

SPONSORSHIP AGREEMENT

This Sponsorship Agreement (the “Agreement”) is made and entered into by and between VMInnovations, Inc. (“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 sponsoring the Program for a period of two years.

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 24 months following effective date unless this Agreement is terminated earlier pursuant to the provisions hereof. Sponsor shall be specifically notified by the City in writing within ten (10) days after 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 \$80,000 in 2016 and \$80,000 in 2017 (“Sponsorship Contribution”). The initial \$80,000 contribution shall be paid by Sponsor upon execution of this Agreement by the Parties. (“2016 Contribution”) Then an additional \$80,000 shall be

paid within thirty (30) days of the one year anniversary of the Effective Date. (“2017 Contribution”)

4. **Annual Reporting.** On or before the one year anniversary of the Bike Share Program being available for use by 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.
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. Sponsor shall be recognized as a sponsor of the Program on eleven (11) of the City’s Bike Share stations. This shall include acknowledgment of the Sponsor’s contribution to the Bike Share Program 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 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 both sides of crossbar/downtube each of seventy-four (74) bikes that are part of the overall Bike Share system. Sponsor acknowledges and agrees that the decals of the Lincoln Community Foundation may appear on bicycles on which Sponsor is also acknowledged, but in no way shall the Lincoln Community Foundation decals of interfere with or conceal the visibility of Sponsor’s decal. No logo of any other Program sponsor, with the exception of the Lincoln Community Foundation, shall be displayed on any bike on which Sponsor is acknowledged per the terms of this Agreement.
 - 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.
 - d. **Station locations.** One (1) bike station shall be installed at Nebraska Innovation Campus near 1901 N 21st St, Lincoln, NE 68508.

- e. **Limited free memberships.** The equivalent of 200 annual memberships shall be made available at no cost to VMInnovations to be used by its employees from the Effective Date until expiration or termination of this Agreement.
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.**
 - a. 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.

- b. The City agrees that Sponsor shall be an additional insured on the City's general liability insurance with respect to activities undertaken as part of the Bike Share Program.

11. **Maintenance by the City.** The City agrees to perform or cause to be performed at its cost and expense any and all preventative maintenance and repairs reasonably necessary for the safe continued operation of the Bike Share Program in Lincoln. Maintenance shall include, but is not limited to, maintaining and restoring the bicycles in the Program, maintaining any Bike Share station improvements, and any other physical components specific to the Bike Share Program. This section shall not be construed to create any duty on the part of the City to maintain public right of way improvements not unique to the Bike Share Program beyond what is otherwise required of the City by law.

12. **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 13. 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 a majority of the people of the City of Lincoln, which 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;

13. **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.

- a. 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.
- b. 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.

14. **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 is no longer in the public interest. In the event that the City exercises such right to terminate this Agreement, City shall promptly pay Sponsor any refund to which Sponsor is entitled pursuant to Section 15 hereof
15. **Rights Upon Termination.** In the event this Agreement is terminated by either Party in accordance with Sections 12, 13, or 14 hereof, (i) all obligations of the Parties shall terminate as of the effective date of such termination, and (ii) the Sponsor's Contribution corresponding to the year of the termination shall be prorated to the effective date of the termination, with any excess being refunded to the Sponsor, its successor in interest, or its designated assignee.
16. **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.
17. **User Agreements.** In all agreements between users of the Bike Share Program and the City, each user shall acknowledge that Sponsor shall not be liable for any injuries or damages arising from user's participation in the Bike Share Program.
18. **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.
19. **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: Kush Abdulloev
1421 Kingbird Rd
Lincoln, NE 68521

20. **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.
21. **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.
22. **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.
23. **Captions.** The titles to the Sections and Subsections of this Agreement are for convenience only and do not define or limit the contents.
24. **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.

25. **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.
26. **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.
27. **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.
28. **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.
29. **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.

SPREETAILE

CITY OF LINCOLN

Kush Abdulloev, FST

Chris Beutler, Mayor

Date

Date

ATTEST:

City Clerk

Exhibit A

