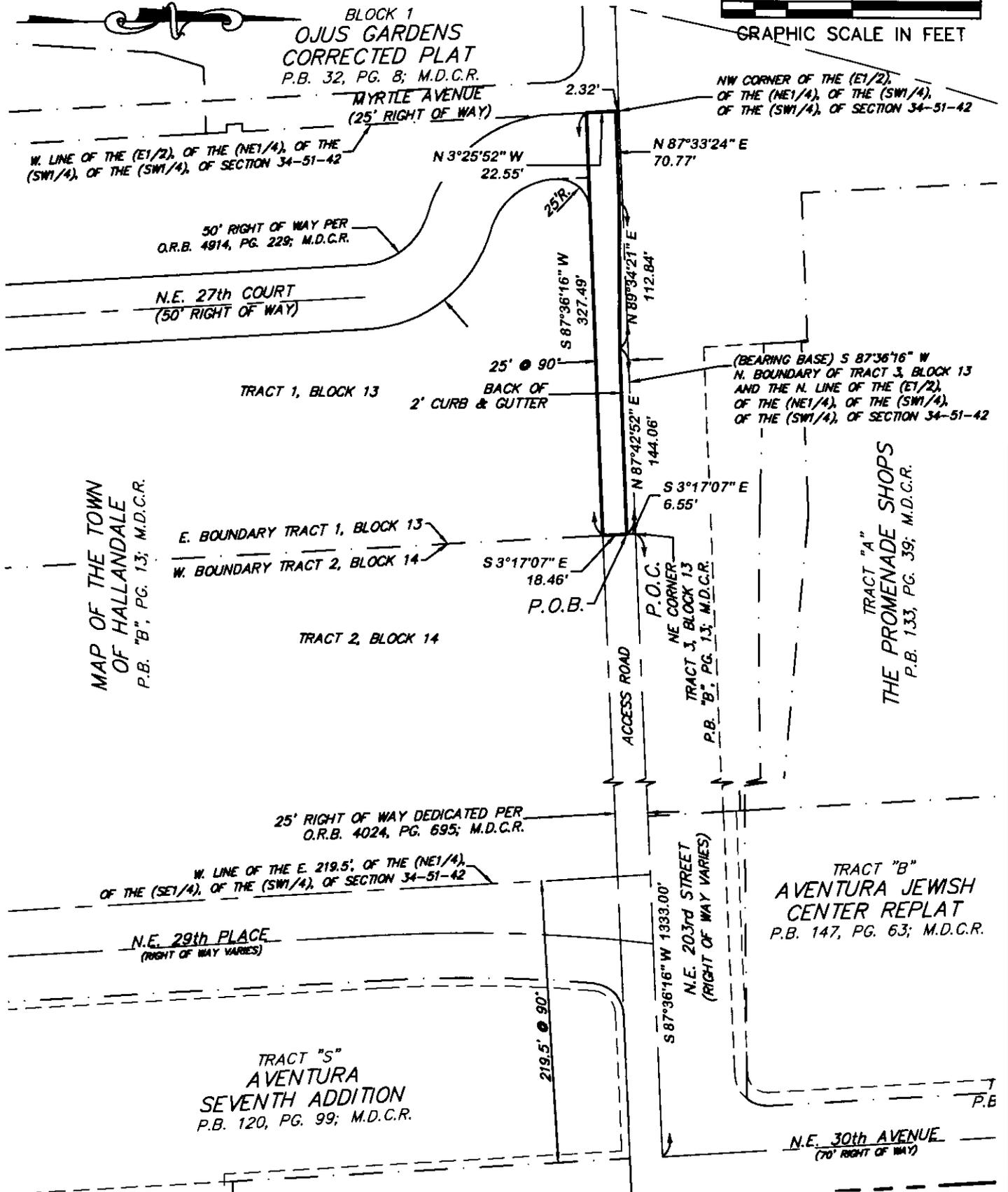
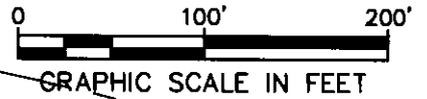
RAYMOND YOUNG
PROFESSIONAL SURVEYOR AND MAPPER NO 5799
STATE OF FLORIDA

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<p>THIS IS ONLY A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.</p> <p>The undersigned and CRAVEN-THOMPSON & ASSOCIATES, INC. make no representations or guarantees as to the information reflected hereon pertaining to easements, rights-of-way, set back lines, reservations, agreements and other similar matters, and further, this instrument is not intended to reflect or set forth all such matters. Such information should be obtained and confirmed by others through appropriate title verification. Lands shown hereon were not abstracted for right-of-way and/or easements of record.</p>	<p>UPDATES and/or REVISIONS</p>	<p>DATE</p>	<p>BY</p>	<p>CK'D</p>
 <p>CRAVEN • THOMPSON & ASSOCIATES, INC. ENGINEERS PLANNERS SURVEYOR'S 3883 N.W. 53RD STREET, FORT LAUDERDALE, FLORIDA 33308 FAX: (954) 738-8409 TEL.: (954) 738-8400 FLORIDA LICENSED ENGINEERING, SURVEYING & MAPPING BUSINESS No. 271 MATERIAL SHOWN HEREON IS THE PROPERTY OF CRAVEN-THOMPSON & ASSOCIATES, INC. AND SHALL NOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION. COPYRIGHT (C) 2018</p>	<p>JOB NO.: 01-0103-188</p>	<p>SHEET 1 OF 2 SHEETS</p>		
	<p>DRAWN BY: RY</p>	<p>F.B. N/A PG. N/A</p>		
	<p>CHECKED BY: TCS</p>	<p>DATED: 11-13-15</p>		

RIGHT OF WAY VACATION



G:\2001\010103.188_BISCAYNE LAKE GARDENS\DRAWNGS\010103.188_SD_ROW VAC 3

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JOB NO.: 01-0103-188	SHEET 2 OF 2 SHEETS
DRAWN BY: RY	F.B. N/A PG. N/A
CHECKED BY: TCS	DATED: 11-13-15



**CITY COMMISSION
REGULAR MEETING MINUTES
MAY 3, 2016
6:00 P.M.**

Aventura Government Center
19200 W. Country Club Drive
Aventura, Florida 33180

1. **CALL TO ORDER/ROLL CALL:** The meeting was called to order by Mayor Enid Weisman at 6:00 p.m. The roll was called and the following were present: Mayor Weisman, Vice Mayor Robert Shelley, Commissioner Enbar Cohen, Commissioner Teri Holzberg, Commissioner Denise Landman, Commissioner Marc Narotsky, Commissioner Howard Weinberg, City Manager Eric M. Soroka, City Clerk Ellisa L. Horvath, and City Attorney David M. Wolpin. As a quorum was determined to be present, the meeting commenced.
2. **PLEDGE OF ALLEGIANCE:** The Pledge was led by Evan Ross.
3. **ELECTION OF VICE MAYOR:** After nomination by Commissioner Holzberg, seconded by Commissioner Weinberg, and unanimously approved by roll call vote, Commissioner Denise Landman was elected Vice Mayor, for the next six-month period.
4. **AGENDA: REQUESTS FOR DELETIONS/EMERGENCY ADDITIONS:** None.
5. **SPECIAL PRESENTATIONS:**
 - **Employee Service Awards:** Mr. Soroka and Mayor Weisman presented Indra Sarju and Alesia Hopkins with an award recognizing each for their ten years of service in the Finance Department.
6. **CONSENT AGENDA:** There were no requests from the public to address the Commission.

A motion to approve the items on the Consent Agenda was offered by Commissioner Shelley, seconded by Commissioner Holzberg, and passed unanimously by roll call vote. The following action was taken:

- A. **Minutes** were approved as follows:
 - March 30, 2016 Commission Workshop Meeting
 - April 5, 2016 Commission Regular Meeting
 - April 28, 2016 Commission Regular Meeting
 - April 28, 2016 Commission Workshop Meeting

- B. **Resolution No. 2016-28** was adopted as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA DECLARING CERTAIN PROPERTY LISTED UNDER THE ASSETS OF THE CITY AS SURPLUS TO THE NEEDS OF THE CITY; DESCRIBING THE MANNER OF DISPOSAL; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

C. Resolution No. 2016-29 was adopted as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AWARDED AND LETTING A BID/CONTRACT FOR BID NO. 16-03-23-2, ELECTRICAL MAINTENANCE SERVICE TO O & J ELECTRIC CORP., UNIVERSAL ELECTRIC OF FLORIDA, INC. AND G & R ELECTRIC CORP. AT THE INDIVIDUAL BID PRICES CONTAINED IN EXHIBIT "A" ATTACHED; AUTHORIZING THE CITY MANAGER TO EXECUTE ASSOCIATED CONTRACTS; AUTHORIZING THE CITY MANAGER TO TAKE NECESSARY AND EXPEDIENT ACTION TO CARRY OUT THE AIMS OF THIS RESOLUTION; PROVIDING FOR THE APPROPRIATION AND ALLOCATION OF FUNDS FOR SAID BID AWARD; AND PROVIDING FOR AN EFFECTIVE DATE.

D. Resolution No. 2016-30 was adopted as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AWARDED AND LETTING A BID/CONTRACT FOR BID NO. 16-03-30-2, NE 213TH STREET MILLING & RESURFACING IMPROVEMENTS TO H & J ASPHALT, INC. AT THE BID PRICE OF \$334,356.75; AUTHORIZING THE CITY MANAGER TO EXECUTE ASSOCIATED CONTRACTS; AUTHORIZING THE CITY MANAGER TO TAKE NECESSARY AND EXPEDIENT ACTION TO CARRY OUT THE AIMS OF THIS RESOLUTION; PROVIDING FOR THE APPROPRIATION AND ALLOCATION OF FUNDS FOR SAID BID AWARD; AND PROVIDING FOR AN EFFECTIVE DATE.

E. Resolution No. 2016-31 was adopted as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AWARDED AND LETTING A BID/CONTRACT FOR BID NO. 16-04-19-2, NE 29TH PLACE SOUTH ROADWAY, DRAINAGE AND STREET LIGHTING IMPROVEMENTS TO METRO EXPRESS, INC. AT THE BID PRICE OF \$721,027.05; AUTHORIZING THE CITY MANAGER TO EXECUTE ASSOCIATED CONTRACTS; AUTHORIZING THE CITY MANAGER TO TAKE NECESSARY AND EXPEDIENT ACTION TO CARRY OUT THE AIMS OF THIS RESOLUTION; PROVIDING FOR THE APPROPRIATION AND ALLOCATION OF FUNDS FOR SAID BID AWARD; AND PROVIDING FOR AN EFFECTIVE DATE.

F. Resolution No. 2016-32 was adopted as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AWARDED AND LETTING A BID/CONTRACT FOR BID NO. 16-04-21-2, YACHT CLUB WAY BRIDGE REPAIRS TO CONTRACTING SPECIALISTS, INC. SOUTH EAST AT THE BID PRICE OF \$55,565.00; AUTHORIZING THE CITY MANAGER TO EXECUTE ASSOCIATED CONTRACTS; AUTHORIZING THE CITY MANAGER TO TAKE NECESSARY AND EXPEDIENT ACTION TO CARRY OUT THE AIMS OF THIS RESOLUTION; PROVIDING FOR THE APPROPRIATION AND ALLOCATION OF FUNDS FOR SAID BID AWARD; AND PROVIDING FOR AN EFFECTIVE DATE.

G. Motion was approved as follows:

MOTION TO APPROVE ANNUAL APPROPRIATION FOR SCHOLARSHIP AWARD TO KROP HIGH SCHOOL STUDENTS.

H. Motion was approved as follows:

MOTION AUTHORIZING THE APPROPRIATION OF UP TO \$1,000 FOR THE MIAMI-DADE URBAN DEBATE LEAGUE FROM THE POLICE FORFEITURE FUNDS IN ACCORDANCE WITH THE CITY MANAGER'S MEMORANDUM.

I. Resolution No. 2016-33 was adopted as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AUTHORIZING THE GREEN MARKET TO BE HELD IN FOUNDERS PARK SOUTH FROM NOVEMBER 2016 TO APRIL 2017; AUTHORIZING THE CITY MANAGER TO ISSUE A SPECIAL EVENT PERMIT TO SEASTAR EVENT CORPORATION, BASED ON THE CONDITIONS CONTAINED IN EXHIBIT "A" ATTACHED HERETO; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

7. ZONING HEARINGS: QUASI-JUDICIAL PUBLIC HEARINGS: Mr. Wolpin reviewed the quasi-judicial procedures and read the following Resolution by title:

RESOLUTION – PUBLIC HEARING:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA GRANTING CONDITIONAL USE APPROVAL TO PERMIT LOT COVERAGE OF 61.64% WHERE MAXIMUM LOT COVERAGE OF 40% IS PERMITTED BY CODE AND TO PERMIT FLOOR AREA RATIO OF 2.0 WHERE MAXIMUM FLOOR AREA RATIO OF 1.39 IS PERMITTED BY CODE; GRANTING CONDITIONAL USE APPROVAL TO PERMIT A RELIGIOUS FACILITY AND SCHOOL; GRANTING VARIANCE TO PERMIT A MINIMUM FRONT YARD SETBACK OF 4 FEET, WHERE A MINIMUM 25 FOOT FRONT YARD SETBACK IS REQUIRED BY CODE; GRANTING VARIANCE APPROVAL TO PERMIT A HEIGHT OF 47 FEET 4 INCHES FOR THE SYNAGOGUE, WHERE A MAXIMUM HEIGHT OF 37 FEET 6 INCHES IS PERMITTED BY CODE, ALL FOR AN OFFICE BUILDING AND RELIGIOUS/SCHOOL FACILITY ON PROPERTY AT 21001 BISCAYNE BOULEVARD, CITY OF AVENTURA PROPOSED TO BE CONSTRUCTED UNDER THE CITY'S GREEN BUILDING PROGRAM; PROVIDING FOR AN EFFECTIVE DATE.

Mrs. Horvath administered the oath to all those wishing to offer testimony.

A motion for approval of the Resolution was offered by Commissioner Cohen and seconded by Commissioner Holzberg.

Community Development Director Joanne Carr addressed the Commission and entered the staff report into the record, which recommended approval, subject to the conditions

specified in Section 2 of the resolution. The staff report was corrected on page 3 to clarify that the site is 1.177 acres.

The following provided testimony on behalf of the Applicant: Alan Rosenthal, Esq. (Rosenthal Rosenthal Rasco Kaplan, LLC - 20900 N.E. 30th Avenue #600, Aventura) and Manny Synalovski, Architect (1800 Eller Drive # 500, Fort Lauderdale).

Mayor Weisman opened the public hearing.

The following members of the public provided comments: Robert Burroughs (Coral Gables).

There being no additional speakers, the public hearing was closed.

The motion for approval of the Resolution passed unanimously by roll call vote, and **Resolution No. 2016-34** was adopted.

8. ORDINANCE - FIRST READING – PUBLIC HEARING: Mr. Wolpin read the following Ordinance by title:

AN ORDINANCE OF THE CITY OF AVENTURA, FLORIDA; AMENDING THE CITY CODE BY AMENDING CHAPTER 30 "ENVIRONMENT", BY CREATING ARTICLE VIII "DRONE REGULATIONS AND PRIVACY PROTECTIONS", BY CREATING SECTION 30-210 "DRONE RESTRICTIONS AT PUBLIC GATHERINGS"; TO REGULATE AND RESTRICT DRONE USE IN AND OVER OUTDOOR PUBLIC GATHERINGS, AND BY CREATING SECTION 30-211 "PROTECTION OF PRIVACY FROM DRONE USE" TO PROVIDE FOR A CODE ENFORCEMENT MECHANISM CONCERNING ANY USE OF A DRONE THAT VIOLATES INDIVIDUAL PRIVACY AS PROTECTED BY SECTION 934.50, FLORIDA STATUTES; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR PENALTY; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion for approval of the Ordinance was offered by Commissioner Cohen and seconded by Commissioner Narotsky.

Mr. Wolpin explained the Ordinance and explained the intent to receive a notice of acceptance or statement of no objection from the FAA Office of Regional Counsel, prior to implementation of the Ordinance.

Mayor Weisman opened the public hearing. There being no speakers, the public hearing was closed.

The motion for approval of the Ordinance on first reading passed unanimously, by roll call vote.

9. ORDINANCES - SECOND READING/PUBLIC HEARINGS:

Mr. Wolpin read the following Ordinance by title:

- A. **AN ORDINANCE OF THE CITY OF AVENTURA, FLORIDA, PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF A PROPOSED AMENDMENT TO CITY CHARTER SECTION 7.06 "CHARTER REVISION", REVISING CHARTER AMENDMENT ELECTION TIMING PROCEDURES APPLICABLE TO THE PERIODIC CHARTER REVIEW PROCESS; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO THE ELECTORATE; CALLING A SPECIAL ELECTION ON THE PROPOSED AMENDMENT TO THE CITY CHARTER TO BE HELD ON TUESDAY, THE 8TH DAY OF NOVEMBER 2016, IN CONJUNCTION WITH THE GENERAL ELECTION BEING HELD ON SAID DATE; PROVIDING NOTICE OF ELECTION; PROVIDING FOR ELECTION PROCEDURE; PROVIDING FOR INCLUSION IN THE CHARTER; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

A motion for approval of the Ordinance was offered by Vice Mayor Landman and seconded by Commissioner Narotsky.

Mayor Weisman opened the public hearing. There being no speakers, the public hearing was closed.

The motion for approval of the Ordinance on second and final reading passed unanimously, by roll call vote, and **Ordinance No. 2016-07** was adopted.

Mr. Wolpin read the following Ordinance by title:

CITY COMMISSION, IN ITS CAPACITY AS THE AVENTURA CITY OF EXCELLENCE SCHOOL BOARD OF DIRECTORS:

- B. **AN ORDINANCE OF THE CITY OF AVENTURA, FLORIDA, ADOPTING THE ATTACHED CHARTER SCHOOL OPERATING AND CAPITAL BUDGET FOR THE AVENTURA CITY OF EXCELLENCE SCHOOL FOR FISCAL YEAR 2016/2017 (JULY 1 – JUNE 30), PURSUANT TO SECTION 4.05 OF THE CITY CHARTER; AUTHORIZING EXPENDITURE OF FUNDS ESTABLISHED BY THE BUDGET; PROVIDING FOR BUDGETARY CONTROL; PROVIDING FOR PERSONNEL AUTHORIZATION; PROVIDING FOR GIFTS AND GRANTS; PROVIDING FOR AMENDMENTS; PROVIDING FOR ENCUMBRANCES; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

A motion for approval of the Ordinance was offered by Commissioner Shelley and seconded by Vice Mayor Landman.

Mayor Weisman opened the public hearing. There being no speakers, the public hearing was closed.

The motion for approval of the Ordinance on second and final reading passed unanimously, by roll call vote, and **Ordinance No. 2016-08** was adopted.

Mr. Wolpin read the following Ordinance by title:

CITY COMMISSION, IN ITS CAPACITY AS THE AVENTURA CITY OF EXCELLENCE SCHOOL BOARD OF DIRECTORS:

C. AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, AMENDING ORDINANCE NO. 2015-04, WHICH ORDINANCE ADOPTED A CHARTER SCHOOL OPERATING AND CAPITAL BUDGET FOR THE AVENTURA CITY OF EXCELLENCE SCHOOL FOR FISCAL YEAR 2015/2016 (JULY 1 – JUNE 30) BY REVISING THE 2015/2016 FISCAL YEAR BUDGET DOCUMENT AS OUTLINED IN EXHIBIT “A” ATTACHED HERETO; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO CARRY OUT THE AIMS OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion for approval of the Ordinance was offered by Commissioner Shelley and seconded by Commissioner Holzberg.

Mayor Weisman opened the public hearing. There being no speakers, the public hearing was closed.

Mr. Soroka explained the Ordinance.

The motion for approval of the Ordinance on second and final reading passed unanimously, by roll call vote, and **Ordinance No. 2016-09** was adopted.

10. RESOLUTIONS - PUBLIC HEARING: None.

11. REPORTS:

Vice Mayor Landman discussed the upcoming Green Market, in the fall.

12. PUBLIC COMMENTS:

- **State Representative Joseph “Joe” Geller:** Representative Geller provided an update on the recent legislative session.

No members of the public provided comments.

13. OTHER BUSINESS: None.

14. ADJOURNMENT: There being no further business to come before the Commission, a motion to adjourn was offered by Commissioner Holzberg, seconded by Commissioner Cohen, and unanimously approved; thus adjourning the meeting at 6:58 p.m.

Ellisa L. Horvath, MMC, City Clerk

Approved by the Commission on June 7, 2016.

CITY OF AVENTURA
OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: City Commission

FROM: Eric M. Soroka, ICMA-CM, City Manager

DATE: April 4, 2016

SUBJECT: **Resolution Declaring Equipment Surplus**



June 7, 2016 City Commission Meeting Agenda Item LB

RECOMMENDATION

It is recommended that the City Commission adopt the attached Resolution declaring certain equipment as surplus to the needs of the City.

BACKGROUND

Section 2-258 of the City Code of Ordinances provides that any property owned by the City which has become obsolete or which has outlived its usefulness may be disposed of in accordance with procedures established by the City Manager, so long as the property has been declared surplus by a resolution of the City Commission.

If you have any questions, please feel free to contact me.

EMS/act

Attachment

RESOLUTION NO. 2016-__

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA DECLARING CERTAIN PROPERTY LISTED UNDER THE ASSETS OF THE CITY AS SURPLUS TO THE NEEDS OF THE CITY; DESCRIBING THE MANNER OF DISPOSAL; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Manager desires to declare certain property as surplus to the needs of the City; and

WHEREAS, Ordinance No. 2000-09 provides that all City-owned property that has been declared surplus cannot be disposed of prior to the preparation and formal approval of a resolution by the City Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, THAT:

Section 1. Recitals Adopted. The above recitals are hereby confirmed and adopted herein.

Section 2. The property listed on Exhibit "A" has been declared surplus and is hereby approved for disposal.

Section 3. The City Manager is authorized to dispose of the property listed on Exhibit "A" through a public auction, sale, trade-in, transfer to other governmental agency or, if of no value, discarded.

Section 4. The City Manager is hereby authorized to do all things necessary to carry out the aims of this Resolution.

Section 5. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Enbar Cohen	_____
Commissioner Teri Holzberg	_____
Commissioner Marc Narotsky	_____
Commissioner Robert Shelley	_____
Commissioner Howard Weinberg	_____
Vice Mayor Denise Landman	_____
Mayor Enid Weisman	_____

PASSED AND ADOPTED this 7th day of June, 2016.

ENID WEISMAN, MAYOR

ATTEST:

ELLISA L. HORVATH, MMC
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

CITY ATTORNEY

**CITY OF AVENTURA
POLICE DEPARTMENT
INTER OFFICE MEMORANDUM**

TO: Eric M. Soroka, City Manager

FROM: ~~Steven Steinberg, Chief of Police~~

DATE: 2 May 2016

SUBJECT: Surplus Property

I would like to have the below listed items, owned by the City of Aventura, declared Surplus Property as per City of Aventura APDP, Chapter 6, Subsection 5, Page 1, as these items have become inadequate for public purposes:

2009	2FAHP71V79X128838	Crown Victoria
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CITY OF AVENTURA

OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: City Commission

FROM: Eric M. Soroka, ICMA-CM, City Manager 

DATE: May 11, 2016

SUBJECT: **Traffic Control Jurisdiction Agreement – Biscayne Lake Gardens**

June 7, 2016 City Commission Meeting Agenda Item 6C

RECOMMENDATION

It is recommended that the City Commission authorize the execution of the attached Traffic Control Jurisdiction Agreement with Biscayne Lake Gardens to provide traffic control jurisdiction by our Police Department over the private roads within the subject property.

BACKGROUND

As you are aware, Biscayne Lake Gardens requested that the City convey the existing City roadways located in the development back to the condominium. At the November Workshop Meeting, the City Commission authorized the City Administration to pursue the request as it would improve safety to the condominium and reduce the City's maintenance costs in the future.

In our continued efforts to provide improved police services to the community, we have initiated a program in the past that allows a condominium or homeowners associations to enter into an Agreement with the City to provide traffic control jurisdiction over a private roadway within the development. This permits the Police Department to conduct traffic enforcement activities on private property at the request of the owner. Many of our condominiums have entered into this type of Agreement over the years. The condominium requested the Agreement to continue police enforcement on the private roadways.

Florida State Statute 316.006 allows municipalities to enter into such agreements provided they are reimbursed for the actual costs of traffic control and enforcement, the owner agrees to indemnify the City and provide liability insurance.

Memo to City Commission
Page 2

The City will bill the owner \$25.00 per hour for each officer required to perform the traffic enforcement detail when requested by the owner. Whenever possible, traffic complaints made by the occupants of the property will be responded to and handled as a call for service, without charge to the owner.

If you have any questions, please feel free to contact me.

EMS/act

Attachment

CCO1934-16

RESOLUTION NO. 2016-__

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AUTHORIZING THE CITY MANAGER TO EXECUTE THE ATTACHED TRAFFIC CONTROL JURISDICTION AGREEMENT BETWEEN BISCAYNE LAKE GARDENS SERVICE CORP. AND THE CITY OF AVENTURA; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, THAT:

Section 1. The City Manager is hereby authorized to execute the attached Traffic Control Jurisdiction Agreement between Biscayne Lake Gardens Service Corp. and the City of Aventura.

Section 2. The City Manager is hereby authorized to do all things necessary to carry out the aims of this Resolution.

Section 3. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Enbar Cohen	_____
Commissioner Teri Holzberg	_____
Commissioner Marc Narotsky	_____
Commissioner Robert Shelley	_____
Commissioner Howard Weinberg	_____
Vice Mayor Denise Landman	_____
Mayor Enid Weisman	_____

PASSED AND ADOPTED this 7th day of June, 2016.

ENID WEISMAN, MAYOR

ATTEST:

ELLISA L. HORVATH, MMC
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

CITY ATTORNEY



TRAFFIC CONTROL JURISDICTION AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____. 2016, by and between Biscayne Lake Gardens Service Corp., a Florida not for profit corporation ("BLGSC") and the City of Aventura, Florida, a Florida municipal corporation (the "City").

RECITALS

A. Biscayne Lake Gardens ("BLG") is a development in Aventura, Florida, consisting of fourteen (14) residential buildings, a clubhouse, pool area, and lake that are owned by the building owners described on **Exhibit "C"** attached to and incorporated into this Agreement by this reference. The building owners are collectively referred to as the "Owners."

B. BLGSC serves as the master association for the Owners and has the authority to enter into this Agreement on behalf of the Owners.

C. The Owners own fee simple title to the following private roadways within BLG which are collectively referred to as the "Private Roads":

NE 203rd Street Frontage Road, excluding publicly dedicated portions

NE 29th Court

NE 201st Terrace

NE 27th Court

D. BLGSC and Owners desire the City to exercise traffic control jurisdiction over the Private Roads, and City desires to exercise such traffic control jurisdiction, pursuant to Florida State Statutes §316.006.

NOW, THEREFORE, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and City agree as follows:

1. Recitals. The foregoing Recitals are true and correct and are incorporated herein by this reference.

2. Traffic Control Jurisdiction Services. The City agrees to exercise traffic control jurisdiction over the Private Roads in accordance with the following terms and conditions.

(a) City shall provide for Police Officers of its Police Department to patrol, by motor vehicle, the Private Roads, in accordance with the schedule and manpower indicated on Exhibit "A" attached hereto, subject to availability.

(b) In exercising such traffic control jurisdiction, the City shall enforce the traffic laws generally applicable to streets and highways under the City's original jurisdiction which are similar in nature to the Private Roads.

(c) The City's exercise of traffic control jurisdiction pursuant to this Agreement shall be in addition to the jurisdictional authority presently exercised by the City over the Private Roads under law, and nothing herein shall be construed to limit or remove any such jurisdictional authority, the City agreeing to continue to provide such other police services as are otherwise provided under law.

(d) In addition to exercising traffic control jurisdiction over the Private Roads as indicated on Exhibit "A", the City shall be entitled to exercise traffic control jurisdiction, even when not requested by the Owners; provided, however, the City shall not be entitled to any compensation from the Owners pursuant to Paragraph 3 below for exercising such discretionary additional traffic control jurisdiction, although the City shall be entitled to retain all revenues from traffic citations issued by the City for violations of traffic laws along the Private Roads, in accordance with law.

(e) Nothing in this Agreement shall require, authorize or permit the City to exercise any control or responsibility concerning the installation or maintenance of traffic control devices.

3. Compensation.

(a) Routine Patrol Activity - Except as provided in subsection (b), Owners shall not be responsible to pay the City any compensation for performing routine patrol activity pursuant to this Agreement. Routine Patrol Activity shall mean a level of patrol activity equivalent to that which is randomly provided on public roads. The City shall be entitled to retain all revenues from traffic citations issued by the City for violation of traffic laws along the Private Roads as provided by law. This shall not preclude the assessment of impact fees or other fees provided by law.

(b) Extended Patrol Activity - BLGSC shall compensate City for extended patrol activities conducted by the City on the Private Roads at BLGSC's request in accordance with the rate schedule enumerated in

Exhibit "B". Extended Patrol Activity shall mean any patrol outside of the scope of the City's routine patrol of the Private Roads requested by BLGSC that requires more than one (1) hour additional patrol time within any twenty-four hour period.

4. **Liability Not Increased**. Neither the existence of this Agreement nor anything contained herein shall give rise to any greater liability on the part of the City than the City would ordinarily be subjected to when providing its normal police services as routinely provided throughout the City.

5. **Term**. The term of this Agreement shall be one (1) year commencing on the date hereof and ending one (1) year following the date hereof, and shall thereafter automatically continue for successive one (1) year terms, unless terminated by either party upon written notice to the other party given at least thirty (30) days prior to the expiration of the then-applicable one (1) year term.

6. **Entire Agreement**. This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

7. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation between the parties for any controversy arising from or related to this Agreement shall be in the 11th Judicial Circuit in and for Miami-Dade County, Florida. The parties hereby voluntarily waive any right to trial by jury for any litigation between the parties which arises out of this Agreement or the provision of law enforcement services to Owners hereunder.

8. Indemnification and Insurance. BLGSC and the Owners jointly and severally agree to defend, indemnify and hold the City harmless from any claim, demand, suit, loss, cost, expense or damage which may be asserted, claimed or recovered against or from the City by reason of any property damage or bodily injury, including death, sustained by any person whomsoever, which said claim, demand, suit, loss, cost, expense or damage arises out of or is incidental to or in any way connected with this Agreement, except to the extent that such claim, demand, suit, loss, damage, cost or expense is caused in whole or in part by City's negligence, or by the negligence of City's agents, servants or employees. In support, but not in limitation of this indemnification provision, BLGSC hereby agrees to maintain and pay all premiums for a policy of comprehensive general liability insurance in an amount of not less than \$300,000 combined single limit insurance covering any occurrence on or adjacent to the Private Roads described above, resulting in property damage or bodily injury or death to person or persons. Such insurance policy shall name the City and City's officers, agents and employees as additional insureds with respect to traffic control or enforcement of the Private Roads and shall provide for 30 days prior written notice of any cancellation or change in scope or amount of coverage of such policy. BLGSC shall furnish City with a Certificate of Insurance evidencing compliance with the provisions of this section.

EXECUTED as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting one Agreement.

Signed, sealed and delivered

OWNER:

In the presence of:

BISCAYNE LAKE GARDENS
SERVICE CORP., a Florida not
for profit corporation

By _____
Print name: _____
Title: _____

ATTEST:

Ellissa L. Horvath, MMC, City Clerk

CITY OF AVENTURA, a Florida
Municipal Corporation

By _____
Eric M. Soroka,
ICMA-CM, City Manager

APPROVED AS TO LEGAL FORM AND SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF AVENTURA ONLY:

By: Weiss Serota Helfman Cole & Bierman, P.L., City Attorney

By: _____

EXHIBIT "A"

Patrol

Aventura Police Officers in marked police vehicles or motorcycles may patrol the Private Roads on a random basis each day. Whenever possible, Traffic complaints made by occupants of the property, will be responded to and handled as a call for service, without charge to the Owners or to BLGSC. Traffic complaints that require Extended Patrol Activity, where the cost of service will be billed to BLGSC, will only be conducted with prior approval of the BLGSC. When requested by the BLGSC to perform specific traffic enforcement duties, BLGSC will be billed in accordance with Exhibit "B".

EXHIBIT "B"

Compensation

The City will bill BLGSC \$25.00 per hour for each officer requested to perform the Extended Patrol Activity.

Exhibit "C"
BISCAYNE LAKE GARDENS OWNERSHIP

Building A	Cooperative	Biscayne Lake Gardens Building "A", Corp., Inc.
Building B	Cooperative	Biscayne Lake Gardens Building "B", Inc.
Building C	Condominium	Biscayne Lake Gardens Condominium No. 1, Inc.
Building D	Condominium	Biscayne Lake Gardens Condominium No. 1, Inc.
Building E	Condominium	Biscayne Lake Gardens Condominium No. 1, Inc.
Building F	Condominium	Biscayne Lake Gardens Condominium No. 2, Inc.
Building G	Condominium	Biscayne Lake Gardens Condominium No. 2, Inc.
Building H	Condominium	Biscayne Lake Gardens Condominium No. 2, Inc.
Building J	Cooperative	Biscayne Lake Gardens Building "J" Inc.
Building K	Condominium	Biscayne Lake Gardens Condominium No. 2, Inc.
Building L	Condominium	Biscayne Lake Gardens Condominium No. 2, Inc.
Building M	Condominium	Biscayne Lake Gardens Condominium No. 2, Inc.
Building N	Condominium	Biscayne Lake Gardens Condominium No. 1, Inc.
Clubhouse/Pool/Lake	Corporate	Biscayne Lake Gardens Development Corp (Inactive)
3 units on NW Corner	Condominium	Biscayne Lake Gardens Condominium No. 3, Inc.

CITY OF AVENTURA

OFFICE OF THE CITY MANAGER

MEMORANDUM

TO: City Commission

FROM: Eric M. Soroka, ICMA-CM, City Manager

DATE: May 23, 2016

SUBJECT: **Resolution Awarding RFP No. 16-11-13-2 to Provide City Wide Bicycle Sharing System to B-Cycle, LLC**



June 7, 2016 City Commission Meeting Agenda Item 6D

RECOMMENDATION

It is recommended that the City Commission award RFP No. 16-11-13-2 to Provide City Wide Bicycle Sharing System to B-Cycle, LLC. The upfront capital cost is \$214,420 and was included in the recent budget amendment. The projected annual operating cost will be \$60,000 of which \$28,000 will be offset from revenue generated from the program.

BACKGROUND

On November 13, 2015, the City received only one response to RFP No. 16-11-13-2. Since that time, we have held numerous meetings with B-Cycle to review all aspects of their proposal and finalize the various agreements to implement the program. At the January Workshop Meeting, after a presentation by B-Cycle, the City Commission authorized the City Administration to proceed with the RFP award and negotiate the necessary agreements. The Agreements have been reviewed and approved by the City Attorney's office.

The Bicycle Sharing System locations are depicted on the map attached hereto. We have visited the sites with B-Cycle and have concluded that the locations meet the specifications for the bicycle docks. The kick-off date of the system is scheduled for August 24, 2016.

The implementation of the City's Bicycle Sharing Program will address the City Commission's goal to provide a healthy alternative means of transportation for our residents and visitors to reduce vehicle traffic.

Memo to City Commission
Page 2

If you have any questions, please feel free to contact me.

EMS/act

Attachment

CCO1941-16



- 1. WATERWAYS PARK
- 2. NE 34TH & CCD EXERCISE PATH
- 3. AVENTURA MALL
- 4. FOUNDERS PARK SOUTH
- 5. COMMUNITY RECREATION CENTER

PROPOSED BIKE SHARING LOCATIONS

RESOLUTION NO. 2016-__

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA AWARDED AND LETTING A BID/CONTRACT FOR RFP NO. 16-11-13-2, TO PROVIDE CITY WIDE BICYCLE SHARING SYSTEM, TO B-CYCLE, LLC, AUTHORIZING THE CITY MANAGER TO EXECUTE THE ATTACHED PURCHASE AGREEMENT, INTELLECTUAL PROPERTY LICENSE AGREEMENT, DIGITAL PLATFORM SERVICES AGREEMENT AND SERVICE AGREEMENT; AUTHORIZING THE CITY MANAGER TO TAKE NECESSARY AND EXPEDIENT ACTION TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Manager has, pursuant to the various laws of the State of Florida and the Code of the City of Aventura, properly solicited and accordingly accepted bids for RFP NO. 16-11-13-2, to Provide City Wide Bicycle Sharing System; and

WHEREAS, sealed bids have been submitted to and received by the City pursuant to the City's RFP Bid/Notice to Bidders, specifications, proposals, and requirements for the project/work as cited above; and

WHEREAS, staff has determined that B-Cycle, LLC has submitted a responsible and responsive bid that meets the requirement of the RFP document; and

WHEREAS, the City Commission, upon the recommendation of the City Manager, is therefore desirous of awarding said bid/contract to B-Cycle, LLC.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA:

Section 1: That bid/contract for RFP NO. 16-11-13-2, to Provide City Wide Bicycle Sharing System, is hereby awarded to B-Cycle, LLC.

Section 2: That the City Manager is hereby authorized to execute, on behalf of

the City, the attached Purchase Agreement, Intellectual Property License Agreement, Digital Platform Services Agreement and Service Agreement, and any other necessary related documents, with such revisions as approved by the City Attorney.

Section 3: That the City Manager is hereby authorized and requested to take all necessary and expedient action to carry out the aims of this Resolution in awarding this RFP/contract.

Section 4: This Resolution shall be effective immediately upon its adoption.

The foregoing Resolution was offered by _____, who moved its adoption. The motion was seconded by _____, and upon being put to a vote, the vote was as follows:

Commissioner Enbar Cohen	_____
Commissioner Teri Holzberg	_____
Commissioner Marc Narotsky	_____
Commissioner Robert Shelley	_____
Commissioner Howard Weinberg	_____
Vice Mayor Denise Landman	_____
Mayor Enid Weisman	_____

PASSED AND ADOPTED this 7th day of June, 2016.

ENID WEISMAN, MAYOR

ATTEST:

ELLISA L. HORVATH, MMC
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

CITY ATTORNEY

PURCHASE AGREEMENT FOR EQUIPMENT AND SERVICES

THIS PURCHASE AGREEMENT FOR EQUIPMENT AND SERVICES (this “Agreement”) is made this 14th day of June, 2016 (the “Effective Date”), by and between B-CYCLE, LLC, a Delaware limited liability company, with its principal offices at 801 West Madison Street, Waterloo, Wisconsin 53594 (“Seller”), and the City of Aventura, Florida, with its principal offices located at 19200 West Country Club Drive, Aventura, Florida 33180 (“Buyer”).

RECITALS

WHEREAS, Buyer has been duly authorized by Aventura, FL to install and operate a bike share system in Aventura, FL on behalf of the City of Aventura, FL;

WHEREAS, Seller and Buyer desire for Seller to provide and sell certain goods and to provide certain installation services to Buyer and for Buyer to pay for such goods and services;

WHEREAS, Seller and Buyer have contemporaneously herewith entered into that certain Intellectual Property License Agreement attached hereto and incorporated herein as **Exhibit A** (“IP Agreement”); together with that certain Digital Platform Services Agreement, attached hereto and incorporated herein as **Exhibit B** (the “Digital Services Agreement”); and

WHEREAS, in order to more fully delineate the agreements between Seller and Buyer with respect to such goods and services, the parties desire to execute this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings contained herein, the parties hereto agree as follows:

AGREEMENTS

1. Definitions. As used herein, the term:
 - (a) “Bicycle” means Seller’s bicycle to be purchased by Buyer from Seller pursuant to this Agreement and meeting the specifications set forth in Schedule A, attached hereto and incorporated herein.
 - (b) “Station” refers collectively to one (1) kiosk and its associated docks, bases, and map/ad module(s), if applicable, as set forth in Schedule B.
 - (c) “Equipment” shall mean any and all Bicycles, docks, kiosks, bases, map/ad modules, components, spare parts, goods, equipment or materials of any kind which are supplied, modified, repaired or overhauled by Seller.
 - (d) “Loss” shall mean any and all losses, claims, damages, liabilities, expenses, including without limitation special, consequential, loss of profit, incidental, resultant or indirect damages (including without limitation, loss of use, revenue, profit and good will), future or exemplary damages.
 - (e) “Site” means the specific physical location where a Station is or will be installed.
2. Sale of Goods and Services.
 - (a) Seller shall sell to Buyer and Buyer shall purchase from Seller 35 Bicycles, together with 5 Stations, at the prices listed in Schedule C, attached hereto and incorporated herein.

- (b) Seller shall install, or cause its contractor (“Contractor”) to install, the Stations referenced in Subsection 2(a) hereof, at the prices listed in Schedule C. Seller and/or Contractor may use subcontractors for the installation described in this subparagraph (b); provided, however, Seller and Contractor each remains liable for all of its work obligations to Buyer and installation services provided to Buyer under this Agreement, notwithstanding that some obligations have been subcontracted to a subcontractor.
- (c) During the Term of this Agreement (as defined in Section 12), (i) subsequent sales of Equipment from Seller to Buyer shall be subject to the terms and conditions of this Agreement; and (ii) the parties shall agree in writing to the cost of all subsequently sold Equipment.
- (d) Seller agrees that during the Term, Seller will sell to Buyer, any and all parts to repair or replace Equipment as needed by the Buyer.
- (e) Delivery and installation of Seller’s Bicycles and Stations specified herein shall be made to the locations specified by Seller in accordance on or about August 24, 2016.
- (f) If proper Tender (as defined herein) of Equipment is made and completion of delivery is prevented through no fault of Seller, Seller may specify a reasonable alternative place of delivery. Buyer agrees that all costs of storage and transport incurred following an initial attempt at delivery are hereby allocated to and imposed upon Buyer, and shall be added by Seller to the sale price. For purposes of this Agreement, “Tender” shall mean the delivery, or offer of delivery, by Seller to Buyer of all Equipment, in the quantities set forth in this Agreement, and which materially conforms to quality standards and specifications as set forth in Schedules A and B hereto.

3. Payment.

- (a) Buyer shall make a deposit payment equal to fifty percent (50%) of the total initial costs as provided in Schedule C on or before the date that this contract is signed. Payment in full shall be made immediately on delivery, installation, inspection of the Stations and acceptance by Buyer, which shall occur within 5 business days, such Acceptance not to be unreasonably withheld.
- (b) All prices exclude state and local use, sales, or similar taxes, any direct or excise tax, and any import or customs exactions. Buyer is responsible for reporting such costs, taxes and exactions, if applicable.
- (c) In the event Buyer fails to make a payment when due under this Agreement, Seller may, upon thirty (30) days prior written notice to Buyer, either:
 - i. exercise Seller’s rights pursuant to the security agreement granted in Section 9 and/or withhold delivery of further Equipment or suspend the software service or planned maintenance due to be performed on Equipment without liability for any Loss to Buyer until such overdue sum, together with any interest as may be due thereon, is paid; or
 - ii. exercise Seller’s rights pursuant to the security agreement granted in Section 9 and/or terminate this Agreement without liability for any Loss to Buyer, and

Buyer shall immediately pay such overdue sum, together with any interest as may be due thereon to Seller.

- (d) Notwithstanding the foregoing, if Buyer pays to Seller such overdue sum, together with any interest as may be due thereon, on or before the expiration of said thirty (30) day period, this Agreement, including Seller's delivery obligations hereunder, shall remain in full force and effect.
- (e) If Buyer is in default of any payment obligation, Seller is, without reminder and prejudice to any other rights, entitled to (1) charge interest at a rate equal to the lesser of one percent (1.0%) per month or the legal maximum rate that may be imposed according to Florida law for similar debts, from the date on which payment was due until such overdue sum, together with any interest as may be due thereon, is paid; and (2) exercise all rights and remedies granted to Seller pursuant to the Security Interest in Equipment granted herein.
- (f) Buyer and Seller agree that the Florida Prompt Payment Act, Florida Statutes §§218.70-80, shall apply and that Buyer shall make any payments or late payments in accordance therewith.

4. Installation.

- (a) Seller shall install, or cause Contractor to install, Stations at Sites selected by Buyer in accordance with the terms and conditions set forth herein. Seller's installation services shall include the following (collectively, the "Installation Services"):
 - i. Pre-site inspection,
 - ii. Transport and delivery of the Bicycles, kiosks, docks, and other Equipment needed for the installation of the Stations,
 - iii. Installation of the Stations by no less than two (2) field technicians, to be provided by Seller,
 - iv. On-site training and questions and answers at the time of installation,
 - v. Installation of Seller's Bicycles with associated Seller's Stations, and
 - vi. Clean-up of Sites.
- (b) Seller's Installation Services shall be performed in accordance with Seller's guidelines and criteria for installation of Stations, attached hereto and incorporated herein as Schedule D ("Installation Criteria"), and any project and site-specific plans mutually agreed to by the parties.

5. Buyer's Responsibilities. Buyer shall perform the following:

- (a) Provide Station Sites at its own cost and expense and obtain all necessary permits or other approvals required for each of the Sites;
- (b) Ensure that each Site satisfies the site requirements set forth in the Installation Criteria in Schedule D;
- (c) Ensure satisfactory on Site power access, quality and grounding for all Equipment.

- (d) Ensure prompt and unencumbered access for Seller to the Sites and to network cabling and communication equipment as may be necessary for Seller to perform the Installation Services and any delivery, redelivery, manufacture, maintenance, repair, overhaul, servicing, or replacement of Equipment. This access includes providing and maintaining connectivity to any modem line, internet connection, vpn persistent access, broadband internet connection, or other secure access reasonably requested by Seller (as applicable) to enable Seller to perform support services and meet service levels, including diagnostic, monitoring and repair services. Seller may separately charge Buyer for a scheduled service call where Buyer does not provide such access and Seller is therefore required to schedule an additional service call.
- (e) Promptly place service calls in accordance with any reasonable Seller protocols provided to Buyer and designate a Buyer representative and alternate with the necessary skills to assist Seller in the diagnosis of service problems.
- (f) Unless expressly provided otherwise, Buyer is separately responsible for: (i) the repair, replacement or removal of any disposables, consumables, supplies, accessories or collateral equipment; (ii) any additional service necessitated by (1) Buyer's or its representatives' designs, specifications, or instructions, (2) anything external to Equipment, including any causes or events beyond Seller's reasonable control, or (3) losses or expenses related to Buyer's relocation, additions, or changes to Equipment.
- (g) Shakeout Period. For a period of ninety (90) days following Installation Services, Buyer and Seller acknowledge that issues may arise related to the normal operation of the Equipment. Buyer and Seller agree to work cooperatively to address any operational issues during this period.

6. Warranties and Limitations of Liability.

- (a) Seller warrants that all Equipment sold hereunder shall be of merchantable quality, free from defects in materials and workmanship (whether the work was performed by Seller or by its approved subcontractor), and fit for their intended use; that all Equipment will be manufactured in accordance with applicable Federal, state, and local laws, regulations, and orders; and that Equipment shall be manufactured in material conformity with the specifications attached hereto as Schedules A and B;
 - i. Except as otherwise agreed to in writing, this warranty shall commence upon delivery of and acceptance by the Buyer of Equipment to the Buyer-designated Site, and continue for a period of twelve (12) months after delivery. If Buyer discovers within this period a failure of any Equipment to conform to warranty stated herein, Buyer shall notify Seller in writing within ten (10) days of discovery. Notification of such discovery shall be made to Seller by Buyer and shall describe the nature of the defect and the manner in which the defect became apparent in sufficient detail to indicate that the defect is covered by this warranty. The notification shall also state the date of delivery of such Equipment to Buyer, proof of purchase from Seller, and the amount of intervening use where applicable.
 - ii. Within a reasonable time after proper notification, Seller, or Seller's contractor, shall correct any failure of Equipment to conform to specifications or drawings or

defects in workmanship, with either new or used replacement parts. If Equipment is proved to Seller's satisfaction to be defective and covered by this warranty, such repair or replacement shall be made by Seller without charge. The original duration of this warranty shall continue for replaced parts. These remedies are the exclusive remedies of Buyer or operator, as the case may be, for breach of this warranty.

- iii. This warranty shall not extend to the following:
 - (1) Normal wear and tear of Equipment;
 - (2) Equipment that has been moved or subjected to any tampering, alteration, modification, installation of unauthorized parts, or repair without prior authorization by Seller;
 - (3) Equipment subjected to experimental running or any type of operation or use other than that for which Equipment is designed;
 - (4) Equipment from which manufacturer's and/or vendor's trademark or serial number has been altered, removed, or obliterated without Seller's written permission, excluding any alteration, removal, or obliteration directly caused by accident or mishap to such Equipment;
 - (5) Equipment that has been in storage or immobilized for more than one (1) year from the date of acceptance of Equipment by Buyer; and
 - (6) Defects resulting from accidents, misuse, abuse, negligence, vandalism, rusting/corrosion, theft, acts of God or other events beyond the control of Seller.
- iv. For the purpose of this warranty, Equipment shall not be regarded as defective merely because some modification or alteration is required to be made by reason of Federal, state, or local regulation after delivery of Equipment.
- v. Any official action or legal proceeding for breach of this warranty must be commenced within six (6) months after discovery by Buyer of an alleged defect in Equipment.
- (b) Seller warrants that the delivery, redelivery, manufacture, installation, maintenance, repair, overhaul, servicing, or replacement of Equipment by Seller shall be performed by trained individuals in a professional, workmanlike manner, in accordance with sound business practices.
- (c) To the extent permitted by law, each party shall defend, indemnify, and hold the other party and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns harmless from and against any Losses and threatened Losses to the extent they arise from or in connection with any of the following: (i) the death or bodily injury of any agent, employee, customer, invitee, visitor or other person, or the damage, loss, or destruction of any real or tangible personal property, either of which is caused by Equipment or the acts or omissions of the other party, its employees, agents, contractors, or subcontractors (except if such Losses or threatened Losses are caused by the gross negligence or willful misconduct of the other party, its employees, agents, contractors, or subcontractors); (ii) any action taken by or on

behalf of a party in the performance of this Agreement that causes the other party to be obligated to indemnify, defend, or hold harmless any third party; and (iii) any claim, demand, charge, action, cause of action, or other proceeding resulting from an act or omission of a party, its employees, agents, or subcontractors acting in its or their capacity as an employer or potential employer with respect to the claimant, to the extent permitted by law. Buyer's liability under this section shall be limited to the monetary limits of Section 768.28(5), F.S., regardless of whether these limits would apply in the absence of this provision.

- (d) Seller warrants that Equipment to be delivered hereunder including, without limitation, the Bicycles, Stations and kiosks, do not infringe on any United States patents, trademarks, or copyrights, or on any other right of any other person. Seller shall indemnify and hold Buyer harmless against any claim of infringement of patent, trademark, or copyright, or such other rights relating to the manufacture, sale, or use of Equipment, and shall bear all costs and expenses, including reasonable attorneys' fees, arising from or related to any such claim. As used herein, the term "claim" includes, without limitation, any claim for temporary or permanent injunctive relief in any action for such infringement of patent or other rights.
- (e) The warranties identified herein shall not be transferred, assigned, extended, altered or varied except by written instrument executed by the parties.
- (f) Notwithstanding any other provision in this Agreement, Seller's total liability for any and all claims, whether in contract, warranty, tort (including negligence but excluding willful misconduct or recklessness), product liability, patent infringement, or otherwise, for any damages arising out of, connected with, or resulting from the performance or non-performance of any service or from the manufacture, sale, redelivery, resale, repair, overhaul, replacement or use of Equipment or any item or part thereof, will not exceed ONE HALF MILLION DOLLARS (\$500,000.00) PER OCCURRENCE AND ONE MILLION DOLLARS (\$1,000,000.00) IN AGGREGATE. In no event, whether as a result of breach of contract, warranty, tort (including negligence but excluding willful misconduct or recklessness), product liability, patent infringement, or otherwise, will Seller be liable for any special, consequential, incidental, resultant or indirect damages (including, without limitation, loss of use, revenue, profit or goodwill) or punitive or exemplary damages.

7. Assignment of Manufacturer's Warranties. To the extent possible, Seller hereby assigns to Buyer all of its rights and interests in the warranties, and shall hereinafter assign to Buyer any future warranties (if any), provided by the manufacturers of Equipment, including, without limitation, new and refurbished parts and components incorporated into Equipment during servicing, maintenance, repair, or replacement.

8. Termination.

- (a) Except as otherwise provided in Section 3(c) of this Agreement, if either party materially breaches this Agreement, the Intellectual Property Agreement, or the Digital Services Agreement, the other party may notify the breaching party in writing, setting out the breach, and the breaching party will have thirty (30) days following such notice to remedy the breach. If the breaching party fails to remedy the breach during said thirty (30)-day period, the non-breaching party may by written notice

thirty (30)-day period, then the breaching party shall undertake such corrections within said thirty-day period and shall diligently prosecute the same to completion. In such event, the breaching party shall give prompt notice of such delay to the other party and the time for performance shall be extended as reasonably necessary to enable completion.

- (b) Each party shall have the right, in its sole discretion, to terminate this Agreement if (i) the other party becomes insolvent or is adjudged bankrupt, (ii) at any time the property and assets of the other party are in liquidation, or (iii) the other party ceases or threatens to cease carrying on its business.

9. Security Interest.

- (a) Buyer hereby grants to Seller a first priority security interest in Equipment to secure all amounts owed by Buyer to Seller under this Agreement for sale of Equipment and the amount of all sums and expenses advanced or incurred by Seller in connection with Seller's installation, repair or overhaul of any Equipment.. After the full payments for the above are made, the grants of the first priority security interest in Equipment immediately extinguish.
- (b) Buyer acknowledges and agrees that, in addition to the security interest and lien expressly granted by Buyer to Seller hereunder, Seller shall have a lien on Equipment retained in possession of Seller to the extent otherwise provided by law.
- (c) Buyer acknowledges that the lien for repairs or overhaul shall be for the full value of such work, and shall be superior to any lien or interest in favor of Buyer, its parents, affiliates, or subsidiaries, or any other person who has knowledge of this Agreement. To the extent that Seller maintains possession of Equipment under repair, Buyer agrees that Seller is a secured creditor of Buyer and has all the rights of a secured creditor. Upon the occurrence of any default by Buyer hereunder, Seller may, at its option, after reasonable written notice to and demand on Buyer, and in addition to all rights and remedies available to Seller under this Agreement, foreclose or otherwise enforce its security interest hereunder in any manner permitted by law.
- (d) Buyer agrees that at any time and from time to time Buyer will promptly make, execute, endorse, acknowledge, file and/or deliver all further instruments and documents, and take all further action, that Seller may reasonably deem to be necessary or desirable, or that Seller may reasonably request, in order to perfect and protect any security interest granted or purported to be granted by Buyer or to enable Seller to exercise and enforce its rights and remedies hereunder.

10. Dispute Resolution.

- (a) EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 10, EACH PARTY EXPRESSLY WAIVES ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE ARISING UNDER THIS AGREEMENT. This agreement shall be governed by, and interpreted in accordance with the laws of the state of Florida without reference to its conflict of laws rules. Any action brought by either party pursuant to this Agreement shall be brought in the appropriate court in Miami-Dade County, Florida, which shall have the sole and exclusive jurisdiction over the matter. Each party shall bear its own costs and fees, including attorneys' fees.

(b) The rights and obligations set forth in this Section 10 shall survive the termination of this Agreement.

11. Representations and Warranties. Seller and Buyer each represent and warrant that they have full corporate authority to enter into and fulfill the terms of this Agreement. Buyer further warrants that it is authorized to, and has all requisite approvals to, establish, own and operate a bicycle sharing system.

12. Term. This Agreement will commence on the Effective Date and will continue for 1 year from the date of the Effective Date (the "Term").

13. Schedules and Exhibits. The schedules and exhibits attached hereto and incorporated herein are subject to reasonable change.

14. Reciprocity. The B-cycle system provides for membership reciprocity between participating B-cycle cities. In the event Buyer chooses to participate in the reciprocity program at B-cycle's discretion, then Buyer acknowledges that it would need to execute and be bound by the B-cycle Inter System Reciprocity Agreement ("Reciprocity Agreement") attached hereto as Schedule E.

15. General Provisions.

(a) *Headings*. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or of any term or provision hereof.

(b) *Beneficiaries*. This Agreement is solely for the parties' mutual benefit and not for the benefit of any third party.

(c) *Independent Contractor*. Buyer and Seller are now and will remain as to each other separate and independent. In the performance of this Agreement, it is mutually understood and agreed that each party is at all times acting and performing under this Agreement as an independent contractor, and not as an employee, joint venturer or franchisee or partner of the other party. The parties expressly agree that this Agreement, together with the Intellectual Property License Agreement and the Digital Platform Services Agreement shall not constitute a franchise. Buyer acknowledges that all goods and services provided hereunder are for value in kind, and shall not constitute a fee. Buyer hereby affirmatively elects to utilize Seller's trademarks in connection with Buyer's bike share program, and Buyer acknowledges that it is not required to do so in order to purchase the goods and services specified herein. Buyer is solely responsible for its own marketing plans, rate structure, and methods of doing business. Neither party shall have any right, authority, or duty to act for the other party, except as otherwise agreed to in this Agreement.

(d) *Confidentiality*. Subject to Chapter 119, Florida Statutes and other applicable laws, the parties agree that, in the course of performance of this Agreement, it may be necessary and desirable for them to exchange confidential information. Each party shall treat the other party's written, proprietary business information as confidential provided that such written material is: (i) marked as confidential or proprietary at the time of disclosure and (ii) not otherwise publicly or already known or available from a lawful source, and (iii) materials and information obtained via B-cycle's suppliers including pricing, tech info, training materials, and manuals. The receiving party

shall not disclose confidential information of the disclosing party to any person outside its employ, except when authorized by the disclosing party. Any party receiving confidential information under this Agreement shall maintain such information in confidence in the same manner it protects its own confidential information and shall use it only for the performance of this Agreement and for no other purpose. Notwithstanding the foregoing, confidential information excludes information relating to the U.S. tax treatment or U.S. tax structure of the transactions covered by this Agreement.

- (e) *Assignment.* This Agreement is not assignable and the duties hereunder are not delegable without the other party's prior written consent, which consent shall not be unreasonably withheld; provided, however, that either Seller or Buyer may transfer and assign this agreement without the other party's consent to any person or entity (except to a competitor of Seller) that is an affiliate of such party or that acquires substantially all of the stock or assets of such party's applicable business if any such assignees agree, in writing, to be bound by the terms of this agreement. Subject to such limitation, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding anything to the contrary contained herein, Seller may hire subcontractors to perform the installation and maintenance work provided for in this Agreement; provided, however, that Seller shall at all times remain responsible for the performance of its obligations and duties under this Agreement.
- (f) *Sponsorship.* Buyer agrees that it will not knowingly sell or offer sponsorships to competitors of Trek Bicycle Corporation.
- (g) *Entire Agreement.* This Agreement, including any and all schedules and exhibits attached hereto and incorporated herein, is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. Acceptance of, or acquiescence in, a course of performance rendered under this Agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
- (h) *Amendments and Termination.* This Agreement can only be amended, modified, or terminated by a writing signed by all of the parties or their duly authorized agents. If a mutually agreed to amendment or modification results in an increase or decrease in the cost, or the time required for completion, of any delivery or part of the work to be completed by Seller under this Agreement, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Agreement shall be modified in writing accordingly.
- (i) *Survival.* The terms of this Agreement that, by their nature, are intended to survive this Agreement's expiration (such as the confidentiality and warranty provisions included herein) shall continue in full force and effect after its expiration.
- (j) *Waiver.* Any failure to enforce any provision of this Agreement is not a waiver of that provision or of either party's right to later enforce each and every provision.

- (k) *Severability.* If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the remaining provisions of this Agreement, all of which shall remain in full force and effect.
- (l) *Force Majeure.* Neither party is liable for delays or failures in performance under this Agreement due to a cause beyond its reasonable control including, without limitation, embargoes, fire, flood, explosions, Acts of God or a public enemy, strikes, labor disputes, vandalism, or civil riots or commotions. In the event of such delay, the party that is unable to perform shall give prompt notice of such delay to the other party and the time for performance shall be extended as reasonably necessary to enable performance.
- (m) *Notices.* All notices or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered personally, one business day following when sent via a nationally recognized overnight courier, or when sent via facsimile (or other electronic transmission) confirmed in writing to the recipient. Such notices and other communications will be sent to the addresses indicated below or such other address or to the attention of such other person as the recipient party shall have specified by prior written notice to the sending party:

To Buyer:
City of Aventura
19200 W. Country Club Drive
Aventura, FL 33180
Attn: Eric M. Soroka, City Manager

To Seller:
B-cycle, LLC
801 W. Madison St
Waterloo, WI 53594
Attn: Robert Burns, President

- (n) *Counterparts; Facsimile.* This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. This Agreement may be executed and delivered via facsimile or other electronic transmission.
- (o) *Language.* If this document is drafted in more than one language, then the English version shall be the controlling document and any disputes arising out of this document shall be resolved with the English version.

[Signature Page to Follow]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed as of the Effective Date indicated above.

SELLER
B-CYCLE, LLC

By: _____
Name: Robert Burns
Its: President

BUYER
CITY OF AVENTURA

ATTEST:

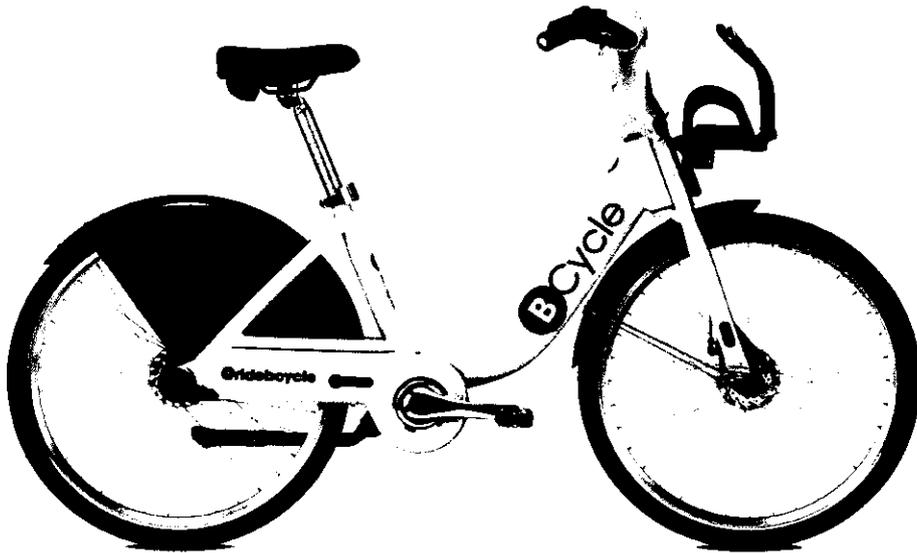
City Clerk

By: _____
Name: Eric M. Soroka
Its: City Manager

Approves as to form and legal sufficiency:

City Attorney

SCHEDULE A: DESCRIPTION OF B-CYCLE 2.0 BICYCLE



B-CYCLE 2.0 COMPONENTS AND SPECIFICATIONS

Customization

Color: White
Branding: Custom graphics
Decal Placement Locations:
Downtube

Optional Decals (Not included in quoted price):
Front Caddy (front panel)
Shroud
Skirt Guard (left and right panels)

Frameset

Sizes: One size fits 5' - 6'2"+
Frame: Oversized alpha aluminum.
Fork: Proprietary triple clamp

Wheels

Front: Shimano Dynamo generator hub with alloy rims
Rear: Shimano 3-speed internal gear hub with alloy rims
Tires: Puncture resistant Bontrager hard case with reflective sidewalls

Drivetrain

Shifters: Shimano twist shifter
Rear: Shimano Nexus 3-speed internal gear hub
Crank: 38T alloy
Chain: KMC Rustproof 1/2x1/8" heavy duty
Pedals: Platform

Components

Saddle: Seamless Bontrager all-weather saddle
Seat Post: Proprietary theft resistant indexed post with easy to use proprietary four-finger clamp
Handlebars: Handlebar caddy and shroud.
Grips: All weather grips
Headset: Sealed bearing
Brakeset: Shimano IM40 all-weather internal brake system
Fenders: Black poly carbonate low profile

Security _____ Proprietary dual front hub locking design, seamless integration with the B-station

Lighting Always-on Spanninga LED front and rear lights that run off the bicycle's hub dynamo.

Included Extras

Fully enclosed chain, shroud housing, robust kickstand, and bell

Note: Bicycle specifications and components subject to change.

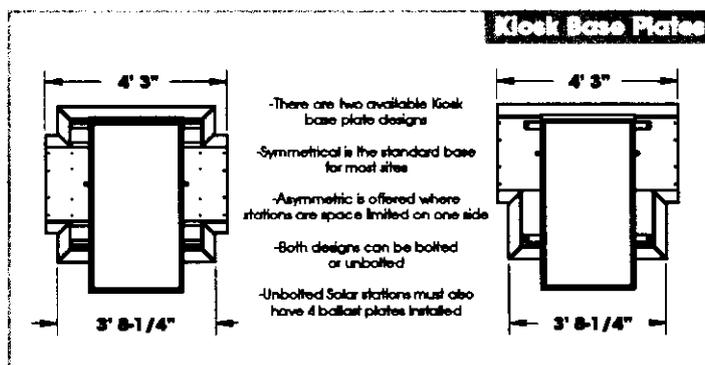
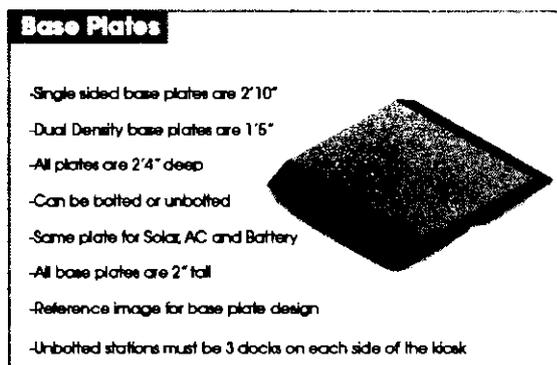
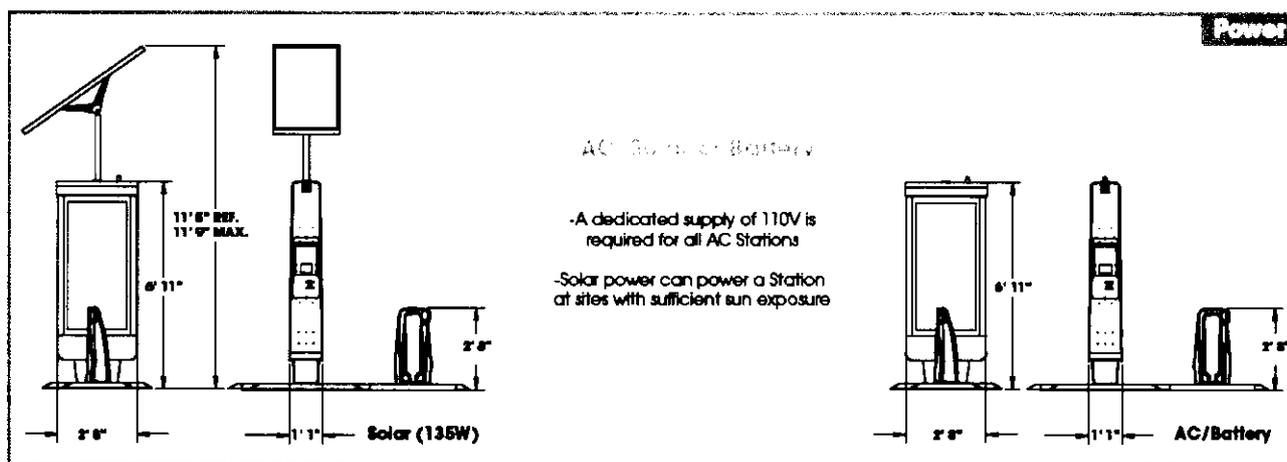
SCHEDULE B: DESCRIPTION OF B-CYCLE 2.0 STATION

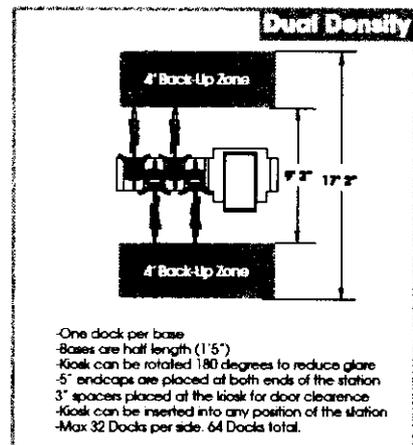
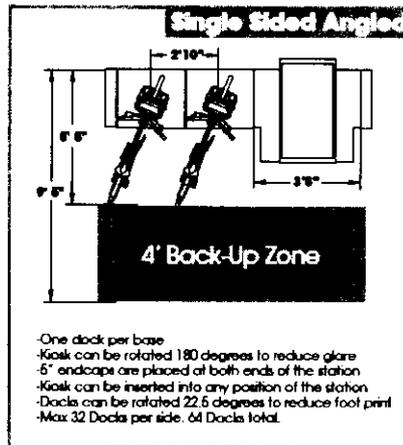
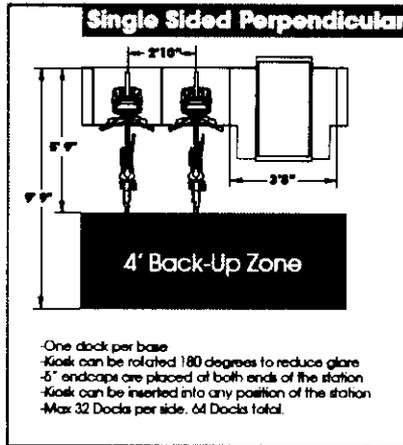
The kiosk can be powered by solar, AC, battery or a combination. A standard B-cycle kiosk covers all basic station functionality (registration with a credit card, check-in/out, nearest bike/dock availability, 15 minute extensions for full stations).

- Kiosk Frame and Base: Galvanneal Steel
- Dock: Cast Aluminum
- Paint: Powder Coat
- Power Options:
 - Solar powered (single 140-watt panel, 4 batteries, 24 volts)
 - A/C (110 VAC, 60 Hz, 10 Amps minimum)
- Display: Color Touchscreen
- Language: English and Spanish (with other language availability)
- Magnetic stripe, Point to Point Encryption (P2PE), all-weather credit card reader (EMV credit card reader available late 2015-2016)
- Communications to central server via broadband cellular (wireless)

Note: Station specifications subject to change.

Station Configuration Options





Dock Dimensions

No. of Docks	Length of Single Sided Station	Length of Dual Density Station
8	27'9"	16'11"
10	33'5"	19'9"
12	39'1"	22'7"
14	44'9"	25'5"
16	50'5"	28'3"
18	56'1"	31'1"
20	61'9"	33'11"
22	67'5"	36'9"
24	73'1"	39'7"
26	78'9"	42'5"
28	84'5"	45'3"

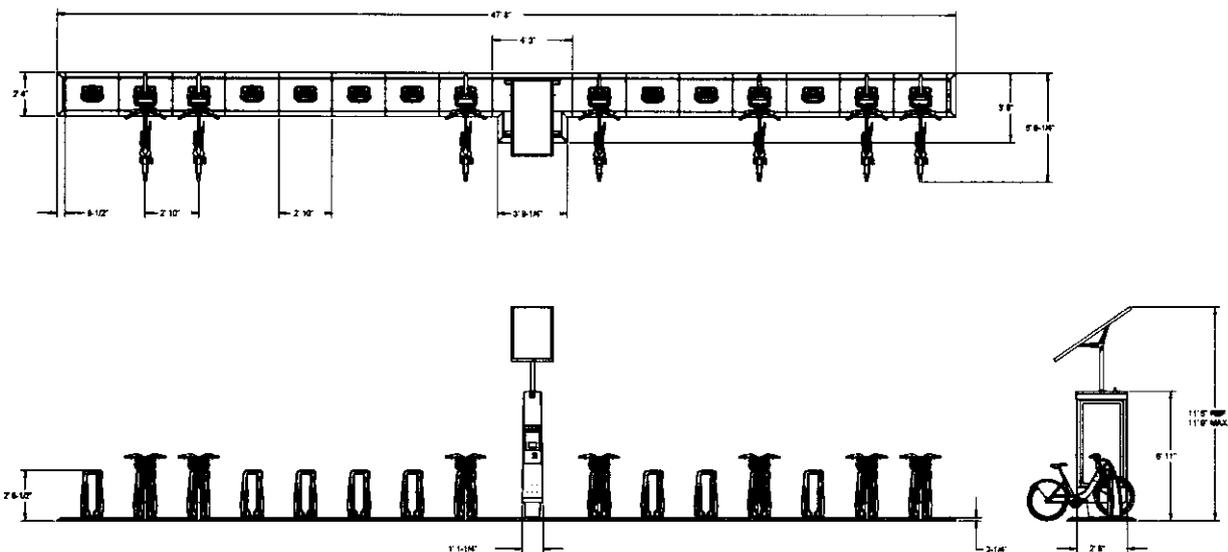
-Sample station lengths in table to the left
 -For station depth refer to tables above
 -Station lengths reflect all required components: Kiosk, docks, end plates and spacers.
 -Single sided station length does not change with angling the docks.

Weights

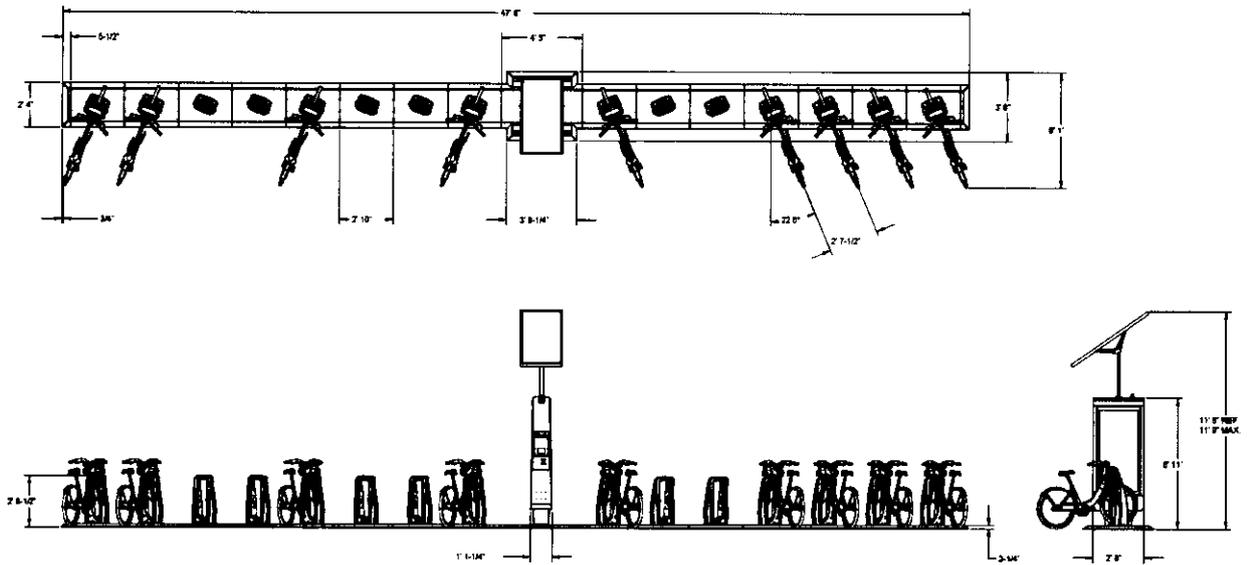
Kiosk	250lbs
Solar Kit	120lbs
Kiosk Base	45lbs
Kiosk Base Ballast	75lbs/each
Dock	35lbs
Dock Base (Single Side)	18lbs
Dock Base (Dual Density)	12lbs
End Caps	6lbs
Spacers	8lbs

*Indicate Final Weights subject to change

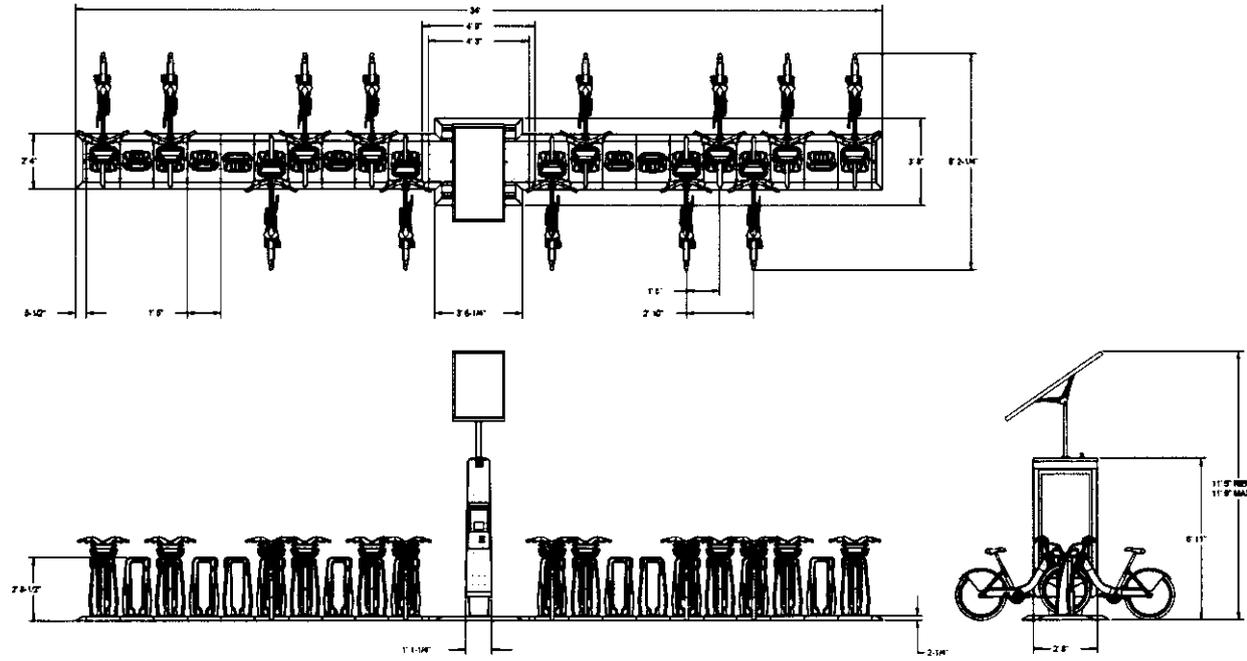
Station Footprint – Straight Dock, Flat Back Kiosk



Station Footprint – Angled Dock, Standard Kiosk



Station Footprint – Dual Density, Standard Kiosk



SCHEDULE C: INITIAL COSTS

INITIAL COSTS

Capital Equipment	Unit Price	QTY	Total
2.0 BIKES (3 speed)	\$ 1,099	35	\$ 38,465
-Active GPS (per bike)*	\$ 226	10	\$ 2,260
STATION			
-Kiosk	\$ 10,124	5	\$ 50,620
-Kiosk Ballast (for non-bolted kiosk)	\$ 940	0	\$ -
-Solar Kit	\$ 3,414	4	\$ 13,656
-Dock	\$ 1,037	58	\$ 60,146
-Base	\$ 343	58	\$ 19,894
	Capital Equipment Total:		\$ 185,041
Additional Equipment and Fees	Unit Price	QTY	Total
RFID READER	\$ 300	1	\$ 300
RFID MEMBERSHIP CARD	\$ 2	1,000	\$ 2,000
SHIPPING AND HANDLING			
-Bike shipping (estimated)	\$ 55	35	\$ 1,925
-Station shipping (estimated)	\$ 14,542	1	\$ 14,542
INSTALLATION	\$ 2,250	5	\$ 11,250
ONE-TIME CONNECTIVITY TEST FEE (per station)	\$ 250	5	\$ -
ONE-TIME SOFTWARE DESIGN FEE	\$ 7,500	1	\$ -
INSTALLATION TRAVEL EXPENSES (estimated)	\$ 1,578	1	\$ 1,622
	Additional Equipment and Fees Total:		\$ 31,639

Total Initial Costs: \$ 216,680

*50% Deposit is due on or before execution of contract

*50% Deposit: \$ 108,340

ONGOING COSTS

Other Fees	Unit Price	QTY	Total
Annual Enterprise Software Fee (per dock)	\$ 125	58	\$ 7,250
Est. Monthly Connectivity Fee (per station)			
-paid to third party provider	\$ 30	5	\$ 150

-Prices estimated

-Quote valid for current configuration only.

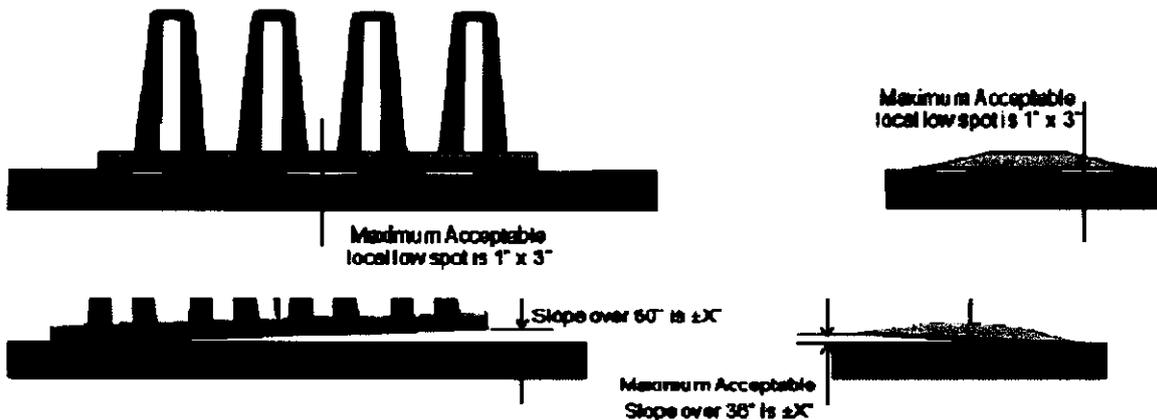
-Shipping and travel charges estimated. Actual charges finalized upon delivery.

-1-year parts and service warranty on the station equipment, 1-year parts warranty on and 5-year warranty on the bike frame.

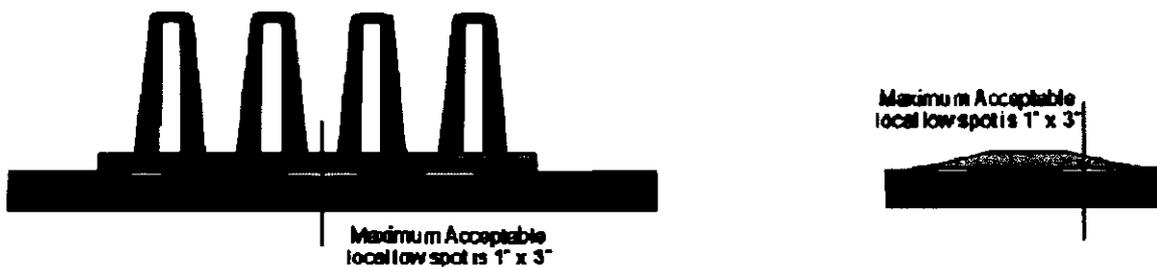
*Active GPS requires an ongoing monthly data charge of \$4 per month per device

SCHEDULE D: INSTALLATION CRITERIA

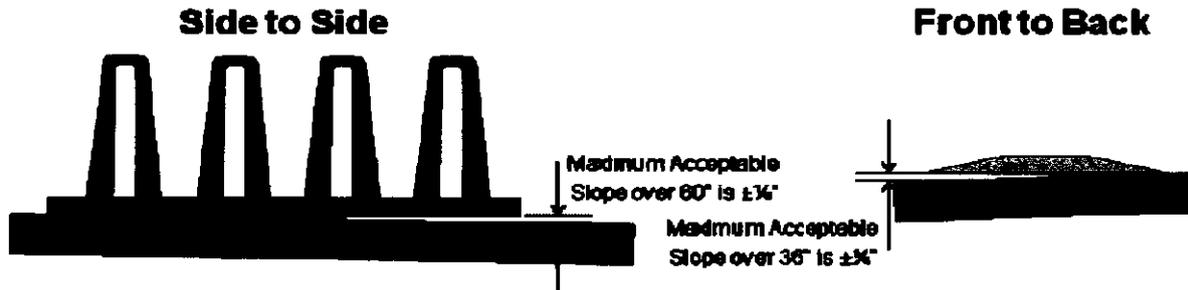
- The maximum number of docks supported by one kiosk is 23 docks (station length would be 64' for 23 single sided docks with 1 kiosk or 32' for 23 double sided docks with 1 kiosk. These lengths do not include measurements for Map/Ad Module).
- The minimum length for an unlagged single-sided station is 4 bases or 21'4" (with 1/2" thick plate). Single-sided stations with less than 4 bases will need to be lagged into the ground. The minimum length for an unlagged double-sided station is 3 bases or 16' (with 1/2" thick plate). Double-sided stations with less than 3 bases will need to be lagged into the ground.
- No dock shall be more than 30' away from the kiosk so we recommend that for stations longer than 30', the kiosk be moved between the docks to satisfy this requirement
- Power Requirements
 - For installations with an AC kiosk, 110V 20Amp single phase service will be required
 - Ideally service is routed under base plate containing kiosk as per sketch
 - Electrical lead ends should be no shorter than 12"
- Allowable ground slope/grade
 - Cross Slope – is the angle perpendicular to the direction of travel or usage
 - Running Slope – is the steepness measured parallel to the direction of travel or usage



- Allowable ground indulation



- Allowable ground flatness
 - Maximum ground variation or flatness is constrained by ADA trip hazard guidelines, which states that a rise larger than $\frac{1}{2}$ " requires a ramp with maximum grade of 1:12
 - Therefore, in order to ensure that the gap between the ground and the base is less than $\frac{1}{2}$ ", the grade variation must be less than $\frac{1}{2}$ " (or $\pm\frac{1}{4}$ ")
 - 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)



- Parallel parking spots
 - Please exercise caution when siting stations for street parallel parking spots
 - Normally, the minimum clearance behind the bikes is 4 feet. In this case, space behind the bike would only be 2.5 feet on a 9 foot wide spot
 - Spots should be chosen close to the intersection (with a stop sign ideally) of a quiet street (because cars are slowing and coming to a stop)

SCHEDULE E: RECIPROCITY AGREEMENT

B-cycle Inter System Reciprocity Agreement

WHEREAS, B-Cycle, LLC ("B-cycle") has installed bike sharing systems in several different locations; and

WHEREAS, all of these bike sharing systems are operated by the same proprietary B-cycle enterprise software; and

WHEREAS, it is technologically feasible to allow B-cycle system members from one system to utilize B-cycle systems in other locations while enjoying the membership benefits of their home location; and

WHEREAS, most B-cycle systems are independently owned and operated by local organizations ("Operators"); and

WHEREAS, many of these Operators have expressed an interest in providing their members with membership privileges in other B-cycle locations in exchange for reciprocal privileges in their own locations; and

NOW THEREFORE; the signatories to this Agreement agree to provide reciprocity for their respective members subject to the terms and conditions set forth below.

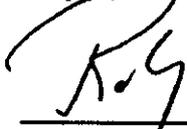
1. Reciprocity shall be extended to annual members only;
2. Current annual members in good standing shall enjoy the privileges of annual membership in participating cities without incurring additional membership fees;
3. Usage fees accrued shall be paid to the location where usage takes place ("Host Location");
4. B-cycle will not charge any additional fees to Operators participating in the reciprocity program;
5. All annual members wishing to enjoy the privilege of reciprocity in participating locations must first accept that location's User Agreement and Terms and Conditions at a kiosk in the Host Location;
6. In the unlikely event that a visiting annual member returns a B-cycle to another participating location, it shall be the responsibility of the Host Location to make arrangements to retrieve its B-cycle, and the Host Location shall determine a retrieval fee which shall be charged to the user;
7. Each Operator shall be responsible for damage to its own facilities which is not otherwise covered by the Kiosk User Agreement or is not recoverable from the User.
8. All participating locations agree that the other participating locations shall have access to the user profiles of the annual members who have opted into other participating locations. This access shall include visibility to all participating locations' user

information and the ability to charge one-time charges, usage fees, and settle outstanding delinquencies to annual members who have opted into other participating locations when they incur these fees in the Host Location. This access shall not include modifying profile, card, or membership information or making adjustments to receipts with the exception of receipts charged by the Host Location;

9. All participating locations shall keep the customer information and other proprietary information of the other participating locations strictly confidential and shall not disclose such information to third parties or use it for any purpose other than those specified herein. Further, all participating locations agree that they will not use other participating locations' user information for marketing purposes unless it is part of a joint marketing effort agreed to by all Operators whose user information is involved;
10. Participating locations will confer and exchange their member's trips in other participating locations;
11. Participation in this Reciprocity Agreement is voluntary and no B-cycle location shall be required to participate;
12. Any participating location may elect to withdraw participation on three months written notice to B-cycle. In the event a participating location elects to withdraw from this Reciprocity Agreement, it shall be its sole responsibility to notify all other reciprocity operators 3 months before reciprocity privileges will expire ;
13. B-cycle, in its reasonable discretion, shall determine whether any individual B-cycle location may participate in this Reciprocity Agreement;
14. Participating locations acknowledge that reciprocity arrangements, by their nature, create the need for inter-system customer service, cooperation and coordination and each signatory below agrees to reasonably cooperate with B-cycle and all other participating locations as may be necessary to effect the purposes and spirit of this Agreement;
15. The original signatories below acknowledge that new systems may be added to this Agreement from time to time.

AGREED:
Original Signatures

B-Cycle, LLC

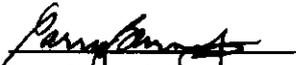


Robert Burns-President

DATE: 2/8/12

Denver Bike Sharing

DATE: 02.13.12

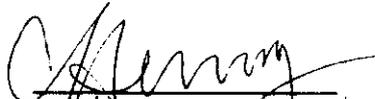

Parry Burhap-Executive Director

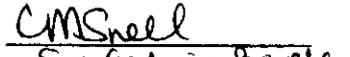
Boulder Bike Sharing

DATE: 2/8/12


Elizabeth Train-Executive Director

Additional Signatures:


Middleton Bicycle DATE: 4/6/12


San Antonio Bicycle DATE: 12-6-12

DATE: _____

DATE: _____

DATE: _____

DATE: _____

Exhibit A
INTELLECTUAL PROPERTY LICENSE AGREEMENT

THIS INTELLECTUAL PROPERTY LICENSE AGREEMENT (this "Agreement") is made this 14th day of June, 2016 (the "Effective Date"), by and between B-CYCLE, LLC, a Delaware limited liability company, with its principal offices at 801 West Madison Street, Waterloo, Wisconsin 53594 ("Seller"), and the City of Aventura, Florida with its principal offices located at 19200 West Country Club Drive, Aventura, Florida 33180 ("Licensee").

RECITALS

WHEREAS, Licensee is forming an independent bicycle share program ("Bike Share Program") with equipment purchased from Licensor;

WHEREAS, Licensee hereby elects to use certain trademarks and other intellectual property of Licensor;

WHEREAS, Licensor owns or has rights to all right, title, and interest in and to the trademarks and internet domain names in the form more fully described in Schedule A hereto (the "Marks");

WHEREAS, Licensor owns or has rights to all right, title, and interest to certain secret and valuable processes, procedures, techniques, and secret and valuable business, financial, software object and source code, and other proprietary information (the "Trade Secrets") that that are useful in the business of bicycle sharing programs (the "Business") and that Licensee may elect to access under the terms of this Agreement;

WHEREAS, Licensor owns or has rights to all right, title, and interest in and to certain information, designs, drawings, operations manuals, compilations of technical information, research files and records, methods and specifications, quality assurance specifications, know-how, processes, business methods, and other priority information related to the Business (the "Know-How") (the Marks, Trade Secrets, and Know-How will be collectively referred to as the "Intellectual Property");

WHEREAS, Licensor wishes to license and Licensee wishes to receive the right to use the Intellectual Property in connection with the Bike Share Program;

WHEREAS, the Intellectual Property constitute valuable rights used by Licensor in conducting its business;

WHEREAS, the Marks designate the origin or sponsorship of Licensor's products and services and Licensor desires to protect the goodwill of its Marks and to preserve and enhance its rights in and the value of the Marks; and

WHEREAS, Licensor and Licensee agree that certain restrictions on Licensee's use of the Intellectual Property are necessary to ensure Licensor's rights to the Intellectual Property are preserved, protected, and enhanced.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

AGREEMENTS

1. Grant of License.

- 1.1 Licensor hereby grants to Licensee, and Licensee hereby voluntarily accepts, a non-exclusive, royalty-free, non-transferable license to use the Intellectual Property solely in connection with the Bike Share Program, subject to the terms of this Agreement.
- 1.2 Licensee recognizes and acknowledges that the Intellectual Property and all rights therein and goodwill pertaining thereto belong exclusively to Licensor and that all rights resulting from Licensee's use of the Intellectual Property as permitted hereunder inure to the benefit of the Licensor.
- 1.3 Licensor represents and warrants to Licensee that: (i) it owns or has the right and all necessary authority to license the Intellectual Property in accordance with the terms of this Agreement; (ii) the Intellectual Property does not infringe any third party intellectual property or other proprietary right, nor misappropriate any third party trade secrets; and (iii) the entering into of this Agreement with Licensee will not breach the terms of any other agreement to which Licensor is a party.
- 1.4 OTHER THAN EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE USE, EXCLUSIVE OWNERSHIP, VALIDITY OR ENFORCEABILITY OF THE MARKS OR THE INTELLECTUAL PROPERTY.

2. Rights Not Granted. All rights other than those expressly granted to Licensee are reserved to Licensor. This Agreement is not an assignment or grant to Licensee of any right, title or interest in or to the Intellectual Property, or any of Licensor's other trademarks, other than the grant of rights to use the Marks subject to the terms and conditions of this Agreement. Licensor expressly does not grant to Licensee the right to use any variation of the Marks that now exist or hereafter are developed by Licensor, Licensee or any other person.

Licensee agrees that it will not make use of the Intellectual Property except in connection with the Bike Share Program nor sell or sub-license same to any third party.

Licensee further acknowledges that the rights granted hereunder do not include the right to: (i) operate a retail or outlet store under the Marks or any variation thereof; (ii) sell any products bearing the Marks at retail stores anywhere in the world, including in the Territory; (iii) sell any products bearing the Marks directly to the public through catalogs (print, CD-ROM or otherwise) or wholesale clubs; or (iv) sell any products bearing the Marks on the Internet or any other electronic network of any kind currently in existence or which may be developed in the future.

3. Territory. The license of the Intellectual Property granted under this Agreement is for use solely in the Territory described in Schedule B hereto.

4. Quality Control.

- 4.1 *Quality Control Standards.* Licensee will use the Intellectual Property only in accordance with the guidance and directions as may be furnished in writing from

time to time by Licensor or its agents.

- 4.2 *Purpose of Quality Control.* To maintain the quality reputation of the Marks, all promotional or packaging material relating to the Bike Share Program must have Licensor's prior written approval, such approval not to be unreasonably withheld.

5. Ownership and Use of Intellectual Property.

- 5.1 Licensee acknowledges and agrees that Licensor is the owner or licensee of the Intellectual Property and that it will never dispute, contest, or challenge, directly or indirectly, the validity or enforceability of the Intellectual Property or Licensor's ownership of or right in the Intellectual Property, nor counsel, procure, or assist anyone else to do the same, nor will it take any action that is inconsistent with Licensor's ownership of or rights in the Intellectual Property, nor will it represent that it has any right, title, or interest in the Intellectual Property other than those expressly granted by this Agreement.
- 5.2 Upon Licensor's request, Licensee will cooperate fully, both before and after termination or expiration of this Agreement and at Licensor's expense, in confirming, perfecting, preserving, and enforcing Licensor's rights in the Intellectual Property, including but not limited to, executing and delivering to Licensor such documents as Licensor reasonably requests for any such purpose, including but not limited to, assignments, powers of attorney, and copies of commercial documents advertising the Bike Share Program. Licensee hereby irrevocably appoints Licensor as its attorney-in-fact for the purpose of executing such documents.
- 5.3 In the event Licensee acquires, as a result of the exercise of any rights provided under this Agreement, any rights in the Intellectual Property, it agrees to assign and hereby assigns all such rights to Licensor.
- 5.4 Licensee will not create, use, distribute, or allow to be distributed, any materials that are false or misleading.
- 5.5 Licensee will ensure that all advertising, labeling, packaging and other materials associated with the Bike Share Program fully conform to all applicable laws and regulations.
- 5.6 Licensee will conduct its business operations in accordance with all applicable laws and regulations, including but not limited to, laws relating to consumer protection, wages, hours, labor, health and safety, and immigration.
- 5.7 Licensee agrees that all right, title and interest in and to all materials, including but not limited to, all artwork and designs, created by Licensor, and used with the Intellectual Property or in association with the Business are the property of Licensor. Additionally, all such materials created by Licensee or any other person or entity retained or employed by Licensee that incorporate any Intellectual Property are works made for hire within the meaning of the United States Copyright Act and are the property of Licensor, who shall be entitled to use and license others to use such materials unencumbered by moral rights. To the extent such materials are not works made for hire or rights in the such materials do not automatically accrue to Licensor, Licensee irrevocably assigns and agrees to

assign to Licensor, its successors and assigns, the entire right, title, and interest in perpetuity throughout the world in and to any and all rights, including all copyrights and related rights, in such materials, which Licensee and the author of such materials warrant and represent as being created by and wholly original with the author. Where applicable, Licensee agrees to obtain any other assignments of rights in such materials from another person or entity necessary to ensure Licensor's right in such materials.

- 5.8 If Licensee, during the term of this Agreement, conceives or develops any improvements or additions to the Intellectual Property, website or any other documents or information pertaining to or relating to the Business, or any new trade names, trade and service marks, logos, or commercial symbols related to the Business or any advertising and promotional ideas or inventions related to the Business (collectively, the "Improvements"), Licensee shall fully disclose the Improvements to Licensor, without disclosure of the Improvements to others, and shall obtain Licensor's written approval prior to using such Improvements. Any such Improvement may be used by Licensor without any obligation to Licensee for royalties or other fees. Licensee shall assign and does hereby assign to Licensor, all right, title and interest in and to the Improvements, including the right to grant sublicenses to any such Improvement. Licensor, at its discretion, may make application for and own copyrights, patents, trade names, trademarks and service marks relating to any such Improvement and Licensee shall cooperate with Licensor, in securing such rights. Licensor may also consider such Improvements as the property and Trade Secrets of Licensor.

6. Ownership and Use of Marks. It is of utmost importance that the goodwill, stature, and image of quality associated with the Marks be maintained and enhanced by Licensee. Licensee will make no use of the Marks without the prior approval of Licensor, this Agreement itself not constituting such approval. To maintain and enhance the goodwill and image of quality associated by the public with the Marks, Licensee will conduct its business in accordance with the following:

- 6.1 Licensee will use the Marks only in lettering, logos, print styles, forms, and formats, including but not limited to, advertising and promotional materials, invoices, signage and promotional items which have been approved by Licensor in accordance with this Agreement, and otherwise promptly follow instructions regarding the Marks given by Licensor in writing from time to time. Licensee will not alter, move, change or obscure any of Licensor's or Licensor's sponsors, trademarks, logos, or other indicia as delivered to Licensee by Licensor on the goods sold to Licensee pursuant to that certain Purchase Agreement for Equipment and Services executed contemporaneously herewith. Licensee shall only use the Marks in accordance with Licensor's Trademark Use Standards, as may be changed by Licensor from time to time and provided to Licensee in writing, and which are attached hereto, and incorporated herein, as Schedule C.
- 6.2 Licensee agrees to use commercially reasonable efforts to safeguard and maintain the reputation and prestige of the Marks and will not do anything that would knowingly tarnish the image of or adversely impact the value, reputation or

goodwill associated with the Marks. Licensee will never attempt to knowingly dilute, directly or indirectly, the value of the goodwill attached to the Marks, nor to counsel, procure, or assist anyone else to do the same.

- 6.3 Licensor may decide, in its sole and absolute discretion, to apply to register or to register any trademarks with respect to the Business or any other goods and services. Failure of Licensor to obtain or maintain in effect any such application or registration is not a breach of this Agreement. Licensee will not, before or after termination or expiration of the Agreement, register or apply to register any of the Marks, or any trademark or logo confusingly similar thereto, anywhere in the world.
- 6.4 Licensee should mark the Marks with a superscript "®" or "TM," as appropriate, unless and until advised by Licensor to use a different notice.
- 6.5 If, in Licensor's reasonable determination, the use of a Mark in connection with the Bike Share Program will infringe or potentially infringe upon the rights of any third party or weakens or impairs Licensor's rights in the Marks, then upon notice from Licensor, Licensee will immediately terminate or modify such use in accordance with Licensor's instructions, and Licensee will have no rights of damages, offset, or right to terminate this Agreement as a result thereof.
- 6.6 Licensee shall not use Licensor's Marks as part of a domain name, except as authorized herein. See Schedule A for a list of approved domain names. Immediately on expiration or termination of this Agreement, Licensee shall cease use of any domain name which incorporates any of Licensor's marks, and shall assign registered ownership in such domain names to Licensor.

7. Trade Secrets. Subject to Chapter 119, Florida Statutes and other applicable laws, Licensee agrees to take all reasonable steps to protect the Trade Secrets, and to employ at least those precautions that Licensee employs to protect its own confidential or proprietary information. In order to protect the Trade Secrets from public disclosure, Licensee agrees to take at least the following minimum steps:

- 7.1 All access to Trade Secret information will be limited to those employees of Licensee who may require the information in order to perform their jobs;
- 7.2 Other than as specifically provided in Section 7.1 above, no Trade Secret information will be disclosed to third parties; and
- 7.3 Licensee will require that all relevant employees enter into confidentiality agreements, in a form suitable to Licensor, acting reasonably.

8. Indemnification and Infringement.

- 8.1 Licensor shall defend, indemnify, and hold harmless Licensee and its officers, directors, employees, agents and members from any and all third party damage, liability, claims, and expense, including reasonable attorneys' fees and expenses, related to any suit, action, legal proceeding, claim or demand of whatever kind or character based on:

- 8.1.1 any allegation of infringement of any patent, copyright, industrial design, trademark, or other intellectual property or proprietary right or misappropriation of any trade secret of a third party, arising from the use of the Intellectual Property in accordance with the terms of this Agreement; or
- 8.1.2 Breach of a warranty, representation, or duty of Licensor to Licensee or to any vendors or consumers.
- 8.2 To the extent permitted by law, Licensee shall defend, indemnify, and hold harmless Licensor from any and all third party damage, liability, claims, and expense, including reasonable attorneys' fees and expenses, related to any:
 - 8.2.1 Act or omission of those with whom Licensee contracts for the provision of goods and services related to the Bike Share Program;
 - 8.2.2 Suit, action, legal proceeding, claim or demand of whatever kind or character based on:
 - (a) any allegation of false or misleading advertising involving the goods and services of the Bike Share Program or the Intellectual Property by Licensee; or
 - (b) any allegation of infringement of any patent, copyright, industrial design, trademark, or other right of a third party, arising from the advertisement, or promotion, by Licensee of the Bike Share Program.
 - 8.2.3 Use of the Intellectual Property in a manner not authorized by this Agreement; or
 - 8.2.4 Breach of a warranty, representation, or duty of Licensee to Licensor or to any vendors or consumers.

Licensee's monetary liability to B-cycle under this section shall be limited to the monetary limits of Section 768.28(5), F.S., regardless of whether these limits would apply in the absence of this provision. Notwithstanding anything to the contrary, Licensee agrees that it shall promptly comply with any injunction or non-monetary relief, in law or in equity, that a court may order.

- 8.3 Licensee shall notify Licensor within three (3) days in writing of any act that Licensee believes constitutes an act of infringement by a third party either of its rights under this Agreement or of the Intellectual Property and shall cooperate fully with Licensor in dealing with it.
- 8.4 Licensee, in its sole discretion and at its expense, shall have the right but not the obligation to bring any action against persons it believes are infringing the Intellectual Property. Licensee agrees to consult with Licensor concerning the strategy for and settlement of any action brought by Licensee. Licensor also has the right but not the obligation to bring any action against persons it believes are infringing the Intellectual Property. Licensor may bring such action if Licensee does not do so and may take over an action that Licensee initiates. If Licensor brings an action or takes over an action brought by Licensee, Licensor will have

full control of the proceedings and Licensee will provide complete cooperation to Licensor in connection with the action, provided that, if any settlement requires an affirmative obligation of, results in any ongoing liability to or prejudices or detrimentally impacts Licensee in any way and such obligation, liability, prejudice or impact can reasonably be expected to be material, then such settlement shall require Licensee's written consent (not to be unreasonably withheld or delayed) and Licensee may have its own counsel in attendance at all proceedings and substantive negotiations relating to such claim. Whichever party brings the action shall notify the other party in writing. Whichever party brings the action is entitled to any recovery, whether by judgment or settlement.

9. Term. This Agreement, unless terminated earlier as provided herein, will remain in full force and effect until the termination of Licensee's B-cycle branded Bike Share Program, including, without limitation, the termination of the Digital Platform Services Agreement entered into between Licensor and Licensee in connection with the Bike Share Program.

10. Termination.

10.1 *Termination for Default.* A non-defaulting party may terminate this Agreement in the event of the occurrence of any of the following events of default:

10.1.1 The failure of the other party to comply with any material provision of this Agreement, the Purchase Agreement for Equipment and Services dated June 14, 2016 between the parties, or the Digital Platform Services Agreement dated June 14, 2016 between the parties, if such noncompliance is not remedied within thirty (30) days after written notice of such default is provided to the defaulting party;

10.1.2 The filing by Licensor or Licensee of a voluntary petition under any chapter of the United States Bankruptcy Code, or any similar state or foreign law;

10.1.3 The appointment of a receiver for Licensee, unless remedied to the satisfaction of Licensor within thirty (30) days after such appointment; or

10.1.4 The unauthorized sale, transfer or assignment of this Agreement by Licensee to a third party. The sale of an interest exceeding fifty percent (50%) in Licensee will constitute an assignment for purposes of this Agreement.

10.2 *No Exclusive Remedy.* The parties agree that termination of this Agreement will not be the exclusive remedy of the non-defaulting party in the event of a default. Rather, in addition to or in lieu of termination pursuant to this Section 10, such non-defaulting party may exercise any and all other legal remedies available to it under applicable law in the event of default.

10.3 *Effect of Termination.* Upon the effective date of termination of this Agreement as provided in Section 10.1 or 10.2, Licensee agrees to immediately discontinue all use of the Intellectual Property. It is expressly understood that the obligations of Sections 5 and 8 above survive termination or rescission of the Agreement or any part thereof.

11. Miscellaneous Provisions.

- 11.1 *Relationship Between Parties.* The relationship between the parties established by this Agreement is solely that of licensor and licensee. Neither party, based on this Agreement alone, is in any way the legal representative, partner, employee or agent of the other, nor is either party authorized or empowered to create or assume any obligation of any kind, implied or expressed, on behalf of the other party, without the express prior written consent of the other.
- 11.2 *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and therein and will supersede all prior agreements, proposals or understandings between the parties whether written or oral.
- 11.3 *Amendment.* This Agreement will not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by written instrument signed by both parties hereto.
- 11.4 *Waiver.* Neither the waiver by either party hereto of any breach of or default under any of the provisions of this Agreement, nor the failure of either of the parties to enforce any of the provisions of this Agreement or to exercise any right hereunder, will be construed as a waiver of any subsequent breach or default, or as a waiver of any such rights or provision hereunder.
- 11.5 *Severability.* If any term or provision of this Agreement will be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each term and provision will be valid and enforceable to the fullest extent permitted by law.
- 11.6 *Notices.* All notices given pursuant to this Agreement will be given in writing and will be given by telegram, telex, cable, facsimile, certified mail or hand delivery to the addresses set forth below or at such other address as a party may from time to time specify in writing:

If to Licensor: B-cycle, LLC
801 West Madison Street,
Waterloo, Wisconsin 53594
Attention: President
Fax: (920) 478-4200

If to Licensee: [City of Aventura
19200 W. Country Club Drive
Aventura, Fl 33180
Attn: Eric M. Soroka, City Manager

- 11.7 *Headings.* The headings in this Agreement are for convenience purposes only and will not be construed as part of this Agreement or in any way limiting or amplifying any of the provisions of this Agreement
- 11.8 *Execution in Counterparts.* To facilitate execution, this Agreement may be executed in counterparts, and it will not be necessary that the signatures of each party appear on each counterpart; but it will be sufficient that the signature of each party appear on one or more of the counterparts. All counterparts will collectively constitute a single agreement.
- 11.9 *Governing Law.* This Agreement will be governed by the substantive laws of the State of Florida without regard to the application of conflicts of law principles. **LICENSEE AND LICENSOR HAVE NEGOTIATED REGARDING A FORUM IN WHICH TO RESOLVE ANY DISPUTES WHICH MAY ARISE BETWEEN THEM AND HAVE AGREED TO SELECT A FORUM IN ORDER TO PROMOTE STABILITY IN THEIR RELATIONSHIP. THEREFORE, IF A CLAIM IS ASSERTED IN ANY LEGAL PROCEEDING INVOLVING LICENSEE, LICENSOR, EITHER OF THEIR AFFILIATES AND ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, OR PARTNERS, BOTH PARTIES AGREE THAT THE EXCLUSIVE VENUE FOR DISPUTES BETWEEN THEM SHALL BE IN THE STATE OF FLORIDA AND EACH WAIVE ANY OBJECTION EITHER MAY HAVE TO THE PERSONAL JURISDICTION OF OR VENUE IN THE STATE OF FLORIDA. LICENSOR AND LICENSEE IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS AND WAIVE ANY OBJECTION THEY MAY HAVE TO EITHER THE JURISDICTION OR VENUE IN SUCH COURT.**
- 11.10 *Attorneys' Fees.* Each party will be responsible for the payment of its own attorneys' fees incurred with the respect to the preparation of this Agreement.
- 11.11 *Language.* If this document is drafted in more than one language, then the English version shall be the controlling document and any disputes arising out of this document shall be resolved with the English version.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

LICENSOR
B-CYCLE, LLC

By: _____
Name: Robert Burns
Its: President

LICENSEE

ATTEST:

City Clerk

CITY OF AVENTURA

By: _____
Name: Eric M. Soroka
Its: City Manager

Approves as to form and legal sufficiency:

City Attorney

SCHEDULE A: MARKS

U. S. Federal Trademark Registrations:

Trademark	Registration Date	Registration No.	Class
Bcycle	10/20/09	3700047	12
Bcycle	05/29/12	4149982	25
Bcycle	12/23/08	3790814	35
Bcycle	10/20/09	3700048	39
Bcycle Logo 	05/17/11	3960369	12, 35, 39
Circle B Logo 	02/14/12	4098871	12, 35, 39
Bcycle Logo 			
Circle B Logo 			

Internet Domain Names:
 Aventura.bcycle.com

SCHEDULE B: TERRITORY

City of Aventura, Florida

SCHEDULE C: TRADEMARK USE STANDARDS

Exhibit B DIGITAL PLATFORM SERVICES AGREEMENT

THIS DIGITAL PLATFORM SERVICES AGREEMENT together with its Schedules (collectively this “Agreement”) is made this 14th day of June, 2016 (the “Effective Date”), by and between B-CYCLE, LLC, a Delaware limited liability company, with its principal offices at 801 West Madison Street, Waterloo, Wisconsin 53594 (“Seller”), and the City of Aventura, Florida with its principal offices located at 19200 West Country Club Drive, Aventura, Florida 33180 (“Customer”).

1. Definitions. In addition to capitalized terms defined elsewhere in this Agreement, the following terms have the following meanings:

- 1.1 “B-cycle Property” is defined in Section 9.
- 1.2 “Confidential Information” is defined in Section 11.
- 1.3 “Data” is defined in Section 12.
- 1.4 “Intellectual Property Rights” is defined in Section 9.
- 1.5 “Kiosk(s)” means the self-service bicycle rental kiosks through which Users will have access to the Service.
- 1.6 “Schedule” means a document attached to this Agreement, identifying, without limitation, specific services, terms and conditions, agreements, specifications and Fees as set forth in this Agreement.
- 1.7 “Service” means B-cycle’s proprietary automated bicycle sharing digital platform, including access to and use of (1) B-cycle’s online enterprise software for bicycle renting and tracking; account and data management; and system administration; (2) B-cycle’s national website at Bcycle.com; and (3) B-cycle’s location-specific website for www.Aventura.BCycle.com, as applicable, as all of the foregoing may be modified by B-cycle from time to time, including all applicable documentation and user guides supporting the use of the service.
- 1.8 “B-cycle Website Terms and Conditions of Use” means B-cycle’s Website Terms and Conditions of Use between B-cycle and users of B-cycle’s national and location-specific websites, if any, as such websites may be modified by B-cycle from time to time. B-cycle’s current version of the Website Terms and Conditions of Use is attached as Schedule A.
- 1.9 “B-cycle Website Privacy Policy” means B-cycle’s privacy policy for users of B-cycle’s national and location-specific websites, as such may be modified by B-cycle from time to time. B-cycle’s current version of the B-cycle Website Privacy Policy is attached as Schedule B.
- 1.10 “User(s)” means end user(s) of the Service.

1.11 “User Agreement” means the agreement between Customer and each User that sets forth the terms and conditions governing Customer’s bike share program, including the membership and payment terms and conditions for such program and Users’ access to the Service through Customer’s location-specific website. Customer’s current version of the User Agreement is attached to this Agreement as Schedule C.

1.12 “User Manual” means the web based user manual for the Service, as updated by B-cycle from time to time, available at www.bcycle.com or other internet address as B-cycle may specify from time to time.

2. Services. Subject to the terms and conditions of this Agreement and the Schedules incorporated herein by reference, during the Term (as defined in Section 10), B-cycle will provide Customer, and Users who have accepted the User Agreement, access to the Service solely in connection with Customer’s bike sharing program activities.

3. Restrictions. Except as otherwise expressly set forth in this Agreement, authorized by B-cycle in writing, or to the extent limited or prohibited by law, Customer will not, and will not cause or permit any User or third party to: (i) transfer User names or passwords between Users; (ii) attempt to gain unauthorized access to the Service, other User accounts, web sites or networks connected to the Service, through password mining or any other means; (iii) breach, violate or circumvent the User Agreement or any other regulations, policies or procedures governing the use of the Service; (iv) intentionally interfere with or disrupt the Service; (v) disassemble, decompile, reverse engineer or otherwise attempt to derive the source code of the software used in the Service; (vi) upload or transmit any content to Kiosks or B-cycle’s website that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party; (vii) use the Service to develop a product that is competitive with the Service. Customer will notify B-cycle in writing of any instances of which Customer is aware that any User has breached the User Agreement. All rights not expressly granted to Customer herein are reserved by B-cycle. If any of the restrictions in this Section 3 are prohibited by applicable law, then, to the extent the following requirements are permissible, Customer will notify B-cycle in writing before engaging in any of the foregoing activities.

4. Activation and Training. During the Term, B-cycle will perform the following services:

4.1 *Activation; Testing.* Customer will purchase Kiosks pursuant to that certain Purchase Agreement for Equipment and Services and all attachments thereto between B-cycle and Customer (the "Purchase Agreement"). B-cycle will activate the Service on the number of Kiosks identified in Schedule D within the activation schedule set forth in such Schedule D (the "Initial Activation"). Customer will review and test the Service and either accept or reject the activation of each location as expressly provided for in this section within ten (10) days ("Acceptance Testing Period") following the date that B-cycle notifies Customer that such location is active ("Activation Date") by delivering to B-cycle on or before the end of the Acceptance Period either (i) a written "Notice of Acceptance" or (ii) a written list containing any and all reasons for not accepting the activation of the Service in such location ("Correction List"). B-cycle will use commercially reasonable efforts to promptly resolve any issues identified within the Acceptance Period, including, without limitation, the Correction List, to the reasonable satisfaction of Customer. The acceptance date ("Acceptance Date") for the activation of each location will be the date that the Acceptance Testing Period concludes unless the Customer has provided a Correction List, in which case the Acceptance Date for such location will occur when B-cycle resolves the issues identified on the Correction List and provides written notification to Customer that the Service is active for such location.

4.2 *Exclusions.* Activation services under this Agreement do not include (i) providing bicycles for the Kiosks, which is provided for under the Purchase Agreement; (ii) training the Customer's staff to rent or service bicycles; or (iii) activating any future versions of the Service or activating the Service in additional Kiosks (each a "Subsequent Activation") unless otherwise specified in Schedule D or agreed by the parties in writing. B-cycle will charge Customer for activation services in connection with each Subsequent Activation as set forth in Exhibit D.

4.3 *Initial Training and Support Services.* B-cycle will provide the initial training and support services set forth in Schedule E. Customer may elect to receive additional training at any time, subject to B-cycle's then-current prices and schedule, upon reasonable advance notice to B-cycle.

5. Custom Development Services. B-cycle will provide customization, programming, consulting, support and development services ("Custom Development Services") to Customer as specified in Schedule F or in any statement of work accepted in writing by B-cycle on a time and materials basis at the rates specified in Schedule F or such statement of

work. For purposes of clarity, B-cycle has sole discretion whether to perform any requested Development Services.

6. Customer Obligations.

6.1 *Cooperation and Assistance.* Subject to applicable laws and regulations, Customer will provide B-cycle access to Kiosks for purposes of B-cycle's fulfillment of its obligations hereunder. Customer and Customer's representatives will provide all reasonably necessary information and assistance to B-cycle with respect to activation, support and use of the Service.

6.2 *Compliance with Laws.* Customer will comply with all applicable laws and regulations relating in any way to Customer's use of the Service and its provision of the Service to Users.

6.3 *Customer Support.* Except as set forth in the B-cycle Website Terms of Use or any separate written agreement with Customer, B-cycle is not required to provide customer support to Users. Customer will handle or cause to be handled any and all User complaints regarding the bicycles rented to Users through the Service.

6.4 *Bike Share Program; User Agreement.* B-cycle will have the right to include the following minimum provisions in the User Agreement, which will incorporate and benefit B-cycle, its licensors, vendors and suppliers: indemnification, disclaimers of warranties and limitation of liability.

6.5 *Membership Fee Processing.* If Customer elects to charge Users for use of the Service, Customer will, at its expense, obtain an account with third party credit card payment gateway service, Authorize.net ("Payment Gateway"). Customer is also required to obtain an account with a third party credit card merchant or payment processor ("Payment Processor") that is compatible with the Payment Gateway. B-cycle has the sole and exclusive right to select the Payment Gateway, but Customer may choose any Payment Processor that can interface with the Payment Gateway selected by B-cycle. The Payment Gateway and Payment Processor will be required to receive and collect credit card payments from Users, if applicable under Customer's User Agreement, in any of the following methods: (i) through a Kiosk; (ii) online; and (iii) manually or verbally entered by one of Customer's authorized representatives. B-cycle will capture User payment information input through the Service and transmit it to the Payment Gateway, which in turn passes it to the selected Payment Processor. Except for the foregoing, B-cycle will not be responsible for any other aspect of collecting payment from Users.

7. Fees.

7.1 *Fees.* Customer will pay B-cycle the fees identified in Schedule G for the Initial Activation (the "Fees").

- (a) Except as otherwise provided in Schedule G, the Fees for the Initial Activation and any Subsequent Activation will be due within thirty (30) days following the date of the invoice provided by B-cycle to Customer ("Invoice"), in accordance with the Florida Prompt Payment Act.
- (b) Except as otherwise expressly set forth in the Agreement, (A) the Fees are non-refundable, and (B) upon any termination of this Agreement, Customer will promptly pay B-cycle all outstanding Fees, including, without limitation, any Fees that Customer would have paid (or would have owed) to B-cycle during the Initial Term and any current Renewal Term.

8. Payment.

8.1 B-cycle will have the right to charge Customer a late charge of one percent (1.0%) per month, (or any applicable legal maximum, whichever is less), for any invoice that is not paid within (30) days of the date of invoice. Such late fees reasonably estimate the amount necessary to compensate B-cycle for costs and losses associated with delays in payment and are therefore not penalties. Customer and B-cycle agree that the Florida Prompt Payment Act, Florida Statutes §§218.70-80, shall apply and that Customer shall make any payments or late payments in accordance therewith. In the event Customer fails to pay B-cycle any Fees when due, B-cycle will have the right, upon written notice to Customer and following Customer's failure to cure within ten (10) days, and without waiving or limiting any other remedies to which B-cycle may be entitled hereunder, in law or in equity, to suspend the operation of the Service until such time as all amounts due have been paid in full.

8.2 The Fees exclude all applicable sales, use, and service taxes ("Taxes"), and Customer will pay all such Taxes if applicable (other than taxes based on B-cycle's income) and any penalties or charges that accrue with respect to the non-payment of any Taxes by Customer.

9. Ownership. Except for the limited rights explicitly granted in this Agreement, B-cycle and/or its licensors and suppliers retain all right, title and interest in and to the Service, including, without limitation, all new software or product enhancements, updates and modifications developed by B-cycle, or by B-cycle and Customer jointly, in the performance of this Agreement, all documentation and all intellectual property rights in each of the foregoing (including, without limitation, all copyrights, patents, trademarks, trade secret and other rights therein, and all improvements, modifications, derivative works, extensions, applications and renewals

thereof, in any form, format or media ("Intellectual Property Rights") (such items and rights individually and collectively, "B-cycle Property"). To the extent (if any) Customer acquires any Intellectual Property Rights in or to any of the B-cycle Property, Customer hereby irrevocably and without further consideration assigns and transfers to B-cycle all such right, title and interest to any such B-cycle Property and waives the enforcement of any moral rights or rights of authors that cannot be so transferred. Customer will take any reasonably requested actions by B-cycle to document or otherwise facilitate B-cycle's ownership of the B-cycle Property.

10. Term and Termination.

10.1 This Agreement will commence on the Effective Date and will continue for one (1) year (the "Initial Term"). At the end of the Initial Term, the Agreement shall automatically renew for successive additional one (1) year terms, (each, a "Renewal Term") unless either party gives the other at least one hundred eighty (180) days' written notice of non-renewal prior to the expiration of the Initial Term or then-current Renewal Term. The Initial Term and each applicable Renewal Term constitute the "Term" of this Agreement.

10.2 Either party will have the right to terminate this Agreement in the event the other party: (i) materially breaches this Agreement, or any other agreement between the parties, and fails to cure such breach within sixty (60) days following written notice from the non-breaching party, or as otherwise stated in the agreement under which the breach has arisen; (ii) files a petition in bankruptcy or an involuntary petition in bankruptcy is filed against it and is not dismissed within thirty (30) days of such filing; or (iii) is subject to the appointment of a trustee, receiver or other custodian for such party or such party's property.

10.3 Upon expiration or termination of this Agreement: (i) all of the parties' rights and obligations granted hereunder will immediately cease to exist (except for rights and obligations that survive as set forth in Section 10.4); (ii) B-cycle will have the right to immediately deactivate the Service; (iii) Customer will return (or, at B-cycle's request, destroy) all B-cycle Property; (iv) B-cycle will provide Customer a copy of the Data; and (v) Customer will promptly pay B-cycle all amounts, Fees, charges and expenses owed as of the date of expiration or termination.

10.4 *Survival.* Sections 1, 3, 8 (solely to the extent of any unpaid Fees) 9, 10.3, 10.4 and 11 through 18 will survive the termination of this Agreement for any reason and continue in full force and effect.

11. Confidentiality.

11.1 As used herein, "Confidential Information" means: (i) any and all technical or business data or information (including, without limitation, third-party information),

materials or software furnished or made available, in whatever form or medium, by the parties to each other regardless of whether such technical or business data or information is marked or identified as "Confidential."

11.2 Subject to Chapter 119, Florida Statutes and other applicable laws, the parties will, during the Term and for a period of two (2) years thereafter, (i) treat as confidential, and preserve the confidentiality of, all Confidential Information; (ii) use the Confidential Information solely for the purposes of this Agreement; (iii) not copy such Confidential Information unless specifically authorized by the disclosing party; and (iv) limit dissemination of the Confidential Information to those employees, agents and representatives to whom disclosure is necessary for the purposes of this Agreement, provided such employees, agents and representatives have first agreed to maintain the confidentiality thereof in writing. Notwithstanding the foregoing, the parties may use Confidential Information for purposes of routine due diligence or internal audit or if required by law.

11.3 The receiving party will promptly return all Confidential Information to the disclosing party at the disclosing party's request, to the extent such request is reasonable and does not interfere with the parties' performance pursuant to this Agreement.

11.4 The obligations imposed by this Section 11 of the Agreement do not apply to any information that: (i) is already in the possession of the receiving party; or (ii) is or becomes publicly available through no fault of the receiving party; or (iii) is obtained by the receiving party from a third person without breach by such third person of an obligation of confidence with respect to the Confidential Information disclosed. Information will not be deemed to be within the foregoing exceptions merely because it is embraced by more general information in the public domain or in the possession of the party receiving such information, or a combination of individual items of information that could be pieced together to reconstruct such combination from non-Confidential Information.

11.5 Because the Confidential Information is unique, either of the parties' failure to comply with the provisions of this Section 11 will result in irreparable harm to the disclosing party and, in the event of a breach by the receiving party of its obligations under this Section, the disclosing party may bring suit in equity to enjoin any such breach.

12. Data. The data entered into the Service by Users of Customer or generated through the Service solely through the location-specific section of the B-cycle website for Customer, if applicable (collectively, "Data") will be stored on B-cycle's servers. As between B-cycle and Customer, B-cycle owns such Data and will have the right to use and disclose the Data

for any lawful purpose. During the Term, B-cycle will provide Customer with copies of such Data upon request, subject to applicable law, and will provide Customer with access to various system administration features of the Service in accordance with B-cycle's then current policies and requirements, as modified by B-cycle from time to time in its discretion and provided to Customer, solely for Customer's geographic location. B-cycle grants to Customer a non-exclusive, irrevocable, perpetual license to use the Data for its lawful purposes.

13. WARRANTIES, DISCLAIMERS, AND LIMITATION OF LIABILITY.

13.1 Representations and Warranties. B-cycle warrants to Customer that, after an initial ninety (90) day Shakeout Period (as defined in the Purchase Agreement for Equipment and Services) following the Activation Date, the Service will operate in material compliance with the specifications set forth in Schedule H to this Agreement.

13.2 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 13.1, THE SERVICE AND ALL SERVICES ARE PROVIDED STRICTLY "AS IS," AND B-CYCLE DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO ANY SUBJECT MATTER OF THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY OR MERCHANTABILITY. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY B-CYCLE, ITS EMPLOYEES, DISTRIBUTORS, OR AGENTS WILL INCREASE THE SCOPE OF THE ABOVE WARRANTY OR CREATE ANY NEW WARRANTIES. ANY DISCLAIMERS SET FORTH IN THE ATTACHED SCHEDULES ALSO APPLY BUT DO NOT LIMIT THE FOREGOING. THE ENTIRE RISK ARISING OUT OF THE USE, PERFORMANCE, OR INABILITY TO USE THE SERVICE REMAINS WITH CUSTOMER. EXCEPT FOR DIRECT DAMAGES AGREEMENT, IN NO EVENT IS EITHER PARTY LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, PERSONAL INJURY OR PROPERTY LOSS TO EITHER PARTY'S EMPLOYEES, USERS OR OTHER THIRD PARTIES, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT

WILL B-CYCLE'S LIABILITY EXCEED ONE HALF MILLION DOLLARS (\$500,000.00) PER OCCURRENCE AND ONE MILLION DOLLARS (\$1,000,000.00) IN AGGREGATE. Customer acknowledges that the Fees, disclaimers and limitations of liability set forth in this Agreement reflect the allocation of risk negotiated and agreed to by the parties and that B-cycle would not enter into this Agreement without these limitations on its liability. These limitations will apply notwithstanding any failure of essential purpose of any limited remedy.

14. Indemnification.

14.1 To the extent permitted by law, each party will indemnify, defend and hold the other party and its affiliates and each of their respective officers, directors, members, managers, employees and agents harmless from and against any and all third party claims, damages, losses and expenses (including, without limitation, reasonable attorneys' fees) arising from (i) B-cycle's breach of any warranty regarding the Service; (ii) any claim that Customer's or User's use of the Service pursuant to the terms of this Agreement infringes or violates any third party's copyright, U.S. patent, trade secret or trademark or any other intellectual property right, or misappropriates any third party trade secret; or (iii) either party's use of Data in violation of any applicable laws, including, without limitation, any privacy and data security laws regarding the collection, use, sharing and storage of personally identifiable information or credit card information of a User.

14.2 To the extent permitted by law, customer will indemnify, defend and hold B-cycle, its suppliers, licensors and vendors harmless from any and all third party claims, damages, losses and expenses (including, without limitation, reasonable attorneys' fees) arising from (i) use of the Service by Customer or any User; (ii) any claim of injury by a User other than a claim that the Service has directly injured such User; (iv) any negligent or wrongful acts or omissions of any User, Customer or its representatives; and (v) Customer's use of Data in violation of any applicable laws, including, without limitation, any privacy and data security laws regarding the collection, use, sharing and storage of personally identifiable information or credit card information of a User.

14.3 The indemnified party will promptly give written notice of any known claim to the indemnifying party (provided that any delay by the indemnified party in providing such notice will not absolve the indemnifying party from indemnifying any indemnified party, unless such delay materially prejudices the indemnifying party's ability to respond to such claim), and provide any assistance which the indemnifying party may reasonably request for the defense of the claim (with all reasonable

associated costs and expenses paid by the indemnifying party). The indemnifying party will have the right to control the defense or settlement of the claim, provided, however, that the indemnified party will have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense, and if any settlement requires an affirmative obligation of, results in any ongoing liability to or prejudices or detrimentally impacts the indemnified party in any way and such obligation, liability, prejudice or impact can reasonably be expected to be material, then such settlement will require the indemnified party's written consent (not to be unreasonably withheld or delayed).

14.4 Customer's monetary liability to B-cycle under this section shall be limited to the monetary limits of Section 768.28(5), F.S., regardless of whether these limits would apply in the absence of this provision. Notwithstanding anything to the contrary, Licensee agrees that it shall promptly comply with any injunction or non-monetary relief, in law or in equity, that a court may order.

15. Restrictive Covenant. Except as the parties mutually agree in writing, during the term of this Agreement and for a period of one (1) year thereafter, neither Customer nor B-cycle will knowingly hire, contract, or solicit the employment of any current or previous employee of the other party who has been involved with this Agreement or performance hereunder, either indirectly or directly, unless a period of at least twelve (12) months has elapsed from the last date that such employee was employed by the party, provided that publications of open positions in media of general circulation will not constitute solicitation by either party.

16. Service Level Agreement. B-cycle will provide the Service according to the Service Levels set forth in Schedule I.

17. Escrow. Upon request by Customer and at Customer'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 set forth in Schedule J.

18. General Provisions.

18.1 Dispute Resolution. This Agreement will be construed under and governed by the laws of the State of Florida, excluding of choice of law provisions. The parties submit to the exclusive jurisdiction of state and federal courts of the state of Florida.

18.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to and services provided by B-cycle to Customer pursuant to the

terms herein. This Agreement supersedes any and all prior agreements and understandings between the parties with respect thereto and may be amended or modified only by a writing signed by each of the parties.

18.3 *Assignment.* This Agreement is not assignable and the duties hereunder are not delegable without the other party's prior written consent, which consent shall not be unreasonably withheld; provided that either B-cycle or Customer may transfer and assign this Agreement without the other party's consent to any person or entity (except to a competitor of B-cycle) that is an affiliate of such party or that acquires substantially all of the stock or assets of such party's applicable business if any such assignees agree, in writing, to be bound by the terms of this Agreement. Subject to such limitation, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. For purposes of this Agreement, any change in control of a party constitutes an assignment of the Agreement. Any attempted assignment in violation of this provision is null and void.

18.4 *Notices.* The parties will make all notices required under this Agreement in writing at the addresses set forth on Page 1 of this Agreement. Notices are deemed delivered when transmitted by facsimile or deposited with an express delivery service with guaranteed third day delivery, prepaid. The parties will notify one another about changes of address in the same manner as they provide any other notice.

18.5 *Force Majeure.* Neither party will be liable to the other for any delay or failure to perform any obligation (other than failures to pay) hereunder if such delay or failure is due to any act of God, acts of civil or military authority, labor disputes, fire, riots, civil commotions, sabotage, terrorism, war, embargo, blockage, floods, or other inclement weather, epidemics, delays in transportation, inability beyond such party's reasonable control to obtain necessary labor, materials, or manufacturing facilities, or when due to governmental restrictions. In the event of any such delay or failure, the parties will have an additional period of time equal to the time lost by reason of the foregoing in which to perform hereunder.

18.6 *Headers.* The titles of the Sections of this Agreement are solely for the convenience of the parties and will not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

18.7 *Severability.* If any provision of this Agreement is held to be invalid or unenforceable by a proper authority having jurisdiction over this Agreement, such provision will be deemed null and void and the remaining provisions of this Agreement will remain in full force and effect. The parties will promptly substitute for the

affected provision an enforceable provision that approximates the intent and economic effect of the affected provision.

18.8 *Independent Contractor Relationship.* The parties intend to create an independent contractor relationship, and nothing contained in this Agreement will be construed to make either B-cycle or Customer (or any of their respective representatives, patients, officers, employees, subcontractors or agents) partners, joint venturers, principals, agents or employees of the other. Neither party will have any right, power or authority, express or implied, to bind the other and neither will be or become liable or bound by any representation, act or omission whatsoever of the other. The parties are independent contractors and not employees of the other party and none of the parties' personnel will be entitled to receive any compensation, benefits or other incidents of employment from the other party.

18.9 *Language.* If this document is drafted in more than one language, then the English version shall be the controlling document and any disputes arising out of this document shall be resolved with the English version.

[Signature Page to Follow]

IN WITNESS WHEREOF, in consideration of the foregoing and the following terms and conditions of this Agreement, together with the terms and conditions of the Schedules, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties by their authorized representatives have entered into this Agreement as of the Effective Date set forth above.

SELLER
B-CYCLE, LLC,

By: _____
Name: Robert Burns
Its: President

CUSTOMER
CITY OF AVENTURA

ATTEST:

City Clerk

By: _____
Name: Eric M. Soroka
Its: City Manager

Approves as to form and legal sufficiency:

City Attorney

SCHEDULE A: WEBSITE'S TERMS OF USE

B-CYCLE WEBSITE TERMS AND CONDITIONS OF USE

We welcome you to the B-cycle websites, including www.bcycle.com and the other websites that display these B-cycle Website Terms and Conditions of Use (collectively, the "Website"). The Website is owned by B-cycle, LLC and is licensed to third parties (together defined as "B-cycle"). **PLEASE READ VERY CAREFULLY THE FOLLOWING TERMS AND CONDITIONS FOR USE OF THE WEBSITE.**

1. **Acceptance of Terms.** This Terms and Conditions of Use Agreement (the "Agreement") sets forth legally binding terms for your use of Website. By using our Website, you agree to be bound by this Agreement and all applicable laws and regulations with regard to your use of the Website, whether you are a "Visitor" (which means that you simply browse our Website) or you are a "Member" which means that you have registered as a Member of this Website and obtained an "Account" which permits you to set up your "Member Profile." **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT USE THIS WEBSITE.**
2. **Changes to Terms.** We may modify this Agreement from time to time, and such modification will be effective upon its posting on our Website or any other website or location through which you are able to access our Website. You agree to be bound by any modification to this Agreement when you use the Website after any such modification is posted; it is therefore important that you review this Agreement regularly. If you have an Account, we will attempt to notify you by email when we update the terms of this Agreement.
3. **Bicycle Rental Agreement.** If you wish to rent bicycles through our system of kiosks in your area, you are required to review and accept the User Agreement. You can access the User Agreement at any time by clicking on the link identified as "User Agreement" at the bottom of any page on the Website.
4. **Member Account, Password and Security.** You must be at least 18 to become a Member of our Website. If you register to become a Member, you will be required to choose a password and user name, and you may be asked for additional information regarding your Account, such as your email address. You agree to provide true, accurate, current and complete information about yourself as prompted by the registration form (the "Registration Data") and maintain and promptly update your Registration Data to keep it true, accurate, current and complete. For safety reasons, we recommend that your user name should not contain your last name (in addition, rather than your actual first name, you may want to consider using a word or term with meaning to you). You are responsible for maintaining the confidentiality of the password and account information, and are fully responsible for all activities that occur under your password and Account. You are required to (a) immediately notify B-cycle (email: info@bcycle.com) of any unauthorized use of your password or account or any other breach of security, and (b) ensure that you log out from your account at the end of each session. B-cycle will not be liable for any loss or damage arising from your failure to comply with this paragraph. Use of and registration for the Website are void where prohibited.
5. **Leader Board.** When you register for the Website, we will give you the option to permit us to display your user name on the Website's "Leader Board." The Leader Board displays publicly visible statistics of some individual Members relating to the Member's use of the Service. If you choose to permit us to display your user name on the Leader Board, we may post your user name and statistics such as number of miles ridden, calories burned, etc. Nothing in this Section will require us to include any information about you in the Leader Board. The Leader Board is an entertainment feature of the Website. Although we will strive to track and display information about Members in the Leader Board accurately, we will not be liable for any errors or inaccuracies in the Member statistics displayed on the Leader Board.
6. **Your Interactions With Other Members.** You acknowledge that we have no screening policy, and that anyone who registers to become a Member will become a Member without any review or approval by us. You are solely responsible for your interactions with other Members that occur as a result of the Website, whether online or offline, and any communications with other individuals through or as a result of the Website are at your own risk. We disclaim all liability for any actions of other Members. Please use your discretion when deciding whether to send any of your personal information to another Member.
7. **Prohibited Conduct.** You agree not to use the Website to post or otherwise transmit information, data, text, software, music, sound, photographs, graphics, video, messages, tags, or other materials ("Content") that:
 - is patently offensive and/or promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
 - harasses or advocates harassment of another person;
 - exploits people in a sexual or violent manner;

- contains nudity, violence, or offensive subject matter;
- solicits personal information from anyone under the age of eighteen (18);
- provides any telephone numbers, street addresses, last names or email addresses of anyone other than your own (and we advise you not to post your own and to communicate such information in private messages to other Members only at your own risk);
- promotes information that you know is false or misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
- violates any intellectual property or other proprietary right of any third party (including without limitation Content that promotes or links to an illegal or unauthorized copy of another person's copyrighted work or provides information to circumvent copy-protect devices);
- involves the transmission of "junk mail," "chain letters," or unsolicited mass mailing, instant messaging, "spimming," or "spamming";
- contains restricted or password only access pages or hidden pages or images (those not linked to or from another accessible page);
- furthers or promotes any criminal activity or enterprise or provides instructional information about illegal activities including, but not limited to making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;
- solicits passwords or personal identifying information for commercial or unlawful purposes from other Members;
- involves commercial activities and/or sales without our prior written consent, such as contests, sweepstakes, barter, advertising, or pyramid schemes;
- includes a photograph of another person that you have posted without that person's consent or, in the case of children under the age of eighteen (18), parental consent, or otherwise constitutes an invasion of an individual's privacy or infringement of publicity rights; or
- contains a virus or other harmful component.

In addition, any unauthorized modification, tampering or change of any information, or any interference with the availability of or access to the Website is strictly prohibited. You may not attempt to override or circumvent any security components and usage rules of the Website. You are prohibited from engaging in any hacking, cracking, or other means of obtaining access to any Member's account information or other data or communications not intended for you. We reserve all rights and remedies available to us, and we will not hesitate to pursue all available legal actions in response to violations of this Agreement.

8. **Responsibility for Content.** You, and not B-cycle, are entirely responsible for any Content that you may upload, post, email, transmit or otherwise make available via the Website. B-cycle does not control the Content posted via the Website and, as such, we do not guarantee the accuracy, integrity or quality of such Content. You understand that by using the Website, you may be exposed to Content that you deem offensive, indecent or objectionable. Under no circumstances will B-cycle be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted or otherwise made available via the Website.

9. **Rejection/Removal of Content.** You acknowledge that B-cycle does not generally pre-screen or review Member Profiles or other Content posted on our Website. However, B-cycle will have the right (but not the obligation) in its sole discretion to pre-screen, edit, refuse, or remove any Content or portion thereof that is available via the Website, in its sole discretion, for any reason.

10. **Termination of Account or Access.** B-cycle has the right in its sole discretion to restrict, suspend, or terminate your Account, or your access to all or any part of the Website at any time, for any or no reason, with or without prior notice, and without liability. You may choose to terminate your membership at any time by notifying us by email at info@bcycle.com. Please allow us sufficient time to process termination requests. You understand that termination of your membership is your sole right and remedy with respect to any dispute with B-cycle. Following the cancellation or termination of your membership by you or by B-cycle for any reason, B-cycle will have no further obligation to save your Member Profile, communications via the Website or any of your settings, information or Content you have posted on or transmitted through the Website. We have the right to delete any personal information or other Content immediately following termination of your Account.

11. **Objectionable Content and Abuse.** If you become aware of misuse of the Website by any person, if you find any Content on the Website that you feel is objectionable, or if you feel that any Member has violated the terms of this Agreement in any manner, please contact B-cycle (email: info@bcycle.com). Please include a description of the misuse of the Website or the objectionable Content or activity (along with the URL or a copy of the Content if possible) in your email. B-cycle has no obligation to take any action whatsoever in response to any such notice, and

the receipt of any such notice will not be deemed to create any duty or liability on the part of B-cycle.

12. Preservation/Disclosure. You acknowledge, consent and agree that B-cycle may access, preserve and disclose your Account information and Content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of B-cycle, its Members and the public. Under no other circumstances will B-cycle intentionally disclose your account information to any third party.

13. Non-commercial Use. The Website may not be used in connection with any commercial purposes, except as specifically approved by B-cycle. You may link to the home page of our Website, but any unauthorized framing of or linking to our Website, or any Content therein, is prohibited. Commercial advertisements, affiliate links, and other forms of solicitation may be removed from your Member Profile without notice and may result in termination of membership privileges.

14. Ownership of Content. B-cycle does not claim ownership rights in any Content you post on or transmit through the Website. Subject to the non-exclusive license contained in the following paragraph, as between B-cycle and you, you will retain all intellectual property rights that you may have in any Content that you post on or transmit through the Website.

15. License to Your Content. In order to be able to offer you the use of our Website, you are required to grant a license to B-cycle to use and distribute your Content. This enables us to permit other Visitors to the Website and Members to view and share your Content, and to display your Content in other places within the Website. Accordingly, by posting, displaying, publishing, transmitting, or otherwise making available (individually and collectively, "posting") any Content on or through our Website, you hereby grant to B-cycle a non-exclusive (meaning you can license the Content to other parties as well), fully-paid, royalty-free, irrevocable, worldwide license (including the right to sublicense) for the duration of copyright in your Content, to use, copy, modify, adapt, translate, create derivative works, publicly perform, publicly display, store, reproduce, transmit, distribute, and otherwise make available such Content on and through our Website, in print, or in any other format or media now known or hereafter invented, without any obligation of notification, compensation, attribution or consent. If you wish to remove any Content from the Website, your ability to do so may depend on the type of Content, the location and manner of posting, and other factors. You may contact us at info@bcycle.com to request the removal of certain Content you have posted, but B-cycle has no obligation to remove any such Content, may choose whether or not to do so in its sole discretion, and makes no guarantee as to the complete deletion of any such Content and copies thereof. In any case, a back-up or residual copy of any Content posted by you may remain on B-cycle's servers after the Content appears to have been removed from our Websites, and B-cycle retains all rights granted in this paragraph to all such remaining copies. You represent and warrant that: (i) you own all right, title and interest in all Content posted by you on or through our Website, or otherwise have the right to grant the license set forth in this section, and (ii) the posting of your Content on or through our Website does not violate the privacy rights, publicity rights, copyrights, trademarks, patents, trade secrets, contract rights, confidentiality, any other rights of any third party, or any terms of this Agreement.

16. B-cycle and Third Party Content. Our Website contains Content of B-cycle ("B-cycle Content"), and Content of third party licensors to B-cycle (including content provided by you and other users of our Website, as described above), which is protected by copyright, trademark, patent, trade secret and other laws. B-cycle owns and retains all rights, title and interest in the B-cycle Content. B-cycle hereby grants to you a limited, revocable, non-sublicensable license to reproduce and display a single copy of the B-cycle Content and any third party Content located on or available through our Website (excluding any software code therein) solely for your personal, non-commercial use in connection with viewing our Website and using the features that appear on the Website. Except for Content posted by you, you may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, make available, or sell any Content appearing on or through our Website.

17. Other Sites. Our Website may contain links to other sites owned by third parties (i.e. advertisers, affiliate partners, strategic partners, or others). We are not responsible for examining or evaluating, and we do not warrant the products or offerings of, any of these businesses or individuals, or the accuracy of the content of their websites. B-cycle does not assume any responsibility or liability for the actions, product, and content of any such websites. Before you use any third party website, you should review the applicable terms of use and policies for such websites. The inclusion of a link in any of our Websites does not imply B-cycle's endorsement of such third party website. If you decide to access any such linked websites, you do so at your own risk.

18. International Use. Due to the global nature of the Internet, you agree to comply with all local rules regarding online conduct and acceptable Content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data or personal information exported from the United States or the country

in which you reside.

19. **Privacy Policy.** Please review our Privacy Policy to learn what personal information we collect through this Website, how we use and share the personal information we collect, and some of the steps we take to protect your privacy. Our Privacy Policy is part of these Terms of Use. By agreeing to these Terms of Use, you are also consenting to the collection, use and disclosure of your personal information in accordance with our Privacy Policy. You can access the Terms of Use and the Privacy Policy at any time by clicking on the links for these documents at the bottom of any page on the Website.

20. **Copyright Policy.** B-cycle has in place certain legally mandated procedures regarding allegations of copyright infringement occurring on our Website. B-cycle reserves the right in its sole discretion to immediately suspend and/or terminate access to our Website by any user who is alleged to have infringed on the intellectual property rights of B-cycle or of a third party, or otherwise violated any intellectual property laws or regulations. B-cycle's policy is to investigate any allegations of copyright infringement brought to its attention. If you have evidence, know, or have a good faith belief that your rights or the rights of a third party have been violated and you want B-cycle to delete, edit, or disable the material in question, you must provide B-cycle with all of the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) identification of the material that is claimed to be infringed or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit B-cycle to locate the material; (d) information reasonably sufficient to permit B-cycle to contact you, such as an address, telephone number, and if available, an electronic mail address at which you may be contacted; (e) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. For this notification to be effective, you must provide it to B-cycle either by e-mail at: info@bcycle.com, or by U.S. mail to our designated agent for notification of infringement, Bob Burns, B-cycle, LLC, 801 West Madison St, Waterloo, WI 53594.

21. **Term and Termination.** This Agreement will remain in full force and effect for so long as it is accessible through the Website. If you wish to terminate your membership, please follow the instructions on the FAQ page for the Website or email us at info@bcycle.com. B-cycle reserves the right to terminate your Account or your access to our Website immediately, with or without notice to you, and without liability to you, if B-cycle believes that you have breached any of the terms of this Agreement, furnished B-cycle with false or misleading information, or interfered with use of the Website by others.

22. **Disclaimer of Warranties.** You expressly understand and agree that:

YOUR USE OF THE WEBSITE IS AT YOUR SOLE RISK. THE WEBSITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. B-CYCLE AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS (THE "B-CYCLE PARTIES") EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WITH RESPECT TO THE WEBSITE, AND ANY THIRD PARTY WEBSITES WITH WHICH THEY ARE LINKED.

THE B-CYCLE PARTIES MAKE NO WARRANTY: (I) THAT THE WEBSITE OR THE FEATURES OFFERED ON THE WEBSITE WILL MEET YOUR REQUIREMENTS, WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR FREE OF ANY HARMFUL COMPONENTS (INCLUDING VIRUSES); (II) REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE WEBSITE; AND (III) THE QUALITY OF THE BICYCLES, CONTENT, PRODUCTS, SERVICES, INFORMATION OR ANY MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE WEBSITE WILL MEET YOUR EXPECTATIONS. WE DO NOT PROVIDE ANY REPRESENTATIONS OR WARRANTIES AGAINST THE POSSIBILITY OF DELETION, MISDELIVERY OR FAILURE TO STORE COMMUNICATIONS, PERSONALIZED SETTINGS, OR OTHER DATA.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF OUR WEBSITE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

23. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS IN NO EVENT WILL THE B-CYCLE PARTIES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY

INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE OF THE WEBSITE, OR ANY WEBSITE WITH WHICH THEY ARE LINKED, EVEN IF B-CYCLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, B-CYCLE'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO B-CYCLE FOR THE WEBSITE. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, in certain jurisdictions, some of the above limitations of liability may not apply to you; all other provisions of this Agreement remain in full force and effect.

24. Indemnity. You agree to indemnify, defend, and hold harmless the B-cycle Parties from any and all third party claims, losses, liability, damages, and/or costs (including reasonable attorney fees and costs) arising from or relating to your breach of the terms of this Agreement or your use of the Website. B-cycle will notify you promptly of any such claim, loss, liability, or demand, and will provide you with reasonable assistance, at your expense, in defending any such claim, loss, liability, damage, or cost.

25. Additional Terms. We may also require you to follow additional rules, guidelines or other conditions ("Additional Terms") in order to participate in certain promotions or activities available through our Website, to obtain certain premium Content through our Website, or for other reasons. These Additional Terms will be posted on the relevant portions of our Website or on the portions of our Website that describe the specific promotions, Content, or activities. These Additional Terms are part of this Agreement, and you agree to comply with them when you participate in those promotions, purchase items from our online stores, or otherwise engage in activities governed by such Additional Terms.

26. Modification and Discontinuation. We reserve the right at any time to modify, edit, delete, suspend or discontinue, temporarily or permanently our Website (or any portion thereof) with or without notice. You agree that we will not be liable to you or to any third party for any such modification, editing, deletion, suspension or discontinuance of the Website.

27. Entire Agreement. This Agreement, together with any other terms or policies referenced herein (including without limitation the Privacy Policy and Additional Terms), constitutes the entire agreement between you and B-cycle and governs your use of the Website, superseding any prior agreements between you and B-cycle with respect to the Website.

28. Choice of Law and Forum. This Agreement and the relationship between you and B-cycle will be governed by the laws of the State of Wisconsin without regard to its conflict of law provisions. You and B-cycle agree to submit to the personal and exclusive jurisdiction of the courts located within Madison, Wisconsin.

29. Waiver and Severability of Terms. The failure of B-cycle to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect.

30. Limitation on Actions. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Websites or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

31. Questions. If you have any questions regarding this Agreement, please contact us by email at info@bcycle.com, or by mail at 801 West Madison St, Waterloo, WI 53594.

SCHEDULE B: PRIVACY POLICY

B-CYCLE WEBSITE PRIVACY POLICY

This B-cycle Website Privacy Policy (“**Privacy Policy**”) governs your use of the B-cycle websites, including www.bcycle.com and any other websites that display this Privacy Policy (collectively, the “**Website**”). The Website is owned by B-cycle, LLC and licensed to third parties (together known as “**B-cycle**”). We have created this Privacy Policy to ensure that you understand our policies and procedures, what personal information you must provide if you wish to use our Website and, ultimately, how we use such personal information. This Privacy Policy is a part of and is incorporated into our B-cycle Website Terms and Conditions of Use. You can access either of these documents at any time by clicking on the links at the bottom of any page on the Website. By accessing or using the Website, you accept, without limitation or qualification, the terms of this Privacy Policy.

1. **Information We Collect.** We collect two types of information from users of our Website: personal information described below; and non-personal information such as information about traffic patterns and usage statistics regarding our Website.

2. **Personal Information.** You may browse our Website without registering for the Website. However, to access certain features of our Website, we require you to register as a member (“**Member**”) and select a user name and password. Some personal data is collected during the registration process. We may then ask for additional information, including personally identifiable and non-personally identifiable information.

When you register as a Member of the Website, or when you enter a contest or other promotion, we may ask you for certain personal information such as your name, address, e-mail address, or credit card number, in order to process your order, administer the contest, or send you promotional e-mails. Providing personal information in these instances is solely your choice; you do not need to provide such information, register as a Member, or enter such contests to browse our Website.

3. **How We Use Your Personal Information.** We use the information collected through our Website for a variety of purposes, including, but not limited to, processing your registration as a Member, operating the Website, and contacting Members. We may use your information to communicate with you, to update you regarding features of the Website, to personalize the Website for you, to contact you for market research or to provide you with marketing information, newsletters, or other information we think would be of interest to you. In addition, if you become a Member of our Website, we may send you an email confirming your membership details.

You can request to remove your email address from our email list for marketing related email messages, or other emails which are not necessary to your participation as a Member of the Website by following the procedures set forth in the “Opt Out Procedures” section below. In addition, you can modify your information or change your preferences, as set forth in the “Reviewing or Changing Your Information” section below. We will strive to exclude you from future communications if you follow the procedures set forth in this section.

Information obtained through our Website may be intermingled with and used in conjunction with information obtained through sources other than our Website, including both offline and online sources.

4. **Disclosure of Personal Information through Leader Board or to Other Members.** If you elect during registration, your user name and other information or Content you provide may be visible on the Leader Board to anyone who visits our Website or browses through our Website, including individuals who are not registered Members. Please keep this in mind as you select your user name.

The Website is not currently set up for social networking. Except for information about you that may appear on the Leader Board, information that you provide as part of your registration or that is collected about you through your use of the B-cycle Service is generally not visible to other Members or to non-members who visit the Website. This may change in the future as we add more features and functionality to the Website.

Please use extreme caution when deciding whether and when to provide any personally identifiable information about yourself (such as your full name, email address, phone number, or address) to another Member of the Website via email, through the Leader Board or otherwise.

5. **Non-Personal Data.** In some cases, we may collect non-personal information. Examples of this type of information include the type of internet browser you are using, the type of computer operating system application software, and peripherals you are using and the domain name of the website from which you accessed our Website. We use your information to do such things as operate and enhance our Website, and sell and deliver advertising.

6. **Cookies.** Certain features on our Website utilize cookie technology. A cookie is a small data file that certain web sites write to your hard drive when you visit them. A cookie file can contain various types of information, including a user ID that the site uses to track the pages you've visited. We may use cookies to enhance your experience on our Website, to determine user traffic patterns and for other purposes.

Most browsers are initially set up to accept cookies; however, you can reset your browser to refuse all cookies or indicate when a cookie is being sent or you can flush your browser of cookies from time to time. (Note: you may need to consult the help area of your browser application for instructions.) If you choose to disable your cookies setting or refuse to accept a cookie, however, you may not be able to access all areas or features of our Website.

7. **Opt Out Procedures.** You have certain options to opt out of receiving promotional or commercial information from B-cycle and our Website during registration and through your Account settings. However, you may not opt out completely of receiving email communications necessary for the operation of your membership in the Website unless you decide to terminate your membership. If you no longer wish to use or visit our Website, or receive any form of direct contact from B-cycle or our Website, whether it is email, discounts, newsletters, or other promotional offers or materials, contact us at: info@bcycle.com.

8. **Reviewing or Changing Your Information.** In order to ensure that the information we maintain is accurate, B-cycle gives Members the option to change or modify their information previously provided during registration. If you would like to change your information currently in our database please log in to your Account and click the "My Profile" link or email us at info@bcycle.com.

9. **Sharing of Your Information.** Except as prohibited by law, B-cycle may share your personal information: (i) with the operators of our Websites and bicycle rental programs; (ii) third parties for advertising or marketing purposes, (iii) if B-cycle is required by law to do so, (iv) in the event of a transfer of ownership of B-cycle, merger or other similar transaction, or (v) as otherwise set forth in this Privacy Policy.

We may share certain personal information with third parties for advertising, promotional and other purposes regarding products and services that we think may be of interest to you. We also may work with third party advertising companies, to serve and track our ads. These third parties may serve other cookies. Our advertising partners may use personal and non-personal information they collect from our Website to help us better market and serve our customers.

This Privacy Policy does not address the practices of third parties who may collect your personal information. You may visit other websites, through links on the Website, which may collect, use and share your personal information in accordance with their own privacy policies. The information practices of those linked websites are not covered by this Privacy Policy, and we encourage you to be very cautious before you disclose your personal information to others.

In order to provide you with the Website and any information, products or services which you have requested, we may share or transfer your personal information with our affiliates or subsidiaries, or third party agents acting on their behalf.

B-cycle may be obligated to cooperate with various law enforcement inquiries. B-cycle reserves the right to disclose or transfer personal information and non-personal information about you and your activities on the Website in order to comply with a legal requirement or request from law enforcement or other government officials, administrative agencies or third parties as we, in our sole discretion, determine necessary or appropriate for the administration of justice, or in connection with an investigation of fraud, intellectual property infringements or violations of any other law, rule or regulation, our B-cycle Terms and Conditions of Use or other rules or policies of our Website, the rights of third parties, or an investigation of any other activity that may expose us or you to legal liability, or to investigate any suspected conduct which B-cycle in its sole discretion deems improper.

10. **Security.** We have installed encryption software conforming to the Secure Socket Layers (SSL) protocol to safeguard all of the information you send to us. All information is stored on our servers in a secure location. It is important for you to protect against unauthorized access to your password and to your computer. If your password is compromised, notify Customer Service at once at info@bcycle.com.

11. **Protection for Children.** Our Website is not intended for users under the age of 18. Furthermore, we do not knowingly collect personally identifiable information from children (i.e., individuals under the age of 13). If you believe that a child has provided information to us through the Website, please contact us by email at info@bcycle.com or by writing us at B-cycle 801 West Madison St, Waterloo, WI 53594 Attn. Privacy Officer. We will use our best efforts to remove all of the information provided by the child from our system.

12. **Privacy Precaution Warning.** Please note that no data transmission over the Internet is 100% secure. As a result, we cannot guarantee the security of the information that you transmit via our Website.

13. **Your Consent.** You may have certain rights under various state and federal statutes that may apply to the personal and non-personal information we collect in connection with the Website. By accepting the terms of this Privacy Policy and using our Website, you are waiving all of such rights as to collection, use, disclosure and storage of your personally identifiable and non-personal information as described herein. You recognize that we are able to offer our Website to you solely based upon these terms, which are an integral part of our contract for the provision of services.

By using our Website and providing your personal information to us, you also authorize the export of your personal information to the USA, as well as its storage and use as specified herein. Our headquarters is located in the state of Wisconsin, in the USA. This Privacy Policy and our legal obligations are subject to the laws of Wisconsin and the USA, regardless of the location of any user. Any claims or complaints must be filed in the USA in the State of Wisconsin.

We may amend our Privacy Policy at any time, without notice to you, by posting such revised Privacy Policy on this page, so you are always aware of what information we collect, how we use it and under what circumstances we may disclose it. Any changes will only apply to information collected after the change is posted.

SCHEDULE C: USER AGREEMENT

USER BIKE SHARING AGREEMENT

TERMS AND CONDITIONS, RIDER'S RELEASE OF LIABILITY, ASSUMPTION OF RISK, INDEMNITY AND HOLD HARMLESS.

RIDER should CAREFULLY READ all terms and conditions before entering this Agreement.

1. PURPOSE OF AGREEMENT

This document constitutes the entire Agreement ("Agreement") between (a) RIDER, the person agreeing to lease and use the bike ("Bike"), and (b) B-cycle LLC ("B-cycle").

2. GENERAL RENTAL AND USE OF BIKE: Agreements and Restrictions

2.1 **RIDER is sole user:** B-cycle expressly agrees to let, and the RIDER expressly agrees to take on, rental of the Bike subject to the terms and conditions set out herein. B-cycle and the RIDER are the only parties to this Agreement. The RIDER is the sole lessee and is solely responsible for compliance with all terms and conditions contained herein.

2.2 **RIDER is 18 or older:** RIDER represents and certifies that RIDER is at least 18 years old. If RIDER intentionally or unintentionally misrepresents his/her age, RIDER accepts full responsibility and is liable for any consequence, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits or disbursements of any kind or nature whatsoever related to any such misrepresentation.

2.3 **RIDER is a competent bike operator:** RIDER represents and certifies that he/she is familiar with the operation of the Bike, and is reasonably competent and physically fit to ride the Bike.

2.4 **Bike is exclusive property of B-cycle:** RIDER agrees that the Bike and any equipment attached thereto, at all times, remains the exclusive property of B-cycle. RIDER will not make any modification to the Bike at any time.

2.5 **Bike Operating Hours and Bike Availability:** RIDER agrees and acknowledges that the Bikes are available seasonally, 7 days/week. Bikes must be rented within the maximum rental time limits set forth in 2.6 below. Bikes are limited and Bike availability at any station is never guaranteed.

2.6 **MAXIMUM RENTAL TIME AND CHARGES:** Maximum rental time is ___ hours. RIDER agrees that RIDER will return the Bike to a designated B-cycle Bike Station within ___ hours of time that rental of the Bike began. RIDER may then rent again. RIDER agrees that he/she is solely responsible for being aware of any elapsed time related to the timely return. Bike Rental Charges are \$___ for the first half hour, \$___ for the second half hour, \$___ additional for the third half hour, \$___ additional for the 4th half hour, and \$___ additional for each half hour thereafter. The maximum day charge is \$___ and is based on a calendar day. Upon return of the bicycle, the rider will be charged the accumulated rental charges, or the maximum day charge; whichever is less. Bikes not returned within ___ hours will be considered stolen, and Rider will be charged \$___. Applicable local and state sales tax of ___% included in Rental and Replacement Charges.

2.7 **Bike may be used and/or operated only in the City of Aventura, FL:** RIDER agrees to only use, operate and/or ride the Bike in the City of Aventura, FL. RIDER will not, under any circumstances, remove the Bike from the City of Aventura, FL.

2.8 **RIDER must follow rules of use and/or operation of Bike:** RIDER agrees to follow all laws pertaining to the use, riding and/or operation of the Bike, including all state and local laws and the rules and regulations pertaining to bicycles in the City of Aventura, FL.

2.9 **Bike is intended for only limited types of use:** RIDER agrees that he/she will not use the Bike for racing, mountain bike riding, stunt or trick riding. RIDER agrees that he/she will not operate and/or use the Bike on unpaved roads, through water, or in any location that is prohibited, illegal and/or a nuisance to others. RIDER agrees that he/she will not use the Bike for hire or reward, nor use it in violation of any law, ordinance or regulation.

2.10 **RIDER's use of front carrier/basket is limited:** RIDER acknowledges that the front carrier/basket of the Bike is intended for light goods only, and that he/she will not carry people or animals anywhere on the bicycle.

2.11 **RIDER must report accident, stolen or lost Bike and/or B-cycle Membership Card:** RIDER agrees that he/she must immediately report an accident, or a stolen or lost Bike to B-cycle and Police. Stolen or lost

membership cards will be reported to B-cycle. RIDER agrees that he/she is responsible and liable for any misuse, consequences, claims, demands, causes of action, losses, liabilities, damages, injuries, costs and expenses, penalties, attorney's fees, judgments, suits or disbursements of any kind or nature whatsoever related to a stolen or lost Bike and/or B-cycle Membership Card.

2.12 **RIDER responsibility related to Bike use and damage:** RIDER agrees to return the BIKE to B-cycle in the same condition received, ordinary wear and tear expected. RIDER agrees to ensure that the Bike is always locked and secured when unattended. Bikes may be equipped with wire locks; however, B-cycle will not be responsible for any lost, stolen, destroyed and/or damaged Bike under any circumstances, regardless of whether Bike locks are used or not properly functioning. RIDER agrees to pay for destruction or loss of Bike and for any damage, including replacement parts. (RIDER agrees to pay for any loss even though damage was caused by someone else). All repairs needed as a result of any damage, will be performed at the normal labor rates. In the event the Bike is lost or damaged beyond repair, regardless of fault or cause, RIDER agrees to pay B-cycle the full replacement value of the equipment.

3. WAIVER AND/OR LIMITATION OF LIABILITY

3.1 For and in consideration of rental and use of the Bike, RIDER specifically forever releases and relinquishes and discharges B-cycle, LLC, the City of Aventura, FL, all Sponsors as well as owners of property upon or near which stations are located ("Released Parties") from any and all claims, liability, cause (s) of action and/or damage or wrongful death, injury to others and/or third parties, which arise out of, result from or relate to this Agreement; the rental, maintenance, design, use and/or operation of the Bike; the B-cycle program, and/or its website, including any and all claims, liability, cause(s) of action and/or damages related to the sole or partial negligence of Released Parties and/or the negligence of others. By this agreement any such claims, rights, and causes of action that RIDER (and RIDER'S legal guardian(s), if applicable) may have are hereby waived, released and relinquished, and RIDER (and guardian(s), if applicable) does(do) so on behalf of RIDER'S heirs, executors, administrators and assigns.

3.2 RIDER expressly agrees to indemnify, defend, release and hold harmless Released Parties from all liability for any such property loss or damage, personal injury or loss of life, whether caused by the sole or partial negligence of B-cycle or the City of Aventura, FL, and/or the negligence of others, whether based upon breach of contract, breach of warranty, active or passive negligence or any other legal theory, in consideration for using and/or operating the Bike.

3.3 RIDER voluntarily agrees, understands and recognizes that RIDER will have no right to make a claim or file a lawsuit against Released Parties arising out of this Agreement, the rental, maintenance, design, use and/or operation of the Bike, the B-cycle program, and/or this website, in consideration for using and/or operating the Bike.

3.4 This agreement is governed by the applicable laws of the State of Florida. If any provision of this agreement is found to be unenforceable, all other provisions will be given full force and effect.

4. **ACCEPTANCE of AGREEMENT and TERMS and Conditions by RIDER:** RIDER expressly acknowledges that he/she has carefully read the entire Agreement, including the Terms and Conditions, and understands this Agreement, including, but not limited to, the Waiver and Liability, Assumption of risk and Indemnification Provisions fully and expressly agrees to be bound by this Agreement. After careful deliberation, RIDER voluntarily gives his/her consent and expressly agrees to all the conditions included in this Agreement as set forth above.

SCHEDULE D: ACTIVATION PLAN

Initial Activation

B-cycle will activate the Service on the number of Stations set forth in the Purchase Agreement on a date that is on or before the Launch Date (as defined in the Purchase Agreement), as mutually agreed upon by the parties.

SCHEDULE E: NOT USED

SCHEDULE F: CUSTOM DEVELOPMENT SERVICES

In the event B-cycle and Customer mutually agree that a custom software enhancement request by Customer should be developed, the parties will mutually agree in advance in writing to the fee that B-cycle will charge for any Custom Development Services performed by B-cycle for Customer or Users.

SCHEDULE G: FEES

Fees. BCycle's software fees are included in its Service Fees, as set forth in the Service Agreement. Should the Customer or B-cycle elect to terminate the Service Agreement, Customer will be responsible for paying B-cycle the following fees for continuing system Services, if desired by Customer:

- A fee equal to \$125 per dock per year ("**Software Fee**").

The Software Fee will be pro-rated for the remainder of the year following the date that B-cycle activates each dock. Customer will pay all Invoices for Fees within thirty (30) days following the date of the Invoice, in accordance with the Florida Prompt Payment Act.

Exclusions. The Software Design Fee and the Software Fee are limited to the Services described in this *Schedule G*. Without limitation, the Fees do not cover the cost of delivery, installation, power, site preparation, connectivity, the bicycles, bicycle computers, radio head controllers, kiosks, docks or other hardware.

SCHEDULE H: SPECIFICATIONS FOR THE SERVICE

B-CYCLE DIGITAL SOLUTION

The B-cycle bike sharing system includes a digital platform comprised of 5 discrete components

1. Customizable Public Facing Website

Capabilities and Features:

- Static information pages (what is it, how to use it, etc.)
- Interactive content and tools
- Local news and events publishing with live, relevant Twitter feeds
- B-Station
- Online subscription purchases, renewals, and upgrades
- Hooks to established social networking sites (links and live feeds)
- Password protected member's portal with personalized data
- Profile information
- Ride and payment history
- Health and environmental impact
- Leader board – user population ranking

2. Self Service Kiosk

Capabilities and Features:

- Touch screen access to:
 - Bike checkout for subscription holders
 - 1 Day/24H subscription purchase via credit card
 - Text-based way-finding for available open docks
 - 15-minute credit requests when station is full
- RFID scanning access to:
 - Bike checkouts at the dock

3. Virtual Kiosk

Capabilities and Features:

- Standard bike check in and outs performed by bike sharing staff members from a laptop (with RFID reader and credit card reader as needed)

4. Mobile Applications

Capabilities and Features:

- Location based Dock and Bike Locator (find bikes and open docks relative to GPS coordinates of the user)
- Outbound system generated SMS text alerts (overdue bike warnings, etc.)
- Open API for mobile developer community

5. Backend Operations Management

Capabilities and Features:

- Tiered, role-based access
- Subscriber and member management (including bulk-loading)
- Inventory management (Kiosks, RFID cards, Bikes, Docks, etc.)
- Reports and role-specific dashboards
- Configurable notifications (maintenance events, overdue bikes, etc.)
- Fulfillment process support
- Maintenance and Issue Tracking
- Program personalization and configuration (notifications, subscription types + pricing)
- Virtual Kiosk management – mobile bike check ins/outs, offsite maintenance

SCHEDULE I: SERVICE LEVEL AGREEMENT

Service Levels; Credits. B-cycle will provide the Service to Users via the Internet and through the Kiosks on a daily basis every day of the year and will provide a credit to Customer in the event that the Service is not available in any single month in excess of the following maximum downtime standards:

Performance Standards.

Service	Up Time Requirement	Penalty
Kiosk Service	95% up time per month	1% of the average monthly service fee in Schedule G for every 1% up time below stated requirement.
Web Service (front and back end)	95% up time per month	1% of the average monthly service fee in Schedule G for every 1% up time below stated requirement.
Connectivity	B-cycle is not responsible for loss of, or poor, cellular connectivity	Connectivity is dependent on third party providers, local landscapes and/or weather conditions.
Station Power	B-cycle is not responsible for loss of power supply	Power is dependent on third party utility providers, property owners and/or or solar conditions.

Downtime. The following will not count as downtime or a breach of the performance standards: planned downtime for maintenance that is scheduled at least 24 hours in advance and held between the hours of 11 pm and 5 am; any loss or interruption of the Service from causes beyond the control of B-cycle, or which are not reasonably foreseeable by B-cycle, including, without limitation, user error, ping or denial of service attacks, third party attacks, interruption or failure of power supply, telecommunication or digital transmission links, cellular network traffic, Internet slowdowns or failures, insufficient solar coverage, hardware issues, failures attributable to the actions of Customer or third parties; downtime that occurs between the hours of 11 p.m. and 5 a.m. Mountain time (for Kiosks) or between the hours of 11 p.m. and 5 a.m. (for the Internet).

Payment of Credits. B-cycle will track downtime for the Service as set forth in this **Schedule I** during the Term and will periodically provide written or electronic reports to Customer setting forth the down time, if any, of the Service per month and the calculation of any credits awarded to Customer as set forth in this **Schedule I** that Customer may apply toward future Base Fees.

Escalation Procedures. Customer will contact the customer service representative (“**Service Representative**”) designated by B-cycle from time to time to report unscheduled downtime and will provide all available information about the outage in order for the Service Representative to handle or direct the timely resolution of the issue.

SCHEDULE J: SOURCE CODE ESCROW TERMS AND CONDITIONS

1. Customer 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 Customer 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 customers. The Escrow Agreement will provide that the Escrow Agent will release the Source Code to Customer 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.

2. The terms of this Section 2 will be effective only if the Agreement is in full force upon the occurrence of a Releasing Event. If the Agreement has been previously terminated, then despite the occurrence of a subsequent Releasing Event, the Source Code will not be released. Customer 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 Customer within the next five (5) business days the Source Code. If Customer disputes any claims in such affidavit, Customer 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 Customer.

3. Subject to the terms and conditions of this *Schedule I* and the Agreement, upon release of the Source Code to Customer, B-cycle hereby grants to Customer 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 Customer’ customers under the Agreement and consistent with all obligations and limitations set forth therein, including restrictions on disclosure of Confidential Information. Further, Customer will use the Source Code strictly in accordance with the following conditions:

(a) Customer 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. Customer 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) Customer will allow use of or access to the Source Code only by employees and contractors of Customer who have a need to use the Source Code for exercise of Customer’ 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) Customer 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) Customer 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.

SERVICE AGREEMENT

THIS SERVICE AGREEMENT is made this 14th day of June, 2016 (the "Effective Date"), by and between B-CYCLE, LLC, a Delaware limited liability company, with its principal offices at 801 West Madison Street, Waterloo, Wisconsin 53594 ("B-cycle"), and the City of Aventura, Florida, with its principal offices located at 19200 West Country Club Drive, Aventura, Florida 33180 ("City").

RECITALS

WHEREAS B-cycle has a contract with the City to install and operate a bike sharing system in Aventura, FL ("Program"); and

WHEREAS B-cycle and the City wish to enter into this Agreement whereby B-cycle will provide bike sharing services related to the Program as set forth below;

NOW, THEREFORE, the parties agree as follows:

AGREEMENTS

1. Operations. B-cycle will perform implementation, first-tier customer service, fulfillment, and station and bicycle maintenance ("Service") for the Program during the Term of this Agreement.

(a) *Customer Service*. B-cycle will establish staff and operate a first tier customer service call center in accordance with the requirements of the Program as follows:

a. The call center shall be in operation from 8:00 AM– 4:00 PM CST, excluding holidays. The call center shall answer questions and provide information concerning, among other things, subscription process, subscription prices, billing, crashes, comments, complaints, malfunction problems, and location of Stations.

(b) *Membership Fulfillment*. B-cycle will send out B-cards and fulfillment packages, as provided by B-cycle, within five (5) business days of a member's enrollment.

(c) *Station and Bicycle Maintenance*. B-cycle shall be responsible for station and bicycle maintenance in accordance with the following standards:

a. Bicycle Maintenance.

i. B-cycle shall employ sufficient personnel with sufficient skill and training to inspect, repair and rebalance the bicycle fleet.

ii. Bicycles shall be inspected monthly and overhauled annually. The assembly and maintenance of bicycles shall be performed in compliance with the B-cycle bicycle assembly manual.

iii. B-cycle shall take all steps to ensure, at all times, that not less than ninety percent (90%) of the bicycle fleet shall be in safe operating condition and placed in service on a daily basis.

iv. Maintenance records for each bicycle shall be maintained by B-cycle and shall be provided to the City upon request.

b. Station Maintenance.

- i. B-cycle shall monitor and service the stations on a daily basis.
 - ii. B-cycle shall make repairs as necessary to keep the stations in proper working order. B-cycle shall perform station maintenance in compliance with the B-cycle station manual.
 - iii. B-cycle shall clean the stations from debris and vandalism as needed.
 - c. System Reporting.
 - i. B-cycle shall provide to the City a monthly report of system operation, including system usage, revenue, and membership sales.
 - d. Copy of Releases
 - i. Upon City's request, B- Cycle will provide the City a certified copy of the liability release from bike riders as generated thru the USER BIKE SHARING AGREEMENT.

2. Term. The Initial Term of this Agreement shall be for one (1) year from Effective Date. Thereafter, it may be renewed for additional one (1) year Renewal Term periods by mutual agreement of the parties. Either party may terminate this Agreement, without cause, on the first anniversary of the Effective Date, with 60 days prior written notice

3. Fees.

- (a) City will pay B-cycle the fees identified in Schedule A for Service (the "Fees"). Except as otherwise provided in Schedule A, the Fees for Service will be due within thirty (30) days, following the date of the invoice provided by B-cycle to City ("Invoice"), in accordance with the Florida Prompt Payment Act.
- (b) Except as otherwise expressly set forth in the Service Agreement, (A) the Fees are non-refundable, and (B) upon any termination of this Agreement, City will promptly pay B-cycle all outstanding Fees, including, without limitation, any Fees that City would have paid (or would have owed) to B-cycle during the Initial Term and any current Renewal Term.

4. Payment.

- a. B-cycle will have the right to charge City a late charge of one percent (1.0%) per month, (or any applicable legal maximum, whichever is less), for any invoice that is not paid within thirty (30) days of the date of invoice, in accordance with the Florida Prompt Payment Act. Such late fees reasonably estimate the amount necessary to compensate B-cycle for costs and losses associated with delays in payment and are therefore not penalties. City and B-cycle agree that the Florida Prompt Payment Act, Florida Statutes §§218.70-80, shall apply and that Buyer shall make any payments or late payments in accordance therewith. In the event City fails to pay B-cycle any Fees when due, B-cycle will have the right, upon written notice to City and following City's failure to cure within ten (10) days, and without waiving or limiting any other remedies to which B-cycle may be entitled hereunder, in law or in equity, to suspend the operation of the Service until such time as all amounts due have been paid in full.
- b. The Fees exclude all applicable sales, use, and service taxes ("Taxes"), and City will pay all such Taxes, if applicable (other than taxes based on B-cycle's income)

and any penalties or charges that accrue with respect to the non-payment of any Taxes by City.

5. Notices. Any notices which are required or permitted under this Agreement will be sent by an overnight delivery service having a reliable method for confirming delivery, and will be deemed effective when received. Notices to City will be sent to Eric M. Soroka, City Manager, City of Aventura 19200 W. Country Club Dr., Aventura, Florida 33180. Notices to B-cycle will be sent to Robert Burns, 801 West Madison Street, Waterloo, Wisconsin 53594.

6. Entire Agreement. This is the entire agreement between the City and B-cycle concerning the subject matter hereof. As of its execution by both parties, it supersedes and extinguishes any other prior oral or written agreements or understandings between them. If a court of competent jurisdiction shall find any part of this Agreement unenforceable, the rest of the Agreement shall remain in full force and effect.

7. Amendments. This Agreement may only be amended by a written document signed on behalf of both parties.

8. Governing Law. This Agreement will be governed by the law of the State of Florida. Any disputes arising under this Agreement will be determined in accordance with such law, and will be venued in the appropriate court in Miami-Dade County, Florida. The parties consent to jurisdiction in Florida.

9. Termination. This Agreement may be terminated for cause. In the event either party believes it has cause for termination, it will notify the other of the specific cause, and the breaching party will have 30 days within which to cure its breach to the satisfaction of the non-breaching party. If the breach is not cured within that period, the non-breaching party may terminate the Agreement with immediate effect.

10. Assignment. This Agreement is not assignable and the duties hereunder are not delegable without the other party's prior written consent, which consent shall not be unreasonably withheld; provided, however, that either party may transfer and assign this agreement without the other party's consent to any person or entity that acquires substantial stock or assets of such party's applicable business if any such assignees agree, in writing, to be bound by the terms of this agreement. Subject to such limitation, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11. Facsimiles; Counterparts. This Agreement may be executed in any number of counterparts, each of which together shall constitute one complete original. Signatures exchanged by facsimile transmissions or email will be accepted as binding.

[Signature Page to Follow]

IN WITNESS WHEREOF, B-cycle and City have caused this Agreement to be executed as of the Effective Date indicated above.

B-CYCLE, LLC

By: _____

Name: Robert Burns

Its: President

ATTEST:

CITY OF AVENTURA

City Clerk

By: _____

Name: Eric M. Soroka

Its: City Manager

Approves as to form and legal sufficiency:

City Attorney

SCHEDULE A: SERVICE FEES

Fees. B-cycle's Fees shall be invoiced monthly, in advance of Services being provided. Monthly Invoice will be determined using the monthly Service Fee schedule outlined here:

B-cycle Service Fee schedule

	Broward BCycle Operations (Year 1)	Broward BCycle Operations (Year 2)	Broward BCycle Operations (Year 3)
Total Stations	5	5	5
Price/Station	\$1,000/month	\$1,030/month	\$1,061/month
Extended Price	\$5,000/month	\$5,150/month	\$5,305/month

*Excludes sales tax and credit card processing fees for user-generated revenues.

CITY OF AVENTURA
FINANCE DEPARTMENT

MEMORANDUM

TO: City Commission

FROM:  Eric M. Soroka, ICMA-CM, City Manager

BY:  Brian K. Raducci, Finance Director

DATE: May 20, 2016

SUBJECT: Interlocal Agreement Between the City and the County for Participation in the Municipal Parking Fines Reimbursement Program.

June 7, 2016 City Commission Meeting Agenda Item DE

RECOMMENDATION

It is recommended that the City Commission adopt the attached resolution authorizing the City Manager to execute the attached Interlocal Agreement between the City and Miami-Dade County for the participation in the Municipal Parking Fines Reimbursement Program ("Program").

BACKGROUND

Since June 2009, the City has participated in a Program offered through Miami-Dade County that improves accessibility and provides equal opportunity to qualified persons who have disabilities and to conduct disability public awareness programs. The Program requires that an Affidavit be submitted annually from the municipality's Chief Administrative Official which states that the funds reimbursed shall be used in accordance with the above guidelines.

In order to be eligible to participate in the FY 2015-2016 Program, the County is requiring that we execute a new Interlocal Agreement and Affidavit and return both documents to them by July 16, 2016.

Reimbursements to municipalities are based on a percentage of revenue collected during the previous fiscal year (FY 2014-2015). The amount is determined by calculating the total amount of fines collected on tickets issued in a municipality divided by the total number of tickets paid county-wide. Funding estimates may include a percentage of the carryover monies that were not distributed to any municipality in the previous year.

In accordance with Section 30-447 of the Code of Miami-Dade County, parking fine money generated from the misuse of marked spaces for people with disabilities is used in the following manner:

- One third of the money is used to defray Clerk of Courts administrative expenses; and
- Two-thirds of the money is used to provide funds to improve accessibility and equal opportunity to qualified physically disabled persons and to provide funds to conduct public awareness programs concerning physically disabled persons. Of this amount, 30% is retained by the County for county-wide purposes, in accordance with State law, and 70% is allocated to the governmental entity having jurisdiction over the violation.

Any monies received from this Program will be utilized to replace or repair any damaged ADA HC ramps.

If you should have any questions related to this memorandum, please feel free to contact the City Manager.

BKR/bkr

RESOLUTION NO. 2016-__

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND OTHERWISE ENTER INTO THE ATTACHED INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF AVENTURA AND MIAMI-DADE COUNTY FOR PARTICIPATION IN THE MUNICIPAL PARKING FINES REIMBURSEMENT PROGRAM; AUTHORIZING THE CITY MANAGER TO DO ALL THINGS NECESSARY TO CARRY OUT THE AIMS OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA:

Section 1. The City Manager is hereby authorized to execute and otherwise enter into the attached Interlocal Agreement by and between the City of Aventura and Miami-Dade County for participation in the Municipal Parking Fines Reimbursement Program.

Section 2. The City Manager is hereby authorized to do all things necessary to carry out the aims of this Resolution.

Section 3. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by _____, who moved its adoption. The motion was seconded by _____, and upon being put to a vote, the vote was as follows:

Commissioner Enbar Cohen	_____
Commissioner Teri Holzberg	_____
Commissioner Marc Narotsky	_____
Commissioner Robert Shelley	_____
Commissioner Howard Weinberg	_____
Vice Mayor Denise Landman	_____
Mayor Enid Weisman	_____

PASSED AND ADOPTED this 7th day of June, 2016.

ENID WEISMAN, MAYOR

ATTEST:

ELLISA L. HORVATH, MMC
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

CITY ATTORNEY



miamidade.gov

May 16, 2016

Internal Services Department ADA Office
111 NW 1st Street, 24th Floor
Miami, Florida 33128-1983
305-375-3566 (voice); 711 (Fla. Relay)
adaoffice@miamidade.gov

Eric M. Soroka, City Manager
Office of the City Manager
City of Aventura
19200 West Country Club Drive
Aventura, FL 33180

RECEIVED

MAY 16 2016

Re: Parking Fines Reimbursement Program

Dear Mr. Soroka:

Miami-Dade County is commencing the next cycle of reimbursements for the Municipal Parking Fines Program. In order to participate in the program, each municipality must submit an executed Interlocal Agreement and the annual Affidavit (both enclosed.) Even if your municipality has previously submitted an Interlocal Agreement, you will need to re-submit this year because of recent changes made to the format of the Interlocal Agreement. When completing the Interlocal Agreement, you must fill in the date and your municipality's name on the first page. Once executed, the Interlocal Agreement will remain on file until further notice.

The Affidavit states that the funds reimbursed shall be used to improve accessibility and equal opportunity to qualified persons who have disabilities in the municipality and to conduct disability public awareness programs. **The Interlocal Agreement and the Affidavit must be submitted within 60 days of the date of this letter to receive these funds.**

In accordance with Section 30-447 of the Code of Miami-Dade County, parking fine funds generated from the misuse of marked spaces for people with disabilities are used in the following manner:

- One-third of the funds are to be used to defray the Clerk of Courts' administrative expenses, and
- Two-thirds of the funds are to be used to improve accessibility and equal opportunity to qualified physically disabled persons and to provide funds to conduct public awareness programs concerning physically disabled persons. Of this amount, 30 percent is retained by the County for countywide purposes, in accordance with State law, and 70 percent is allocated to the governmental entity having jurisdiction over the violation.

Page 2

If you need additional information regarding the Parking Fines Reimbursement Program, please contact me at 305-375-2013 or hjwrig@miamidade.gov. Please return the Interlocal Agreement and Affidavit to my attention at Miami-Dade County, Internal Services Department, ADA Office, 111 NW 1st Street, 24th Floor, Miami, FL 33128.

Sincerely,

A handwritten signature in cursive script that reads "Heidi Johnson-Wright".

Heidi Johnson-Wright,
ADA Coordinator

Enclosures

c: Tara C. Smith, Director, Internal Services Department
Theresa Therilus, Assistant Director, Internal Services Department

**Miami-Dade County
Municipal Parking Fines Reimbursement Program
Interlocal Agreement (Rev. 2016)**

This agreement is entered into this _____ (day) of _____ (month/year), by and between Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County") and _____ (the "municipality"), a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter referred to jointly as the Parties).

WITNESSETH

WHEREAS, Section 316.008 Florida Statutes, and Section 30-447 Code of Miami-Dade County, authorizes the charging of fines for misuse of specially marked parking spaces for people with disabilities, and

WHEREAS, Miami-Dade County proposes to distribute said fines under the provisions of Section 30-447 of the Code of Miami-Dade County, Florida.

NOW THEREFORE in consideration of the covenants contained herein, the Parties agree as follows

1. This agreement shall become effective upon its execution by the authorized officers of the Parties and will continue annually upon agreement by both Parties.
2. The allocation of the disabled parking fine monies shall be used to provide funds to improve accessibility and equal opportunity to qualified persons who

**Miami-Dade County
Municipal Parking Fines Reimbursement Program
Interlocal Agreement (Rev. 2016)**

have disabilities and to provide funds to conduct public awareness programs in the County or municipality concerning persons who have disabilities.

3. The municipality shall annually submit an affidavit sworn by the chief administrative official to the Miami-Dade County Internal Services Department ("ISD").

4. The affiant will affirm that expenditures meet the following criteria:
 - a. The funds reimbursed shall be used to improve accessibility and equal opportunity to qualified persons who have disabilities in the municipality and to conduct public awareness programs in the municipality concerning persons who have disabilities.

 - b. If only a portion of the project or program is being promoted to benefit people with disabilities, then only that portion of the project or program may be funded with these monies.

5. The Parties agree to follow the terms and conclusions regarding payment as follows:
 - a. The percentage for distribution shall be calculated by the County annually. Each year the County shall notify all municipalities of the distribution of the disabled permit parking fine money for the annual period.

**Miami-Dade County
Municipal Parking Fines Reimbursement Program
Interlocal Agreement (Rev. 2016)**

- b. The County agrees to pay the County and the municipality under this agreement based on a payment schedule agreed upon by ISD, accompanied by such documentation as requested.
- c. In no event shall County funds be advanced to any subcontractor hereunder.
- d. The Parties shall return funds to the County if the project is not successfully completed and allow ISD to audit projects and conduct site visits. Any such audits or inspections shall be conducted in such manner and at such times so as not to unreasonably interfere with the day-to-day operation of the Parties.
- e. The County may amend the terms of this agreement from time to time, as it may deem necessary.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed by their respective and duly authorized officers on the date hereinabove first mentioned.

ATTEST:

MIAMI-DADE COUNTY, FLORIDA

By: _____

Harvey Ruvín, Clerk

Carlos A. Gimenez, Mayor

**Miami-Dade County
Municipal Parking Fines Reimbursement Program
Interlocal Agreement (Rev. 2016)**

ATTEST:

MUNICIPALITY OF _____, FLORIDA

By: _____

City/Town/Village Clerk

City/Town/Village Manager

(Date)

(Official Seal)

Approved for form and legal sufficiency:

Shanika A. Graves
Assistant County Attorney

**Miami-Dade County
Municipal Parking Fines Reimbursement Program
Affidavit**

**MUNICIPAL PARKING FINES REIMBURSEMENT PROGRAM
AFFIDAVIT**

State of Florida, County of Miami-Dade

BEFORE ME, the undersigned Notary,

[name of Notary
before whom affidavit is sworn], on this _____ [day of month] day of

[month], 20____, personally appeared

[name of affiant],
known to me to be a credible person and of lawful age, who being by me first duly
sworn, on _____ [his or her] oath, deposes and says:

The municipal parking fines funds reimbursed shall be used to improve accessibility and equal opportunity to qualified persons who have disabilities in the municipality and to conduct public awareness programs in the municipality concerning persons who have disabilities.

If only a portion of the project or program is being promoted to benefit people with disabilities, then only that portion of the project or program will be funded with these monies.

The municipality shall return funds to the County if the project is not successfully completed and allow the Miami-Dade County Internal Services Department to audit projects and conduct site visits. Any such audits or inspections shall be conducted in such manner and at such times so as not to unreasonably interfere with the day-to-day operation of the parties.

[signature of affiant]

[typed name of affiant]

**Miami-Dade County
Municipal Parking Fines Reimbursement Program
Affidavit**

[address of affiant, line 1]

[address of affiant, line 2]

State of Florida, County of Miami-Dade

Sworn to (or affirmed) and subscribed before me this _____ day of

_____ (month), _____ (year), by

_____ (name of person making statement)

_____ (title of person making statement)

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

MEMORANDUM

TO: City Commission of the City of Aventura, Florida

FROM: David M. Wolpin, City Attorney's Office

DATE: April 21, 2016

SUBJECT: Request to Consider Adoption of Drone Ordinance

April 28, 2016 City Commission Workshop

We have drafted the attached proposed Ordinance for City Commission consideration. The proposed Ordinance consists of two primary components for a new Article VIII "Drone Regulations and Privacy Protections" of Chapter 30 "Environment" of the City Code, as follows:

- (1) Creation of City Code Section 30-210 "Drone Restrictions at Public Gatherings"; and
- (2) Creation of Section 30-211 "Protection of Privacy from Drone Use."

Section 30-210 is intended to protect the public safety by prohibiting drones from being flown within or over defined Public Gatherings in the City.

Section 30-211 is intended to enable the city code enforcement special magistrate system to be used to address violations of city residents' privacy protections arising from drone use within the City. Section 30-211 is modeled after Section 934.50(5) (b), Florida Statutes, and embodies a code enforcement approach for privacy protection. The statute relies on a civil action law suit remedy. The City's innovative, proposed code enforcement approach is supported by the March 30, 2016 Attorney General Opinion 16-04 (2016), which was requested by the City.

An additional component of the proposed Ordinance is that Section 6 "Implementation", enables the City Manager to investigate the potential purchase and deployment of technological devices and systems which may enable the safe immobilization of drones which are found to be operated in violation of the Ordinance or applicable laws within the City.

If the City Commission desires to proceed with the proposed Ordinance, we would recommend that we be authorized to contact the FAA Office of Regional Counsel for approval of the Ordinance or for a statement of "no objection" from the FAA concerning the Ordinance.

Once you have had an opportunity to review the proposed draft Ordinance, please advise us of any questions.

Copy: City Manager, City Clerk

Attachments: Proposed Ordinance; Attorney General Opinion 16-04 (2016); Section 934.50, F.S.

ORDINANCE NO. 2016-__

AN ORDINANCE OF THE CITY OF AVENTURA, FLORIDA; AMENDING THE CITY CODE BY AMENDING CHAPTER 30 "ENVIRONMENT", BY CREATING ARTICLE VIII "DRONE REGULATIONS AND PRIVACY PROTECTIONS", BY CREATING SECTION 30-210 "DRONE RESTRICTIONS AT PUBLIC GATHERINGS"; TO REGULATE AND RESTRICT DRONE USE IN AND OVER OUTDOOR PUBLIC GATHERINGS, AND BY CREATING SECTION 30-211 "PROTECTION OF PRIVACY FROM DRONE USE" TO PROVIDE FOR A CODE ENFORCEMENT MECHANISM CONCERNING ANY USE OF A DRONE THAT VIOLATES INDIVIDUAL PRIVACY AS PROTECTED BY SECTION 934.50, FLORIDA STATUTES; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR PENALTY; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Aventura ("City") finds that it is necessary to amend Chapter 30 "Environment" of the City Code to restrict Drone operations at outdoor public gatherings within the City, and to afford a means of protecting personal privacy from Drone intrusions via City Code enforcement mechanisms; and

WHEREAS, the City Commission has held the required public hearing, duly noticed in accordance with law; and

WHEREAS, the City Commission finds that this proposed Ordinance serves to further enhance the protection of the public health, safety and welfare.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above-stated recitals is hereby adopted and confirmed.

Section 2. **City Code Amended.** That Article VIII "Drone Regulations and Privacy Protections" is hereby created within Chapter 30 "Environment" of the City Code, consisting of Section 30-210 " Drone Restrictions at Public Gatherings", and Section 30-211 " Protection of Privacy from Drone Use ", to read as follows:

ARTICLE VIII. DRONE REGULATIONS AND PRIVACY PROTECTIONS

Section 30-210. Drone Restrictions at Public Gatherings.

(a) *Purpose and intent.* This Section is intended to promote public safety and protect people attending outdoor public gatherings from dangers posed by the flying of unmanned aircraft systems (the "UAS" or "Drones") in and over such public gatherings. The City Commission wishes to regulate the use of Drones at outdoor venues where people gather, such as parks and athletic field facilities, open spaces and similar areas that may attract groups of people. The restrictions of this Section are intended to protect persons gathered in groups where a Drone incident would cause greater harm and risk of injury due to a greater number of people gathered in a close proximity. This Section shall not be construed to conflict with FAA regulations, but rather to operate in conjunction with those regulations to promote public safety.

(b) *Definitions.* As used herein, the following terms shall have the meaning which is indicated below:

Operator shall mean the person or corporation that operates or controls a Drone.

Public Gatherings shall mean an outdoor area within the City of Aventura at which more than fifty (50) people congregate or assemble to observe and/ or participate in an athletic or sporting event, festival, show, outdoor movie, concert, exhibit, or engage in an organized demonstration or similar free speech activity, which is held in a public space, open space, plaza, street, park, athletic field, school grounds, shopping center or mall parking lot, or any open-air facility, when the time, date and location of such Public Gathering is posted on the City's website for the purpose of providing advance notice to the public and Drone Operators. The date of such posting on the City's website shall be at least three (3) days prior to the date of the Public Gathering in order to be considered effective notice under this provision.

Unmanned aircraft systems (UAS or Drone) shall mean a powered, aerial vehicle as defined in Section 934.50(2)(a), Florida Statutes, which statutory definition is hereby incorporated herein.

(c) *Prohibitions.* Unless otherwise exempt under this Section, a Drone is prohibited from being deployed, launched or flown in any airspace within or over any Public Gathering, as

defined above. Accordingly, no person shall deploy, launch or fly a Drone in any airspace within or over a Public Gathering in the City.

(d) *Exemptions.* This Section shall not prohibit the use of a Drone by any law enforcement or fire rescue agency, public utility, or local, county, regional, state, or federal governmental agency for lawful purposes and operated in a lawful manner. Notwithstanding the prohibitions set forth in this Section, nothing in this Section shall be construed to apply to any person who demonstrates that such person is expressly authorized by the Federal Aviation Administration to operate a Drone in City air space at a Public Gathering, in accordance with the authority granted by the Federal Aviation Administration.

(e) *Enforcement.*

- (1) *Penalty.* Any person in violation of any provision of this Section shall be subject to the penalty provided in Section 1-14 of the City Code. However, in addition to, or in lieu of any such penalty, the City shall have the power to sue in civil court and/or to enforce the provisions of this Section before its code enforcement special magistrate established in Chapter 2, Section 2-331, et. seq. of the Code of the City of Aventura, as amended.
- (2) In addition to the penalties referenced above, a Drone operated in violation of this Section may be impounded by a Police Officer of the City and held until the conclusion of the applicable court or code enforcement proceedings.

Section 30-211. Protection of Privacy from Drone Use.

- (1) SHORT TITLE. — This Section may be cited as the “Drone Privacy Protection Ordinance.”
- (2) DEFINITIONS. — As used in this Section, the term:
 - (a) “*Drone*” means a powered, aerial vehicle as defined in Section 934.50(2)(a), Florida Statutes, which statutory definition is hereby incorporated herein.
 - (b) “*Image*” means a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.
 - (c) “*Imaging device*” means a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.

(d) “*Surveillance*” means:

1. With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or
2. With respect to privately owned real property, the observation of such property’s physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

(3) PROHIBITED USE OF DRONES.

- (a) A person shall not use a Drone equipped with an Imaging Device to record an Image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct Surveillance on the individual or property captured in the Image in violation of such person’s reasonable expectation of privacy without his or her written consent. For purposes of this Section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a Drone.
- (b) No person shall engage in conduct which is prohibited by paragraph (a) above.
- (c) This Section is intended to prohibit conduct by a person that would give rise to a cause of action under Section 934.50(5)(b), Florida Statutes, as authorized by Florida Attorney General Opinion 16-04(2016).

(4) EXCEPTIONS. — This section does not prohibit the use of a Drone:

- (a) By a person or an entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor thereof, if the Drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person’s or entity’s license. However, this exception does not apply to a profession in which the licensee’s authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- (b) By an employee or a contractor of any local, county, state or federal governmental agency who uses a Drone solely for governmental purposes.
- (c) To capture Images by or for an electric, water, or natural gas utility:

1. For operations and maintenance of utility facilities, including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity;
 2. For inspecting utility facilities, including pipelines, to determine construction, repair, maintenance, or replacement needs before, during, and after construction of such facilities;
 3. For assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way;
 4. For utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility service; or
 5. For conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit.
- (d) For aerial mapping, if the person or entity using a Drone for this purpose is operating in compliance with Federal Aviation Administration regulations.
- (e) To deliver cargo, if the person or entity using a Drone for this purpose is operating in compliance with Federal Aviation Administration regulations.
- (f) To capture Images necessary for the safe operation or navigation of a Drone that is being used for a purpose allowed under federal or Florida law.

(5) ENFORCEMENT FOR VIOLATION.

The City may initiate City code enforcement proceedings, and impose administrative fines and costs, pursuant to Section 2-331, et. seq. of Chapter 2 of the City Code against any person in violation of paragraph (3) of this Section, at the written request of the owner, tenant, occupant, invitee, or licensee of privately owned real property within the City who is aggrieved by a violation of this Section or Section 934.50(3)(b), Florida Statutes. Alternatively, such code enforcement proceedings may be commenced upon the City's own initiative.

Section 3. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any

part.

Section 4. Inclusion in the Code. That it is the intention of the City Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Aventura; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 5. Penalty. That any person who violates any provisions of Section 30-210 of this Ordinance shall, upon conviction, be punished by a fine not to exceed \$500.00 or imprisonment in the County jail not to exceed sixty (60) days or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate violation. This Ordinance shall also be subject to enforcement under the Local Government Code Enforcement Act, Chapter 162, F.S., as amended, and City Code Section 2-331, et. seq., as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

Section 6. Implementation.

- A. That the City Manager is authorized to take any action which is necessary to implement and enforce this Ordinance.
- B. Further, the City Manager is authorized to investigate the potential purchase and deployment of technological devices and systems which may enable the safe immobilization of drones which are found to be operated in violation of this Ordinance or applicable laws within the City.

Section 7. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Commissioner Cohen, who moved its adoption on first reading. This motion was seconded by Commissioner Narotsky, and upon being put to a vote, the vote was as follows:

Commissioner Enbar Cohen	<u>Yes</u>
Commissioner Teri Holzberg	<u>Yes</u>
Commissioner Marc Narotsky	<u>Yes</u>
Commissioner Robert Shelley	<u>Yes</u>
Commissioner Howard Weinberg	<u>Yes</u>
Vice Mayor Denise Landman	<u>Yes</u>
Mayor Enid Weisman	<u>Yes</u>

The foregoing Ordinance was offered by Commissioner _____ who moved its adoption on second reading. This motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Commissioner Enbar Cohen	___
Commissioner Teri Holzberg	___
Commissioner Marc Narotsky	___
Commissioner Robert Shelley	___
Commissioner Howard Weinberg	___
Vice Mayor Denise Landman	___
Mayor Enid Weisman	___

PASSED AND ADOPTED on first reading this 3rd day of May, 2016.

PASSED AND ADOPTED on second reading this 7th day of June, 2016.

Enid Weisman, Mayor

ATTEST:

Ellisa L. Horvath, MMC
City Clerk

Approved as to Form and Legal Sufficiency
For City's Reliance Only:

City Attorney



STATE OF FLORIDA

PAM BONDI
ATTORNEY GENERAL

March 30, 2016

16-04

Mr. David M. Wolpin
Attorney for the City of Aventura
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, Florida 33134

Dear Mr. Wolpin:

On behalf of the City of Aventura, you ask the following:

Does section 934.50, Florida Statutes, preempt the adoption of a municipal ordinance prohibiting the use of drones equipped with imaging devices within the city's limits by private individuals and entities, when such use invades the privacy rights of the city's residents?

In sum:

Section 934.50, Florida Statutes, does not preempt the adoption of a municipal ordinance prohibiting the use of drones by private individuals for surveillance which invades the privacy rights of the city's residents.

You state that the City of Aventura is contemplating the enactment of an ordinance to prohibit the unauthorized use of surveillance drones by private persons, when such use invades the privacy rights of citizens. The proposed ordinance would track the statutory exclusions from the prohibition in section 934.50(4), Florida Statutes, and would impose civil penalties for its violation pursuant to the authority in Chapter 162, Florida Statutes.¹ The city, however, questions whether such an ordinance would be preempted by or be in conflict with section 934.50, Florida Statutes, the "Freedom from Unwarranted Surveillance Act."²

¹ Chapter 162, Fla. Stat., establishes administrative enforcement procedures and a means of imposing administrative fines by local governing bodies for violations of local codes and ordinances for which no criminal penalty has been specified.

² While you have limited your inquiry to the impact of s. 934.50, Fla. Stat., the Federal Aviation Authority and federal law may be implicated in the regulation of drones. Regrettably, this office does not interpret federal law, so it may be advisable to contact the Federal Aviation Authority for further direction.

Initially, I would note that the discussion below generally addresses the provisions in section 934.50, Florida Statutes, and does not speak to the specific language the city may use in its ordinance.

Section 934.50(3), Florida Statutes, in prohibiting the use of drones,³ provides:

- (a) A law enforcement agency may not use a drone to gather evidence or other information.
- (b) A person, a state agency, or a political subdivision as defined in s. 11.45 may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

Specific exceptions to the prohibition against the use of drones are enumerated.⁴

³ Section 934.50(2)(a), Fla. Stat., provides:

"Drone" means a powered, aerial vehicle that:

- 1. Does not carry a human operator;
- 2. Uses aerodynamic forces to provide vehicle lift;
- 3. Can fly autonomously or be piloted remotely;
- 4. Can be expendable or recoverable; and
- 5. Can carry a lethal or nonlethal payload.

⁴ Section 934.50(4), Fla. Stat.:

EXCEPTIONS.—This section does not prohibit the use of a drone:

- (a) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.
- (b) If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone.
- (c) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.
- (d) By a person or an entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor thereof, if the drone is used only to

The statute further provides remedies for violation of its terms:

(5)(a) An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of this section.

(b) The owner, tenant, occupant, invitee, or licensee of privately owned real property may initiate a civil action for compensatory damages for violations of this section and may seek injunctive relief to prevent future violations of this section against a person, state agency, or political subdivision that violates paragraph (3)(b). In such action, the prevailing party is entitled to recover reasonable attorney fees from the nonprevailing party based on the actual and reasonable time expended by his or her attorney billed at an appropriate hourly rate and, in cases in which the payment of such a fee is contingent on the outcome, without a multiplier, unless the action is tried to verdict, in which case a multiplier of up to twice the actual value of the time expended may be awarded in the discretion of the trial court.

(c) Punitive damages for a violation of paragraph (3)(b) may be sought

perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license. However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

(e) By an employee or a contractor of a property appraiser who uses a drone solely for the purpose of assessing property for ad valorem taxation.

(f) To capture images by or for an electric, water, or natural gas utility:

1. For operations and maintenance of utility facilities, including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity;
2. For inspecting utility facilities, including pipelines, to determine construction, repair, maintenance, or replacement needs before, during, and after construction of such facilities;
3. For assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way;
4. For utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility service; or
5. For conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit.

(g) For aerial mapping, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations.

(h) To deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations.

(i) To capture images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law.

Mr. David M. Wolpin
Page Four

against a person subject to other requirements and limitations of law, including, but not limited to, part II of chapter 768 and case law.

(d) The remedies provided for a violation of paragraph (3)(b) are cumulative to other existing remedies.⁵

Section 166.021(1), Florida Statutes, a provision of the "Municipal Home Rule Powers Act," states that municipalities may exercise any power for municipal purposes except when expressly prohibited by law. Section 166.021(3), Florida Statutes, provides that pursuant to the authority set forth in section 2(b), Article VIII, Florida Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject upon which the state Legislature may act except, among other things, any subject that is expressly prohibited by the constitution or any subject that is expressly preempted to state or county government by the Constitution or by general law.⁶ The term "express" as used in section 166.021, Florida Statutes, has been construed to mean a reference that is distinctly stated and not left to inference.⁷

A review of section 934.50, Florida Statutes, does not reveal an express preemption of the regulation of drones, nor do the provisions of the statute appear to be so pervasive so as to preclude any other regulation by a local government.⁸ At this time, there does not appear to be a uniform state law which would preempt local regulation of the use of drones by private persons in the manner proposed by the city.

As was established in *City of Miami Beach v. Rocio Corporation*⁹:

The principle that a municipal ordinance is inferior to state law remains undisturbed. Although legislation may be concurrent, enacted by both state and local governments in areas not preempted by the state, concurrent legislation enacted by municipalities may not conflict with state law. If conflict arises, state law prevails. An ordinance which supplements a statute's restriction of rights may coexist with that statute, whereas an ordinance which countermands rights provided by statute must fail.

⁵ Section 934.50(5), Fla. Stat.

⁶ Section 166.021(3)(b) and (c), Fla. Stat.

⁷ See *Edwards v. State*, 422 So. 2d 84, 85 (Fla. 2d DCA 1982); Op. Att'y Gen. Fla. 84-83 (1984). Cf. *Pierce v. Division of Retirement*, 410 So. 2d 669, 672 (Fla. 2d DCA 1982).

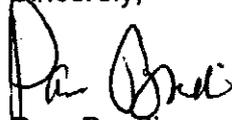
⁸ Compare Inf. Op. to Mr. James D. Palermo, dated September 25, 2002, Florida's Beverage Law does not expressly preempt local regulation prohibiting individuals under the age of 21 from entering a bar.

⁹ 404 So. 2d 1066, 1070 (Fla. 3d DCA 1981), *petition for review denied*, 408 So. 2d 1092 (Fla. 1981).

Mr. David M. Wolpin
Page Five

Accordingly, it is my opinion that section 934.50, Florida Statutes, does not preempt the adoption of a municipal ordinance prohibiting the use of drones equipped with imaging devices within the city limits by private individuals and entities, when such use invades the privacy rights of the city's residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Pam Bondi". The signature is written in a cursive, flowing style.

Pam Bondi
Attorney General

PB/tls

Mr. David M. Wolpin
Page Six

RE: MUNICIPALITIES—MUNICIPAL CODE ENFORCEMENT—
DRONES—PRIVACY RIGHTS. Authority of municipality to enact
ordinance prohibiting private use of drones to invade privacy rights of
citizens. s. 934.50, Fla. Stat.

- Home
- Senate
- House
- Citator
- Statutes, Constitution, & Laws of Florida
- Florida Statutes**
- Search Statutes**
- Search Tips**
- Florida Constitution**
- Laws of Florida**
- Legislative & Executive Branch Lobbyists
- Information Center
- Joint Legislative Committees & Other Entities
- Historical Committees
- Florida Government Efficiency Task Force
- Legislative Employment
- Legistore
- Links

The 2015 Florida Statutes

<u>Title XLVII</u>	<u>Chapter 934</u>	<u>View Entire Chapter</u>
CRIMINAL PROCEDURE AND CORRECTIONS	SECURITY OF COMMUNICATIONS; SURVEILLANCE	

934.50 Searches and seizure using a drone. —

(1) **SHORT TITLE.**—This act may be cited as the “Freedom from Unwarranted Surveillance Act.”

(2) **DEFINITIONS.**—As used in this act, the term:

(a) “Drone” means a powered, aerial vehicle that:

1. Does not carry a human operator;
2. Uses aerodynamic forces to provide vehicle lift;
3. Can fly autonomously or be piloted remotely;
4. Can be expendable or recoverable; and
5. Can carry a lethal or nonlethal payload.

(b) “Image” means a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.

(c) “Imaging device” means a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.

(d) “Law enforcement agency” means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

(e) “Surveillance” means:

1. With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or
2. With respect to privately owned real property, the observation of such property’s physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

(3) **PROHIBITED USE OF DRONES.**—

(a) A law enforcement agency may not use a drone to gather evidence or other information.

(b) A person, a state agency, or a political subdivision as defined in s. 11.45 may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person’s reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to have a reasonable expectation of privacy on his or her privately owned real

Interpreter Services for the Hearing Impaired



property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

(4) EXCEPTIONS.—This section does not prohibit the use of a drone:

(a) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk.

(b) If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone.

(c) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.

(d) By a person or an entity engaged in a business or profession licensed by the state, or by an agent, employee, or contractor thereof, if the drone is used only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license. However, this exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.

(e) By an employee or a contractor of a property appraiser who uses a drone solely for the purpose of assessing property for ad valorem taxation.

(f) To capture images by or for an electric, water, or natural gas utility:

1. For operations and maintenance of utility facilities, including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity;

2. For inspecting utility facilities, including pipelines, to determine construction, repair, maintenance, or replacement needs before, during, and after construction of such facilities;

3. For assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way;

4. For utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility service; or

5. For conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit.

(g) For aerial mapping, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations.

(h) To deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations.

(i) To capture images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law.

(5) REMEDIES FOR VIOLATION.—

(a) An aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of this section.

(b) The owner, tenant, occupant, invitee, or licensee of privately owned real property may initiate a civil action for compensatory damages for violations of this section and may seek injunctive relief to prevent future violations of this section against a person, state agency, or political subdivision that violates paragraph (3)(b). In such action, the prevailing party is entitled to recover reasonable attorney fees from the nonprevailing party based on the actual and reasonable

time expended by his or her attorney billed at an appropriate hourly rate and, in cases in which the payment of such a fee is contingent on the outcome, without a multiplier, unless the action is tried to verdict, in which case a multiplier of up to twice the actual value of the time expended may be awarded in the discretion of the trial court.

(c) Punitive damages for a violation of paragraph (3)(b) may be sought against a person subject to other requirements and limitations of law, including, but not limited to, part II of chapter 768 and case law.

(d) The remedies provided for a violation of paragraph (3)(b) are cumulative to other existing remedies.

(6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or collected in violation of this act is not admissible as evidence in a criminal prosecution in any court of law in this state.

History.—s. 1, ch. 2013-33; s. 1, ch. 2015-26.