

THIS INSTRUMENT PREPARED BY:

Roy K. Payne
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32802
(407) 246-2295

**BIKESHARE STATIONS ENCROACHMENT
AND REMOVAL AGREEMENT**

THIS BIKESHARE STATIONS ENCROACHMENT AND REMOVAL AGREEMENT, “Agreement,” made and entered into this ____ day of _____, 2014, by and between **CITY OF ORLANDO**, a Florida municipal corporation, (hereinafter referred to as “CITY”), with an address of 400 S. Orange Avenue, Orlando, FL, 32802 and **CYCLEHOP, LLC**, a Florida limited liability company, whose address is 1701 Purdy Avenue, Unit #203, Miami Beach, FL, 33139, (hereinafter referred to as the “OWNER”).

RECITALS:

WHEREAS, OWNER intends to establish a bike share program, “Bikeshare,” within the City of Orlando and pursuant thereto, entered into an agreement with the CITY on March 24, 2014, “Bikeshare Agreement;” and

WHEREAS, the Bikeshare Agreement provides in part for the City’s licensure of certain portions of CITY property and right-of-way for the placement of kiosks and bike racks, “Bikeshare Stations,” required for implementation and operation of Bikeshare; and

WHEREAS, OWNER desires to construct and maintain twenty (20) Bikeshare Stations, (“Project”) within the rights-of-way and/or property owned and maintained by the CITY (the “CITY PROPERTY”), as shown in **Exhibit “B”**, attached hereto and made a part hereof by reference; and

WHEREAS, OWNER intends to implement the Project in two phases. Phase I of the Project consists of the first four (4) Bikeshare Stations shown in **Exhibit “B”**. Phase II of the Project consists of the remaining sixteen (16) Bikeshare Stations shown in **Exhibit “B”**; and

WHEREAS, this Agreement is a condition of OWNER’s application for a building permit(s) for construction of the Project; and

WHEREAS, Section 61.203 of the Orlando City Code requires that the OWNER enter into a binding agreement providing for the encroachment of the Project into the CITY PROPERTY and providing for removal of the Project under certain conditions; and

WHEREAS, the Project will continue to be subject to all applicable provisions of the Orlando City Code and any other applicable government regulation, and this Agreement does not vest any particular manner of development of the OWNER's Property.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties hereto, the parties agree as follows:

1. Recitals. The foregoing Recitals are true and correct and incorporated into the substantive body of this Agreement.
2. Encroachment. The CITY hereby grants permission for the encroachment of the Project into the CITY PROPERTY, strictly limited to the areas described and shown in **Exhibit "B"**. Notwithstanding the Effective Date of this Agreement, OWNER's right to use the CITY PROPERTY for Phase I of the Project shall only become effective upon the CITY's issuance of a building permit for construction of Phase I. OWNER's right to use the CITY PROPERTY for Phase II of the Project shall only become effective upon the CITY's issuance of a building permit for construction of Phase II.
3. Release. OWNER hereby releases the CITY, its representatives, employees and elected officials from any and all damages, claims, or liability, with respect to the Project that may arise due to the CITY's operation and maintenance of the City PROPERTY and any improvements located thereon.
4. Priority of City Property. The Project shall not be operated or maintained in such a manner so as to interfere, in any way, with the CITY's operation or maintenance of its right-of-way and property including any public or general utility improvements located thereon.
5. Project. In consideration for the CITY's consent to construction and maintenance of the Project within the CITY PROPERTY, as described herein, the OWNER agrees, at its sole cost and expense, to construct, maintain, repair and operate the Project, consistent with reasonable engineering standards and all applicable laws, codes, and regulations.

6. No Waiver/No Vesting. This Agreement does not constitute a waiver of the CITY's regulatory authority and the OWNER's Property, including the Bikeshare Stations, as well as this Agreement and the Bikeshare program, remain subject to all applicable laws, rules, codes and regulations. This Agreement does not operate to vest any interest or right whatsoever.

7. Insurance. OWNER shall possess and maintain, at all times during the construction, operation and maintenance of the Project within the CITY PROPERTY, 1) worker's compensation insurance in the amount of the Florida Statutory Limit; 2) automobile liability insurance of at least \$1,000,000; and 3) general liability insurance in the amount of at least \$1,000,000, in order to protect the CITY from any liability, claims, damages, losses or expenses arising from or out of in any way connected with construction, operation or maintenance of the Project. CITY shall be listed as an additional insured on the automobile and general liability policies and **OWNER shall provide said policies to the City for review and approval prior to implementation of the Project**. CITY may request proof of such insurance at any time during the term of this Agreement. This provision shall survive termination of this Agreement as necessary to protect the CITY from claims arising during the term thereof.

8. Indemnification. The OWNER agrees that it shall indemnify, hold harmless and defend the CITY, its representatives, employees and elected and appointed officials from and against all claims, damages, loss and expenses of any sort including reasonable attorney's fees and costs including appeals, arising out of or resulting from any act or omission of the OWNER, its tenants, agents, contractors, subcontractors, customers, invitees, patrons, anyone utilizing the Bikeshare program or anyone for whose act or acts any of them may be liable, for acts or omissions occurring on the CITY PROPERTY or resulting from the operation or maintenance of the Project, including but not limited to matters arising from the construction, operation, maintenance, marketing and removal of the Bikeshare Program. This provision shall survive termination of this Agreement as necessary to protect the CITY from claims arising during the term thereof.

9. Representatives Bound Hereby. This Agreement shall be recorded and shall be binding upon the successors, heirs, executors, administrators, representatives, or assigns of the OWNER, and upon all persons acquiring an interest there under.

10. Recording. The OWNER will record this Agreement, at its expense, in the Public Records of Orange County, Florida.

11. Controlling Laws.

- a. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the CITY now in effect and those hereinafter adopted.
- b. The location for settlement of any and all claims, controversies, disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Orange County, Florida.
- c. The parties to this Agreement agree to comply with all applicable federal, state, and local laws, ordinances, rules and regulations pertaining to the utilization of the property under this Agreement.

12. Miscellaneous.

- a. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
- b. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.

13. Legal Counsel. OWNER acknowledges that it has had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement, and that OWNER represents and warrants that it has sought such independent legal advice and counsel.

14. Attorney's Fees. OWNER agrees that it shall be liable for reasonable attorney's fees incurred by CITY, if CITY is required to take any actions, through litigation or otherwise, to enforce this Agreement.

15. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and that this Agreement and all

documents executed in connection herewith were prepared and executed without undue influence exerted by any party or on any party. Further, this Agreement was drafted jointly by all parties, and no parties are entitled to the benefit of any rules of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.

16. Termination of License and Removal of Encroachment. The CITY retains the right to terminate this Agreement at any time in part or in full by notifying the OWNER in writing at the address listed in the initial paragraph of this Agreement. OWNER shall remove the designated Bikeshare Station, and any and all attendant improvements, from the CITY PROPERTY, and restore the CITY PROPERTY to the condition existing on the Effective Date of this Agreement, within thirty (30) days of the date of receipt of the written notice to OWNER. If the OWNER fails to remove said Bikeshare Station and attendant encroachments and restore the CITY PROPERTY, within the above-described timeframe, the CITY may remove same and charge the cost of removal to the OWNER. Should the OWNER fail to pay the costs of CITY's removal of the Bikeshare Station and attendant encroachments and restoration of the CITY PROPERTY, within thirty (30) days of the CITY's request, OWNER shall be in default under the terms of the Agreement. The termination procedure outlined in this Agreement incorporates and is subject to the terms of the Bikeshare Agreement with respect to the removal and relocation of Bikeshare Stations and termination of the Bikeshare project. This Agreement automatically terminates upon termination of the Bikeshare Agreement, subject to the survival of OWNER's obligation to remove improvements as described herein.

17. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the CITY PROPERTY.

18. Effective Date. The effective date of this Agreement is the date of its execution by the last person to execute it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

ATTEST:

CITY OF ORLANDO

Alana C. Brenner, City Clerk

Mayor / Mayor Pro Tem

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, and Alana C. Brenner, to me known as the Mayor/ Mayor Pro Tem and City Clerk respectively, of the City of Orlando, who acknowledged before me that they have executed the foregoing instrument for the purposes therein expressed, and that they were duly authorized to do so.

Notary Public: _____
Commission Expires: _____

TWO WITNESSES:

CYCLEHOP, LLC, a Florida limited liability company (Corporate Seal)

Print Name: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority, _____, as _____, of CycleHop, LLC, a FL limited liability company. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal this _____ day of _____, 2014.

Notary Public
Print Name: _____
My commission expires: _____

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida, only.

_____, 2014.

Chief Assistant City Attorney