

**ASSET PURCHASE AMENDMENT
TO PROCUREMENT AND GRANT AGREEMENT BETWEEN PUGET SOUND BIKE
SHARE AND THE CITY OF SEATTLE FOR BIKE SHARE STATIONS**

This Amendment (this "Amendment") is made and entered into as of [_____], 2016 (the "Effective Date"), by and between PUGET SOUND BIKE SHARE d/b/a PRONTO CYCLE SHARE, a Washington non-profit corporation ("Pronto") and THE CITY OF SEATTLE, represented by the CITY PURCHASING AND CONTRACTING SERVICES OF THE DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES AND SEATTLE DEPARTMENT OF TRANSPORTATION (collectively, "City", and each of City and Pronto, a "Party" and together the "Parties").

BACKGROUND

A. Pronto and City are parties to that certain Procurement and Grant Agreement between Puget Sound Bike Share and the City of Seattle for Bike Share Stations, made and effective as of February 28, 2014 (the "Agreement") pursuant to which The City collaborated with Pronto to launch a bike share program, the City paid \$1,000,000 to Pronto which was reimbursed through a Federal Transit Administration Grant (the "Grant") and the City agreed to purchase the 17 bike stations from Pronto.

B. Pronto is currently in the business of operating a bike share program in the City of Seattle and the City wishes to purchase the bike sharing assets and has agreed to commit up to \$5 million to purchase new stations for the bike share program by 2017, subject to appropriation and proviso;

C. The parties wish to amend the Agreement to provide terms for Pronto's sale to City, and City's purchase from Pronto, of the rights of Pronto to the Purchased Assets (as defined herein), subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. **Purchase and Sale.**

1.1 **Purchase and Sale of Assets.** Subject to the terms and conditions set forth herein, Pronto shall sell, assign, transfer, convey and deliver to City, and City shall purchase from Pronto, all of Pronto's rights, title and interest in the assets set forth on Exhibit A attached hereto (the "Purchased Assets"), free and clear of any mortgage, pledge, lien, charge, security interest, claim or other encumbrance ("Encumbrance"), *provided that* the Purchased Assets shall not include any cash on hand at the Closing (the "Excluded Assets").

1.2 **Purchase Price.** The full, final, aggregate purchase price for the Purchased Assets shall be an amount equal to: [\$_____] (the "Purchase Price"). City shall pay

the Purchase Price to Pronto at the Closing (as defined herein) in cash or other immediately available funds.

1.3 Allocation of Purchase Price. Pronto and City agree to allocate the Purchase Price among the Purchased Assets for all purposes (including tax and financial accounting) in accordance with the allocation schedule set forth on Exhibit B attached hereto. City and Pronto shall file all tax returns (including amended returns and claims for refund) and information reports in a manner consistent with such allocation.

2. Closing.

2.1 Closing. The closing of the transactions contemplated by this Amendment (the "Closing") shall take place as soon as reasonably practicable after all of the conditions in Section 2.2 are satisfied or waived but in no event later than _____ (the "Closing Date") at the offices of Miller Nash Graham & Dunn, 2801 Alaskan Way, Suite 300, Seattle, WA 98121, or such other time and place as the Parties mutually agree. The consummation of the transactions contemplated by this Amendment shall be deemed to occur at 12:01 a.m. on the Closing Date.

2.2 Conditions to Closing.

(a) Conditions to City's Obligation to Close. City's obligations under this Amendment shall be subject to Pronto's fulfillment (or City's waiver) of each of the following conditions at or prior to Closing:

(i) Pronto shall deliver to City the following: (A) an executed signature page to this Amendment; (B) a duly executed bill of sale in the form set forth in Exhibit C hereto (the "Bill of Sale"), transferring the Purchased Assets to City; and (C) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to City, as may be required to give effect to this Amendment.

(ii) All of the representations and warranties of Pronto shall be true and correct as of the Closing Date.

(iii) There shall have been no material breach by Pronto in the performance of any of its covenants and agreements contained herein to be performed prior to the Closing Date.

(b) Conditions to Pronto's Obligation to Close. Pronto's obligations under this Amendment shall be subject to City's fulfillment (or Pronto's waiver) of each of the following conditions at or prior to Closing:

(i) City shall deliver to Pronto the following: (A) an executed signature page to this Amendment; and (B) the Purchase Price.

(ii) The City shall commit up to \$5,000,000 to the expansion of bike share in and around Seattle, subject to appropriation and proviso.

(iii) All representations and warranties of City shall be true and correct as of the Closing Date.

(iv) There shall have been no material breach by City in the performance of any of its covenants and agreements contained herein to be performed prior to the Closing Date.

3. **Representations and Warranties of Pronto.** Pronto represents and warrants to City, as of the date hereof and as of the Closing Date, as follows:

3.1 **Title.** Pronto has, and shall deliver to City at Closing, good and marketable title to the Purchased Assets, free and clear of any Encumbrance or other restriction on transfer.

3.2 **Condition of Assets.** The Purchased Assets are in good condition and are adequate for the uses to which they are being put, and none of such Purchased Assets are in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

3.3 **Compliance with Laws.** Pronto has and shall until Closing, conduct its business in compliance with all applicable statutes, rules, regulations, permits, licenses and similar requirements of any applicable government entity or court.

4. **Representations and Warranties of City.** City represents and warrants to Pronto, as of the date hereof and as of the Closing Date, as follows:

4.1 **No Violations.** Neither the execution nor the delivery by City of this Amendment, or any other document or agreement contemplated by it, will constitute any violation or breach of City's Charter or of the provisions of any other agreement to which City is a party. City is not required to give notice to, make a filing with or obtain the authorization, consent or approval of any third party, including, without limitation, any governmental entity or court, in order for the Parties to consummate the transactions contemplated by this Amendment.

5. **Further Assurances.** Following the Closing, each of the Parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Amendment and the documents to be delivered hereunder.

6. **Covenants.**

6.1 **Agreement.** The Parties agree that immediately after Closing, the Agreement shall be amended to incorporate the terms of this Amendment without any action on the part of either Party. In the event of a conflict between this Amendment and the Agreement, this Amendment shall control.

6.2 **Wind-Up and Dissolution of Pronto.** Promptly after Closing, Pronto shall take all action necessary to wind-up and dissolve Pronto according to applicable law, including,

but not limited to (i) adopting a consent to dissolve in accordance with its organizational documents, (ii) paying all outstanding debts, obligations and liabilities, and distributing any remaining assets that are not Purchased Assets, (iii) receiving a revenue clearance certificate from the Washington Department of Revenue, (iv) filing articles of dissolution with the Washington Secretary of State, (v) providing the Washington Attorney General with notice of such dissolution, and (vi) notifying the Internal Revenue Service of its dissolution in connection with filing Pronto's final Form 990.

6.3 Post-Closing Adjustment. The Parties agree that in the event Pronto has any cash on hand remaining from the Excluded Assets (such amount, a "Dissolution Excess") after it has wound-up and dissolved its business and received all required certificates and approvals and all relevant waiting periods have expired pursuant to Section 6.2 of this Amendment and applicable law, such Dissolution Excess, if any, shall be delivered to the City and become a "Purchased Asset" for purposes of this Amendment.

7. Miscellaneous.

7.1 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Washington without regard to its conflict of law principles. The Superior Court of King County, situated in Seattle, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Amendment.

7.2 Entire Agreement. The Agreement as amended by this Amendment, together with all related exhibits and schedules hereto and all documents required to be delivered hereunder, constitutes the sole and entire agreement of the parties to this Amendment with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. All representations, warranties, covenants and agreements contained herein shall survive the Closing.

7.3 Amendment and Modification. This Amendment may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

7.4 Severability. If any term or provision of this Amendment is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Amendment or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Amendment so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

7.5 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth on the signature page hereto (or to such other address that may be designated by the receiving Party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all

fees pre-paid), e-mail of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Amendment, a Notice is effective only (a) upon receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

7.6 Counterparts:. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Amendment.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

**PUGET SOUND BIKE SHARED d/b/a
PRONTO CYCLE SHARE:**

THE CITY OF SEATTLE:

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: City Purchasing and Contracting
Director

Address: _____

Address: _____

Email: _____

Email: _____

By: _____
Print Name: _____
Title: Seattle Department of Transportation
Director

Address: _____

Email: _____

EXHIBIT A
PURCHASED ASSETS

EXHIBIT B
ALLOCATION

[Insert Allocation Schedule]

EXHIBIT C

BILL OF SALE

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, PUGET SOUND BIKE SHARE d/b/a as PRONTO CYCLE SHARE ("Pronto"), does hereby grant, bargain, transfer, sell, assign, convey and deliver to THE CITY OF SEATTLE ("City"), all of its right, title and interest in and to the Purchased Assets, as such term is defined in the Asset Purchase Amendment, dated as of [DATE] (the "Purchase Amendment"), by and between Pronto and City, to have and to hold the same unto City, its successors and assigns, forever.

City acknowledges that Pronto makes no representation or warranty with respect to the assets being conveyed hereby except as specifically set forth in the Asset Purchase Amendment.

Pronto for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of City, Pronto will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required by City in order to assign, transfer, set over, convey, assure and confirm unto and vest in City, its successors and assigns, title to the assets sold, conveyed and transferred by this Bill of Sale.

IN WITNESS WHEREOF, Pronto has duly executed this Bill of Sale as of [DATE].

PUGET SOUND BIKE SHARED d/b/a as
PRONTO CYCLE SHARE

By _____
Name:
Title: