

Proposed Public Bicycle Program

Date:	April 1, 2010
To:	Public Works and Infrastructure Committee
From:	General Manager, Transportation Services Deputy City Manager and Chief Financial Officer
Wards:	All Wards
Reference Number:	p: 2010/Cluster B/tra/tim/pw10011tim

SUMMARY

The purpose of this report is to advise City Council on the outcome of negotiations with Public Bike System Company (PBSC), as directed by Council, to provide, install, operate and maintain a public bicycle program for Toronto.

City Council, at its meeting on August 5 and 6, 2009, authorized staff to negotiate an agreement with PBSC to implement and operate a Toronto public bicycle program “at no cost to the City.” During negotiations with PBSC, it became clear that the City would need to share the financial risk with PBSC to ensure the viability of the project.

City staff and PBSC have negotiated the draft terms of an agreement whereby PBSC would enter into a 10-year agreement with the City to be launched May 1, 2011. When the program is deployed, Torontonians and visitors would have access to 1,000 bicycles via 80 fully automated and conveniently located “bicycle parking stations” in the downtown area during the first year of operation with the potential to expand the system to other areas in the future. PBSC would be responsible for the \$4.8 million capital investment to manufacture and install the public bicycle infrastructure and for the operation of the program, and the estimated \$1.3 million average annual operating cost. In return, the City would provide a loan guarantee to assist PBSC in securing favourable financing. The City would be responsible for the cost of replacing the bicycles and stations due to vandalism and theft in excess of a six percent threshold.

The proposed agreement between the City and PBSC provides Toronto with a significant program which aligns well with the City's sustainable transportation and environmental objectives, with minimal cost or financial risk. The draft terms of agreement are very favourable to the City in comparison to other cities around the world with similar public bicycle programs.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer and the General Manager, Transportation Services recommend that City Council:

1. Declare the public bicycle program to be a municipal capital facility related to the provision of a transportation system and recreational facilities for City purposes and public use pursuant to Section 252 of the *City of Toronto Act, 2006*, and pass a by-law to authorize the entering into of an agreement for the provision of the facility, and request that the City Clerk give notice of the municipal capital facility by-law as required under the *City of Toronto Act, 2006*;
2. Authorize staff to negotiate and finalize an agreement with Public Bike System Company (PBSC) for the supply and operation of a public bicycle program for a term of approximately ten years based on the terms and conditions as contained in the Attachment to this report, and including such other terms and conditions as may be satisfactory to the Deputy City Manager and Chief Financial Officer, the City Solicitor and the General Manager, Transportation Services;
3. Provide to Public Bike System Company 's financial institution a capital loan guarantee in the amount of \$4,800,000.00 (inclusive of all interest costs payable by PBSC), for a ten year term commencing on November 30, 2010 until November 30, 2020, on the following conditions:
 - a. In accordance with the City's Capital Loan and Line of Credit Guarantee Policy, the City shall enter into a tri-party agreement with PBSC and its financial institution, in respect of the recommended capital loan guarantee;
 - b. The guarantee and all related agreements be secured in accordance with the proposed Terms of Agreement attached to this report and with any additional terms and conditions satisfactory to the City Solicitor and the Deputy City Manager and Chief Financial Officer, and that the Deputy City Manager and Chief Financial Officer be requested to negotiate appropriate and adequate safeguards, to the satisfaction of the City Solicitor;
 - c. The Deputy City Manager and Chief Financial Officer be authorized to reduce the loan guarantee as the loan is paid off;
 - d. PBSC provides the Deputy City Manager and Chief Financial Officer with their 2011 to 2020, inclusive, audited financial statements when they become available; and
 - e. The capital loan guarantee be deemed to be in the interest of the municipality.

4. Authorize the General Manager, Transportation Services to relocate and adjust bicycle station locations, where necessary, in consultation with the Toronto Parking Authority, Parks Forestry and Recreation and other affected parties;
5. Direct the General Manager, Transportation Services to report to the Budget Committee in time for the 2012 Operating Budget process to include future year costs related to theft and vandalism within its operating budget targets, if necessary;
6. Authorize staff to provide Public Bike System Company with reasonable access to available means by which the public bicycle program may be promoted at locations and in media that are controlled by the City, including the City website, newsletters, bulletins, bulletin boards, direct mailings and signage; and
7. Authorize and direct the appropriate City officials to take the necessary action to give effect thereto, including the introduction of all necessary bills.

Financial Impact

The public bicycle program recommended in this report does not require a capital investment by the City; however, it does not meet the "no cost to the City" directive of City Council because it does require the City to assume some financial risk to implement the program. Public Bike System Company is prepared to assume the initial \$4.8 million capital investment in the public bicycle infrastructure (bicycles and bicycle stations) and fund the estimated \$1.3 million average annual operating costs through sponsorship contributions and user fee revenues. In return, Public Bike System Company has proposed that the City share the financial risk through the provision of a \$4.8 million loan guarantee. Public Bike System Company has also requested that the City share in the financial risk of extraordinary loss due to theft and vandalism of the bicycles and the bicycle parking stations.

The loan guarantee would decline annually along with the declining loan principal. There would be no separate exposure for interest and the City's liability will be capped at \$4.8 million. The loan guarantee would require the City to assume the debt payments in the event that Public Bike System Company defaulted on the loan or should the City, or its agent, take over the operation.

Public Bike System Company will be responsible for the repair and replacement costs associated with theft and vandalism affecting up to six percent of the bicycles and vandalism affecting up to six percent of the parking stations in any given year. The City would assume the repair and replacement costs due to theft and vandalism in excess of the six percent threshold. By comparison, the theft and vandalism experience in the first year of operation of the Montreal public bicycle program (BIXI) was approximately one percent in 2009, therefore, this is an acceptable risk for the City to assume.

The business pro forma provided by Public Bike System Company indicates that the revenues generated by user fees and sponsorship are expected to cover the operating costs and to retire the debt on the capital over the 10-year loan period. In the event of surplus revenues, the surplus would be split 50-50 between the City and PBSC. The City's share of surplus revenues would be directed towards the expansion of the program or debt payment, at the discretion of the General Manager, Transportation Services.

PBSC and the City will be responsible for their own legal costs associated with the finalization of the agreement and loan guarantee. The City will also be responsible for making all appropriate arrangements and obtaining all permits and authorizations, including any fees and expenses related to securing approvals for the bicycle station locations. Any Transportation Services resources required to assist PBSC in implementing the public bicycle program will be absorbed within its approved Operating Budget.

There are no financial implications of this proposal for the Transportation Services 2010 and 2011 Operating Budgets. Since it is anticipated that the public bicycle program will launch in May, 2011, the earliest date at which Transportation Services would incur potential theft and vandalism costs would be mid-2012, at the end of the first year of operations. Therefore, it is recommended that in the event of extraordinary theft and vandalism costs (over 6%) prior to 2012, these costs be absorbed within the Transportation Services budget. Otherwise, Transportation Services will submit a report to the Budget Committee in time for the 2012 Operating Budget process to include future year costs within its operating budget targets. For example, based on estimates submitted by PBSC, every percentage of irreparable vandalism and theft over the six percent threshold represents approximately \$37,000 in additional costs to the City.

The Deputy City Manager and Chief Financial Officer has reviewed the audited financial statements provided by Stationnement de Montreal. Public Bike System Company is a subsidiary of Stationnement de Montreal, and as such, it has been concluded that PBSC has adequate resources to implement and operate a public bicycle program in Toronto.

DECISION HISTORY

Transportation Services issued a Request For Expressions of Interest (REOI No. 9155-09-7087) in 2009 to identify potential vendors capable of offering a public bicycle program that was not dependant on advertising within the street right-of-way. One of the objectives of the City's 2009 REOI was to determine whether it would be feasible to have a vendor provide and operate a public bicycle program in Toronto at no cost to the City.

The REOI invited responses to one or both of the following two options:

Option A - Vendor supplies and operates public bicycle system at no cost to the City; and

Option B - City purchases public bicycle system from the vendor to be operated by the City or a third party.

The intent of the REOI process was to pre-qualify respondents for a subsequent Request for Proposals (RFP) process. The RFP process would have selected a proponent with whom the City could enter into an agreement for the provision of a public bicycle program.

All companies known to be operating public bicycle programs, in North America and Europe, were advised of the City's REOI. Response submissions were received from two potential proponents by the REOI closing date of May 14, 2009. Only one respondent, the Public Bike System Company (PBSC), achieved the necessary minimum point requirements to be selected as a Pre-qualified Respondent for the subsequent RFP process. Montreal's BIXI program was developed and is operated on behalf of the City of Montreal by PBSC, which is a subsidiary of Stationnement de Montreal (Montreal's parking authority). In addition to operating the BIXI program in Montreal, PBSC is marketing their technology and technical services to other cities around the world, such as Boston and London, U.K. PBSC submitted proposals in response to Options A and B and achieved the necessary minimum point requirements to be pre-qualified for both options.

In response to REOI Option A, PBSC's submission outlined a model for financing and operating a public bicycle program that required no initial investment by the City but with the condition that the City share in the financial risk of implementing and operating the program. On the basis of the PBSC submission, Transportation Services submitted a report to the Public Works and Infrastructure Committee, titled "Toronto Public Bicycle Project" (PW25.21), seeking authority "to undertake negotiations with the Public Bike System Company, as the sole pre-qualified vendor, to develop a proposal to implement and operate a Toronto public bicycle program at no cost to the City." City Council, at its meeting of August 5 and 6, 2009, authorized the General Manager, Transportation Services, in consultation with the City Solicitor, to undertake these negotiations and report back to the Public Works and Infrastructure Committee on the results of these negotiations.

<http://www.toronto.ca/legdocs/mmis/2009/pw/decisions/2009-06-03-pw25-ds.htm>

COMMENTS

Implementing a public bicycle program was identified as one of the Transportation Services Division's cycling infrastructure priorities in the report, entitled "Toronto Bike Plan - New Strategic Directions", dated May 25, 2009, which was received by the Public Works and Infrastructure Committee on June 3, 2009. A public bicycle program could be an important component of Toronto's sustainable transportation strategy towards achieving an 80 percent reduction in greenhouse gas emissions in the City by 2050 from 1990 levels. Public bicycle programs have significantly increased the number of trips made by bicycle in cities that have launched major programs. For example, in the first season of operation, May 26 to November 15, 2009, Montreal's BIXI program recorded 1.15 million bicycle trips, almost 11,000 annual subscribers and 113,000 single-day users. Of the single-day users, sixty percent (67,000) were visitors to Montreal.

Brief History of Public Bicycle Programs

Small-scale public bicycle programs have been implemented in many European and North American cities since the 1970's. However, few of the early generation public bicycle programs lasted more than a few years due to theft of bicycles and/or lack of a sustainable source of operating funds. Toronto's BikeShare program, operated by the Community Bicycle Network from 2001 to 2006, is an example of an early generation program. BikeShare had a few hundred members who could sign out one of 150 bicycles at 16 locations for up to three days at a time. BikeShare was dependant on grants for the majority of the program's operating costs and consequently the program was discontinued when the funding ran out.

In 1995, Copenhagen launched the first large-scale public bicycle program funded in large part through commercial advertising on the bicycle. The Copenhagen program featured coin-operated bicycle docks and a specially designed bicycle to minimize theft and vandalism. Public bicycle programs and the supporting technology have evolved since then and these "modern" programs feature solar powered pay stations, smart cards, payment over wireless networks and real-time tracking of the bicycle fleet. Montreal's BIXI system advanced the design further with their "portable" bicycle stations that do not require excavation or the installation of an electrical supply, thereby making them practical for northern cities which may need to remove them during the winter.

The number of European cities providing a modern public bicycle program has grown significantly in the past few years, with more than 60 cities operating programs in 2009. The largest of these modern programs, called Velib, was launched in Paris in 2007 with a network of 20,000 bicycles and 1,450 bicycle stations. There are currently two modern public bicycle programs operating in North America, in Washington D.C. and a much larger program, called BIXI, operated by the City of Montreal with 5,000 bicycles in 2009. Another three North American cities are planning to launch public bicycle programs in 2010 (Boston, Chicago and Minneapolis) and several other cities are actively investigating the feasibility of launching similar programs. Minneapolis, for example, is funding a public bicycle program with \$250,000 in funding by the City, a \$1.7 million Federal Highway grant and approximately \$1.0 million in sponsorship funding.

How Would Toronto's Public Bicycle Program Operate?

The public bicycle program would operate more like an extension of public transit rather than a bicycle rental program. The bicycles are intended to be used for one-way trips of less than 30 minutes in duration. Regular users who purchase a membership or "pass" for periods ranging from one month to one year have 24-7 access to the bicycles. For registered members there is no trip fee if the bicycle is returned to a bicycle parking station within 30 minutes. Bicycles can be picked up and dropped off at any bicycle parking station in the system. A rental fee is generally charged for any trip longer than 30 minutes or for trips by unregistered users, who access the system with a credit card.

In order for the program to be successful the customers have to be reasonably assured that a bicycle will be available for pick-up at all times and that a docking space will be available when they arrive at their destination. To provide this high level of service, bicycles and bicycle parking stations must be placed in highly visible locations within the “service area”, generally no more than 300 metres apart. Bicycle docking stations would accommodate anywhere from 11 to 60 bicycles depending on the demand at a particular location.

The first year of the program would launch with 80 bicycle parking stations and 1,000 bicycles across the City's central area. The bicycle stations (and the bicycles locked at the stations) are connected electronically to the program's call centre where all bicycle activity can be monitored in real time. Monitoring of the bicycle fleet throughout the day is essential because the usage patterns at each station will vary. Some stations will naturally have more bicycle pick-ups and others will have more drop-offs at different times of the day or days of the week. Therefore, bicycles will need to be redistributed during the day to ensure that bicycles and bicycle parking spaces are always available at all stations. If a customer arrives at a station with no bicycles available or no space available to drop-off their bicycle, the call centre will extend their time and direct them to the nearest available bicycle station.

A mobile service crew will visit every station and bicycle on a regular basis to ensure a constant high level of maintenance of the bicycle fleet, payment kiosks and bicycle docking hardware. Bicycle repairs that cannot be completed on-site will be transported to the repair shop for servicing. The bicycle dock will enable customers to indicate that a bicycle needs repair (such as a flat tire) that will communicate with the call centre to remove the bicycle from active service and to dispatch service staff.

The BIXI program features a rugged, vandal-resistant bicycle designed for the Canadian climate and a technologically advanced, modular bicycle docking station design that is powered by solar energy and uses wireless communications technology. The BIXI bicycle docking station is completely portable and requires no excavation or electrical work to install, thus eliminating lengthy set-up time and costs. Moreover, because it is completely portable and modular, BIXI bicycle stations may be fully set up or dismantled for relocation in a matter of minutes with minimal disruption to public spaces during installation or removal.

As required by the proposed terms of agreement, the City will also be expected to respond to requests to expand, relocate and add stations to match customer demand and to accommodate planned capital work and emergency work, as needed. Therefore, this report recommends that the General Manager, Transportation Services be authorized to relocate and adjust bicycle station locations, where necessary, in consultation with the Toronto Parking Authority, Parks Forestry and Recreation and other affected parties.

Recommended Financing Model

There are several different operating and financing models for public bicycle programs. Some programs, such as the Paris Velib program, are funded and operated by a private company in exchange for exclusive advertising rights within the city's right-of-way. Other programs are primarily funded through an initial start-up investment by the city with the expectation that the revenues generated by the program (user fees, advertising and sponsorship) will repay the annual operating costs and the initial capital investment over time. For example, the City of Montreal invested several million dollars in research and development to design a unique program suited to Montreal's climate, which requires the bicycle stations to be removed each winter and re-installed in the spring. Montreal also created a not-for-profit agency, Public Bike System Company, as a subsidiary of their municipal parking authority to operate their program and to market the program to other cities. London, U.K. is purchasing a 20,000-bicycle system from PBSC and contracting a local company to operate their program. Other cities, such as Boston and Minneapolis are investing in a smaller "start-up program" and launching their program when they have generated sufficient revenue or financial commitments through sponsorships and user subscriptions.

In keeping with the spirit of Council's direction to develop a "no cost to the City" program, and to minimize the financial risk to the City, Transportation Services is recommending a phased implementation. The first phase of the program would be a demonstration of the system and a marketing campaign launched during Bike Month 2010. During this first phase PBSC and City staff would focus on achieving five project milestones that would trigger the launch of the program.

The five project milestones are:

- \$600,000 in sponsorship funding;
- 1,000 subscription pledges;
- 80 approved bicycle parking station locations;
- Marketing/communications plan in place; and
- PBSC obtaining a loan commitment on terms satisfactory to the Deputy City Manager and Chief Financial Officer.

The project milestones must be achieved by November 30, 2010 to launch the program by May 1, 2011. When the project milestones have been met, the City will provide a loan guarantee (\$4.8 million) to PBSC. In turn, PBSC will secure a loan for an estimated \$4.8 million and commence to manufacture the BIXI equipment for installation in Toronto and establish a local operations group to manage the program. The second phase of the program would be the deployment of 1,000 bicycles and 80 bicycle stations in the City's central area for the first year of operation.

From time-to-time, the City of Toronto provides financial guarantees to non-profit or community-based organizations, which provide important services that could not be provided by the City otherwise. Typically, non-profit organizations can secure a more advantageous

interest rate and credit terms if they have obtained a guarantee from the City. While the City regards a loan guarantee as a financial commitment, there is no direct cost unless the organization defaults on its obligation and the City cannot recover the funds from the remaining assets. The loan guarantee will be recorded as a contingent liability in the City's Financial Statements. To-date, the City has not had to make any loan guarantee payments since no organization has defaulted on a loan guaranteed by the City.

Providing a loan guarantee to Public Bike System Company exposes the City to a relatively low level risk because PBSC, as a subsidiary of Stationnement de Montreal, has the staff, financial resources and an operational capacity to deliver a successful public bicycle program as they are currently doing in Montreal. Public Bike System Company was founded to create, develop and operate Montreal's public bicycle program (BIXI) and will assume a similar role for the City of Toronto. Public Bike System Company controls all aspects of the BIXI system, from the design of the software to the design and manufacture of all system components, including the bicycles and the parking stations.

The City Solicitor has advised that, in light of the terms of the proposed arrangement and the public environmental and health benefits from this proposal, it would be possible for Council to identify the public bicycle program as a municipal capital facility being provided under Section 252 of the City of Toronto Act, 2006 for transportation and recreational purposes. Designation as a municipal capital facility will allow the City to clearly guarantee borrowing in respect of the project.

The City would also share the financial risk of extraordinary loss due to damage, theft and vandalism of the bicycles and the bicycle parking stations. Public Bike System Company would be responsible for the cost of damage, theft and vandalism in an amount up to six percent of the total value of the bicycles and the bicycle stations. The City would be responsible for the annual cost of damage, theft and vandalism to the bicycles and stations exceeding a threshold amount equal to six percent of the total value of the stations and bicycle fleet. Based on the theft and vandalism experience in other cities this is an acceptable risk for the City to assume. For example, the BIXI program in Montreal had a theft and vandalism rate of one percent in the first year of operation.

PBSC will operate the public bicycle program in Toronto for the 10-year term of the agreement between the City and PBSC. At the end of the 10-year agreement the City would assume responsibility for the operation of the program. However, there may be a financial advantage for the City to take over the operations before the 10-year agreement has concluded. For example there may be potential cost saving in assigning some of the operating functions of the program to existing operating divisions. Accordingly, the draft terms of agreement includes a clause that would enable the City to assume responsibility for some or all of the program's operations, at the discretion of the General manager, Transportation Services. Transportation Services will develop a succession plan to assume full control of the operations at the conclusion of the agreement with PBSC or earlier if there is a benefit to the City.

Achieving the Project Milestones

Achieving the project milestones prior to launching the program will minimize the risk of a revenue shortfall in the first year of operations and allow the project to proceed quickly. The business pro forma indicates that the annual operating costs and debt repayment are expected to be funded 60 percent by user fees and 40 percent by sponsor contributions. However, given the limited North American experience with public bicycle programs there is no methodology for confirming the system-user assumptions on which the business pro forma is based. The City and PBSC will launch a marketing and subscription pledge campaign with the goal of receiving 1,000 pledges by November 30, 2010. This represents approximately 12 percent of the number of subscribers required to break even in the first year of operations, as projected in the business pro forma.

With respect to sponsorships, PBSC and the City will work together to solicit a primary sponsor and secondary sponsors with a goal of securing financial commitments in the amount of \$600,000. This would represent approximately 50 percent of the required operating budget to sustain a 1,000-bicycle program. Sponsorships can include identification of sponsors on the bicycles and stations (e.g. by logo), website and other media, but no advertising by the sponsors or other third parties will be permitted within the street right-of-way.

Although the public bicycle program will be operated by PBSC, the City must play a key role in the implementation and ongoing marketing and support for the service. Public Bike System Company and the City will jointly determine the locations of the bicycle parking stations prior to the launching of the service. The City will be responsible for making the necessary arrangements and obtaining permits and authorizations, and the related fees and other charges, for securing station locations. Bicycle parking stations may be placed in a variety of locations such as city parks, public squares and the street right-of-way, including on the roadway. In the event that city property is not available or does not provide a satisfactory location, agreements with private property owners may be negotiated by PBSC, subject to the approval of the City.

In the first year the program would deploy 1,000 bicycles and 80 bicycle stations with a capacity to securely park 1,500 bicycles. The bicycle station locations will be an important feature of the marketing campaign because they provide sponsorship opportunities (e.g. sponsors would be able to sponsor a specific station). Further, prospective subscribers will be influenced by the degree to which the station locations serve their needs. Therefore, the bicycle station locations must be secured well in advance to support the marketing and subscription pledge campaign. Full support from City Divisions and relevant City boards, agencies and commissions, including but not limited to: Transportation Services, Parks, Forestry and Recreation, the Toronto Parking Authority and Toronto Transit Commission will be critical to securing sufficient and convenient station locations.

Public Bike System Company and the City will be jointly responsible for advertising and promoting the public bicycle program. PBSC will design and operate a website to promote the service and to provide a means to purchase subscriptions. Under the terms of the agreement the City must, subject to availability, provide to PBSC reasonable access free of

charge to means by which the public bicycle program may be advertised and promoted on facilities and in media to which the City can grant access including, but not limited to, the City's website, newsletters, bulleting boards, direct mailings and signage. The promotional efforts will also include developing advertising and sponsorship agreements with third parties, subject to approval by the City.

This report has been prepared in consultation with Legal Services, Corporate Finance, Parks, Forestry and Recreation, Insurance and Risk Management and the Toronto Parking Authority.

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ATTACHMENT:

Public Bicycle Program Proposed Terms of Agreement

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Public Bicycle Program Proposed Terms of Agreement

1. **Project:** Provision by Public Bicycle System Company (PBSC) of a public bicycle program comprised of a 1,000 bicycles and 80 bicycle parking stations (the “**System**”) located on City property, proposed to be launched May 1, 2011.
2. **Term:** Includes preliminary “milestone” period and 10 years, commencing on November 30, 2010 (the “**Term**”).
3. **Key Milestones:** The following milestones must be achieved by November 30, 2010 (unless waived or extended by agreement of the parties) in order to trigger the launch of the program on May 1, 2011:
 - Sponsorship funding targets - \$600,000 for a 1,000 bicycle program for the first year of the project;
 - 1000 Subscription pledges;
 - 80 approved bicycle parking station locations;
 - Marketing/communications plan in place; and
 - PBSC to obtain loan commitment on terms and conditions satisfactory to the City, including an option to permit the City to assume the loan and pay it off early without penalty.
4. **Launch:** Upon achievement of the milestones, PBSC and the City shall enter into the loan agreement/guarantee and PBSC shall commence manufacture of the bicycles and Stations required for the project.
5. **Loan Guarantee:** The City would be required to provide a loan guarantee to PBSC for the start-up capital investment (approximately \$4.8M).
6. **Operating Costs:** PBSC shall be responsible for any operating cost shortfall where operating costs exceed the amounts set out in its pro forma, provided that the City shall be responsible for the amount of the annual cost of damage/vandalism to the bicycles and stations exceeding a threshold amount equal to 6% of the total value of the stations and bicycle fleet (total cost estimated at \$3.7 million; threshold amount estimated at \$222,000. Operating costs are deemed to include debt service.
7. **Monthly Reporting:** PBSC agrees that all gross revenues and costs related to the provision, installation, maintenance, repair, replacement and operation of the System, shall be reported to the City on a monthly basis and shall be reconciled at the end of the operating year against the gross revenues received.
8. **PBSC Incentive:** In the event that annual operating costs (including debt service) are less than the amounts set out in the proforma, PBSC shall, subject to its obligations to properly operate and maintain the system, be entitled to retain such amounts as an incentive. Where operating costs are reduced as a result of an in-kind contribution by

the City, any additional revenue surplus generated by such reduction shall be shared as set out in Section 22 ("Allocation of Revenue Surplus").

9. **Future Price Increases:** PBSC guarantees that the pricing for bicycles and Stations (including docks) beyond the quantities specified for the program start-up in 2011 shall not increase in future operating years beyond an increase for materials as required by the annual increase in the Producer Price Index (Metal Fabricated Products sub-index).
10. **Operating Surplus:** Beyond the first year, a portion of the operational surpluses as mutually agreed will be used to expand the program incrementally as set forth below.
11. **Service Area:** Phase One of the project would be at locations placed approximately 300 meters apart in a proposed service area centred on the downtown core of the City (the "Service Area").
12. **Number of Bicycle and Stations for the Program Launch in 2011:**
 - 1,000 bicycles shall be supplied for the operation of the System for the program start-up in 2011; and
 - 80 automated bicycle rental stations ("Stations"), including 1500 docks, will be installed in the Service Area during Phase One.
13. **Equipment Specifications:** The bicycles and Stations shall be produced according to PBSC's standard specifications and operated according to PBSC's standard service levels to be defined in the agreement.
14. **Locations:** The locations of the Stations will be as jointly agreed by the City and PBSC according to criteria as agreed to by the parties. The City agrees that it shall be responsible for making all appropriate arrangements and obtaining all permits and authorizations (and shall assume all related fees, costs, expenses, and other charges) so that the Stations may be lawfully installed and operated at the Locations on City-owned property within the Service Area prior to the Launch Date as approved by the General Manager. The City may where requested by PBSC also arrange for locations on private property on terms satisfactory to the General Manager of Transportation Services. PBSC shall, upon request, provide the City with whatever information may be required for the purposes of applying for and securing such permits or authorizations.
15. **Exclusivity:** For the duration of the agreement to be entered into between the parties, the City shall not permit another bike-share system to be installed on City property, except with the consent of PBSC.
16. **Branding:** The System shall be operated under the brand "BIXI Toronto".
17. **Sponsorship/Advertising:** The placing of third party advertising, including advertising showing the goods or services of a sponsor, on the bicycles or the

Stations, shall not be permitted within the public highway (including sidewalks and boulevards). Only sponsorship identification (i.e. name or logo) in dimensions and locations approved by the City shall be permitted on the bicycles or Stations. The design, size or scale of the bicycles or Stations shall not be modified or enlarged for the purposes of accommodating advertising or sponsorship identification. The City will approve all sponsors and proposed advertising.

- 18. PBSC Responsibilities:** PBSC Shall, during the Term of the Agreement:
- Manufacture the bicycles and Stations and operate the System in accordance with the specifications and requirements of the agreement;
 - Provide the City with all required licenses, software and support services, including the inventory/maintenance tracking system, required for future operation of the System by the City in the event that it assumes operation of the System itself;
 - Operate and maintain the System in good and proper working order, including maintenance, repair and cleaning, all in accordance with applicable laws;
 - Bear all costs related to the provision, installation, maintenance, repair, replacement and operation of the System, save as otherwise explicitly provided;
 - Perform emergency maintenance and relocate Stations as required by the City;
 - Comply at all times with the City's Workers' Rights, Fair Wage, Re-Employment of Former City Employees and Non-Discrimination policies;
 - Collect and properly account for all user fees and subscriptions as well as sponsorship and permitted advertising revenues (i.e. "**Gross Revenues**"); and
 - Contract as necessary for the operation of the System (e.g. hire staff, arrange space, provide service and collect user fees and subscriptions), provided that subcontractors shall be approved by the General Manager of Transportation Services.
- 19. City Responsibilities:** The City shall:
- Approve locations for approximately 80 Stations for the launch prior to November 1, 2010;
 - Approve and secure alternate locations in response to requests for changes to Station locations by PBSC based on operational feedback and other factors as agreed by the parties; and
 - Assist with advertising, promotion and sponsorship of the service.
- 20. City Expansion of the Program:** The City shall:
- Have the option, on reasonable notice where capital funds are available, to require PBSC to expand the System on terms and conditions agreeable to the City and PBSC.
- 21. Future City Assumption of the Program:** The City shall:
- Have the option to pay off or assume the loan and take on the debt responsibility, thereby ending PBSC's operating contract according to a transition plan as agreed by the parties;

- In the event that the City is required to make payment under the Loan Guarantee, it shall have the right to assume the loan and terminate its agreement with PBSC (provided that this shall not otherwise entitle the City to claim damages against PBSC); and
 - Have the right to require PBSC to continue to provide required support services, including use of the PBSC central call centre and the supply of technical support, training and replacement parts, at a cost no greater than that charged to PBSC's other customers, and provide such proprietary information in the form of documentation and training (subject to execution of a non-disclosure agreement by the City if required by PBSC) to permit the City or a third party retained by the City to operate and maintain the System.
- 22. Allocation of Revenue Surplus:** In the event of a revenue surplus in any year during the Term of the agreement, the surplus would be split 50/50 between the parties, with the PBSC's share spent as it sees fit and the City's share to be invested in the expansion of the program or debt payment, at the discretion of the General Manager, Transportation Services. Despite the foregoing, in the event that the City is required to make any debt payment but chooses to continue its agreement with PBSC, it shall be entitled to require that any revenue surplus be paid to the City up to the amount of previous debt payment contribution made by the City.
- 23. City Loan/Annual Reporting Requirements:**
- Loan term shall not exceed the term of the Agreement;
 - PBSC shall provide the City with annual audited financial statements for the duration of the Agreement and the Loan Guarantee in a form and content satisfactory to the Deputy City Manager and Chief Financial Officer;
 - PBSC shall establish and maintain books of account and records of all transactions relating to the System, including maintenance, revenues, advertising and sponsorship, in accordance with generally accepted accounting practices, and the City shall be entitled to audit such records; and
 - PBSC and the City shall be responsible for payment of their own costs (including legal costs) associated with the negotiation and finalization of the Loan Guarantee and other agreements as required.
- 24. Assignment:** PBSC may not assign the Agreement without the prior written consent of the City, provided that consent shall not be required for assignment to an affiliate of PBSC.
- 25. Ownership:** PBSC will, during the term of the Agreement, own the Phase I public bicycle infrastructure (bicycles and bicycle stations) acquired through the initial capital loan, but the ownership of all public bicycle infrastructure will be transferred to the City upon the expiry or termination of the Agreement and the assumption by the City of the operation of the System and capital loan.

26. **General Manager's Authority:** approvals by the “City” are deemed to mean approval by the General Manager of Transportation services.
27. **Insurance:** The Agreement will contain terms relating to adequate insurance coverage, to the satisfaction of the Deputy City Manager and Chief Financial Officer.
28. **Other Commercial Terms:** The Agreement will contain other terms, including mutual indemnities, termination, assignment, manner of notice, waiver provisions, interpretation, etc. as may be satisfactory to the Deputy City Manager and Chief Financial Officer and the City Solicitor.