CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: May 4, 2020

ITEM: Motion – Approval of License Agreement – BCycle Bike Share Station – Des Moines Street Collective

FINANCIAL IMPACT: Expense not-to-exceed $2,500 per year ($5,000 over term of agreement) to cover sponsorship of BCycle station. Funds are available in the department's operating budget. In 2018, the BCycle station was moved to Raccoon River Park from a previous location in Des Moines, so there was no cost to the City for the station itself.

BACKGROUND: With approval from the City Council in 2018, the Des Moines Street Collective, a local non-profit organization, installed a self-service bike rental station in Raccoon River Park. The agreement expired on December 31, 2019, and the City was recently approached by the Street Collective about renewing it. Per the agreement, the Street Collective is responsible for all aspects of operating the station including maintenance, replacement, and removal. The Street Collective is also responsible for making sure the station is stocked with bikes.

Although there has been no cost to the City for the station itself, the Street Collective depends on advertising sponsorships to cover approximately 50% of their cost to operate the BCycle program. To continue to offer the BCycle opportunity to users at Raccoon River Park, it is necessary for the City to sponsor the station located there. Also, by branding the station with City information, it makes it clear that the City is involved in providing the bicycles. It also gives the City control over the advertising message which is currently information on the Five Waters Project. The Street Collective will replace the advertising at no additional cost to the City at any time during the term of the agreement.

The BCycle station at Raccoon River Park was the first one to be installed outside of downtown Des Moines. Staff has been informed that Clive and Windsor Heights are now also participants in the program. The Raccoon River Park station has proven to be highly popular with 1,732 trips taken from it in 2019. It was the 5th top performing station in the Des Moines metro last year.

The attached License Agreement is nearly identical to the agreement approved in 2018. It has been reviewed and approved by the Legal Department. The Parks & Recreation Advisory Board recommended approval of the agreement on April 16, 2020.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the City Council approve the agreement with Des Moines Street Collective.

Lead Staff Member: Sally Ortgies, Director of Parks & Recreation

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks & Recreation *S.O.*
Appropriations/Finance	Tim Stiles, Finance Director TS
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)			**SUBCOMMITTEE REVIEW** (if applicable)			
Published In			Committee			
Dates(s) Published			Date Reviewed			
			Recommendation	Yes	No	Split

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made this 6th day of April, 2020, by and between STREET COLLECTIVE, an Iowa not-for-profit corporation whose address is 506 E. 6th Street, Suite 100, Des Moines, Iowa 50309 ("Licensee"), and CITY OF WEST DES MOINES, a municipal corporation, whose address is 4200 Mills Civic Parkway, West Des Moines, Iowa 50265 ("Licensor").

WITNESSETH

WHEREAS, Licensee recognizes, encourages, and facilitates the use of bicycles as a viable mode of transportation and recreation in the State of Iowa and desires to engage in the rental of bicycles through the use of self-service bicycle rental stations; and

WHEREAS, Licensee desires to establish and maintain a bicycle rental station ("B-station") and bicycles ("Bicycles") on property owned by Licensor located at Raccoon River Park, 2500 Grand Avenue, West Des Moines, Iowa ("Property"); and

WHEREAS, Licensor has the authority to enter into this Agreement, and the right, power and interest in the Property, and the authority to allow Licensee the use of the Property as described herein.

NOW, THEREFORE, in consideration of the mutual premises and covenants contained herein, Licensee and Licensor agree as follows:

1. LICENSE. Licensor hereby grants to Licensee a non-exclusive license ("License") to install, operate, maintain, repair and replace a B-station and Bicycles in the location on the Property as identified in Attachment A.

2. TERM/RENT/FEES. Except as otherwise provided in Paragraph 9 herein, the Term of this Agreement shall be through December 31, 2021. This Agreement may be extended for an additional term of one (1) year ("Renewal Term") upon the written mutual consent of Licensee and Licensor. Licensee must submit to Licensor a written request to extend the term not less than ninety (90) days prior to the expiration of the Term. The day and year first written above shall be the "Commencement Date". No rent shall be payable by the Licensee for this License. There shall be no fees payable by the Licensor to the Licensee for Bicycle services. If Licensor requests Bicycle services not specifically outlined in this Agreement, and both parties agree such additional Bicycle services require payment from Licensor to Licensee, Licensee will provide Licensor with a quote for additional Bicycle services and a purchase order issued by Licensor will confirm additional Bicycle services to be provided under the terms of this Agreement.

3. PLACEMENT OF THE BICYCLES.

A. Licensee shall:

i. Provide a double-sided 10-bike B-station and install the Bicycles in a safe and workmanlike manner consistent with commercially accepted standards within the licensed area;

ii. Install and operate the Bicycles in such a way as to minimize, as is reasonably practical, any interference with the operations of the Property;

iii. Obtain, prior to placement of the B-station and Bicycles, any necessary federal, state, and municipal permits, licenses and approvals, to place and operate the B-station and Bicycles; and

iv. Not permit any liens to be attached to Licensor or to the Property.

v. Shall not use or store any hazardous materials on the Property.

4. COVENANTS.

A. Licensee hereby covenants and agrees as follows:

i. Keep and maintain the B-station and Bicycles in good order, repair and condition throughout the Term, and Renewal Term, if any, and to promptly and adequately repair all damage to the Bicycles and Licensor's Property, whether caused by Licensee, its employees, contractors or agents, customers, or its invitees;

ii. Comply with any federal, state, and municipal law, orders, rules and regulations applicable and governing the installation and operation of the B-station and Bicycles;

iii. Except as is reasonably necessary to operate and service the B-station and Bicycles, not to disrupt, adversely affect or interfere with Licensor's business operations or use of the Property by the general public;

iv. Any Bicycle services provided by a third party contracted by Licensee will be subject to the terms of this Agreement and must be approved by the Licensor in advance; and

v. Not sell or permit any advertising on the B-station or in the licensed area to or for any outside party not a party to this

Agreement without prior approval of the Licensor. Advertising on Bicycles may be sold or permitted by the Licensee.

B. Licensor hereby covenants and agrees to provide Licensee and any third party vendor acting on behalf of or at the request of Licensee, access to the Property to perform installation, maintenance and repair functions, all in accordance with Licensor's site rules and regulations or as set forth in the City Code of the City of West Des Moines. Licensee agrees that its personnel, and any third party vendor acting on behalf of or at the request of Licensee, will abide by Licensor's site rules and regulations.

5. EQUIPMENT AND FACILITIES.

A. The Bicycles, and any and all other equipment provided by the Licensee used to provide the Bicycle services, shall remain the exclusive property of the Licensee.

B. Licensor shall not be liable for damage, theft, misappropriation or loss of the Bicycles or any part thereof. Licensee acknowledges that it is not covered under any of the Licensor's insurance policies.

C. Upon the expiration or early termination of this Agreement, Licensee shall, at its sole cost and expense, remove the B-station and Bicycles from the Property. Licensee shall repair any and all damage to the Property. If the B-station and Bicycles, or any part thereof, is not removed within thirty (30) days after the expiration of this Agreement, it shall become the property of the Licensor to do with as it sees fit.

6. WARRANTIES. Licensor makes no warranties or representations that the Property is suitable for the use contemplated by this Agreement. Licensee has inspected the Property and accepts the same "as is". Licensee agrees that the Licensor is under no obligation to assist with the placement of the Bicycles or to provide any materials to prepare the Property for Licensee.

7. INSURANCE. Licensee agrees to maintain commercial general liability insurance with a combined single limit of not less than $1 million per occurrence and an aggregate limit of not less than $2 million, and to name Licensor as an additional insured on such policy against any and all claims for bodily injury, personal injury and property damage. If any Licensee personnel or subcontracted personnel will perform services at Licensor's premises, Licensee agrees to maintain workers' compensation coverage and employer's liability insurance as required by applicable state law. If any Licensee personnel will drive a vehicle in the course of performing under this Agreement, then Licensee agrees to provide business automobile liability coverage insuring bodily injury and property damage with a combined single limit of not less than $1 million per accident for owned, non-owned and hired vehicles. The insurance required by this paragraph

will be provided at Licensee's sole expense and will be maintained at all times while the applicable Agreement is in effect and for such period thereafter as may be necessary to provide protection with respect to events occurring during the term of the Agreement. All insurance provided by Licensee will be primary and non-contributory to any insurance carried by Licensor. In no event will the limits of Licensee's insurance or the limits stated in this paragraph be considered as limiting the liability of Licensee under this Agreement. All insurance required to be maintained by Licensee will be provided by U.S.-domiciled companies rated A or better in the most current issue of A.M. Best's Rating Guide. Licensor will at any time have the right to require Licensee to furnish certificates of insurance showing that the required insurance is in force and satisfies all requirements stated in this paragraph.

8. INDEMNIFICATION. To the fullest extent permitted by law, Licensee agrees to defend, pay on behalf of, indemnify, and hold harmless the Licensor, its elected and appointed officials, employees, volunteers, and others working on behalf of Licensor against any and all claims, demands, suits, or losses, including any and all outlays and expenses connected therewith, and for any damages which may be asserted, claimed, or recovered against or from the Licensor, its elected and appointed officials, employees, volunteers or others working on behalf of the Licensor, by reason of personal injury, including bodily injury or death, and property damages, including loss or use thereof, which arises out of or is in any way connected or associated with the work and/or services provided by Licensee to the Licensor pursuant to the provisions of this Agreement. It is the intention of the parties that the Licensor, its elected and appointed officials, employees, volunteers or others working on behalf of the Licensor shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by Licensee, its officers, employees, subcontractors, and others affiliated with Licensee due to accidents, mishaps, misconduct, negligence, or injuries either in person or property resulting from the work and/or services performed by Licensee pursuant to the provisions of this contract, except for and to the extent caused by the negligence of the Licensor.

Licensee expressly assumes full responsibility for any and all damage or injuries which may result to any person or property by reason of or in connection with the work and/or services provided by Licensee to the Licensor pursuant to this Agreement, and agrees to pay the Licensor for all damages caused to the Licensor premises resulting from the activities of Licensee, its officers, employees, subcontractors, and others affiliated with Licensee.

Licensee represents that its activities pursuant to the provisions of this contract will be performed and supervised by adequately trained and qualified personnel, and Licensee will observe and cause its officers, subcontractors and others affiliated with the Licensee to observe all applicable safety rules.

9. TERMINATION OF AGREEMENT. Either party may immediately terminate this Agreement prior to the actual Termination Date for any reason upon thirty (30) days notice to the other party.

10. SUBJECT TO LAWS. This Agreement is further subject to all applicable federal, state and local laws, ordinances and regulations, rulings and orders of governmental agencies.

11. NOTICES. All notices in connection with this Agreement will be directed to the contact persons at the respective addresses listed below, or to such other contact person or address as was last designated in a written notice by that party for notices to itself.

Notices to Licensor:

Sally Ortgies
Director of Parks & Recreation
City of West Des Moines
P.O. Box 65320
4200 Mills Civic Parkway
West Des Moines, Iowa 50265

Notices to Licensee:

Des Moines Street Collective
506 E. 6th Street, Suite 100
Des Moines, Iowa 50309

12. ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither party shall assign, sublet, delegate, or transfer any of its rights or obligations hereunder without the prior written consent of the other party.

13. JURISDICTION AND VENUE. Any lawsuits arising from or related to this Agreement shall be governed by the laws of the state of Iowa. Both parties agree that the District Court in and for the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement and said parties shall consent to the jurisdiction of **Polk** County, Iowa.

14. SEVERABILITY. In the event that any one or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and shall remain in effect and be binding upon the parties.

15. WAIVER. The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by the parties in writing.

16. PARAGRAPH HEADINGS. Paragraph headings as contained herein are provided for convenience and reference only. They in no way restrict or limit the contents or terms of this Agreement.

17. AMENDMENTS. No subsequent agreement between Licensee and Licensor shall be effective or binding unless it is made in writing and signed by both of the parties hereto.

18. FINAL AGREEMENT. This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the subject matter described herein, and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein.

19. LEGAL STATUS. It is hereby understood that no agency, employment, joint venture or partnership is created hereby or between the parties hereto, and that neither party shall hold the right, power or authority to bind the other or to act for the other in any matter.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

CITY OF WEST DES MOINES, Licensor	STREET COLLECTIVE, Licensee
_____	_____
Steven K. Gaer Mayor	Jeremy Lewis Executive Director

CERTIFICATION BY CITY OF WEST DES MOINES, IOWA

I, Ryan T. Jacobson, City Clerk of the City of West Des Moines, Iowa, do hereby certify that acquisition of the within and foregoing Agreement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. _____, passed on _____, 2020, and that this certificate is made pursuant to the authority of said City Council.

Signed this _____ day of _____, 2020.

CITY OF WEST DES MOINES, IOWA

BY:_____
Ryan T. Jacobson, City Clerk

Steven K. GaerJeremy Lewis
MayorExecutive Director

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Signed this _____ day of _____, 2020.

CITY OF WEST DES MOINES, IOWA

BY:_____
Ryan T. Jacobson, City Clerk