

**AMENDMENT SEVEN
TO AGREEMENT BETWEEN THE CITY OF SAN ANTONIO
AND SAN ANTONIO BIKE SHARE
FOR BIKE SHARE/RENTAL AND BIKE TOURS PROGRAM**

The City of San Antonio, a Texas Municipal Corporation ("CITY") presently contracts with San Antonio Bike Share ("BIKE SHARE"), for services for the Bike Share/Rental and Bike Tours Program, pursuant to an Agreement ("AGREEMENT") approved by City Council June 17, 2010, through City Council Ordinance No. 2010-06-17-0563, for an amount not to exceed \$841,579.00.

On June 23, 2011, Ordinance No. 2011-06-23-0583 approved Amendment One which included an increase of an additional \$403,522.00 in grant funds. Amendment Two was approved by Ordinance No. 2012-01-19-0033 which included an increase of \$15,645.00 in grant funds. Amendment Three was approved by Ordinance No. 2012-06-14-0434 and included an increase of \$27,000.00 in grant funds. Amendment Four, authorized by Ordinance No. 2011-05-05-0349, included an increase of up to \$324,000.00 in grant funds. Amendment Five, authorized by Ordinance No. 2012-12-06-0930 and signed January 15, 2013, added an additional \$1,050,000.00 in grant funds. Amendment Six authorized by Ordinance No. 2012-09-20-0738, included an increase of up to \$295,774.00 in grant funds for a current total compensation amount not to exceed \$2,957,520.00.

This Amendment Seven of the AGREEMENT ("AMENDMENT SEVEN") extends the term of the AGREEMENT for an additional two years with options for the CITY to renew for two additional one-year periods, modifies the asset management and reporting requirements required from BIKE SHARE, and allocates a portion of the Texas Department of Transportation (TxDOT) 2012 Transportation Enhancement Program (TEP) grant funds to BIKE SHARE and implements the grant application scope of work for the "B-Cycle Urban Core Expansion", as authorized by Ordinance No. 2012-11-08-0876 (for the TxDOT grant application) and Ordinance No. 2013-12-____-_____ (for the grant fund allocation). Amendment Seven includes an increase of up to \$934,779.00 in funds from the TxDOT TEP Grant and an amount up to \$233,695.00 from the COSA Energy Efficiency Fund, for an additional compensation amount not to exceed \$1,168,474.00. The addition of the TxDOT TEP funds and COSA Energy Efficiency Funds brings the total compensation under the contract to an amount not to exceed \$4,125,994.00. Additionally, this Amendment Seven deletes language concerning ARRA funding requirements that is no longer applicable to the program, deletes the requirement for BIKE SHARE to offer or operate the Bike Rental and Bike Tours portion of the program, and provides for the potential transfer of all assets which the CITY has funded from any source during the program to BIKE SHARE at the termination of this agreement.

This Amendment Seven is entered into by and between the CITY, acting by and through its designated representative, and BIKE SHARE. The undersigned hereby agree to amend said AGREEMENT, as amended, as follows:

1. Page 3, Term of Performance and Termination Date, is amended by deleting the ~~strikethrough~~ and adding the underlined language:

Term of Performance and Termination Date: The initial term of this agreement is for three and one-half (3.5) years ~~with no options for renewal~~. With City Council approval, the City may renew the agreement for two (2) additional years, to December 31, 2015, prior to the termination date and, at the City's sole option, may then extend the agreement for two additional one year periods, upon notice to Contractor and with no further City Council action. It is the intention of the parties that the Bike Share ~~three Program topic areas (Bike Share, Bike Rental and Bike Tours)~~ shall continue after the term of this agreement, with no further obligation for funding by the City; therefore, subject to further future agreement with the City, Contractor may be entitled to continued use of the kiosk and hub locations to continue the Program irrespective of the termination of this Agreement. The three and one-half year initial term of this Agreement shall commence on or about June 18, 2010 and shall terminate on or about December 31, 2013. Contractor will implement and operate the Bike Share ~~all three topic areas ("Services")~~ of the Program for the ~~three-year~~ entire term of the agreement, including any renewal and extensions.

2. Page 2, Compensation, paragraph one of this section, the amended budget sum of \$2,957,520.00 is increased by the addition of TxDOT TEP Grant funds and City funds in an amount not to exceed an additional \$1,168,474.00 for a new budget sum not to exceed \$4,125,994.00, as authorized by the San Antonio City Council under Ordinance No. 2013-12-_____, passed and approved on December ___, 2013. References to the original compensation amount throughout the AGREEMENT shall reflect the increased amount.

3. Page 3, Scope of Services, paragraph four (on page 4) is amended by adding the underlined language:

The Parties understand and agree that title to assets (including but not limited to kiosks, bicycles, supplies and other related equipment) acquired with ARRA funds, or any funds provided by the City regardless of the source, under this agreement will be held by Contractor in trust for the public during the operation of the Program, and that title to the assets will revert and will vest upon the City and shall be properly accounted to and returned to the City at the termination of this agreement. However, in the event the Parties negotiate the terms of a new agreement or a renewal and extension of this Agreement to continue the operation of the Program, Contractor may continue to hold title to assets purchased with ARRA or City provided funding in trust for the public until such time as the Contractor no longer operates the Program for the City. It remains the intention of the City to vest the Contractor with title to the assets, to be held in public trust, provided that the Contractor continues in existence and operates the Bike Share Program, and also provided that the Contractor: 1) continues to successfully implement the Bike Share program; 2) successfully completes the pending TxDOT TEP grant for expansion of the Bike Share program and any additional expansions funded by the City; and 3) provides accurate and regular financial and programmatic reports (monthly, quarterly, and annually) as mutually agreed to between the parties. Contractor must maintain property records that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data

including the date of disposal and sale price of the property. A physical inventory of the property must be taken and the results reconciled with the property records at least once a year. Written documentation of physical inventory shall be submitted to the Director. The inventory certification will disclose any obsolescence, condition of bikes, etc. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated and reported to the Director. Adequate maintenance procedures must be developed to keep the property in good condition. Notwithstanding the above, and any other contrary provision in the contract documents, the City finds and declares that the Bike Share Program serves a public purpose, is a public good and it is in the public interest that such a program continue past the termination of this Agreement; therefore, upon final termination of the agreement, as provided for in the prior section entitled "Term of Performance and Termination Date" including any subsequent renewal and extension period, it is the intention of the City of San Antonio to vest all rights, title and interest in the City funded assets to the non-profit San Antonio Bike Share, provided, however, that "BIKE SHARE" meets and complies with all the terms of the Agreement, as amended or modified, and, provided that "BIKE SHARE" continues to hold title to the assets in public trust as a non-profit entity. In the event "BIKE SHARE" shall cease operation of the Bike Share Program at any future date and any City funded assets remain, "BIKE SHARE" shall transfer title and possession of those specific assets to City.

4. Page 5, Reporting, is amended by adding the underlined language:

Reporting In addition to any other reporting requirements in the Agreement or other contract documents, Contractor shall provide to City all data required by the ARRA related to energy savings, job creation, and usage, on a periodic basis, in the detail and format as determined by the Director. At the conclusion of the ARRA grant period, ARRA grant required reports will not be necessary. However, other future grants or funding may require additional reporting. To assure and inform the City of the progress and status of the Bike Share program, the City will require, and "BIKE SHARE" will provide, regular Programmatic and Financial reports on a periodic basis (monthly, quarterly, annually) in the detail and format as determined by the Director and referenced in the "Scope of Services" above. Programmatic reports, in general, will address the following areas: macro and micro usage metrics, membership statistics, outreach/public events. Financial reports, in general, will address the following areas: annual budgets; CPA reviewed annual reports; quarterly income statements to include funding from membership sales, advertising income, sponsorship income, and miscellaneous sources of income; quarterly expense reports. It is the intent of the parties to collaborate and mutually agree on the nature and extent of reporting so as to provide the City with the information it needs and concurrently not be overly burdensome or costly to "BIKE SHARE".

5. All American Recovery and Reinvestment Act of 2009 (ARRA) specific provisions within the agreement, from the section entitled "Source of Funds - ARRA" on page 8 through and including the section entitled "(d) Rates of Wages" on page 29, and any additional ARRA requirements included within prior amendments to the agreement, are deleted and of no effect as these provisions are no longer required because all ARRA funding has been expended for the Program.

6. This AMENDMENT SEVEN to the AGREEMENT shall not prejudice any present or future rights, remedies, benefits, or powers belonging to or accruing to CITY and/or "BIKE SHARE" under the terms of the AGREEMENT herein amended.

7. Except as provided otherwise herein, the AGREEMENT shall remain unaffected, unchanged, and unimpaired by reason of the foregoing AMENDMENT SEVEN.

AMENDMENT AGREED TO this 25 of November, 2013.

CITY OF SAN ANTONIO, A TEXAS
MUNICIPAL CORPORATION

SAN ANTONIO BIKE SHARE

By _____

By CM Snell

Title

Executive Director
Title

APPROVED AS TO FORM
Michael D. Bernard
City Attorney

By: Assistant City Attorney