

Attachment F
Lincoln Bike Share
Sponsorship Agreement
City of Lincoln and Lincoln Community Foundation

16R-74

Introduce: 4-18-16

RESOLUTION NO. A- 89652

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

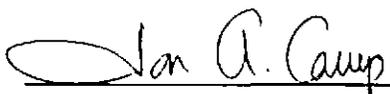
2 That the Sponsorship Agreement between Lincoln Community Foundation and the

3 City of Lincoln for funding of the Bike Share Program in the amount of \$80,000.00, upon

4 the terms and conditions as set forth in said Sponsorship Agreement, is hereby approved

5 and the Mayor is authorized to execute the same on behalf of the City of Lincoln.

Introduced by:



Approved as to Form & Legality:

AYES: Camp, Christensen, Eskridge,
 Fellers, Gaylor Baird, Raybould;
 NAYS: None; ABSENT: Lamm.



City Attorney

Approved this ^{5th}~~28~~ day of April, 2016:



Mayor

ADOPTED

APR 25 2016

BY CITY COUNCIL

CITY OF LINCOLN REQUEST FORM

Submit one original to City Clerk

Please check (✓, ✖) one, request for: ___ Ordinance X Resolution

Bill No. 16R-74

Date: 4/7

DESIRED DOCKET DATE: April 18, 2016

Introduction: 4/18

REQUEST MADE BY: David R. Cary, Director of Planning

Public Hearing: 4/25

DEPARTMENT: Planning

FILED

APR 06 2016

EMERGENCY MEASURE REQUIRED: X No ___ Yes
IF EMERGENCY, GIVE REASON (See Art. 6, Sec. 2 of Charter):

CITY CLERK'S OFFICE

DIRECTOR'S EST'D TIME/TESTIMONY:
___ 0 - No Hearing (Consent Agenda) X 1 - Short ___ 2 - Average

___ 3 - Long

REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION:

Request for Resolution for Council action on the proposed **SPONSORSHIP AGREEMENT BETWEEN LINCOLN COMMUNITY FOUNDATION AND THE CITY OF LINCOLN** for funding of the Bike Share Program in the amount of \$80,000.

On February 29, 2016, the City Council voted 7-0 to approve the Bike Share Agreement between the City of Lincoln and the Nebraska Department of Roads, adopted by Resolution No. A-89518.

ASSOCIATED REQUESTS: The following applications are associated requests and should be scheduled for hearing at the same time in the following sequence:

- Bike Share Sponsorship Agreement - University of Nebraska-Lincoln
- Bike Share Sponsorship Agreement -Blue Cross Blue Shield
- Bike Share Sponsorship Agreement - Lincoln Community Foundation
- Bike Share Sponsorship Agreement - Spreetail
- Adoption of the Nebraska Department of Road's Sponsorship Policy
- Create a Bike Share Special Reserve Fund

REQUESTOR: ___ DOES X DOES NOT WISH TO REVIEW AND APPROVE THIS ORDINANCE PRIOR TO ITS INTRODUCTION

David R. Cary, Jr.
DIRECTOR'S SIGNATURE

4/7/2016
DATE

TO BE USED BY THE FINANCE DEPARTMENT

BUDGET REVIEW
ACCOUNT NUMBER AND APPROPRIATE BALANCES
FUND AVAILABILITY APPROVED

DATE:
DATE:
DATE:

FINANCE DIRECTOR'S SIGNATURE DATE

FACTSHEET

TITLE: Resolution adopting proposed
**AGREEMENT REGARDING THE LINCOLN BIKE
SHARE PROJECT BETWEEN THE CITY OF
LINCOLN, NEBRASKA AND THE LINCOLN
COMMUNITY FOUNDATION** requested by the
Director of Planning.

SPONSOR: Planning Department

BOARD/COMMITTEE:

STAFF RECOMMENDATION: Approval

FINDINGS OF FACT:

1. This is a request to adopt an agreement between the City of Lincoln and Lincoln Community Foundation for funding of the Bike Share Program in the amount of \$80,000.
2. History:
 - Conducted a day-long workshop in 2014 in conjunction with the Association of Students of University of Nebraska to educate key stakeholders on Bike Share and other programs across the country.
 - The Lincoln-Lancaster County Planning Department applied to the NDOR for a Congestion Mitigation and Air Quality Grant (CMAQ) in the amount of \$600,000, with total project costs of \$750,000.
 - The Planning Department was awarded the total requested funding amount for federal Fiscal Year 2016.
 - The MPO Officials' Committee amended the Transportation Improvement Program (TIP) to include the Bike Share Project in November 2015.
 - The Planning Department has secured local partnerships for the required local match of the CMAQ grant, in the amount of \$150,000. In addition to the receiving the necessary match funds, an additional \$223,334 in funding has been allocated towards the operations and maintenance of the Bike Share Project with the sponsorship funds.
 - On February 29, 2016, the City Council voted 7-0 to approve the Bike Share Agreement between the City of Lincoln and the Nebraska Department of Roads, adopted by Resolution No. A-89518.
3. The Bike Share Project's CMAQ Grant and combined local matching funds in the amount of \$750,000 will be used to design and implement the first phase of the public bike sharing project, including equipment, technology/software, and installation/related services.
4. Major points of proposed agreement:
 - Sponsorship agreements for the partial funding match of 11 stations (\$55,000) and future partial operations/maintenance costs for 1 year on 11 stations (\$25,000).
 - Spreetail is providing the other half of the match for the 11 stations and partial funding for 2 years of operations/maintenance costs on 11 stations.

FACTSHEET PREPARED BY: Geri Rorabaugh

DATE: April 12, 2016

REVIEWED BY: David Cary, Director of Planning

DATE: April 12, 2016

SPONSORSHIP AGREEMENT

This Sponsorship Agreement (the "Agreement") is made and entered into by and between the Lincoln Community Foundation ("Sponsor") and the City of Lincoln, Nebraska, a municipal corporation, ("City") (collectively the "Parties") for sponsorship of the City's public Bike Share Program ("Bike Share Program").

WHEREAS, the City has undertaken the development of a Bike Share Program to be operated within the corporate limits of the City; and

WHEREAS, the Bike Share Program will be made available to the public at large to serve as an alternative mode of transportation; and

WHEREAS, implementation of the Bike Share Program will promote a form of transportation that can have the effect of reducing the number of motor vehicles on the streets and thereby extend the life of valuable public infrastructure; and

WHEREAS, the City has been awarded Congestion Mitigation and Air Quality funds by the United States Federal Highway Administration that requires the City to provide matching funds in the amount of \$150,000.00; and

WHEREAS, it is the City's intention to raise sufficient funds through sponsorships of the Bike Share Program to be able to pay the costs associated with maintaining and operating of the Bike Share Program and infrastructure for a period of three years while making efforts to increase the number of users of the Bike Share Program; and

WHEREAS, the Sponsor desires to encourage and promote the Bike Share Program by financially contributing to the Program for one year.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and intending to be legally bound hereby, the City and Sponsor agree as follows:

1. **Term of Agreement.** This Agreement shall commence as of the date when the Bike Share Program is made available for the public to use ("Effective Date") and shall continue in full force and effect for one year commencing on the Effective Date unless this Agreement is terminated earlier pursuant to the provisions hereof.
2. **Sponsorship.** From and after the Effective Date, the Sponsor shall enjoy the benefits and obligations described herein that are provided to sponsors of the Bike Share Program.
3. **Sponsorship Amount.** Sponsor will make a one-time contribution of Eighty-Thousand and NO/100 Dollars (\$80,000.00) to the City. In recognition of its contribution, Sponsor is hereby granted sponsorship rights and privileges pursuant to the terms of this Agreement. Sponsor shall make said contribution to the City upon execution of this Agreement by the Parties.
4. **Annual Reporting.** Within sixty (60) days of the one year anniversary of the Effective Date, the City shall report in writing to the Sponsor the total number of

persons who used the Bike Share Program over the course of the previous year, the number of trips made, and the revenue generated by the Bike Share Program over the course of said year.

5. **Sponsorship Rights.** In consideration of the the Sponsor's contribution described in Section 3. above are the following rights and privileges are conveyed upon the Sponsor:
 - a. *Sponsor shall be recognized as a sponsor of the Bike Share Program on eleven (11) Bike Share stations. This shall include acknowledgment of the Sponsor's contribution to the Bike Share Program on permanent fixtures and improvements at the identified stations. The rights and privileges do not include any right to place Sponsor's branding materials on any kiosk or other structure placed at the station for the purpose of allowing riders to pay for use of the bikes. The Sponsor and City shall agree upon designs for the Sponsor's logo and branding materials including, but not limited to, sizes, coloring, lettering style, and any graphic art standards for usage of the Sponsor's logo prior to placing said items on the sponsored station.. The logo shall consist of the graphic design shown on Exhibit A, which is included herewith and incorporated into this Agreement by this reference. Sponsor is acknowledges, understands, and agrees that any and all acknowledgments of Sponsor's contribution shall comply with Nebraska Department of Roads and the Federal Highway Administration rules and restrictions for sponsorship acknowledgments. Further, Sponsor agrees that this contribution is made of its own free will and not as consideration for marketing rights associated with the Bike Share Program.*
 - b. **Bike Sponsorship.** *Sponsor shall be entitled to have one bicycle decal application with the Sponsor's logo placed on each of seventy-four (74) bikes that are part of the overall Bike Share system. Sponsor acknowledges and agrees that the decals of other entities and organizations sponsoring the Bike Share Program may also be placed on the bicycles in addition to the decal of the Sponsor, but in no way shall the decals of other entities interfere with or conceal the visibility of Sponsor's decal.*
 - c. **Bike Share Program Website.** *Any website created and maintained for the purpose of promoting and providing information regarding the Bike Share Program shall include a prominent link to the Sponsor's website as well as an acknowledgement that Sponsor has provided financial support for the Bike Share Program. Furthermore, the Sponsor's Logo shall be included on any social media account used by the City to promote the Bike Share Program.*
6. **Rights to Sponsor Trademarks and Trade Names.** The use by the City of the Sponsor's logo and any other of Sponsor's trademarks, trade names, and logos under the terms and conditions of this Agreement shall inure solely and exclusively to the Sponsor and neither the City nor the Bike Share Program shall acquire any goodwill or other interest in them. Sponsor hereby grants to the City a limited license to use the logo shown on Exhibit A as well as any other related trademarks, trade names, or logos as subsequently approved and agreed upon by the Sponsor and the City for the sole and limited purpose of identifying and promoting the Bike Share Program. Further, Sponsor affirmatively represents to the City that the logo depicted in Exhibit

A is Sponsor's official corporate logo and is not a secondary logo of the Sponsor used primarily for marketing purposes. Upon termination of this Agreement or receipt by the City, or its successor in interest, of a written request from Sponsor to cease the use of such trademarks, trade names, and/or logos, the City, or its successor in interest shall cease all such use in accordance with the terms and provisions of the written request from the Sponsor.

7. **Infrastructure Construction.** Construction of any physical infrastructure necessary to implement the Bike Share Program shall be the sole and separate responsibility of the City.
8. **Binding Effect.** This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their successors and assigns.
9. **Indemnification by Sponsor.** Subject to the terms and conditions of this Agreement, Sponsor hereby agrees to indemnify, defend, and hold harmless the City, its elected officials, employees, agents, volunteers, and their respective successors and assigns from and against all costs, damages, liabilities, claims, causes of action, and expenses (including reasonable attorney's fees and expenses) of any kind or nature resulting from the content of any signage, panels, or any messages or promotions displayed in the form furnished and/or approved by Sponsor, including without limitation, claims, demands, or litigation alleging that said signage, panels, promotions, or messages are defamatory, constitute illegal competition, or unfair trade practice, contain infringement of trademarks or trade names, or constitute a violation of rights of privacy or infringement of copyrights and proprietary rights (collectively "advertising claims"). If the City learns of any advertising claim, the City shall give Sponsor prompt notice in writing of such claim. Sponsor shall, on a regular basis, provide the City with full and complete information relating to such advertising claims and shall not enter into any settlement or compromise prior to receipt of written consent of the City. The obligations of the Sponsor under this Section shall survive the termination or expiration of this Agreement until all such claims are resolved and all relevant statutes of limitation have expired.
10. **Indemnification by the City.** Subject to the terms and conditions of this Agreement, the City hereby agrees, to the extent permitted by law, to indemnify, defend, and hold harmless the Sponsor, its subsidiaries and affiliates, officials, employees, agents, and volunteers and their respective successors and assigns from and against all costs, damages, liabilities, claims, causes of actions, and expenses (including reasonable attorney's fees and expenses) arising out of or resulting from performance of this Agreement, that results from any claim for damage, including without limitation, bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the negligent act or omission of the City, or anyone for whose acts it may be liable. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This Section shall survive termination or expiration of this Agreement.
11. **Termination.** Each of the following shall constitute a breach and material default of this Agreement:

- a. Either Party's failure to correct, remedy, or cease a failure or violation of this Agreement for which the other Party provides notice as provided in Section 14. below;
- b. Either Party, by the actions of any of its officers or officials has committed, or shall commit, any act, tending to shock, insult, or offend the public in a way that materially and adversely affects the operation or use of the Bike Share Program or materially and adversely impacts the number of people using the Bike Share Program;

12. **Termination for Failure to Correct, Remedy, or Cease Failure or Violation of Agreement within Reasonable Time After Receipt of Notice.** In the event either Party to this Agreement fails to perform any obligation hereunder or violates any provision of this Agreement, the other Party may give written notice to such Party of such failure and demand the performance of such Party's obligations hereunder or compliance with the terms and conditions hereof within a reasonable time after the date of such notice, which period shall not exceed sixty (60) days. In the event the Sponsor is the Party receiving notice of such failure or violation, and Sponsor does not correct, remedy, or cease such failure or violation within the reasonable time specified in such notice, the City may terminate this Agreement, whereupon all obligations of the Parties hereto that had not been incurred as of the effective termination date shall terminate. In the event the City is the Party receiving such notice, Sponsor may either (i) terminate this Agreement and receive any refund to which it may be entitled under Section 15 below; or (ii) if such failure on the part of the City can be cured by expending funds to clean up, repair, maintain or replace an item that is the responsibility of the City, Sponsor may, in its sole discretion, advance and pay for such item and the costs expended by the Sponsor for such item shall become due and owing by the City to the Sponsor within thirty (30) days after the Sponsor invoices the City for such item.
13. **Termination for Convenience** City is entitled to remove, reconstruct, relocate, or otherwise alter any and all structures upon which the Sponsor's participation in the Bike Share Program is acknowledged if the City, at its sole discretion, determines that the structure(s) in question or the Bike Share Program generally poses significant safety concerns in the community or interferes with the free and safe flow of traffic. Likewise the City may at its sole discretion terminate this Agreement if it determines that the Bike Share Program or the Sponsor's participation in said program results in (1) significant public safety concerns; (2) interference with the free and safe flow of traffic; or (3) is no longer in the public interest.
14. **Force Majeure.** In the event that either Party to this Agreement is unable to perform its obligations hereunder or to enjoy any of its benefits because of the substantial damage or destruction of the Bike Share Program infrastructure due to any cause, including a natural disaster or action or decree of a governmental body with appropriate jurisdiction (hereinafter referred to as a "Force Majeure Event"), the Party that has been so affected shall immediately give written notice to the other Party of such fact and shall take all reasonable steps to resume its performance. Upon receipt of such notice, each Party's obligations hereunder shall be suspended for the period of such Force Majeure Event. At the sole option of the Sponsor, this Agreement shall be automatically extended for a period equal to the number of days during which the

Bike Share Program was closed due to a Force Majeure Event. If the City is unable to fulfill its obligations due to a Force Majeure Event and chooses not to continue operation of the Bike Share Program, the Sponsorship Fee paid by Sponsor shall be prorated to the date of the Force Majeure Event and refunded to the Sponsor or its successor in interest or assignee as appropriate.

15. **Nondiscrimination.** Sponsor shall comply with any and all applicable federal, state, and local laws prohibiting discrimination based on race, religion, color, age, sex, family status, and/or national origin. Further Sponsor shall not denigrate groups based on race, religion, color, age, sex, family status, or national origin.
16. **Notices.** Any notice or communication to be given by one Party to the other under this Agreement must be in writing; and if given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the third business day following the date on which a registered or certified letter containing such notice or communication, properly addressed, with postage prepaid, is deposited in the United States mail, but if given otherwise than by registered or certified mail, it shall be deemed to have been given when received by the Party to whom it was addressed. Such notices or communications shall be delivered or sent to the following respective addresses or to such other addresses as the parties, from time to time, may specify in writing:

To the City: Mayor of the City of Lincoln
555 South 10th Street
Lincoln, Nebraska 68508

With a copy to:

City Attorney
City of Lincoln
555 S. 10th Street, Suite 300
Lincoln, Nebraska 68508

Planning Department
Attn: Director
555 S. 10th Street
Lincoln, Nebraska 68508

To the Sponsor: Lincoln Community Foundation
215 Centennial Mall South, Suite 100
Lincoln, Nebraska 68508

With a copy to:

Sarah Peetz
Vice President For Community Outreach
215 Centennial Mall South, Suite 100
Lincoln, Nebraska 68508

17. **Amendments.** No addition to, deletion from, or other modification of any of the provisions hereof shall be valid unless made in writing and signed by an authorized representative of each of the parties hereto.
18. **Applicable Law; Venue.** This Agreement shall be construed under the laws of the State of Nebraska, without regard to the conflict of law principles. The parties agree that venue for any legal action arising out of this Agreement shall be proper in a court of competent jurisdiction in Lancaster County, Nebraska and each party waives any objection to such venue.
19. **Relationship of the Parties.** Nothing in this Agreement shall be construed to create a partnership or joint venture, nor to authorize any Party hereto to act as an agent for or representative of any other Party hereto. Each party hereto shall be deemed an independent contractor and no Party hereto shall act as, or hold itself out as acting as, an agent for any other party hereto.
20. **Captions.** The titles to the Sections and Subsections of this Agreement are for convenience only and do not define or limit the contents.
21. **Waivers.** No action other than a written notice by one Party to the other specifically stating that such notice has the effect of a waiver shall constitute a waiver of any particular breach or default of such other Party. No such notice of waiver from either Party shall waive the other Party's failure to fully comply with any other term, condition, or provision of this Agreement notwithstanding the fact that an employee or agent of said Party may have knowledge of such a breach or default. Further, no waiver of full performance by either Party shall be construed or operate as a waiver of any subsequent default of any of the terms or conditions of this Agreement.
22. **Cumulative Rights.** All remedies available at law or in equity to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
23. **Entire Agreement.** The Parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any Party on the basis of such Party's draftsmanship thereof. This Agreement constitutes the entire agreement between the Parties respecting the subject matter hereof, and there are no understandings or agreements between them respecting the subject matter hereof, written or oral, other than as set forth herein.
24. **Agreement Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect and may be delivered by electronic delivery of a digitized signature.
25. **Severability and Savings.** Each Section and each Subsection of this Agreement is hereby declared to be independent of every other Section or Subsection so far as inducement for the acceptance of this Agreement, and invalidity of any Section or Subsection of this Agreement shall not invalidate any other Section or Subsection of this Agreement.
26. **Capacity.** The undersigned persons representing the City and the Sponsor respectively do hereby agree and represent that he or she is legally capable to sign

this Agreement on behalf of the Party he or she represents and to lawfully bind said Party to this Agreement.

Lincoln Community Foundation

Barbara Bartle
Barbara Bartle, President

4-15-16
Date

CITY OF LINCOLN

Chris Beutler
Chris Beutler, Mayor

April 28, 2016
Date

ATTEST:

Teresa J. Meeks
City Clerk



Exhibit A

LINCOLN COMMUNITY

F O U N D A T I O N