

**AGREEMENT AND LICENSE TO INSTALL AND MAINTAIN
BIKE RACK(S) IN PUBLIC RIGHT-OF-WAY**

THIS AGREEMENT AND LICENSE (**License**), made and entered into this _____ day of _____, 2018, is by and between Kansas City, Missouri, a constitutionally chartered Municipal corporation (**City**), and _____ (**Property Owner**).

WHEREAS, City has agreed to grant a license to the Property Owner to install and maintain bike racks(s) in the public right-of-way areas generally located at _____ in Kansas City, Jackson County, Missouri (**Property Area**); and

WHEREAS, City is vested with an interest in rights-of-way located within the Property Area; and

WHEREAS, City and Property Owner recognize the public health and environmental benefits to be realized by the increased use of bicycle transportation; and

NOW, THEREFORE, City and Property Owner do hereby agree as follows:

Sec. 1. Scope.

City and Property Owner enter into this License for the installation and maintenance of bike rack(s) on City street rights-of-way within the Property Area. The City hereby grants to Property Owner, its representatives, employees, consultants and Contractors, a license to use that portion of the public right-of-way reasonably necessary for the installation and maintenance of the bike rack(s) between curbs and sidewalks. The grant of this License shall not constitute a conveyance of any interest in the public right-of-way.

Sec. 2. Definitions. The following terms have the meaning and/or usage ascribed herein, except where an alternative definition or usage is specifically provided:

Contractor refers to every person or entity retained by Property Owner to design, install, construct, deconstruct, reconstruct, or maintain the improvements described herein.

Maintenance includes every action, up to and including replacement of any structure or component, necessary to keep the bike rack(s) in good condition, whether such action is necessitated by normal wear and tear, accident, storms or other acts of God, vandalism, or equipment failure.

Bike Rack means a city approved stationary fixture specifically designed for a **bicycle** to be securely attached.

Property Area means the public right-to-way areas immediately abutting the parcel identified by the listed address.

Sec. 3. City Obligations.

a) City agrees to review any application for permits for installation, maintenance, repair and replacement of bike rack(s) to be installed on City-owned street rights-of-way within the Property Area. Bike rack(s) installed under such permits shall remain the property of the Property Owner and shall not be owned by the City.

b) City agrees to allow the Property Owner to arrange for and perform all maintenance, repairs and replacement of bike rack(s) on City owned street rights-of-way.

c) The City shall have the right to work within the right-of-way, whether by its own forces or contracted forces. City also may, but is not obligated to, perform maintenance on the bike rack(s). City agrees that, if City is required to make repairs or perform maintenance to City-owned public utilities or other City-owned improvements within the areas where the bike rack(s) are installed, City agrees, subject to the appropriation of funds, to restore the area and replace the bike rack(s) at City expense.

d) City agrees to comply with all other requirements applicable to City as set forth in this License.

Sec. 4. Property Owner Obligations.

a) Property Owner agrees to contract for and oversee every facet of work necessary to plan for and complete installation of the bike rack(s) in a manner that complies with the terms of this License and all applicable codes. Property Owner shall provide all labor, materials, and hardware necessary to install functioning bicycle racks, and do so in a manner that does not cause damage to the public right-of-way. Any pavements or other areas disturbed during the process of installing the bicycle racks shall be made safe and fully restored without delay or interruption and in accordance with the requirements the City. In the event that City notifies Property Owner that it deems a dangerous condition to exist as a result of the installation of a bicycle rack, Property Owner shall immediately abate or cause its contractor to abate the dangerous condition.

b) Property Owner agrees to ensure that all required permits are obtained and that the installation and maintenance is conducted in conformity with the requirements imposed by all governmental entities having authority to permit, prohibit or otherwise impose conditions on the constructing and maintenance of the bike rack(s).

c) Property Owner agrees to obtain approval of the Director of Public Works Department as provided for in Section 4 of this License prior to engaging in any installation of the bike rack(s).

d) Property Owner agrees that it is fully responsible for the funding of the installation and maintenance of the bike rack(s) and that, unless otherwise provided in this License, the City assumes no financial obligations towards the installation and maintenance of the bike rack(s).

e) Property Owner agrees to be fully responsible for the repair of or damage to any infrastructure during installation or maintenance of the bike rack(s). Property Owner further agrees to be responsible for the repair or replacement, including with bike rack(s) to this License, of any sod and/or concrete damaged during the installation or repair of the bike rack(s).

f) Property Owner agrees that the installation and maintenance are to include all labor and materials necessary to construct or maintain the bike rack(s) on City-owned street rights-of way, including all incidental hardware for construction and maintenance.

g) Property Owner agrees to contract for and/or perform all installation and maintenance of the bike rack(s) on City-owned rights-of-way using qualified individuals or contractors and to keep the bike rack(s) in good condition and operational at all times, and do so in a manner that does not cause damage to the public right-of-way. Damaged bicycle racks shall be secured for safety of pedestrians and motorists within four (4) hours of notification to or discovery by Property Owner. Repair or replacement of damaged bicycle racks shall commence within forty eight (48) hours of notification to or discovery by Property Owner of damaged bicycle racks. Repair or replacement of damaged bicycle racks shall continue uninterrupted until bicycle racks are fully repaired and in good working condition, provided however, performance by Property Owner shall not be deemed to be in default where delays or defaults are due to any event or act which might reasonably be deemed to be outside the control of Property Owner. With written notice to City, the time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any such event or act. Any pavements or other areas disturbed during the process of maintaining the bicycle racks shall be made safe and fully restored without delay or interruption and in accordance with the requirements of City. In the event that City notifies Property Owner that it deems a dangerous condition to exist as a result of the manner in which the maintenance is being performed, Property Owner shall immediately abate or cause its contractor to abate the dangerous condition.

h) Property Owner agrees if, in the future, Property Owner, its successors or assigns, no longer desire to maintain the bike rack(s) on City-owned rights-of-way, it shall cause its bike rack(s) within the Property Area to be removed and the Property Area to be repaired per City standards.

i) Property Owner agrees to comply with all other requirements applicable to the Property Owner as set forth in the License.

Sec. 5. Required approval. Reasonably detailed drawings, plans and specifications of the bike rack(s) needing to be installed, and their proposed locations, shall be presented to City's Director of Public Works for review. If City determines that modifications to the plans and specifications need to be made, it shall notify Property Owner of its determination and Property Owner shall, at its sole expense, submit revised plans and specifications for review. No construction, deconstruction or installation shall commence unless and until approval of the plans and specifications have been obtained, nor shall any construction, deconstruction or installation be permitted to proceed except in accordance with the plans and specifications as approved by City. Should Property Owner fail to obtain the necessary approval or complete the installation in conformity with the plans and specifications approved by City, City may, in its sole discretion, allow the work to proceed or order that Property Owner cause the work to cease and restore at its expense the affected location to the same or substantially similar condition as existed prior to the unauthorized or nonconforming work at Property Owner's sole expense. The City shall not unreasonably withhold, condition, or delay approval of Property Owner's drawings, plans, and specifications.

Sec. 6. Insurance. Property Owner shall procure and maintain, and shall require its Contractors to procure and maintain, in effect throughout the duration of this License, insurance coverage not less

than the types and amounts specified below. Property Owner shall ensure that City is named as an additional insured on its and its Contractors' policies.

a) Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- i. Severability of Interests Coverage applying to Additional Insureds
- ii. Contractual Liability
- iii. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
- iv. No Contractual Liability Limitation Endorsement
- v. Additional Insured Endorsement, ISO form CG2010, current edition, or its equivalent.

b) Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers' Compensation	Statutory
Employers' Liability with limits of:	\$100,000 each accident \$500,000 disease –policy limit
	\$100,000 disease - each employee

c) Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an “any auto” basis and written on an “occurrence” basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with this License.

d) If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$ 2,000,000.

e) Property Owner shall deliver to City, prior to the start of any work at the Property area, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to City. The receipt or acceptance of a certificate of insurance that does not incorporate the required terms and coverage shall not constitute a waiver by City of the insurance requirements contained in this License.

f) All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Property Owner and its Contractors will contain waiver provisions. The certificates of insurance will also contain a provision stating that should any of

the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

g) If the coverage afforded is cancelled or changed or its renewal is refused, Property Owner shall endeavor to give at least thirty (30) days prior written notice to City.

Regardless of any approval by City, it is the responsibility of Property Owner to ensure that the required insurance coverage is procured and maintained in effect at all times. In the event Property Owner fails to ensure that the required insurance is procured and maintained in effect, or that City is named as an additional insured, City may order that the installation of the bike racks immediately stop and, upon ten (10) days' notice and an opportunity to cure, may remove the concrete pavers and basket poles without notice or may pursue any other remedies for breach of this License as provided for herein and by law.

Sec. 7. Indemnifications. Property Owner shall defend, indemnify, and hold harmless City and any of its agencies, officials, officers and employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the performance under this License, caused in whole or in part by Property Owner, Property Owner's employees, agents, or Contractors, or others for whom Property Owner is legally liable, regardless of whether or not caused in part by any act or omission of City, its agencies, officials, officers or employees.

Property Owner's contracts with every Contractor shall require such persons or entities to defend, indemnify, and hold harmless the City and any of its agencies, officials, officers and employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the performance under this License, caused in whole or in part by Contractor, Contractor's employees, agents, or Contractors, or others for whom Contractor is legally liable, regardless of whether or not caused in part by any act or omission of City, its agencies, officials, officers or employees.

If Property Owner hires any architect or engineer in connection with the installation of the bike rack(s), then Property Owner's contracts with its architects or engineers shall cause such contractors to indemnify and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, but only to the extent caused by the negligent acts, efforts, or omissions of such Contractors, their employees, agents or others for whom such Contractors are legally liable, in the performance of professional services. Property Owner's Contractors are not obligated under this section to indemnify City for the negligent acts of City and any of its agencies, officials, officers, or employees.

Sec. 8. Assignment. Property Owner may contract for the installation and maintenance of the improvements but may not assign or transfer any part or all of their obligations or interests under this License without City's prior written approval. Property Owner shall notify City, in writing, at least thirty (30) days prior to any proposed assignment or transfer and shall provide with that notice, the proposed assignee's or transferee's written acceptance of the terms and conditions of this License. However, Property Owner shall not be released from its obligations under this License unless and until the Director of Public Works releases Property Owner in writing.

Sec. 9. Effective Date; Duration; Termination; Survival of Obligations. This License shall become effective upon the date stated above and shall continue in effect until such time as the last of any bicycle rack installed in the public right-of-way pursuant to this License has been fully removed and the public right-of-way restored in accordance with the requirements of City, or until earlier terminated by City, which right City may exercise with or without cause and at any time upon thirty (30) days advance notice to Property Owner. Notwithstanding the foregoing, Property Owner's obligation with regards to indemnification as provided in Section 7 of this License shall survive the expiration or termination of this License with regards to any claims arising during such time as this License was in effect. City shall have the absolute right to terminate this License irrespective of whether Property Owner is meeting its maintenance obligations. Property Owner party shall, within the thirty (30) day termination period, remove the bicycle racks and restore all surfaces without delay or interruption and in accordance with the requirements of City. Property Owner shall be liable for all costs associated with the removal and restoration and shall not be entitled to any contribution from City.

Sec. 10. Removal and Restoration; Recourse. City shall have the right to require Property Owner to remove one or more of the bicycle racks if City determines, in its sole and subjective discretion, that (1) it requires use of the right-of-way within its sovereign authority, or (2) that the removal is in the public's interest, or (3) that removal has been requested by a utility operating within City right-of-way, or (4) that Property Owner has failed to provide maintenance satisfactory to City in accordance with standards for maintenance set forth in this Agreement, provided however that prior to terminating this Agreement on the ground that Property Owner has failed to provide satisfactory maintenance, City shall send notice to Property Owner that, in the opinion of City, the standards of maintenance are not being met whereupon Property Owner shall have fourteen (14) days from the date of the notice to correct such deficiencies or to provide information to City disputing City's findings concerning maintenance. City shall ultimately have the sole authority to determine whether Property Owner has, in fact, met its maintenance obligation. Once City has notified Property Owner that it is obligated to remove and restore under any provision of this section, Property Owner shall, within thirty (30) days, remove the bicycle racks and restore all surfaces without delay or interruption and in accordance with the requirements of City's Department of Public Works. Property Owner shall be liable for all costs associated with the removal and restoration and shall not be entitled to any contribution from City. In the event of an emergency posing a risk to public health, safety or welfare, the City may act without providing the above-referenced notice.

If Property Owner fails to remove the bicycle racks and restore the surface in accordance within the allotted time above, the City shall have the right to remove the bicycle racks and restore the right-of-way, but shall not be obligated to do so. City shall charge the costs to Property Owner and Property Owner shall be obligated to reimburse City within 30 calendar days. Property Owner's obligation to reimburse City exists independently by virtue of this License and shall not be impaired by City's ability to assess certain maintenance costs to the property owner(s) as provided by Section 64-243 of the Code of Ordinances or any other provision of law. The City shall be entitled to retain or dispose of the bicycle racks as City deems appropriate in its sole and subjective discretion.

Sec. 11. Public Use. Any bicycle rack located within the public right-of-way pursuant to this Agreement shall be available to the public-at-large on a first-come-first-serve basis. Non-City Party shall not restrict, attempt to restrict, or otherwise impose restrictions on the public's use.

Sec. 12. Notice. All notices required by this License shall be in writing sent by regular United States mail, postage prepaid, commercial overnight courier or facsimile and addressed as hereinafter specified. Each party shall have the right to specify that notice be addressed to any other address by giving the other party ten (10) days' notice thereof. Unless a party to this License has given ten (10) days' notice of a change of person and address for purposes of notice under this License to the other party in writing, notices shall be directed to the following:

Notices to the City:
Director of Public Works
20th Floor – City Hall
414 East 12th Street
Kansas City, Missouri 64106
Tel. (816) 513-2634
Fax (816) 513-2712

Notice to Property Owner:

Kansas City, MO,
Tel.
Email.

Sec. 13. Severability. The provisions of this License shall be deemed severable. In the event that any provisions of this License are found by a court of competent jurisdiction to be invalid, the remaining provisions of this License shall remain valid unless the court finds that the valid provisions are so essentially and inseparably connected with and so dependent upon the invalid provision, that it cannot be presumed that the parties hereto have agreed to the valid provisions of this License; or unless the court finds that the valid provisions, standing alone, are incompatible and incapable of being executed in accordance with the contracting parties intent.

Sec. 14. Persons Bound. This License shall be binding upon and ensure to the benefit of the parties hereto, their successors and assigns.

Sec. 15. Amendment. The terms of this License shall not be amended, canceled, abrogated or released without the prior written consent of all parties.

Sec. 16. Dangerous Conditions. The parties shall take all necessary precautions so as not to suffer or permit any unreasonably dangerous condition to pedestrians and/or motorists to be created, exist or continue. In the event City declares an unreasonably dangerous condition to exist, Property Owner shall take all steps reasonably necessary and without delay to abate or cause its Contractors to abate the condition.

Sec. 17. Independent Contractor. Property Owner and its Contractors are independent contractors and are not City's agents. Property Owner and its Contractors have no authority to take any action or execute any documents on behalf of City except as specifically provided for in this License.

Sec. 18. Governing Law. This License shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Property Owner: (1) shall submit exclusively to the jurisdiction of the state and federal courts located in Jackson County, Missouri and no other; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non conveniens as an objection to the location of any litigation.

Sec. 19. Compliance with Laws. Property Owner and its Contractors shall comply with all federal, state and local laws, ordinances and regulations applicable to the installation and maintenance of the improvements. Property Owner shall require its Contractors to secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of their obligations under this License.

Sec. 20. Waiver. No consent or waiver, express or implied, by any party to this License or any breach or default by any other party in the performance of its obligations under this License shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any party to complain of any act or failure to act or to declare any of the other parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this License. The parties reserve the right to waive any term, covenant, or condition of this License; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the parties reserve the right to exercise any and all of their rights and remedies under this License irrespective of any waiver granted.

Sec. 21. Headings; Construction of Agreement. The headings of each section of this License are for reference only. Unless the context of this License clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 22. Conflicts of Interest. Property Owner certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this License, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Property Owner or its Contractors under this License.

Sec. 23. No Partnership. It is expressly understood that the parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this License.

Sec. 24. Further Acts. The parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement.

Sec. 25. Representations. The parties certify that they have the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with its terms.

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Property Owner,

By: _____

Title: _____

Date: _____

STATE OF MISSOURI)
) SS
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 2018, before me, the undersigned notary public in and for the county and state aforesaid, came _____ to me personally known, who being by me duly sworn did say that he/she is the owner of the property located at _____ and that said instrument was signed on behalf of said property by authority of the Property Owner-and acknowledged said instrument to be the free act and deed of said Property Owner.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Notary Public

My Commission Expires:
