

**BIKESHARE GRANT AGREEMENT
(TID 68 & TID 75)**

THIS BIKESHARE GRANT AGREEMENT (“Agreement”) is made and entered into as of the _____ day of _____, 20____, by and between the City of Milwaukee, a Wisconsin municipal corporation (“City”) and Midwest BikeShare, Inc., a Wisconsin non-stock corporation (“Grantee”).

RECITALS

1. The City created Tax Incremental Financing District No. 68 (“TID 68”) by passage of Resolution No. 060895 by its Common Council on December 12, 2006, and amended it by passage of Resolution No. 080541 on September 16, 2008.
2. The City created Tax Incremental Financing District No. 75 (“TID 75”) by passage of Resolution No. 090564 by its Common Council on September 22, 2009, and amended it by passage of Resolution No. 090688 on November 30, 2011.
3. The Project Plans for TID 68 and TID 75 include funding for various public improvements related to pedestrian amenities and public rights-of-way.
4. Grantee is establishing a bikeshare program in the City (“Bikeshare Program”). The Bikeshare Program will include at least one location within a one-half mile radius of the TID 68 boundary and at least one location within a one-half mile radius of the TID 75 boundary where a bicycle rental station kiosk and rental bicycles (“Bikeshare Station”) will be installed to allow members of the public to rent bicycles for recreational or transportation purposes (the “Project”).
5. Supporting the Project in TID 68 will provide another amenity to pedestrians and residents in TID 68 encouraging further residential development consistent with the purposes for which TID 68 was established.

6. Supporting the Project in TID 75 will encourage use of the Hank Aaron State Trail, which runs along the Menomonee Canal, and increase public access to the water consistent with the purposes for which TID 75 was established.

7. The City's Common Council, by passage of Resolution No. _____ on _____, 20____, authorized the expenditure of up to \$50,000 from TID 68 and up to \$50,000 from TID 75 in the form of a grant ("Grant") to the Grantee to cover certain costs of the Project as further described in this Agreement.

8. This Agreement sets forth the terms and conditions applicable to the implementation of the Project by Grantee and the disbursement of Grant proceeds by the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties agree as follows:

I. AWARD.

City hereby awards the Grant in an amount up to \$100,000 (no more than \$50,000 from each of TID 68 and TID 75) to Grantee for implementation of the Project. Grantee agrees to undertake the Project in accordance with the terms of this Agreement.

II. GRANTEE REQUIREMENTS.

In the implementation of the Project, Grantee shall:

A. Establish at least one Bikeshare Station in the public right-of-way or other publically accessible area within one-half mile of the TID 68 boundary and at least one Bikeshare Station in the public right-of-way or other publically accessible area within one-half mile of the TID 75 boundary in accordance with

plans filed by Grantee with City and approved by the City's Commissioner of City Development.

- B. Operate the Bikeshare Stations and have bicycles available for rent by the general public on or before April 1, 2014, but in no event later than April 1, 2015 ("Deadline").
- C. Expend all Grant proceeds on public infrastructure and capital expenditures of the Project. No Grant proceeds shall be expended on operational or administrative costs for the Bikeshare Stations.
- D. Establish and maintain records and file reports with the City's Commissioner of City Development as hereinafter set forth:
 - i. Keep and maintain books, records, and other documents as may be reasonably necessary to reflect and disclose fully the amount and disposition of all Grant proceeds and the total costs of all Project activities undertaken in whole or in part with Grant proceeds.
 - ii. All such books, records, and documents shall be maintained for a period of 7 years following final disbursement of Grant proceeds.
- E. Allow the City's Commissioner of City Development, the City's Comptroller or their designees and agents, at any time during normal business hours, to undertake examination of all of its books, records and documents maintained with respect to all matters related to the Project covered by this Agreement and permit such City representatives to audit, examine, and make copies of all contracts, invoices, materials, payrolls, records, and other data relating to the Project covered by this Agreement.

- F. Enter into a special privilege agreement or some other agreement or permit with the City as approved by the City's Commissioner of Public Works regarding the Project.
- G. Provide credit to the City in brochures, news releases, program publications and other printed materials in the following manner:

“This Bikeshare Project is funded in part through a grant from the City of Milwaukee.”

(or as otherwise approved by the City's Commissioner of City Development).
- H. Not unlawfully discriminate against any person participating in the Project or activities funded in whole or in part with Grant proceeds on the basis of age, race, religion, color, disability, sex, physical condition, developmental disability, sexual orientation or national origin.

III. INDEMNITY.

Indemnify and hold harmless the City, its officers, employees, and agents from and against any and all losses, claims, damages, expenses, and all suits in equity or actions at law arising from, in connection with or as a result of the implementation of the Project. Nothing in the foregoing indemnity shall protect City, its officers, employees, and agents from their own default, active negligence, or misconduct.

IV. FUNDING.

Grant proceeds shall be disbursed in accordance with procedures approved by the City's Commissioner of City Development. Grantee shall provide the City with invoices and other evidence reflecting all expenditures for the Project to be funded in whole or in part utilizing Grant proceeds.

V. NOTICES.

All notices under this Agreement shall be made in writing and deemed served upon depositing the same in the United States Postal Service as “Certified Mail, Return Receipt Requested,” addressed as follows:

To City: City of Milwaukee Department of City Development
809 North Broadway
Milwaukee, WI 53202
Attn: Commissioner

To Grantee: Midwest BikeShare, Inc.
316 North Milwaukee Street #501
Milwaukee, WI 53202
Attn: President

with a copy to:

Bruce A. Keyes
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306

VI. BINDING EFFECT / ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the City and Grantee, their successors and permitted assigns. Grantee shall not assign any interest in this Agreement without the prior written consent of the City’s Commissioner of City Development, which shall not be unreasonably withheld. Notwithstanding anything to the contrary herein, Grantee may pledge or assign its ownership interest for purposes of obtaining financing or leasing for the Bikeshare Program. Any interests of the City in this Agreement or in the Bikeshare Stations shall further be subject to any licenses, restrictions or limitations imposed by the manufacturer or vendor of the equipment, including any trademark licenses (“System Licenses”).

VII. GRANTEE’S FAILURE TO COMPLY.

If the Project is not completed by the Deadline or the Grantee ceases to operate the Bikeshare Stations funded as part of this Project for any 15 continuous months within 5 years of being first placed in operation, the following penalties shall be implemented:

- A. In the event that the Project is not completed by the Deadline, 100% of Grant proceeds disbursed to Grantee shall be repaid to the City.
- B. In the event that the Project is partially completed, the City shall decide, in its sole, but reasonable discretion, whether Grantee shall repay to the City 100% of the Grant proceeds disbursed or whether Grantee shall convey its ownership interest in the Bikeshare Stations, to the extent funded by the proceeds of the Grant, to the City (subject to any System Licenses).
- C. In the event that the Project is completed but Grantee ceases operation for 15 continuous months of any or all of the Bikeshare Stations funded through the proceeds of the Grant within 5 years of being first placed in operation, the City shall decide, in its sole, but reasonable discretion, whether Grantee shall remove the Bikeshare Stations, at Grantee's cost, from the public right-of-way or whether Grantee shall convey its ownership interest in the Bikeshare Stations, to the extent funded by the proceeds of this Grant, to the City (subject to any System Licenses).

Upon request by the City, Grantee shall execute and deliver a UCC-1 to the City's Commissioner of City Development for recording to acknowledge and secure the repayment and conveyance provisions set forth in this section.

VIII. TERMINATION.

Grantee can terminate this Agreement at any time before disbursement of the Grant.

[Signature Page Follows]

THE PARTIES HERETO have caused this Agreement to be executed by their duly authorized representatives as of the day and date first above written.

MIDWEST BIKESHARE, INC.

By _____
Bruce A. Keyes, President

CITY OF MILWAUKEE, WISCONSIN

By _____
Tom Barrett, Mayor

By _____
James R. Owczarski, City Clerk

By _____
Martin Matson, Comptroller

Approved as to form, execution, and content
this ____ day of _____, 2013.

Mary L. Schanning
Assistant City Attorney

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