

## LICENSE AGREEMENT FOR THE CITY OF LINCOLN BIKE SHARE PROGRAM

THIS LICENSE AGREEMENT ("Agreement"), dated as of \_\_\_\_\_, 2016 ("Effective Date") is entered into by and between **THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**, a public body corporate and agency of the State of Nebraska, and governing body of the University of Nebraska-Lincoln, hereinafter called "University," and the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, hereinafter called "City," (collectively the "Parties" or individually a "Party") for 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, including, but not limited to, University employees, students, visitors, and representatives, to serve as an alternative mode of transportation and promote a healthier lifestyle; and

WHEREAS, University owns parcels of land in the City of Lincoln (the "University Property"), and the City desires a license over certain areas of the University Property, identified on **Exhibit A** (collectively, "the Licensed Areas"), for the installation, operation and maintenance of Bike Share Program Stations; and

WHEREAS, the University has reviewed the locations proposed by the City as Bike Share Program stations and approves those locations identified on **Exhibit A** as appropriate and consistent with the University's operations and activities in said areas; and

WHEREAS, the University agrees to grant the City a license to use the Licensed Areas for the Bike Share Program pursuant to the terms of this Agreement; and

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

1. **Definitions.** In addition to those defined terms set forth in the recitals above and in the provisions below, the following words shall have the defined meanings, as used in this Agreement:
  - a. "License Area(s)" shall refer to any one (1) or all of three (3) designated areas as mutually agreed upon by the Parties, and as shown on **Exhibit A**, attached hereto and incorporated herein by this reference. Each License Area shall consist of approximately 200 square feet.

- b. "Stations" shall refer to the bicycle rental kiosks and any other structures necessary for securing Bike Share Program bicycles so as to allow for the efficient and effective operation of the Bike Share Program.
2. **Grant of License.** University hereby grants to the City, its directors, officers, employees, agents, guests, invitees, subscribers, and its maintenance, operations, and installation contractors and/or subcontractors from time to time, a license to use the License Areas for the following purposes and for no other purposes without the prior written consent of University:
- a. To construct, install or remove a Bike Share Program Station;
  - b. To operate, maintain, repair, and replace a bicycle or Bike Share Program Station and its related signage (the installation of signage requires the prior written approval of the University with respect to content, style, size and location, said approval not to be unreasonably withheld); and
  - c. To add or remove bicycles to and from a Bike Share Program Station.

University also grants the City a non-exclusive license to use existing access drives and walks on University property for access to the License Areas and for no other purpose. This Agreement and all rights hereunder are subject to all covenants and encumbrances of record and all applicable laws, ordinances, rules and regulations promulgated and imposed thereunder and all University policies.

3. **Term of License.** The term ("Term") of the License shall be for a period of ten (10) years from the Effective Date to \_\_\_\_\_ unless this Agreement is terminated earlier pursuant to the provisions hereof.

4. **General Provisions and Responsibilities.**

- a. The City shall comply with all directives of University authorities while on University property. The City shall ensure Bike Share Program Station locations are safe and accessible, do not block sidewalks, fire lanes, or streets, do not interfere with traffic or University activities, and are consistent with all University rules and policies. The City shall notify the University in writing at least two weeks prior to the date when the Bike Share Program Stations in the License Areas are officially opened to the public for use.
- b. The City shall (1) not deliberately or negligently destroy, damage, impair, or remove any part of the License Areas and shall otherwise maintain the License Areas in reasonably safe and sanitary conditions in compliance with all applicable laws and ordinances during the Term; (2) be fully responsible for all damage, and agrees to pay for all damage caused to the License Areas by the Bike Share Program; (3) maintain and care for the License Areas and

keep same free from garbage, refuse, rubbish, trash, and junk during the Term; and (4) return the License Areas to the same or similar condition as when this License was issued at the end of the Term, normal wear and tear excepted.

- c. The City shall be solely responsible for any and all costs related to the installation, improvements, modifications, and operational expenses of the Bike Share Program Stations. The City shall not cause the University Property, or any part thereof, to be encumbered by any liens arising out of or in connection with any of the rights granted to it under this Agreement.

5. **Liability**. To the extent allowed by law, the City agrees to defend, indemnify, and hold University, its employees, and representatives, harmless from and against any and all claims, suits, damages and liabilities, as well as costs and expenses therewith, including reasonable attorney's fees, where it is alleged in such claims or suits that the services provided by the City through the Bike Share Program have caused loss, damage, injury, or death (each a "Loss") in any way to persons or property, including, but not limited to, any damage to or loss of University's possessions, equipment, or premises; provided, however, the City shall not be required to indemnify University for any Loss to the extent such Loss is caused by or results from any negligent act or omission or intentional misconduct of University, its employees and representatives. Neither the City nor the University waives its governmental immunity by entering into this Agreement and both fully retain all immunities and defenses provided by law.

Neither Party shall be liable nor deemed in default for any delay or failure in performance under this Agreement or other interruption of service deemed resulting, directly or indirectly, from acts of God, acts of public enemy, tornadoes, fires, explosions, floods, failure of transportation, strikes or other work interruptions, or any similar cause that is beyond the reasonable control of either Party.

6. **Insurance**. The City must, at the City's sole cost and expense, maintain or cause to be maintained a Commercial General Liability Insurance Policy ("Policy"). The Policy shall name the Board of Regents of the University of Nebraska, its employees, and representatives as additional insureds; it shall have a limit of coverage greater than or equal to \$1,000,000 per incident of occurrence and \$3,000,000 aggregate. The City may not void, suspend, cancel, or reduce coverage or limits of the Policy except after thirty (30) calendar days' prior written notice to University. The City may, at its discretion, implement a self-insurance program that wholly or partially satisfies its obligation to provide insurance coverage as required by this Agreement in lieu of acquiring a Commercial General Liability Insurance Policy. At University's request, the City shall provide University with certificates of insurance evidencing compliance. The University is in no way responsible for any property or equipment of the City placed in the License Area.

7. **Termination.** Upon termination of this Agreement, the City shall be responsible for (i) restoration of the License Areas to the similar or same condition they were in immediately prior to the Effective Date, normal wear and tear excepted and (ii) the removal of the Stations and other equipment from the License Areas. University may terminate this License for failure of the City to comply with any one or more of the provisions of this License or for convenience. University may terminate this License if the Bike Share Program ceases to operate. Notice of termination shall be in writing and delivered to the other party at the address below. Any termination hereunder shall be effective ninety (90) days after delivery of the notice of termination.

8. **Controlling Law.** This License shall be governed by, construed, and interpreted in accordance with the laws of the State of Nebraska.

9. **Notices.** Any notice or communication to be given by one Party to the other under this Agreement must be in writing. 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 S. 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

With copies 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 UNL: Chancellor  
201 Administration Building  
University of Nebraska-Lincoln  
Lincoln, Nebraska 68588-0419

With a copy to: Vice President and General Counsel  
University of Nebraska  
3835 Holdrege Street  
Lincoln, Nebraska 68583-0745

10. **Rights of Parties.** Nothing in this License, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this License on any persons other than the Parties to this License and to their respective successors and assigns. Nothing contained in this Agreement shall be deemed to be a gift or

dedication, or the offer of any gift or dedication, of any portion of any of the University Property to the general public, or for any public use or purpose whatsoever other than that specifically identified herein.

11. **Capacity**. The undersigned persons representing the City and University each 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.
12. **Miscellaneous**. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior offers and negotiations, both oral and written. It may not be amended or modified in any respect whatsoever, except in writing as authorized by both Parties. The City shall not assign this Agreement in whole or in part without the prior written consent of the University.

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.

None of the terms or provisions contained herein are intended to, or shall be deemed to, create any partnership, joint venture or other form of joint enterprise between the City and University.

[The remainder of this page is intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, **University** and the **City** have hereto subscribed their signatures on the dates below indicated.

Executed by **University** this 13<sup>th</sup> day of September, 2016.

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF NEBRASKA

By: Christine A. Jackson  
Christine A. Jackson  
Vice Chancellor for Business & Finance

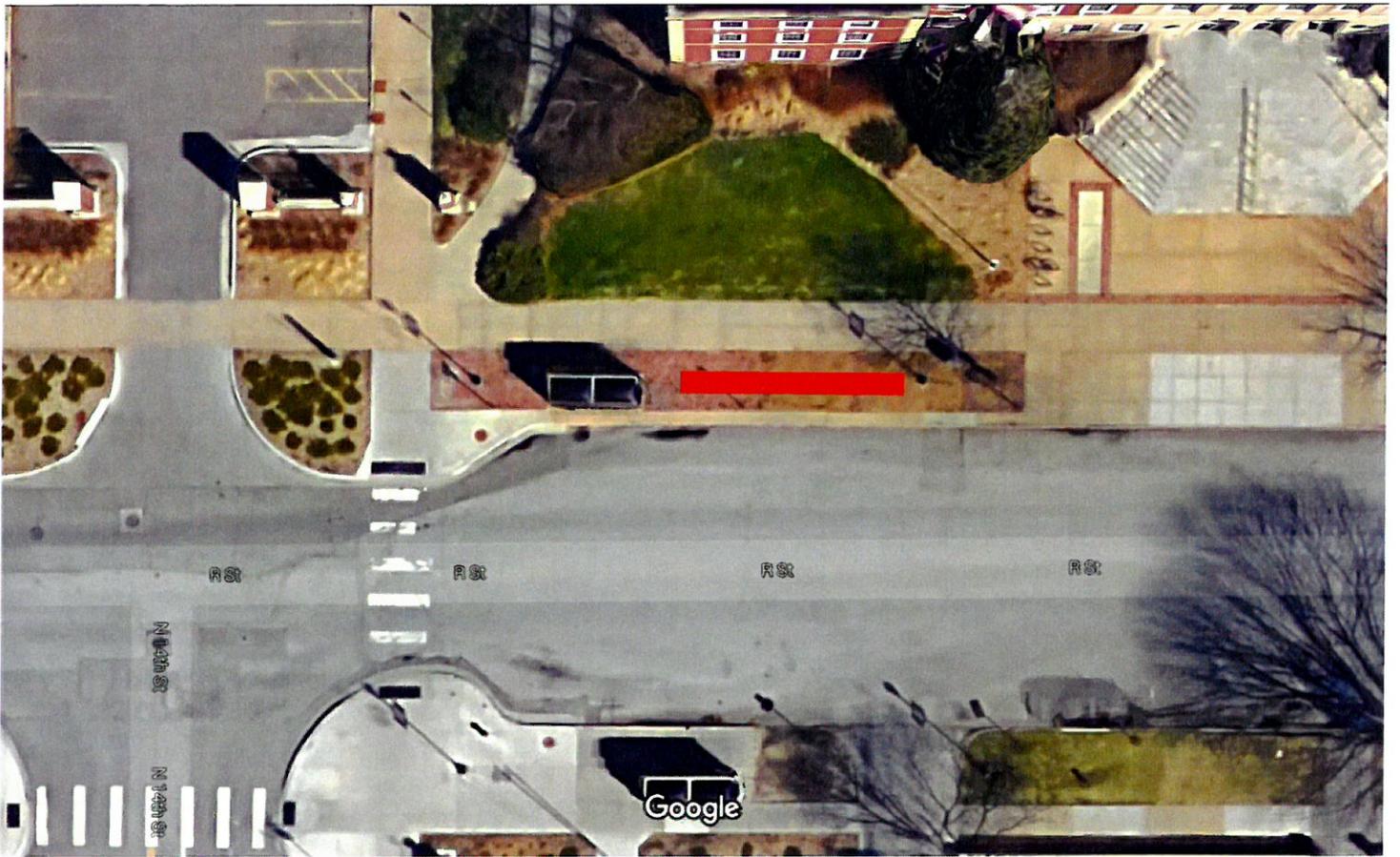
Executed by the **City** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF LINCOLN, NEBRASKA,  
a municipal corporation

By: \_\_\_\_\_

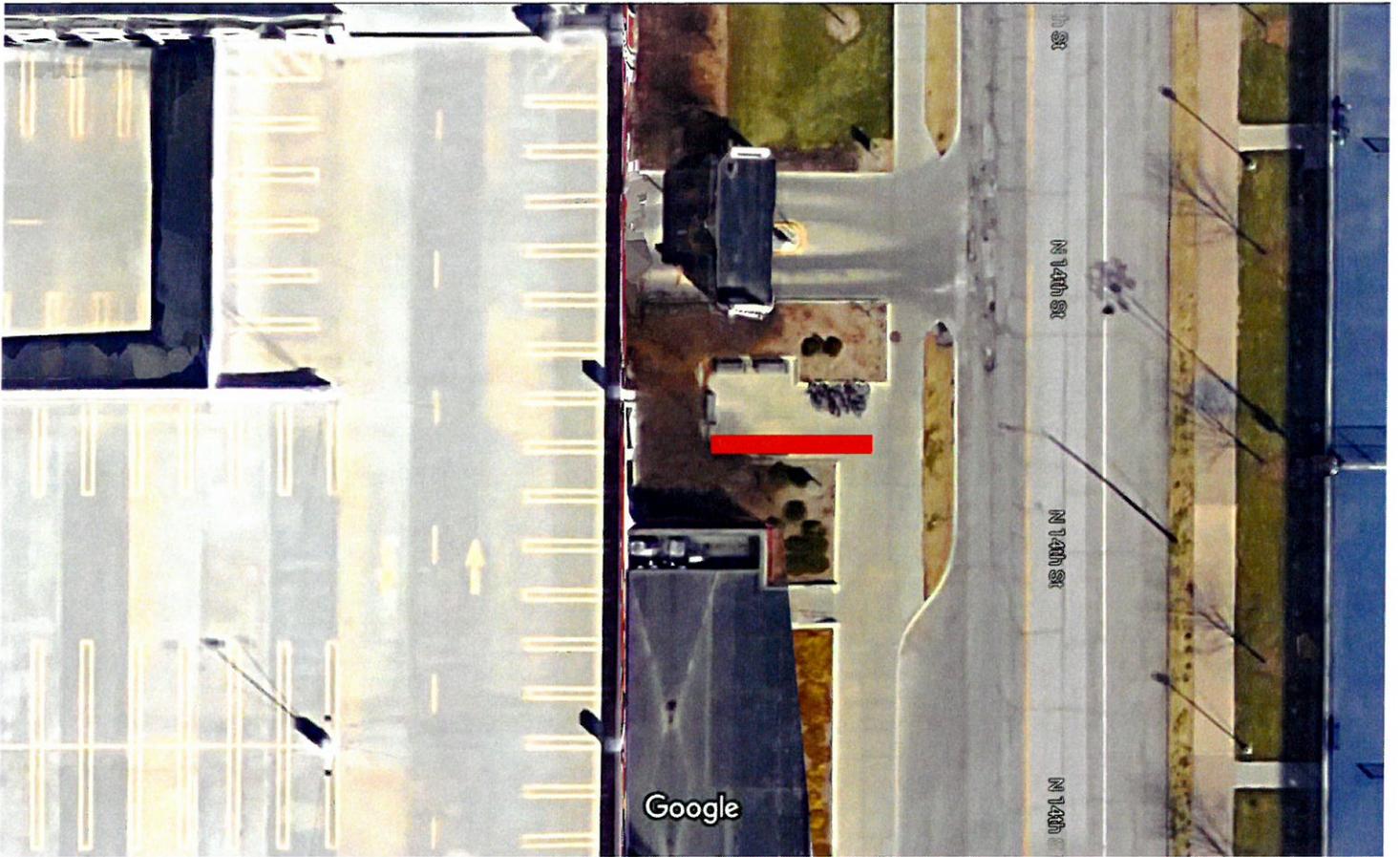
**EXHIBIT A**

[See Attached]



Imagery ©2016 Google, Map data ©2016 Google 10 ft

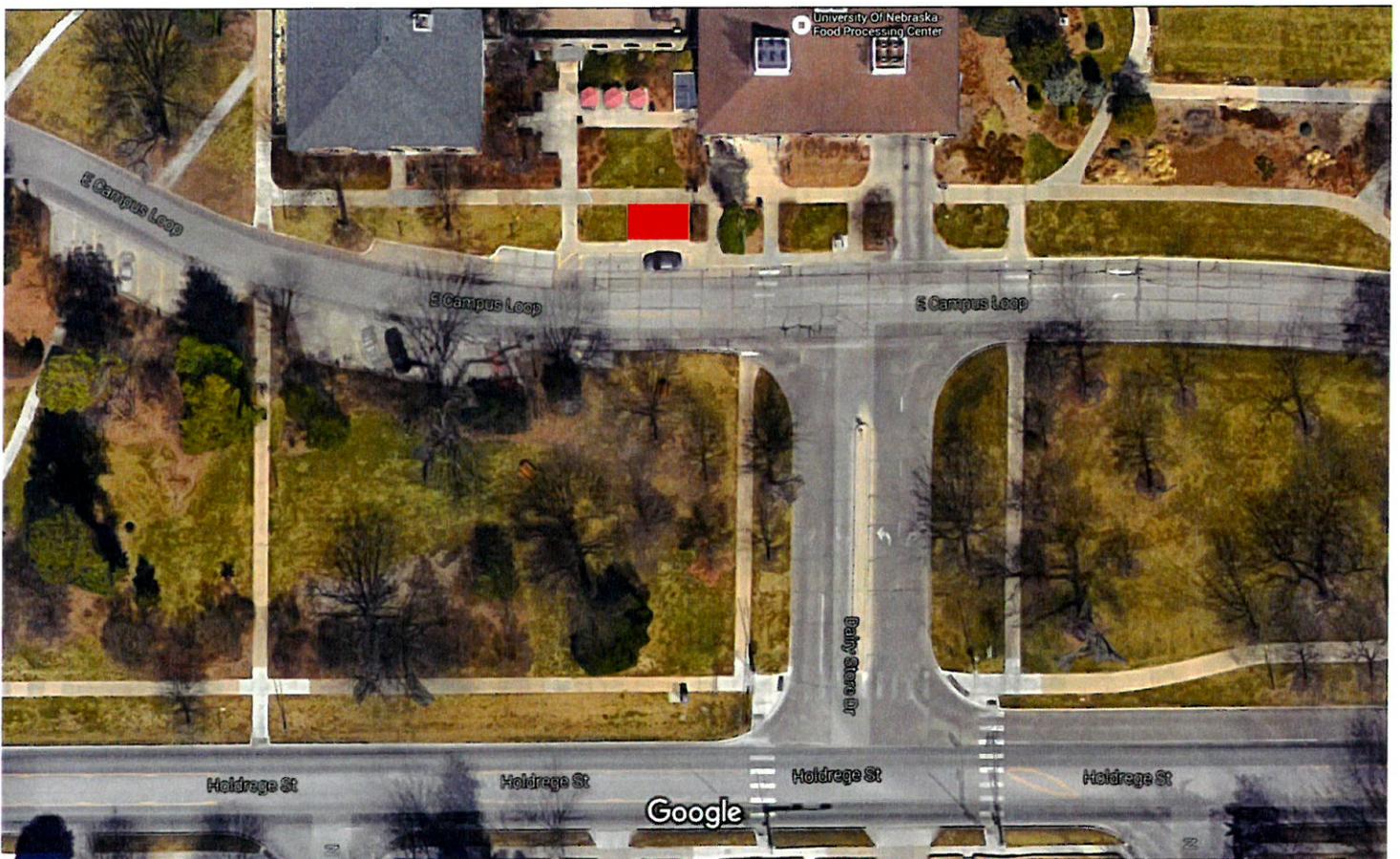
Primary LAT -96.70074004880 LONG 40.81701243540 At UNL: R St., North side between 14th and Cent. Mall



Imagery ©2016 Google, Map data ©2016 Google 20 ft

Primary LAT -96.70144580900 LONG 40.82414999480 At UNL: 14th St., west side between Avery and Salt Creek Roadway, in front of the parking garage

Google Maps



Imagery ©2016 Google, Map data ©2016 Google 20 ft

Primary LAT -96.66704030700 LONG 40.82862593730 At UNL: Dairy Store, East Campus