

**Attachment H**  
**Lincoln Bike Share**  
**Sponsorship Agreement**  
**City of Lincoln and University of Nebraska - Lincoln**

16R-72

Introduce: 4-18-16

RESOLUTION NO. A- 89650

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

2 That the Sponsorship Agreement between the University of Nebraska-Lincoln and

3 the City of Lincoln for funding of the Bike Share Program in the amount of \$114,000.00,

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

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

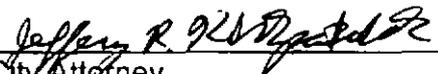
Introduced by:




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Approved as to Form & Legality:

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




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City Attorney

**ADOPTED**  
 APR 25 2016  
 BY CITY COUNCIL

Approved this 28<sup>th</sup> day of April, 2016:




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Mayor

# CITY OF LINCOLN REQUEST FORM

Submit one original to City Clerk

Please check (✓, ✗) one, request for: \_\_\_ Ordinance X Resolution

Bill No. 16R-72

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 THE UNIVERSITY OF NEBRASKA-LINCOLN AND THE CITY OF LINCOLN** for funding of the Bike Share Program in the amount of \$114,000.00.

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 / gsc  
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 UNIVERSITY OF NEBRASKA - LINCOLN, 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 the University of Nebraska - Lincoln for funding of the Bike Share Program in the amount of \$114,000.
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 funding match of three stations (\$30,000) and future operations/maintenance costs for three years on three stations (\$84,000).

**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 Board of Regents of the University of Nebraska ("University") on behalf of the University of Nebraska-Lincoln, a public body corporate, hereinafter referred to as ("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 making a financial contribution to the Program.

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 three years following the Effective Date unless this Agreement is terminated earlier pursuant to the provisions hereof. Sponsor shall be specifically notified by the City in writing of the date when the Program is officially opened to the public for use.
- 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.** The Amount of Sponsor's financial contribution to the Program shall be One Hundred Fourteen Thousand and No/100 Dollars (\$14,000) ("Sponsor Contribution") which represents \$30,000 for three (3) Bike Share stations with ten (10) bikes each and three (3) years' of maintenance of the three stations at

\$28,000/year. Said amount shall be paid by Sponsor upon execution of this Agreement by the Parties.

4. **Annual Reporting.** Within thirty (30) days of the annual anniversary of the Program being made available to the public, 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. Sponsor may request periodic updates of the information described in this section up to two additional times during each year of this Agreement.
5. **Sponsorship Rights.** In consideration of the Sponsorship Amount described in Section 3. above are the following rights and privileges are conveyed upon the Sponsor:
  - a. **Bike Share Station Sponsorship.** Sponsor shall be the exclusive sponsor of three (3) Bike Share stations. The Sponsor shall be acknowledged on the Bike Share Program permanent fixtures and improvements at the designated stations. The Sponsor shall provide the City with its official logo, which is attached hereto as Exhibit A, and the City and Sponsor shall agree upon placement of the Sponsor's logo on the designated Bike Share Program fixtures. Sponsor 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 twenty (20) bikes that are part of the overall Bike Share system. No other Sponsor shall be acknowledged on any of these 20 bikes without Sponsor's consent.
  - 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.
9. **Indemnification by Sponsor.** Subject to the terms and conditions of this Agreement, Sponsor hereby agrees to the extent permitted by law, 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 Sponsor 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.
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, who, 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 which materially and adversely affects the operation or use of the Bike Share Program or reflects adversely on the image or representation of the other party to this Agreement.

- 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 in a pro rata amount proportionate to the remaining term of the Agreement and receive a refund; 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 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

With a copy to:

City Attorney  
City of Lincoln  
555 S. 10<sup>th</sup> Street, Suite 300  
Lincoln, Nebraska 68508

Planning Department  
Attn: Director  
555 S. 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

To the Sponsor:

Chancellor  
201 Administration Building  
University of Nebraska-Lincoln,  
Lincoln, NE 68588-0419

With a copy to:

Vice President and General Counsel  
University of Nebraska  
3835 Holdrege Street  
Lincoln, NE 68583-0745

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.

27. **Work Status Verification.** City and its subcontractors shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska pursuant to Neb. Rev. Stat. §§ 4-108 to 4-114 as amended.
28. **Debarment List.** No contract shall be awarded to any Contractor/Bidder listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension," (the "Debarment List"). For contracts which in the aggregate exceed \$25,000, City specifically warrants and represents that it is not included on the Debarment List. City further agrees that should it be included on the Debarment List at the time the contract/proposal is awarded, or at any time during which it performs its contractual obligations pursuant to the contract, such listing shall be considered a material breach of the contract between the City and the Sponsor.
29. **Nebraska Legislative Bill (LB) 429.** Pursuant to Nebraska's Taxpayer Transparency Act (Neb. Rev. Stat. §84-602.01, as may be amended), as of January 1, 2014, the University of Nebraska is required to provide the Nebraska Department of Administrative Services with a copy of each contract that is a basis for an expenditure of state funds, including any amendments and documents incorporated by reference in the contract. Copies of all such contracts and documents will be published by the Nebraska Department of Administrative Services at [www.nebraskaspending.gov](http://www.nebraskaspending.gov). It shall be the sole responsibility of the City to notify the University of any requested redactions to such contracts and documents under Neb. Rev. Stat. 84-712.05(3) at the time of execution.
30. **Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).** If applicable, the City and its subcontractors shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.
31. **Section 503.** If applicable, the City and its subcontractors shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors to employ and advance in employment qualified individuals with disabilities.

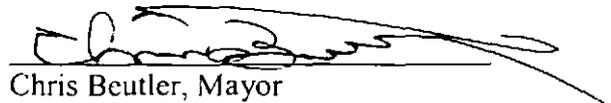
SPONSOR  
Board of Regents of the  
University of Nebraska



Christine A. Jackson  
University of Nebraska-Lincoln  
Vice Chancellor, Business and Finance  
307 Canfield Administration Building  
Lincoln, NE 68588-0425

4/13/16  
Date

CITY OF LINCOLN



Chris Beutler, Mayor

April 28, 2016  
Date

ATTEST:

  
City Clerk



Exhibit A



April 22, 2016

City Council Office  
County City Building  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68510

Dear City Council Members,

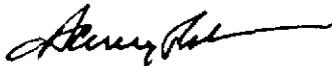
This letter is written in strong support of the Lincoln Bike Share Program and the bike share sponsorship agreement before you. The University of Nebraska-Lincoln is proud to say that we are the first participant as a sponsor of this program.

As you might know, our students led the effort on campus and within the community to work on bringing a bike share program to Lincoln. Since spring of 2014 we have worked in partnership with our colleagues at the city to assess the need and demand for such a program. The planning process has been extensive, from on-site visits to locations with similar programs, workshops and community stakeholder meetings, research was exhaustive and thorough. We are especially appreciative of the efforts of Milo Mumgaard and David Carey and his staff.

Almost all of the Big Ten institutions or communities in which they reside are at some stage of planning or have implemented a bike share program. This is not unlike interest within our own campus community. Faculty, staff and students are progressively more conscientious about sustainability issues including those that relate to transportation. The University of Nebraska-Lincoln has a strong bicycling community and amenities such as these contribute to our ability to recruit and compliment the quality of life for our entire community.

We continue to appreciate the collaborative effort with our city colleagues to continue the momentum in creating a progressive and inviting community. The Lincoln Bike Share Program is one more area that provides a very positive image for our city.

Sincerely,



Harvey Perlman  
Chancellor