

**Memorandum of Understanding Between
Midwest BikeShare, Inc. d/b/a Bublr Bikes®
And
University of Wisconsin - Milwaukee
Regarding the
Installation and Operation of an Expansion to the Bublr BikeShare System**

This Memorandum of Understanding (“MOU”) is entered into between Midwest BikeShare, Inc. d/b/a Bublr Bikes®, a Wisconsin non-stock corporation (“Bublr”) and the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin – Milwaukee (“UWM”).

Article I. Recitals

Section 1.01 WHEREAS, Bublr owns and operates the Bublr BikeShare system within the City of Milwaukee and wishes to expand the Bublr BikeShare System in and around Milwaukee County.

Section 1.02 WHEREAS, UWM wishes to facilitate the expansion of the Bublr BikeShare System in and around UWM while providing its students with reduced Pass Fees.

Section 1.03 NOW, THEREFORE, for the good and valuable consideration set forth herein, Bublr and UWM agree as follows:

Article II. Definitions

Section 2.01 **“Bicycle”** means the bicycles used in the Bublr BikeShare System, which Bicycles are specifically designed to work with the Docks and Stations which comprise the existing Bublr BikeShare System.

Section 2.02 **“Bublr BikeShare System”** means the BikeShare system Bublr is developing in and around Milwaukee County.

Section 2.03 **“Bublr Pass”** means the pass offered to non-UWM Users which is priced at \$15 per month and includes unlimited 60 minute trips, with trips beyond 60 minutes charged at \$3 per 30 minutes. Purchasing a Bublr Pass for an entire year would cost a non-UWM User \$180. This definition is included for informational purposes only and is subject to change at Bublr’s sole discretion.

Section 2.04 **“Effective Date”** means the date the last party executes this MOU.

Section 2.05 **“Fees”** the fees discussed in this MOU are named and described as follows:

(A) **“Pass Fees”** mean the fees charged for a pass to access the system.

(B) **“Usage Fees”** means the fees charged for usage time outside of, or in addition to, usage associated with, or included in a Pass Fee.

Section 2.06 **“Fob”** means the RFID based card that is linked to a User’s account and payment method, which Fob can be used to checkout a Bicycle directly from a Dock.

Section 2.07 **“Funds”** means all monies, grants and/or in-kind donations paid and/or given to Bublr under the terms of this MOU.

Section 2.08 **“Dock”** means the portion of a Station that holds and locks a Bicycle. For Users with a Fob, the Dock will likely be their main point of access to the system.

Section 2.09 **“Kiosk”** means the portion of a Station housing the computer, LCD screen, credit card reader, and wireless communication technology. The Kiosk is also the portion of the station which is connected to the power source and, and in the case of a solar powered station, the solar panel is bolted to the Kiosk and the batteries are stored inside the Kiosk. For Users without a Fob, the Kiosk will likely be their main point of access to the system.

Section 2.10 **“Memorandum of Understanding”** means this memorandum of understanding, and includes all exhibits, appendices, or other attachments hereto as well as any modifications or amendments made in accordance with its terms.

Section 2.11 **“Station”** means the combined Docks and Kiosk. All Docks have the capacity to hold at least eight (8) Bicycles.

Section 2.12 **“System”** means the entire Bublr BikeShare System, including all Bicycles and Stations.

Section 2.13 **“Trip”** means the period of time between when a Bicycle is removed from a Dock and returned to a Dock.

Section 2.14 **“User”** means an individual over fourteen (14) years of age who lawfully access the Bublr BikeShare System.

Section 2.15 **“UWM – Bublr Pass”** means a 365-day access pass for UWM Users to use the Bublr BikeShare System as set forth in this MOU.

Section 2.16 **“UWM User”** means an individual, over fourteen (14) years of age, who is an active UWM student, with a valid UWM email address, who signs up for a UWM – Bublr Pass, and who lawfully access the Bublr BikeShare System under the terms of this MOU.

Article III. Duration of MOU

Section 3.01 Initial Duration. This MOU shall remain in full force and effect for a period of five (5) years from the Effective Date.

Section 3.02 Extension of MOU. At the end of the five (5) year initial duration of this agreement Bublr and UWM may negotiate a mutually agreeable extension to this MOU.

Article IV. Scope of Work

Section 4.01 Use of Funds. Bublr will utilize Funds received from UWM to expand the Bublr BikeShare System in and around the UWM campus, specifically Bublr will:

- (A) Stations. Install no fewer than six (6) Stations as set forth in Exhibit A;
- (B) Bicycles. Provide no fewer than forty (40) Bicycles; and
- (C) Operations. Operate the expanded system.
- (D) Payment for Services. It is understood by both parties that the Funds received under this agreement are considered payment for services provided and are not a capital purchase on behalf of UWM.

Section 4.02 Disbursement of Funds. UWM will pay the invoice for services provided under the terms of this MOU up to \$300,000.00, within thirty (30) days of receipt.

Section 4.03 Student Validation. UWM Users must be current students at the UWM. No more than once per quarter, Bublr will send a list of all UWM – Bublr Pass holders to UWM. Within one (1) week of transmission of such a list, UWM shall confirm or deny whether each UWM – Bublr Pass holder is a current UWM student. If a current UWM – Bublr Pass holder is discovered to no longer be a UWM student, the UWM – Bublr Pass access will be expired and the user will be marketed another access options.

Section 4.04 Primary Station Siting and Installation. Bublr and UWM will cooperate and coordinate with each other in good-faith to determine where and when to install the Stations placed under this MOU. The agreed to Station locations and installation timeline are detailed in Exhibit A.

Section 4.05 Pass and Usage Fee Structure.

The Pass and Usage Fee structure for UWM Users is detailed in Exhibit B.

Section 4.06 Operations. Bublr will, at all times, be fully responsible for operating, maintaining, and managing the Bublr BikeShare System.

- (A) Seasonality of Bublr BikeShare System. Based on actual and anticipated weather conditions Bublr may, at its sole discretion, shut-down the BikeShare System during inclement months. However, in no case shall the Bublr BikeShare System be shut-down for more than six (6) months in any calendar year.
- (B) Hours of Operation. When the Bublr BikeShare System is active (i.e. not shut-down) it will operate nineteen (19) hours per day, seven (7) days per week.
- (C) Staffing. Bublr will ensure that it has sufficient staff to implement, operate, and maintain the Bublr BikeShare System.
- (D) Bicycle Maintenance. Bublr is responsible for Bicycle maintenance and will ensure that Bicycles are maintained such that:
 - (i) At least three (3) Bicycles will be painted with UWM's colors (black and gold) and name, with the final design to be approved by UWM;

- (ii) There are enough functional Bicycles in the System to allow the System to function effectively; and
 - (iii) The Bicycles are safe for use.
- (E) Station Maintenance. Bublr is responsible for Station maintenance and will maintain the Stations in the System so that they function effectively.
- (F) Station Relocation or Removal. Throughout the course of operating the Bublr BikeShare System Bublr or UWM may recognize the need to resize or relocate certain Stations placed under the terms of this MOU. Bublr and UWM will cooperate and coordinate in good-faith to determine whether a Station should be resized or relocated and will perform such resizing or relocation on a mutually agreed to schedule. Bublr shall be solely responsible for any costs associated with such resizing or relocation.
- (G) Bicycle Distribution. Bublr will initially distribute, and thereafter for the duration of this MOU, rebalance Bicycles between stations, making reasonable efforts to ensure that each station always has no fewer than two Bicycles available for checkout and no fewer than two open docks available for Bicycle return.
- (H) PantherCard. Bublr will make a good-faith best effort to enhance its payment acceptance capacity so that payments can be accepted via UWM User's Student IDs (PantherCards) within two (2) years of the Effective Date of this MOU.
- (I) Data Security. Bublr will undertake commercially reasonable efforts to at all times comply with the Payment Card Industry Data Security Standard ("PCI DSS") requirements for cardholder data that are prescribed in the PCI Data Security Standard or otherwise issued by the PCI Security Standards Council, as they may be amended from time-to-time. Current PCI DSS Requirements documentation is available on the PCI Security Standards Council (PCI SSC) website at <https://www.pcisecuritystandards.org>.

Section 4.07 Record Keeping & Reporting.

- (A) Record Keeping. Bublr will maintain records as reasonably necessary to provide UWM with information on how Funds received under this MOU were used, and the effectiveness of the Bublr BikeShare System. Bublr shall maintain all such records for a period of five (5) years from their date of creation and make such records available to UWM for inspection and duplication upon request.
- (B) Reporting. Bublr will, annually, provide UWM with a report on the expenditure of Funds, and the functioning of the Bublr BikeShare System, which report will include:
 - (i) trips per bike per day;
 - (ii) average duration of each Trip;
 - (iii) number of Users;

- (iv) number of UWM Users; and
- (v) reduction in carbon dioxide emissions.

Section 4.08 Enhancement of Milwaukee's Bicycle Infrastructure. As a wholly aspirational component of this MOU, Bublr will use its best reasonable efforts to work with UWM and other willing community partners to enhance bicycle facilities and routes around the UWM campus.

Article V. Communications

Section 5.01 Notice. All notices made under this MOU shall be made in writing and deemed served once deposited in the United States Postal Service as "Certified Mail, Return Receipt Requested."

Section 5.02 UWM. Notices to UWM shall be mailed to:

- (A) Kate Nelson, University of Wisconsin – Milwaukee, Arch & Urban Planning 333, P.O. Box 413, Milwaukee, Wisconsin 53201-0413; and
- (B) Office of Legal Affairs, University of Wisconsin – Milwaukee, Chapman Hall 380, P.O. Box 413, Milwaukee, Wisconsin 53201-0413.

Section 5.03 Bublr. Notice to Bublr shall be mailed to:

- (A) Bublr Bikes; 600 East Mason, St. Ste. #101; Milwaukee, WI 53202; and
- (B) Bruce Keyes; Foley & Lardner, LLP; 777 E. Wisconsin Ave.; Milwaukee, WI 53202-5306.

Article VI. Default, Opportunity to Cure & Remedies

Section 6.01 Default.

- (A) Bublr shall be in default if violates any provisions of this MOU.
- (B) UWM shall be in default if it violates any provisions of this MOU.

Section 6.02 Opportunity to Cure. In acknowledgment of the relative newness of BikeShare generally, and the newness of Bublr BikeShare specifically, the parties agree to the following procedure in the event of default:

- (A) The non-defaulting party shall give defaulting party notice, following the Communications procedures in Article V, of the default;
- (B) Within fourteen (14) days of service of the notice of default, defaulting party will respond, also following the procedures in Article V, with a proposed plan to cure the default;
- (C) If after providing a proposed plan to cure the default, defaulting party does in fact cure the default within thirty (30) days of the original notice of default, the default will be deemed cured and the non-defaulting party shall seek no additional remedy at law or equity.

Article VII. Liability

Section 7.01 Bublr's Waiver. Bublr waives all rights Bublr may have to bring a claim against UWM and UWM's employees or agents, for personal injury, property damage, and economic loss Bublr suffers, and which claims arise from, or are related to, this MOU.

Section 7.02 UWM's Hold Harmless. UWM agrees to hold harmless Bublr and Bublr's employees or agents, for any claims which arise from the willfully malicious or negligent actions of UWM, its employees, or its agents under this MOU.

Section 7.03 Indemnification. Bublr will indemnify and hold harmless UWM, and its officers, employees, and agents from and against any and all losses, claims, damages, expenses, and suits in law or equity which were not caused by the knowing, willful, reckless, or negligent actions of UWM, its officers, employees or agents.

Section 7.04 Third-Party Liability. This MOU does not create or confer any rights, benefits, or causes of action on any third-party.

Section 7.05 Insurance. Bublr shall comply with the following insurance requirements:

- (A) Bublr shall, at all times this MOU is in effect, maintain an insurance policy with an insurance company licensed to do business in the State of Wisconsin, with a minimum AM Best rating of "A-". The minimum coverage provided by such policy shall be as follows:

<u>Coverage Type</u>	<u>Minimum Limit</u>
Worker's Compensation	Statutory Limits
Employer's Liability	
Each Accident	\$100,000
Disease – Policy Limit	\$500,000
Disease – Each Employee	\$100,000
Commercial General Liability	
Each occurrence	\$1 million
General Aggregate & Products Liability	\$2 million
Automobile Liability	
Combined Single Limit	\$1 million

- (B) Bublr shall add the "Board of Regents of the University of Wisconsin System, its officers, employees and agents" as an additional insured under its commercial general liability policy.

Article VIII. General Conditions

Section 8.01 Ownership of Bicycles & Stations. Bublr shall remain the sole owner of all Bicycles and Stations provided under the terms of this MOU.

Section 8.02 Changes, Modification & Amendments. This MOU may only be changed, modified, or amended in writing, signed by both Bublr and UWM.

Section 8.03 Waiver. The failure of Bublr or UWM to enforce any portion of this MOU does not operate as a waiver. No portion of this MOU will be deemed waived unless such waiver is explicitly made in writing and signed by the parties in full compliance with §8.02.

Section 8.04 Permitting & Permissions. Bublr will secure all required permits and permissions necessary to effectuate the terms of this agreement. Bublr is not permitted to use UWM's name or any of its images and registered trademarks without UWM's written permission.

Section 8.05 Construction & Severability. Wherever possible, each provision of this MOU will be interpreted so that it is valid under the applicable law. If any provision of this MOU is held to be void, voidable or otherwise unenforceable by a court of competent jurisdiction, such a provision will still be effective to the extent it remains valid. Any provision held to be completely invalid shall be severed from this MOU. In either case, all other provisions shall remain valid to the maximum extent allowable by law.

Section 8.06 Compliance with Applicable Laws. Bublr shall observe and comply with all applicable federal, state, county and municipal laws, statutes, regulations ordinances, and executive order in effect now or later, and will require all contractors and subcontractors to do the same.

Section 8.07 Statement of Nondiscrimination.

- (A) Employees. Bublr shall not unlawfully discriminate against any employee or applicant for employment on the basis of age, race, religion, color, handicap, sex, gender, gender identity, physical condition, developmental disability, sexual orientation, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Bublr further agrees to actively work to ensure equal employment opportunities. Bublr agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
- (B) Users. Bublr shall not unlawfully discriminate against any person seeking to use or access the Bublr BikeShare System on the basis of age, race, religion, color, handicap, sex, gender, gender identity, physical condition, developmental disability, sexual orientation, or national origin.

Section 8.08 Choice of Law. This MOU shall be governed by the laws of the State of Wisconsin and construed and interpreted in accordance with the same.

Section 8.09 Merger Clause. This MOU, and all exhibits, represents the entire agreement between Bublr and UWM with respect to the subject matter hereof, and all

prior agreements and understandings with respect to such subject matter are superseded by this MOU.

Section 8.10 FERPA. Bublr acknowledges that UWM has a duty to maintain the privacy of student records including, without limitation, education records as defined by the Family Education Rights & Privacy Act , 20 USC § 1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time (collectively "FERPA"). As such, Bublr agrees as follows:

- (A) Confidential information about UWM's students may be contained in records provided to Bublr. As such, Bublr agrees to protect the privacy of all student education records to the full extent required of UWM under FERPA;
- (B) Bublr is performing an institutional service or function that has been outsourced by UWM and for which the UWM would otherwise use its employees;
- (C) Bublr is subject to all FERPA requirements governing the use and disclosure of personally identifiable information from education records, including without limitation the requirements of 34 C.F.R. 99.33(a) and shall not maintain, use, disclose, or allow access to education records except as authorized by UWM;
- (D) Even in circumstances that might justify an exception under FERPA, Bublr may not disclose personally identifiable information unless UWM has first authorized in writing such disclosure or disclosure is required by applicable law; and
- (E) Bublr, to the extent it re-discloses any education records to a subcontractor or other third party, it shall require such subcontractor or third party to comply with Bublr's obligations under this section.

THE PARTIES HERETO have executed this Memorandum of Understanding through their duly authorized representatives as of the day and date written below.

Midwest BikeShare, Inc. d/b/a Bublr Bikes

By: _____

Date: _____

Kevin Hardman

The Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Milwaukee

By: Martin Kowalski

Date: 6/23/2015

Martin Kowalski

Read and acknowledged

By: Katherine Nelson

Date: 6/23/2015

Katherine Nelson

EXHIBIT A – STATION LOCATIONS AND INSTALLATION TIMELINE

I. Primary Stations

- A. Locations. Bublr will place the six (6) Stations placed under this MOU in or near:

- (1) Sandburg Hall (3400 block of North Maryland Ave., Milwaukee, WI);
- (2) Student Union (2200 block of East Kenwood Blvd., Milwaukee, WI);
- (3) Klotsche Pavilion (3400 block of North Downer Ave, Milwaukee, WI);
- (4) Kenilworth Square (1900 block of East Hartford Ave., Milwaukee, WI);
- (5) Cambridge Commons Residential Hall (2300 block of East North Ave., Milwaukee, WI – on the east side of the Milwaukee River); and
- (6) Riverview Residential Hall (2300 block of East North Ave., Milwaukee, WI – on the west side of the Milwaukee River).

In the alternative, it will not be considered a violation of this MOU if a Station is placed at some other location agreed to by both Bublr and UWM. In any event, once a Station is installed it will not be removed during the term of this MOU except by the mutual consent of the parties to this MOU.

- B. Installation Timeline. Bublr will place the first of the Primary Stations 130 days after the Effective Date of this agreement.

- C. Station Move Request. Either Bublr or UWM may request that a Station be relocated during the term of this MOU, however any such move must be approved by both parties.

(1) UWM Move Request. If UWM requests that a Station be moved, and Bublr approves of the move, Bublr will move the Station and invoice UWM an additional \$5,000.

(2) Bublr Move Request. If Bublr request that a Station be moved, and UWM approves of the move, Bublr will move the Station at no cost to UWM.

- D. Additional Stations. Bublr agrees that a contiguous bikeshare system is necessary and will make good-faith efforts to install Stations at or near the following locations within one (1) year of the Effective Date without any use of UWM Funds:

- (1) Maryland/Bradford
- (2) Downer/Café Hollander
- (3) Oakland/Newberry
- (4) North Avenue Pick N Save

Such Stations are not otherwise subject to the terms of this MOU.

Exhibit B – UWM User Pass and Usage Fee Structure

UWM User Pass Fee Structure

During the term of this MOU a UWM – Bublr Pass will be discounted and offered to each UWM User as follows:

	Discount off Bublr Pass	Discount off UWM- Bublr Pass	Cost to UWM User
First 365 day period following the Effective Date of this MOU	\$180	\$20	\$0
Starting the 366 th day after the Effective Date of this MOU and continuing through the end of the Initial Duration as defined in Article III	\$160	\$0	\$20

The UWM – Bublr Pass includes unlimited free 60 minute trips. It is each UWM User's responsibility to sign up for a UWM – Bublr Pass on the website provided by Bublr Bikes. To sign up, each UWM User must use their valid UWM email address as well as a credit or debit card.

Usage Fee Structure

UWM Users who take trips lasting longer than 60 minutes, will be charged \$3 per 30 minutes, which is the same Usage Fee charged to non-UWM Users. The Usage Fee is determined, set, and changed by Bublr at Bublr's sole discretion.