



**CITY OF DELRAY BEACH
100 NW 1st AVENUE, DELRAY BEACH, FL 33444**

**RFP No. 2017-003
Bicycle Sharing Program**

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**CITY OF DELRAY BEACH, FLORIDA
PURCHASING DEPARTMENT
REQUEST FOR PROPOSALS**

**RFP No. 2017-003
Bicycle Sharing Program**

Summary

ISSUE DATE: September 15, 2016

DEPARTMENT: Environmental Services

DUE DATE: October 18, 2016

TIME: 2:00 PM, ET

PURPOSE: The City of Delray Beach, FL (City) is interested in implementing a readily accessible automated Bicycle Sharing Program, for citizens, commuters, employees and visitors, at no cost (or as a revenue stream to the City) during the first quarter of fiscal year 2017. The Bicycle Sharing Program (Program) is envisioned to enhance mobility of residents, commuters, employees, and visitors, reduce automobile trips and related congestion, and contribute to environmental sustainability and economic prosperity of the City.

The City is soliciting proposals for the provision of a Program as identified in the Scope of Services herein. Any Proposer wishing to submit a proposal must comply with the requirements contained in this Request for Proposals (RFP).

A Non-Mandatory Pre-proposal conference is scheduled for **Monday, September 22, 2016 at 9:00 a.m., ET** in the City, City Hall Building, 1stFloor Conference Room, 100 N.W. 1st Avenue, Delray Beach, FL. Proposers are encouraged to attend and ask questions.

1. **NOTIFICATION:** The City utilizes the following methods for notification and distribution of solicitation opportunities:

- Bidsync – www.bidsync.com
- City of Delray Beach [website](http://www.cityofdelraybeach.com)
- Request via email purchasing@mydelraybeach.com
- Hard copies are available at City Hall

These are the only methods of notification and distribution authorized by the City. The City shall not be responsible for receipt of notification and information from any source other than those shown above. It shall be the Proposer's responsibility to verify the validity of all RFP documents and solicitation information received by sources other than those listed.

2. **REQUIRED INFORMATION:** This RFP contain various sections which require completion. Responses to this RFP (Proposals) must be completed and returned prior to the Due Date and Time set for Proposal opening or the Proposer will be found non-responsive.

3. **CORRESPONDENCE:** The number of this RFP must appear on all correspondence, or inquiries, pertaining to this RFP.

4. **NOTICE OF PUBLIC DOCUMENTS:** Any and all materials initially or subsequently submitted as part of the solicitation process for this RFP shall become the property of the

City, and shall be treated as City documents subject to typical practice and applicable laws for public records.

5. **ADDENDA:** Any interpretations, corrections, or changes to this RFP will be made by addenda. Sole issuing authority shall be vested in the City Purchasing Department. Addenda will be posted and available through the City notification methods shown above.
6. **ELECTRONIC PROPOSAL SUBMISSION:** Electronic responses via www.bidsync.com are not accepted for this RFP.
7. **HARD COPY (PAPER) PROPOSAL SUBMISSION:** All proposals must be received on or before the Due Date and Time (local time) at the City Hall Lobby reception desk, 100 N.W. 1st Avenue, Delray Beach, Florida, 33444. Proposals must be presented to the Purchasing Department in a sealed container unless otherwise indicated. It is the sole responsibility of the Proposer to utilize the forms provided in this RFP and to ensure their proposal reaches the Purchasing Department on or before, the Due Date and Time (local time) at the City of Delray Beach, Purchasing Office, 100 N.W. 1st Avenue, Delray Beach, Florida, 33444. City business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding City holidays. The Proposer's name, return address, the RFP number, RFP title, Due Date and Time must be noted on the outside of the sealed container. Included in the sealed container shall be:
 - One (1) unbound original clearly marked "ORIGINAL".
 - Six (6) copies clearly marked "COPY" with all required information and identical to the original.
 - Three (3) electronic copies with all required information, identical to the original, on separate universal serial bus (USB) portable flash memory card. Electronic copies should be in Adobe Acrobat® PDF format in one continuous file. Do not password protect or otherwise encrypt electronic copies.
8. **LATE PROPOSALS:** The City shall not be responsible for a Proposer's inability to submit a proposal via BidSync by the Due Date and Time for any reason. Hard copy proposals received at the City of Delray Beach City Hall after the Due Date and Time shall be returned unopened and will be considered non-responsive. It is the sole responsibility of Proposer to ensure its Proposal is received by the City by the Due Date and Time. The City is not responsible for the lateness due to weather conditions, delivery service, issues arising from the use of BidSync. or any other reasons.
9. **PROPOSAL OPENINGS:** All proposals submitted before the Due Date and Time shall be publicly opened by the Purchasing Department at the City Hall Building, located at 100 N.W. 1st Avenue, Delray Beach, FL or other designated City location as posted. Proposers and the public are invited to attend Proposal openings. Only the Proposers' names will be read aloud at the Proposal opening.
10. **MINOR DEFECT:** The City reserves the right to waive any minor defect, irregularity, or informality in any proposal. The City may also reject any or all proposals without cause prior to award.
11. **EVALUATION:** Proposals will be evaluated as outlined in this RFP.

12. **AWARD:** The City reserves the right to accept any proposal or combination of proposal alternates which, in the City's judgment will best serve the City's interest, reject any and all proposals or any part of a proposal, and to negotiate terms with the Successful Proposer. The City reserves the right to waive any informality in a proposal, and to award the purchase in the best interest of the City. Discrepancies in the multiplication of units of work and unit prices in Proposer's Fee Proposal will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

The City reserves the right to award the Agreement on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City.

The City reserves the right to make an award to the responsive and responsible Proposer whose product or service meets the terms, conditions, and specifications of the RFP and whose Proposal is considered to best serve the City's interest.

13. **INFORMATION:** Within this RFP are several Sections. Section 1 provides the scope of services, Section 2 describes the Terms and Conditions that will apply to this RFP and any resulting Agreement. Section 3 describes the Proposal Response Requirements to be provided by the Successful Proposer. Section 4 provides the scope of work and Section 4 provides forms and instructions for preparing a proposal in response to this RFP.
14. **RFP SCHEDULE:** A summary schedule of the major activities associated with this solicitation is presented in Table 1, below. The City, at its sole discretion, may modify this schedule as the City deems appropriate.

Table 1

ACTIVITY	DATE
Issue RFP	September 15, 2016
Non-Mandatory Pre-proposal Conference	September 22, 2016
Deadline for Delivery of Questions	September 27, 2016
Due Date and Time (for delivery of Proposals)	October 18, 2016 by 2:00 p.m., ET
Institute Cone of Silence	October 18, 2016
Phase 1 Evaluation (Responsive and Responsible)	October 24, 2016
Selection Committee Meeting – Technical Evaluations	October 31, 2016
Selection Committee Meeting – Interviews (if conducted)	November 7, 2016
Selection Committee Meeting - Final Evaluations	November 9, 2016

15. **BIDSYNC:** The City uses BidSync (www.bidsync.com) to administer the competitive solicitation process, including but not limited to soliciting proposals, issuing addenda, posting results and issuing notification of an intended award decision. There is no charge to potential Proposers to register and download the solicitation from BidSync. Proposers are strongly encouraged to read the various vendor Guides and Tutorials available on the BidSync website well in advance of their intention of submitting a proposal to ensure familiarity with the use of BidSync.

16. **POINT OF CONTACT:** For information concerning procedures for responding to this RFP,

contact the City Purchasing Department via email at purchasing@mydelraybeach.com. Such contact shall be for clarification purposes only.

17. **QUESTIONS:** Each Proposer must examine this RFP, which incorporates all its addenda, appendices, exhibits, drawings, instructions, special conditions and attachments to determine if the requirements are clearly stated. All questions concerning this RFP, such as discrepancies, omissions and exceptions to any term or condition of the RFP documents, including the Sample Agreement, should be submitted in writing utilizing the question / answer feature provided by BidSync at www.bidsync.com. Questions of a material nature must be received prior to the Deadline for Delivery of Questions specified in the RFP schedule.

Failure of the Proposer to examine all pertinent documents shall not entitle the Proposer to any relief from the conditions imposed in the Agreement.

18. **DEFINITIONS** The City will use the following definitions in its special conditions, scope of services, instructions, addenda and any other document used in the solicitation process:

- A. REQUEST FOR PROPOSALS (RFP) - City request for proposals from qualified Proposers.
- B. PROPOSER – Person or firm submitting a Proposal.
- C. PROPOSAL – Proposers response to this RFP.
- D. RESPONSIVE PROPOSER – A Proposer whose Proposal conforms in all material respects.
- E. RESPONSIBLE PROPOSER – A Proposer who meets the minimum qualification requirements and has the capability to perform the Agreement requirements.
- F. FIRST RANKED PROPOSER – The Proposer whose Proposal is deemed the most advantageous to the City after applying the evaluation criteria contained in this RFP.
- G. SUCCESSFUL PROPOSER – Proposer who is awarded an Agreement for the provision of services detailed in this RFP.
- H. AGREEMENT – The Agreement, a sample of which is attached hereto and made a part hereof, between the City and the Successful Proposer to perform the services described herein.

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SECTION 1: SPECIAL TERMS AND CONDITIONS

A. INTRODUCTION AND INFORMATION

1. Purpose

The City is soliciting proposals for the provision of a Program, as identified in the Scope of Services herein. Any Proposer wishing to submit a proposal must comply with the requirements contained in this RFP.

Within this RFP are several Sections. Section 1 describes the Terms and Conditions that will apply to this RFP and any resulting Agreement. Section 2 describes the Proposal Response Requirements to be provided by the Successful Proposer. Section 3 provides the scope of services and Section 4 provides forms and instructions for preparing a proposal in response to this RFP.

B. TERMS AND CONDITIONS

1. Addenda, Changes, and Interpretations

Potential Proposers should utilize the question / answer feature provided by BidSync and request modification or clarification of any ambiguity, technical specifications, conflict, discrepancy, omission or other error discovered in this RFP. Requests for clarification, modification, interpretation, or changes must be received prior to the Deadline for Delivery of Questions. Requests received after the Deadline may not be addressed.

The City's response to questions and requests for information will be answered within the question/answer feature provided by BidSync. Additionally, all questions received and responses given will be provided via an addendum to this ITB and uploaded to BidSync. Material changes, if any, to the requirements, scope, specifications, or the solicitation process will be made by official written addendum issued by the City and uploaded to BidSync as an addendum to this ITB.

All addenda are a part of the RFP solicitation documents and each Proposer will be bound by such addenda. It is the responsibility of each Proposer to read and comprehend all addenda issued. Failure of any Proposer to acknowledge an issued addendum in its Response will not relieve the Proposer from any obligation contained therein.

2. Evaluation of Proposals

The City Manager will designate a Selection Committee to review and evaluate the Proposals submitted in response to this RFP. The review process will be conducted at a minimum of two phases. In Phase One, the Chief Purchasing Officer (CPO) or designee shall determine whether each Proposer is responsive and responsible. For the purposes of this RFP, a responsive Proposer means a Proposer that has submitted a proposal that conforms in all material respects to the requirements in the RFP. Accordingly, in Phase One, the CPO or designee will determine whether each Proposer correctly submitted all of the necessary forms and documents. For the purposes of this RFP, a responsible Proposer means a Proposer meets the minimum qualification requirement(s) in this RFP, Section 2.

Among other things, a Proposal may be found to be non-responsive if the Proposer failed to provide the information requested in the RFP; failed to utilize or complete the required forms; provided incomplete, indefinite, or ambiguous responses; failed to comply with the applicable deadlines; provided improper or undated signatures; or provided information that is false, misleading, or exaggerated.

In Phase Two, the Selection Committee will evaluate each proposal utilizing the following weighted criteria:

Evaluation Criteria

Criterion	Max Score
Experience	20
Operational Plan	25
Capacity and Approach	25
Revenue Proposal	15
Interviews	10
Location	5
Total	100

Each Selection Committee member will evaluate, rank and score the proposals for each of the evaluation criteria. The Selection Committee may create a short list of Proposers from the proposals received and elect to conduct interviews/presentations with the short-listed firms. If the Selection Committee elects to short-list only those proposals from Proposer that are short-listed will be considered for award of the Agreement.

The Selection Committee may rank Proposals without conducting interviews with Proposers. For this reason, each Proposer must ensure that its proposal contains all of the information requested in this RFP.

If interviews are conducted, the evaluation will be on the knowledge demonstrated by the Proposer and its team members, as well as the team's ideas and vision for services for the City. Consideration will be given for unqualified answers, comprehensive explanations of relevant experience, and understanding of the required services. Consideration will also be given for presentation style. Clarification information as well as information obtained during the interview process will be considered in the final evaluations and ranking of Proposals.

At any time during the Selection process, the City may conduct investigations it deems necessary to evaluate the proposals. Each Proposer shall promptly provide the City with any additional information reasonably requested by the City. The City shall have the right to make additional inquiries, interview some or all of the Proposers, visit the facilities of one or more of the Proposers, or take any other action the City deems necessary to fairly evaluate a proposal.

At any time during the Selection process, the City may reject a proposal if the City concludes the Proposer is not qualified (e.g. Proposer does not satisfy the minimum requirements criteria set forth in this RFP).

The Selection Committee and/or the City Commission may select the Successful Proposer without allowing any presentations or interviews by any Proposer. For this reason, each Proposer must ensure that its proposal contains all of the information requested in this RFP.

3. Award

The City reserves the right to accept a Proposal(s) and award an Agreement that in its judgment will be for the best interest of the City. The City reserves the right to negotiate agreement terms with the Successful Proposer.

4. The City's Acceptance or Rejection of Proposals

The City reserves its exclusive right to:

- Disregard all non-conforming, non-responsive, unbalanced or conditional proposals
- Reject any and all proposals that fail to satisfy the requirements and specifications in this RFP
- Accept the proposal which is the best overall proposal, based on the selection criteria listed
- Reject any and all non-responsive proposals
- Waive minor irregularities in any proposal
- Issue addenda or otherwise revise the requirements in this RFP
- Reject all proposals, with or without cause
- Issue requests for new proposals
- Cancel this RFP

The City may reject a proposal for any reason that the City deems sufficient. For example, the City may reject one or more proposals if (1) the Proposer misstates or conceals any material fact in their proposal; (2) the proposal does not conform to the requirements of applicable Law; (3) the proposal is subject to conditions or qualifications; (4) a change occurs that makes this RFP unnecessary for the City; (5) any Proposer submits more than one proposal under the same or different names; (6) a Proposer has failed to perform satisfactorily or meet its financial obligations on previous contracts; (7) the Proposer employs unauthorized aliens in violation of Section 274(A)(e) of the Immigration and Naturalization Act; and/or (8) or the Proposer is listed on the U.S. Comptroller General's List of Ineligible Companies for Federally Financed or Assisted Projects.

Any or all proposals may be rejected if the City concludes that collusion existed among two or more of the Proposers. Proposals received from the participants in such collusion will not be considered for the same work in this RFP if re-advertised.

The City may reject proposals if two (2) or more Proposers are planning a merger, or are in the process of merging with or acquiring other Proposers, and the City concludes that the Proposers are not submitting bona fide or uncompromised proposals. In such cases, the City may reject all proposals in which such Proposers are involved.

The City reserves the right to disqualify Proposer during any phase of the competitive solicitation process and terminate for cause any resulting contract upon evidence of collusion with intent to defraud or other illegal practices on the part of the Proposer.

5. Protest Procedures

As noted above, proposals will be evaluated in two phases. If the Proposer is deemed non-responsive or non-responsible during Phase One, the CPO shall provide notice to the affected Proposer. The CPO shall also post notice on BidSync (www.bidsync.com) and the bulletin board located in the lobby of City Hall after the Selection Committee provides a recommendation for award at the conclusion of Phase Two.

Any Proposer who is aggrieved by these decisions or a decision of the City Commission may file a protest pursuant to Section 36.04 (entitled "Protest Procedures") of the Delray Beach Code of Ordinances. However, nothing contained in this RFP shall be deemed to limit the authority of the City Commission under special or general law.

Any Proposer filing a protest shall submit with its protest a Protest Bond, payable to the City, in the amount of fifteen thousand dollars (\$15,000). If the protest is decided in the protester's favor the entire protest bond is returned. If the protest is not decided in the protester's favor the protest shall be forfeited to the City. The protest bond shall be in the form of a cashier's check.

6. Changes and Alterations

Proposers may change or withdraw a Proposal at any time prior to the proposal Due Date and Time; however, no oral modifications will be allowed. Modifications shall not be allowed following the proposal Due Date and Time.

7. Proposer's Costs

The City shall not be liable for any costs incurred by Proposers in responding to this RFP.

8. Pricing/Delivery

All pricing should be identified on the Fee Proposal page provided in this RFP. No additional costs may be accepted, other than the costs stated on the Fee Proposal pages. Failure to use the City's Fee Proposal form and provide costs as requested in this RFP may deem Proposer's proposal non-responsive.

Proposer must quote a firm, fixed fee for all services stated in the RFP. Fees stated in the Fee Proposal must be quoted FOB: Destination and all costs, including travel to and from the City <and installation> shall be included.

Discrepancies in the multiplication of units of Work and unit prices submitted in the Price Proposal will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

9. Invoices/Payment

The City will accept invoices no more frequently than once per month. Each invoice shall fully detail the related fees and shall specify the status of the particular task or project as of the date of the invoice with regard to the accepted schedule for that task or project. Payment will be made within forty-five (45) days after receipt of an invoice

acceptable to the City, in accordance with the Florida Local Government Prompt Payment Act. If, at any time during the Agreement, the City shall not approve or accept the Proposer's work product, and agreement cannot be reached between the City and the Proposer to resolve the problem to the City's satisfaction, the City shall negotiate with the Proposer on a payment for the work completed and usable to the City.

10. Acceptance of Proposals / Minor Irregularities

The City reserves the right to accept or reject any or all proposals, part of proposals, and to waive minor irregularities or variances to specifications contained in proposals which do not make the proposal conditional in nature, and minor irregularities in the solicitation process. A minor irregularity shall be a variation from the solicitation that does not affect the price of the contract or does not give a Proposer an advantage or benefit not enjoyed by other Proposers, does not adversely impact the interests of other firms or, does not affect the fundamental fairness of the solicitation process. The City also reserves the right to reissue a RFP.

The City reserves the right to disqualify Proposer during any phase of the competitive solicitation process and terminate for cause any resulting contract upon evidence of collusion with intent to defraud or other illegal practices on the part of the Proposer.

11. Modification of Services

While this Agreement is for services provided to the department referenced in this RFP, the City may require similar work for other City departments. Successful Proposer agrees to take on such work unless such work would not be considered reasonable or become an undue burden to the Successful Proposer.

The City reserves the right to delete any portion of the work at any time without cause, and if such right is exercised by the City, the total fee shall be reduced in the same ratio as the estimated cost of the work deleted bears to the estimated cost of the work originally planned. If work has already been accomplished and approved by the City on any portion of an Agreement resulting from this RFP, the Successful Proposer shall be paid for the work completed on the basis of the estimated percentage of completion of such portion to the total project cost.

The City may require additional items or services of a similar nature, but not specifically listed in the Agreement. The Successful Proposer agrees to provide such items or services, and shall provide the City prices on such additional items or services based upon a formula or method, which is the same or similar to that used in establishing the prices in their proposal. If the price(s) offered are not acceptable to the City, and the situation cannot be resolved to the satisfaction of the City, the City reserves the right to procure those items or services from other suppliers, or to cancel the Agreement upon giving the Successful Proposer thirty (30) days written notice.

If the Successful Proposer and the City agree on modifications or revisions to the task elements, after the City has approved work to begin on a particular task or project, and a budget has been established for that task or project, the Successful Proposer will submit a revised budget to the City for approval prior to proceeding with the work.

12. Non Exclusive Contract

Proposer agrees and understands that the Agreement shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services from another supplier at the City's sole option.

13. Contract Agreement

By submitting a proposal the Proposer agrees to all terms and conditions in this RFP, which incorporates all addenda, appendices, exhibits, attachments and sample Agreement.

The Successful Proposer will be required to execute the Agreement, a sample of which is attached hereto and made a part hereof. The Agreement will incorporate the Successful Proposer's Proposal and any subsequent information requested from the Successful Proposer by the City during the evaluation process.

The City will transmit the Agreement to the recommended proposer for execution. Proposer agrees to deliver two duly executed copies of the Agreement to the City within five (5) calendar days of receipt.

14. Subcontractors

If the Proposer proposes to use subcontractors in the course of providing services to the City, this information shall be a part of the proposal. Such information shall be subject to review, acceptance and approval of the City, prior to any award. The City reserves the right to approve or disapprove of any subcontractor candidate in its best interest and to require Proposer to replace subcontractor with one that meets City approval.

Proposer shall ensure that all of Proposer's subcontractors perform in accordance with the terms and conditions of the Agreement. Proposer shall be fully responsible for all of Proposer's subcontractors' performance, and liable for any of Proposer's subcontractors' non-performance and all of Proposer's subcontractors' acts and omissions. Proposer shall defend, at Proposer's expense, counsel being subject to the City's approval or disapproval, and indemnify and hold harmless the City and the City's officers, employees, and agents from and against any claim, lawsuit, third-party action, or judgment, including any award of attorney fees and any award of costs, by or in favor of any Proposer's subcontractors for payment for work performed for the City.

Successful Proposer shall require all of its subcontractors to provide the required insurance coverage as well as any other coverage that the Proposer may consider necessary, and any deficiency in the coverage or policy limits of said subcontractors will be the sole responsibility of the Successful Proposer.

15. Performance Bond/Irrevocable Letter of Credit (if applicable)

The Proposer will execute and deliver to the City, within ten (10) days after notification of award, a Cash Deposit, Performance Bond, or Unconditional Irrevocable Letter of Credit payable to the City, in the amount of \$100,000. If the bond is on an annual coverage basis, renewal of each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing bond. A surety company of recognized standing, authorized to do business in the State of Florida, and having a resident agent must execute the Performance Bond. If a letter of credit is chosen, it must be in a form

acceptable to the City, drawn on a bank acceptable to the City, and issued in favor of the City. Acknowledgment and agreement is given by both parties that the amount herein above set is not intended to be or shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Proposer to the City in the event of a material breach of the Agreement by the Proposer.

The City shall monitor the performance of all Proposers. If Proposer performance fails to meet the requirements specified within the contract, the City may without cause and without prejudice to any other right or remedy, terminate the contract whenever the City determines that such termination is in the best interest of the City.

16. Insurance Requirements

The Successful Proposer shall supply proof of insurance, detailing terms and provisions of coverage. Coverage must be received and approved by the City Risk Manager within 10 days of final execution of the Agreement.

Selected Proposer shall carry the following minimum types of insurance:

- A. Workers' Compensation. Successful Proposer shall carry Worker's Compensation insurance with the statutory limits; Employers' Liability insurance with a limit of not less than \$100,000 for each accident, \$100,000 for each disease, and \$500,000 for aggregate disease.
- B. Employers' Liability insurance with a limit of not less than \$100,000 for each accident, \$100,000 for each disease, and \$500,000 for aggregate disease.
- C. Comprehensive General Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence and two million (\$2,000,000) in the aggregate for Bodily Injury and Property Damage.

The Comprehensive General Liability insurance policy must include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and Contractual Exclusions removed.

- D. Automobile Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence.
- E. Commercial Crime Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence.

All insurance policies shall be issued by companies that (a) are authorized to do business in the State of Florida; (b) have agents upon whom service of process may be made in Palm Beach County, Florida; and (c) have a Best's rating of A or better. All insurance policies shall name the City of Delray Beach as an additional insured. The Successful Proposer agrees to notify the City within (5) business days of coverage

cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City Risk Management Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

17. Award of Agreement

An Agreement may be awarded by the City Commission. The City reserves the right to execute or not execute, as applicable, an Agreement with the Successful Proposer(s) that is determined to be in the City's best interests. The City reserves the right to award an Agreement to more than one Proposer, at the sole and absolute discretion of the in the City.

18. Unauthorized Work

The Successful Proposer(s) shall not begin work until an Agreement has been awarded by the City Commission and a purchase order and/or task order has been issued. Successful Proposer(s) agree and understand that the issuance of a purchase order and/or task order shall be issued and provided to the Successful Proposer(s) following Commission award; however, non-receipt of a purchase order and/or task order shall not prevent the Successful Proposer(s) from commencing the work once the City Commission has awarded the Agreement.

19. Uncontrollable Circumstances (Force Majeure)

The City and Successful Proposer will be excused from the performance of their respective obligations under the Agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

- A. The non-performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
- B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
- D. The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Proposer will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

20. News Releases/Publicity

News releases, publicity releases, or advertisements relating to the Agreement or the tasks or projects associated with the project shall not be made by Proposers without prior City approval.

21. Agreement Period

The initial Agreement term shall commence on the date specified in the Agreement and shall be for a term of two years, with three, one year renewal options, to be exercised at the City's sole discretion.

Each renewal of this Contract is subject to continued satisfactory performance compliance with the specifications, terms and conditions established herein.

At the City's request, the Successful Proposer shall continue services beyond the final expiration date. This extension period shall not extend for more than ninety days beyond the final expiration date of the Agreement. The Successful Proposer shall be compensated at the rate in effect when this extension period is invoked by the City.

22. Agreement Coordinator

The City may designate an Agreement Coordinator whose principal duties shall be:

- Liaison with Successful Proposer.
- Coordinate and approve all work under the Agreement.
- Resolve any disputes.
- Assure consistency and quality of Successful Proposer's performance.
- Schedule and conduct Successful Proposer performance evaluations and document findings.
- Review and approve for payment all invoices for work performed or items delivered.

23. Substitution of Personnel

It is the intention of the City that the Successful Proposer's personnel proposed for the Agreement will be available for the Agreement Period. In the event the Successful Proposer wishes to substitute personnel, Successful Proposer shall propose personnel of equal or higher qualifications and all replacement personnel are subject to City approval. In the event substitute personnel are not satisfactory to the City and the matter cannot be resolved to the satisfaction of the City, the City reserves the right to cancel the Agreement for cause.

24. Public Records

IF THE SUCCESSFUL PROPOSER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUCCESSFUL PROPOSER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-

243-7050 OR VIA EMAIL
AT PUBLICRECORDSREQUEST@MYDELRAYBEACH.COM.

Successful Proposer shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Successful Proposer does not transfer the records to the City.
- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Successful Proposer or keep and maintain public records required by the City to perform the service. If the Successful Proposer transfers all public records to the City upon completion of the Agreement, the Successful Proposer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Successful Proposer keeps and maintains public records upon completion of the Agreement, the Successful Proposer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- v. If the Successful Proposer does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

25. REQUEST FOR RECORDS; NONCOMPLIANCE

All requests to inspect or copy public records relating to a City Agreement for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Successful Proposer of the request, and the Successful Proposer must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

If Successful Proposer does not comply with the City's records request for records, the City shall enforce the Agreement provisions in accordance with the Agreement. If Successful Proposer fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statute Chapter 119.10.

If a civil action is filed against Successful Proposer to compel production of public records relating to a City Agreement for services, the court shall assess and award against the Successful Proposer the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the Successful Proposer unlawfully refused to comply with the public records request within a reasonable time; and
2. At least eight business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Successful Proposer has not complied with the request, to the public agency and to the contractor. A notice complies if it is sent to the City's custodian of public records and to the Successful Proposer at the Successful Proposer's address listed on its Agreement with the City or to the Successful Proposer's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format. A Successful Proposer who complies with a public records request within eight business days after the notice is sent is not liable for the reasonable costs of enforcement.

26. Limitations on Communication-Cone of Silence: Proposers are advised that a Cone of Silence will be in effect during this RFP. The Cone of Silence is effective from the Due Date and Time until award is made by the City Manager and/or Commission. The Cone of Silence prohibits any communications, regarding this RFP, between the Proposers or any Person representing the Proposers, and any member of the City Commission, the Commission's staff, any City employee authorized to act on behalf of the City to award the Agreement under this RFP, or any member of the Selection Committee. All correspondence regarding this RFP must be in writing and must be directed to the Chief Purchasing Officer, who is the only Person authorized to receive such documents.

Section 36.13 of the City Code provides "any person participating in a competitive solicitation issued by the City shall comply with Section 2-355 of the Palm Beach County Code of Ordinances." The County Code provides as follows:

- A. 'Cone of Silence' means a prohibition on any communication, except for written correspondence, regarding a particular request for proposals, request for qualification, bid, or any other competitive solicitation between:
 - (1) Any person or person's representative seeking an award from such competitive solicitations; and
 - (2) Any county commissioner or commissioner's staff, any member of a local governing body or the member's staff, a mayor or chief executive officer that is not a member of a local governing body or the mayor or chief executive officer's staff, or any employee authorized to act on behalf of the commission or local governing body to award a particular Agreement.
- B. For the purposes of this section, a person's representative shall include but not be limited to the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.
- C. The Cone of Silence shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. The Cone of Silence applies to any person or person's representative who responds to a particular request for proposals, request for qualification, bid, or any other competitive solicitation, and shall remain in effect until such response is either rejected by the county or municipality as applicable or withdrawn by the person or person's representative. Each request for proposals, request for qualification, bid or any other competitive solicitation shall provide notice of cone of silence requirements and refer to this article.

- D. The provisions of this article shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, Bidder negotiations during any public meeting, presentations made to the board or local municipal governing body as applicable, and protest hearings. Further, the Cone of Silence shall not apply to Bidder negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, or any written correspondence at any time with any employee, county commissioner, member of a local municipal governing body, mayor or chief executive officer that is not a member of the local municipal governing body, or advisory board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.
- E. The Cone of Silence shall not apply to any purchases made in an amount less than the competitive solicitation threshold set forth in the county purchasing ordinance (County Code, chapter 2, article III, division 2, part A, section 2-51 et seq.) or municipal ordinance as applicable.
- F. The Cone of Silence shall terminate at the time the board, local municipal governing body, or a county or municipal department authorized to act on behalf of the board or local municipal governing body as applicable, awards or approves an Agreement, rejects all Bids or responses, or otherwise takes action which ends the solicitation process.
- G. Any Agreement entered into in violation of the Cone of Silence provisions in this section shall render the transaction voidable.

27. OFFICE OF THE INSPECTOR GENERAL: Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed city contracts, transactions, accounts and records. The City has entered into an Inter-local Agreement with Palm Beach County for Inspector General Services. This agreement provides for the Inspector General to provide services to the City in accordance with the City functions and powers set out in the Palm Beach County Office of Inspector General Ordinance. All parties doing business with the City and receiving City funds shall fully cooperate with the Inspector General, including providing access to records relating to the Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of the parties doing business with the City, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud.

Proposer agrees that it is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of purchases and Agreements, and may demand and obtain records and testimony from Proposer and its sub licensees and lower tier sub licensees. Proposer understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Proposer or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of any order.

Failure to cooperate with the Inspector General, or interference with or impeding any investigation shall be a violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

30. **PUBLIC ENTITY CRIMES:** Pursuant to Florida Statutes 287.133, as amended, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on an Agreement to provide any goods or services to a public entity, may not submit a proposal on an Agreement with a public entity for the construction or repair of a public building or public work, may not submit a proposal on leases of real property to a public entity, may not be awarded or perform work as an Agreement or, supplier, subcontractor or consultant under an Agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statutes 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Each Proposer must certify that the Proposer is not subject to these prohibitions regarding public entity crimes.
31. **SCRUTINIZED COMPANIES:** This Section applies to any Agreement for goods or services of \$1 million or more. The Proposer certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, that it does not have business operations in Cuba or Syria and t as provided in Florida Statutes 287.135. The City may terminate an Agreement at the City's option if the Proposer is found to have submitted a false certification as provided under subsection (5) of Florida Statutes 287.135 or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has engaged in business operations in Cuba or Syria, as defined in Florida Statutes 287.135.
32. **DEBARRED OR SUSPENDED PROPOSERS:** The Proposer certifies, by submission of a response to this solicitation, that neither it nor its principals or subcontractors are presently debarred or suspended by any Federal, State or City department or agency.
33. **LOBBYING ACTIVITIES:** All Proposers are advised that the Palm Beach County Lobbyist Registration Ordinance (Section 2 - 351 of the Palm Beach County Code of Ordinances) applies to the City and this solicitation. Any violation of this requirement may cause the Proposer to be disqualified and prohibited from participating further in the RFP process.
34. **COMPLIANCE WITH LAWS:** Proposer shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant any order.
35. **NON-DISCRIMINATION:** The Proposer shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. The Proposer will endeavor to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicapped status, disabilities, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. These provisions apply to all subcontractors and it is the responsibility of the subcontractor to be in compliance.

36. **CONFLICT OF INTEREST:** By submitting a Proposal, Proposer declares and certifies that no officer, employee or person whose salary is payable in whole or part from the City is directly or indirectly interested in this Proposal or in the supplies, materials, equipment or services to which it relates or in any portion of the profits thereof; or

The award is subject to provisions of State Statutes and City Ordinances. All Proposers must disclose with their Proposal the name of any officer, director or agent who is also an employee of the City. Further, all Proposers must disclose the name of any City employee who owns, directly or indirectly, any interest in the Proposer's firm or any of its' branches.

37. **ANTI-COLLUSION:** Proposer certifies that its Proposal is made without prior understanding, agreement, or connection with any other corporation, firm or person submitting a Proposal for the same materials, services, supplies, or equipment and is in all respects fair and without collusion or fraud.

Any such violation may result in Agreement cancellation, return of materials or discontinuation of services and the possible removal of Proposer from participation in future City solicitations for a specified period.

38. **CITY POLICIES:** Successful Proposer shall comply with the City Equal Employment Opportunity Policy, Violence in the Workplace Policy, Drug and Alcohol Free Workplace Policy, General Complaint Policy and Sexual Harassment Policy. Copies of these policies may be obtained from the City Human Resources Division. Violations of these policies may result in cancellation/termination of the Agreement.

39. **TRADE SECRET:** Any language contained in the Proposer's Proposal purporting to require confidentiality of any portion of the Proposal, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 (Public Records Laws), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's Proposal constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the City its officers, employees, volunteers, and agents, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records. Proposals purporting to be subject to copyright protection in full or in part will be rejected.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR PROPOSAL AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR PROPOSAL OR ANY PART THEREOF AS COPYRIGHTED.

40. **LOCAL PREFERENCE:** In accordance with the City Code of Ordinances Sec. 36.14, the City shall give preference to a Local Business. A Local Business is any person, firm, partnership, company or corporation authorized to do business in Florida that has a valid business tax receipt issued by the City for at least one year prior to the solicitation issue

date and a physical address within the City from which the vendor lawfully performs and operates.

41. **VENUE:** Proposers waive the privilege of venue and agree that any legal action brought pursuant to this RFP or any resulting Agreement between Proposer and the City will be in Palm Beach County, Florida and that all litigation between Proposer and the City in the federal courts shall take place in the U.S. District Court for the Southern District of Florida.

Proposer hereby waives any claim against City and its officers, employees, volunteers or agents for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of the Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring the Agreement null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

42. **INDEMNITY/HOLD HARMLESS AGREEMENT:** Proposer shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Proposer, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of any order including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Proposer shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by the City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of any order. To the extent considered necessary by the Chief Purchasing Officer and the City Attorney, any sums due Proposer under any order may be retained by City until all of City's claims for indemnification pursuant to any order have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by the City.

43. **SPECIFICATIONS:** The specifications contained in the Scope of Services may include items that are considered minimum, mandatory, or required. If any Proposer is unable to meet or exceed these items and feels that the specifications are overly restrictive, the Proposer must notify the Purchasing Department prior to the Deadline for Delivery of Written Questions and Objections. If no such notification is received prior to the Deadline for Delivery of Written Questions, the City will consider the specifications to be acceptable to all Proposers.

44. **PROTEST PROCEDURES:** Parties that are not actual proposers including, but not limited to, subcontractors, material and labor suppliers, manufacturers and their representatives, shall not have standing to protest or appeal any determination made pursuant to this Section.

Upon notification by the City that a proposer is deemed non-responsive and/or non-responsible, the, proposer or responder who is deemed non-responsive and/or non-responsible may file a protest with the Chief Purchasing Officer by close of business on the third business day after notification (excluding the day of notification) or any right to protest is forfeited.

Likewise, after a Notice of Intent to Award an Agreement is posted, any actual proposer who is aggrieved in connection with the pending award of the agreement or any element of the process leading to the award of the agreement may file a protest with the Chief Purchasing Officer by close of business on the third business day after posting (excluding the day of posting) or any right to protest is forfeited.

Any proposer filing a protest shall simultaneously provide a Protest Bond to the City in the amount of \$15,000. If the protest is decided in the protester's favor, the entire Protest Bond shall be returned to the protester. If the protest is not decided in the protester's favor, the Protest Bond shall be forfeited to the City. The Protest Bond shall be in the form of a cashier's check, and shall be in the amount specified in the Sealed Competitive Method documents.

Any actual proposer that does not formally protest or appeal in accordance with this City Code Ordinance 36.04 shall not have standing to protest the City Commission's award.

Proposal protests will follow the procedures set forth in City Code Ordinance 36.04.

45. **ITEMS WITH RECYCLED CONTENT:** In addressing environmental concerns, the City encourages Proposers to submit a Proposal or, if requested an alternate proposal, containing items and/or the use of items with recycled content. When submitting a Proposal with recycled content items, Proposer shall provide documentation to the City to support their claim of the recycled content. The City prefers packaging consisting of materials that are degradable or that able to be recycled. When specifically stated in the RFP, the City may give preference to proposals containing items and/or the use of items manufactured with recycled material or packaging that is recyclable.
46. **USE OF OTHER GOVERNMENTAL AGREEMENTS:** The City reserves the right to reject any part or all of any proposal received and utilize other available governmental agreements, if such action is in its best interest.

The successful Proposer agrees to make available to all governmental agencies, authorities, departments, and municipalities the prices submitted with the selected proposal should any governmental agency, authority, department, and municipality (collectively referred to as Public Entities) desire to buy under the selected proposal.

The City will not be responsible for any transactions between the Successful Proposer and Public Entities that may elect to utilize the awarded proposal. All terms, prices and conditions of the awarded proposal will apply between the Successful Proposer and Public Entities utilizing the awarded proposal. As a condition of using the awarded proposal, the Public Entity and successful Proposer shall hold the City harmless from any claims or legal actions that may arise. NOTE: Any quantities estimated in this RFP are for the City only.

47. **PROHIBITION OF INTEREST:** No Agreement will be awarded to a Proposer who has City elected officials, officers or employees affiliated with it, unless the Proposer has fully complied with current Florida State Statutes, City Ordinances, the Palm Beach County Code of Ethics, and all other applicable rules and regulations relating to this issue. Proposers must disclose any such affiliation in their Proposal. Failure to disclose any such affiliation will result in disqualification of the Proposer, removal of the Proposer from the City's Proposer lists, and prohibition of the Proposer from engaging in any business with the City for a specified period.

48. **LEGAL REQUIREMENTS:** Applicable provisions of all federal, State of Florida, and Palm Beach County laws, local ordinances, rules and regulations shall govern development, submittal and evaluation of Proposals submitted in response to this RFP and shall govern any and all claims and disputes which may arise between Proposers and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Proposer shall not constitute a cognizable defense against the legal effect thereof.
49. **PAYMENT:** Payment terms for any agreed upon revenue sharing model will be by the fifteenth of each month for the previous month's revenue share. If a revenue sharing model is agreed upon and Successful Proposer doesn't report any revenues for the prior month, the City and the Successful Proposer shall discuss methods to improve revenue stream.
50. Notwithstanding the business model for the Program, Program Performance expectations will be negotiated with the Successful Proposer to establish parameters to track the success of the Program and incorporated into the Agreement.
43. **PROPOSAL FIRM FOR ACCEPTANCE:** Proposer warrants that by virtue of submitting a Proposal, the Proposal and the prices quoted in the Proposal will be firm for acceptance by the City for a period of one hundred fifty days from the Due Date and Time.
44. **COMMUNICATIONS:** Only written communications from Proposer, which are signed by a person authorized to bind the Proposer will be recognized by the City as duly authorized expressions on behalf of Proposer.

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SECTION 2: PROPOSAL RESPONSE REQUIREMENTS

1. HISTORY AND BACKGROUND

A bike sharing program is a service in which bicycles are made available for shared use to individuals on a short term basis. Bike sharing allows people to borrow a bike from point "A" and return it at point "B". Many bike-share systems offer subscriptions that make the first 30–45 minutes of use either free or very inexpensive, encouraging use as transportation. This allows each bike to serve several users per day. For many systems, smartphone apps show nearby stations with available bikes and open docking stations.

Bike sharing began in Europe in the 1960s and a more viable format emerged in the mid-2000s through the introduction of information technology. As of June 2014, public bike sharing systems were available in fifty countries on five continents.

2. PROPOSER STATEMENT OF ORGANIZATION

Provide information on Proposer as follows:

- A. Legal contracting name including any dba.
- B. State of organization or incorporation.
- C. Ownership structure of Proposer's company.
(e.g., Sole Proprietorship, Partnership, Limited Liability Corporation, Corporation)

D. Federal Identification Number.

E. Contact information for Proposer's Corporate headquarters.

Address
City, State, Zip
Phone

F. Contact information for Proposer's Local office (if any).

Address
City, State, Zip
Phone

G. Years in business

H. List of officers, owners and/or partners, or managers of the firm. Include names, addresses, and phone numbers

I. Any additional organizational information that Proposer wishes to supply to augment its proposal

J. Contact information for Proposer's Primary representative during this RFP process.

Name
Phone
E-mail
Mailing Address
City, State, Zip

K. Contact information for Proposer's Secondary representative during this RFP process.

Name
Phone
E-mail
Mailing Address
City, State, Zip

3. MINIMUM QUALIFICATIONS

Each proposer shall submit information and documentation requested that confirms it meets the following qualification requirement(s):

- i. Must be registered with the States of Florida, Division of corporations to do business in Florida.

No documentation is required. The City will verify registration.

- ii. Must have managed a bike sharing service at a minimum of two municipalities with a population of at least 60,000 year round residents for a period of at least one year.

Provide the requested information below for each of the two qualifying municipalities.

- (1) **Name of agency**
- (2) **Location**
- (3) **Population**
- (4) **Contact name**
- (5) **Contact phone number**
- (6) **Contact email address**
- (7) **Dates of service-Length of Contract (Begin/End)**

- iii. Must have been in business for a minimum of three years.

Provide supporting documentation (state, county, or city business or occupational license) that confirms Proposer or its owner(s) and/or principal(s) has been in business providing bike share services for a minimum of three years.

4. PROPOSAL RESPONSE REQUIREMENTS

A. EXPERIENCE

- i. Submit a detailed narrative description documenting Proposer's overall background and experience to include, but not limited to, the following:

- a. Provide a narrative description of the primary respondent's experience and background in providing and operating bike sharing programs.
 - b. Provide examples of three bike programs initiated in local markets and other cities.
 - c. Identify any potential partner organizations providing key services in relation to the proposed Program.
 - d. Awards, certifications, or other related recognition
- ii. Submit a detailed narrative description documenting Proposer's specific experience including, but not limited to, the following:
 - a. Background in managing bike dock stations.
 - b. Experience specific related to managing bike programs during special events.
 - c. Experience managing revenue control systems.
 - d. Experience managing a bike share programs in a location with seasonal visitors and/or residents.
- iii. Submit a detailed narrative description documenting experience of each key personnel proposed by Proposer to include the on-site supervisor and their manager.
- iv. Each Proposer shall submit client references for whom they have provided services similar to those specified in this RFP in the past five (5) years and who are agreeable to respond to a request from the City regarding proposer's experience. Each client reference should include the following:
 - a. Organization name
 - b. Contact name(s)
 - c. Contact email address
 - d. Address
 - e. Telephone and fax numbers
 - f. Dates of service (start/end)
 - g. Scope of work (brief description)

B. OPERATIONAL PLAN

- i. Provide the approach and general strategies for management of the Program.
- ii. Provide a business plan of no more than ten pages that includes, but is not limited to the following elements:
 - (a) Executive summary
 - (b) Description of business model
 - (c) Target market
 - (d) Marketing and promotional strategies
 - (e) Description of management strategies

- ii. Describe the methodology by which Proposer's team will identify and address routine maintenance and cleaning of the bikes, parking stations and terminals.
- iii. Describe the plan for maintenance and repairs of dispensing equipment failure.
- iv. Detail Proposer's sustainability plan for on-going operations.
- v. Describe any guarantees that will be offered to the City regarding the Program.
- vi. Describe the methodology to be utilized by the Program operator to monitor flow and rebalance the distribution of bikes.
- vii. What type of vehicles will be used to rebalance the distribution of bikes?
- viii. Describe the contingency plan for a weather emergency (e.g., tropical storm systems)
- ix. Provide a detailed staffing plan for a one month period (assuming one month period is during a busy season). Staffing plan should include details of the number of full-time and part-time positions that will be required.
- x. Detail any strategies Proposer will utilize to recruit local and economically disadvantaged workers.
- xi. Provide details of your general recruiting plan, strategies for hiring and retaining personnel and any benefits provided to your staff.
- xii. Describe Proposer's customer service practices and approaches.
- xiii. Describe the process for obtaining refunds and resolving customer disputes.
- xiv. Describe in detail Proposer's marketing plan and the marketing materials and media that will be used.
- xv. Include a marketing schedule that covers the time period prior to the start of the program, opening week/month of the program, and long-term. Proposers may include up to ten pages of example marketing/promotional materials in this section of the Proposal. NOTE: Delray Beach has a comprehensive sign ordinance limiting off-premise signage and such a program would require a waiver. (Information regarding this is in LDR Section 4.6.7 J2 at: <http://www.mydelraybeach.com/Planning%20Zoning/Dec%202009%20SIGN%20CODE>).
- xvi. Detail the amounts and types of fees proposed for the Program (e.g., hourly, daily, yearly, membership).
- xvii. If a City resident or employee discount will be included, provide a schedule of the discount rates and a description of the types of discount fees plans proposed (e.g., subscription accounts, short-term visitor rates and seasonal rates).
- xviii. Provide details of the payment options proposed for patrons. Explain any payment options for un-banked residents without credit or debit card payment access.
- xix. Provide a description of any technology that will be utilized in the Program. For payment, reporting, tracking. Include details on what type of software, if any will be required as well as internet access requirements.
- xx. Describe the payment/information kiosks and their features, functionality and the ability to deliver customized messaging.
- xxi. Provide select screen shots of Proposer's website for reserving and making payment for bike sharing.
- xxii. Provide select screen shots of the mobile/computer application for users

- illustrating the ease of use.
- xxiii. Describe the reporting and identity security capabilities of the technology and payment mechanisms.
 - xxiv. Provide details of the software to be utilized for payment and the ability to link to the City's website.

C. CAPACITY AND APPROACH

- i. Provide a summary narrative that demonstrates working knowledge and understanding of the requirements of the Scope of Services.
- ii. Provide a detailed narrative description of the proposed approach and methodology for engaging with City representatives while in the course of performing the duties.
- iii. Describe the overall approach to delivering the Scope of Services and any unique strategies Proposer proposes to implement.
- iv. Detail the goals that Proposer would like to achieve through the Program.
- v. Detail the proposed implementation plan and schedule.
- vi. If the Program is to be implemented in phases, how many bike docking stations and bikes will be provided at each phase, and what is the timing or thresholds would be met to expand the Program.
- vi. Provide a description of the demand analysis and relevant assumptions used to determine the program size, and distribution/density of bike docking stations.
- vii. Submit a map indicating a preliminary geographic distribution of bike docking stations.
- viii. Provide details on the docking stations for the Program to include the type of docking stations (e.g., manufacturer, model, materials, size, capacity)
- ix. Provide details, in a table format, on the bikes proposed for the program to include the following:
 - a. Types of bikes (e.g., manufacturer, color, weigh, sizes, gears, breaks, lights, cargo capacity).
 - b. Details regarding bikes with ADA accommodations.
- x. Detail how Proposer will address seasonal fluctuations in demand. Will docking station size be flexible to adjust for seasonal fluctuations or population growth?
- xi. Detail any provisions in your Program for portable docking stations that can be deployed to maximize capacity for special events.
- xii. Provide a description, specifications and photos of docking stations and payment equipment proposed for the Program (limited to no more than ten pages). Include details regarding any Americans with Disabilities Act (ADA) accommodations, the source of energy required, back up energy provisions and the locking mechanisms that are proposed.
- xiii. Provide details of Proposer's funding sources to obtain the equipment required for the Program.
- xiv. Thoroughly explain:
 - a. Proposer's accessibility in the areas of availability for meetings, general communications, coordination, and supervision
 - b. How the proposer physically plans on attending pre-scheduled meetings
 - c. How the proposer plans on ensuring accessibility and availability during the term of the Agreement

D. REVENUE PROPOSAL

- i. Proposers are encouraged to propose other creative revenue sources to ensure the financial stability and long-term viability of the Program (e.g., sponsorships, commercial property owners). Provide details of alternative revenue sources proposed and examples of successes in obtaining these types of revenues from other similar programs managed by Proposer.
- ii. Provide a detailed, financial summary of expected revenues and expenses for each year of the Agreement.
- iii. Provide information, data and documentation that supports the proposed revenues and expenses detailed above.
- iv. Provide a preliminary five (5) year operating pro forma including assumptions underlying the income and expense projections clearly indicating the sources and amounts of revenues must be included. The Proposer must show the Cash-on-Cash Return and Internal Rate of Return and describe proposed distribution or utilization of net operating income.
- v. Identify revenue-sharing options such as a minimum guarantee and/or a percentage of gross revenues Proposer is including in its Program and detail how the City's share of the revenue would be calculated.
- vi. Include any projected figures related to having, and not having, advertisements on the bicycles and/or kiosks.

E. LOCATION

Per City Code of Ordinances Section 36.14 Local Business Preference; for all acquisitions made pursuant to Requests for Proposals, as provided in City Code of Ordinances Section 36.02(A)(2), the solicitation shall include a weighted criterion for local businesses of five percentage points of the total points in the evaluation criteria published in the solicitation. Businesses must be certified prior to the Due Date and Time for submission of Proposals.

Proposer's who are certified as required will receive the full five points allotted for this evaluation criteria. All other firms will receive zero points in this evaluation criterion.

- i. Provide a copy of Proposer's documentation that confirms Proposer meets the local business requirements and is certified by the City prior to the Due Date and Time for submission of Proposals.

[Remainder of page intentionally left blank]

SECTION 3: SCOPE OF SERVICES AND/OR SPECIFICATIONS

1. Scope

Successful Proposer will furnish and install bicycles and docking stations, and will provide an automated Program, for citizens and tourists, 24 hours a day, 7 days a week within the City of Delray Beach's commercial core, stretching approximately from the Congress Avenue corridor and Tri-Rail station to the west, east to Delray Beach public beach and from Linton Blvd. to the south, to George Bush Blvd. to the north at proposed locations. Successful Bidder will provide all required registrations and permits to perform the work specified.

Program will be a self-service plan that is technology enabled and in which bicycles are made available for shared use to individuals on a short term basis. Program will allow people to borrow a bike from point "A" and return it at point "B", during variable periods of demand, including multiple major special events.

The City and Successful Proposer will work collaboratively to implement all of the elements of the Program and to refine and evolve the Program during the Agreement term to meet the defined goals and expectations.

Scope requirements include, but are not limited to the following:

- (a) Work must be conducted during the hours of 7:00 a.m. and 4:00 p.m. Monday through Friday, excluding City holidays.
- (b) Installation work must be completed within seventy-five calendar days after award.
- (c) Ensure all rubbish, building materials, and packaging materials are removed from the docking station area.
- (d) Install bike stations as per the manufacturer's specifications.
- (e) Provide signage, lighting, and other barriers, as required, to maintain safety at all times.
- (f) Selected Proposer, its employees, subcontractors and agents shall adhere to the City's Nonsmoking Building policies. Smoking is not permitted within the building or within twenty-five feet of entrances, operable windows, or outdoor air intakes.
- (g) Selected Proposer shall schedule work (such as rebalancing of bikes) to minimize impact on traffic and sidewalks.

2. General Requirements

- (a) Program should offer subscriptions that provide a limited time of use either free or very inexpensive, encouraging use as a transportation mode.
- (b) Prices for using the Program should be broken down in the way that will allow patrons to "pay as you go", as well as offer discounts and memberships.
- (c) Program should utilize smartphone mapping apps and web-based information to indicate nearby docking stations with available bikes and open docks.
- (d) Smartphone apps and Selected Proposer's website should describe clearly how the program works, how the user is registered, pricing, allow users to make reservations and payments via electronic devices (cell phones, computers,

tablets, etc.), how to reserve and pay for a bike and information regarding the return process.

- (e) App should be updated in a regular basis to delete and/or add dates or events.
- (f) The Program should have a payment option available that allows residents to have access to the service without need of electronic payment system.
- (g) Program will allow patrons to return the bicycle at any station even if there is no open slot, for example by locking the bike on the side with cable lock and report it.
- (h) Selected Proposer will provide services of rebalancing the distribution of bikes in the service area periodically throughout the day.
- (i) Selected Proposer will provide services of routine maintenance, cleaning, repair or replacement of bike equipment, docking stations and payment terminals.
- (j) Program will promote bike safety by providing pre-ride and safety tips and incentivize the use of safety helmets for patrons.
- (k) Selected Proposer shall update software throughout the term of the Program.
- (l) Selected Proposer will provide marketing support to promote maximum adoption of the Program through a variety of media formats, including but not limited to website, brochures and launching events.
- (m) In coordination with the City, selected Proposer shall engage with local citizen-driven bicycle and safety advocacy groups and neighborhood groups to roll-out a program to gain substantive public support.

3. Deliverables and Schedule

Deliverables shall be considered those tangible resulting work products to be delivered to the City of Delray Beach Program Manager for this project or designee. Deliverables and schedule for this project shall include, but are not limited to:

- (a) Detailed Implementation Schedule (to be received within 30 days of final execution of the Agreement)
- (b) Public presentation to the City Commission/Transportation Committees upon request.
- (c) Monthly Reports that include:
 - Hours of vehicle usage
 - Number of active users
 - Number of new users registered
 - Number of accounts canceled
 - Descriptive statistics on frequency of usage per user
 - Number of departures and arrivals for each kiosk
 - User revenue collected
 - Advertising revenue collected
 - Theft report
 - Damage report
 - Accident/Injury report
 - Fleet condition
 - Kiosk and information board maintenance
 - Detailed report on net revenue or cost
 - Summary of number of complaints received and how those complaints were resolved

- Any innovative ideas that have been implemented to benefit the Program

[Remainder of page intentionally left blank]

SECTION 4: FORMS AND INSTRUCTIONS

A. AUTHORIZATION TO BIND PROPOSER

Each proposal must be signed by a Person who is legally authorized to bind the Proposer to the proposal. Each proposal shall remain valid for at least one hundred and fifty (150) days after the Due Date.

The Proposal Submittal Signature Page for Proposals submitted by a corporation must be executed in the corporate name by the CEO or President; by an LLC must be executed by a Member or Manager; by an LP must be executed by a General Partner; by a Partnership must be executed by a Partner and by an Individual must be executed by the Individual. His or her title must appear under his or her signature. If someone other than these authorized individuals execute the Proposal Submittal Signature Page, Proposer must provide documentation such as the company Articles of Organization or Operating Agreement that demonstrates the legal authority of the executor to sign on behalf of Proposer.

B. PROPOSAL FORMAT

Each proposal shall include all the requested information. Proposals shall be organized in chapters, as indicated in Table 2. All pages are to be consecutively numbered. If a form is provided and there is insufficient space for a response on the form, the response may be continued on a blank page immediately following the form. The additional pages shall be numbered the same as the form, with the addition of the letter "a", "b", "c", etc. If a form is provided and additional copies of the form are needed, the form may be copied by the Proposer. The copied pages shall be numbered the same as the form, with the addition of the letter "a", "b", "c", etc.

Proposal responses to this RFP must be complete and unequivocal. In instances where a response is not required or a question is not applicable to the proposal, a response such as "no response required" or "not applicable" shall be provided.

Table 2 - Proposal Format

Chapter 1	Letter of Transmittal: Briefly state the Proposer's understanding of the services to be rendered, Proposer's interest in the Program, and summarize related experience and qualifications (limited to two pages).
Chapter 2	Proposer's Statement of Organization
Chapter 3	Minimum Qualifications
Chapter 4	Proposal Response Requirements
Chapter 5	Public Entity Form, Drug Free Workplace Form, Conflict of Interest Form
Chapter 6	Acknowledgement of Addenda Form
Chapter 7	Proposal Submittal Signature Page

Chapter 8	Evidence of Insurance, Professional Licenses, and Certificates: Certificate of Insurance showing current coverage, forms, limits. Submit a copy of all Licenses, Certificates, Registrations, and Permits required to perform the work not previously requested in this RFP, that Proposer and/or its staff possess.
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[Remainder of page intentionally left blank]

RESPONSE CHECKLIST

A responsive Proposer means a Proposer that has submitted a proposal that conforms in all material respects to the requirements in the RFP. The CPO or designee will determine whether each Proposer correctly submitted all of the necessary forms and documents. The purpose of this checklist is to assist Proposers in completing their Proposals and ensuring that all required forms and information is submitted. Do not include checklist with your Proposal submittal.

- ☐ Letter of Transmittal
- ☐ Statement of Organization Section
- ☐ Minimum Qualifications
- ☐ Proposal Requirements
 - ☐ Experience Section
 - ☐ Operational Section
 - ☐ Capacity and Approach Section
 - ☐ Revenue Section
 - ☐ Location Section
- ☐ Proposal Submittal Signature Page
- ☐ Proposer's Statement of Organization
- ☐ Public Entity Crimes Form
- ☐ Drug Free Workplace Form
- ☐ Conflict of Interest Form
- ☐ Acknowledgement of Addenda Form
- ☐ Evidence of Insurance, Professional Licenses, and Certificates

Form A - Proposal Submittal Signature Page

By signing this Proposal, the Proposer certifies that it satisfies all legal requirements as an entity to do business with the City, including all Conflict of Interest and Code of Ethics provisions.

Firm Name: _____

Street Address: _____

Mailing Address (if different from Street Address): _____

Telephone Number(s): _____

Fax Number(s): _____

Email Address: _____

Federal Identification Number: _____

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

By signing this document, the Proposer agrees to all terms and conditions of this RFP which includes the Sample Agreement.

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED ABOVE BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE CITY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS PROPOSAL.

(Remainder of page intentionally left blank)

Form A - Signature Authority

Indicate below Proposer's type of organization and provide the required documentation as applicable to demonstrate that the executor of Proposer's Proposal is duly authorized to execute on behalf of, and as the official act of, Proposer.

Select	Type of Organization	Officer Who Signed Proposal Submittal Signature Page	Required Authorizing Documentation
<input type="checkbox"/>	Corporation	President, Vice President, or Chief Executive Officer	None
<input type="checkbox"/>	Corporation	Director, Manager, or other title	Corporate resolution
<input type="checkbox"/>	Limited Liability Company (LLC) – Member-Managed	Member	Articles of Organization or Operating Agreement
<input type="checkbox"/>	Limited Liability Company (LLC) – Manager-Managed	Manager	Articles of Organization or Operating Agreement
<input type="checkbox"/>	Limited Partnership	General Partner	Document demonstrating the legal authority to bind the Limited Partnership
<input type="checkbox"/>	Partnership	Partner	None
		CEO, Director, Manager or other title	Authorizing documentation
<input type="checkbox"/>	Individual	Individual	None

☐ Documentation is not required per the above instructions.

☐ The required authorizing documentation is included with Proposal.

Form B - Public Entity Crimes

NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

Pursuant to Section 287.133, *Florida Statutes*, you are hereby notified that a person or affiliate who has been placed on the convicted contractors list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-Proposer, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 [F.S.] for Category Two [\$35,000.00] for a period of thirty-six (36) months from the date of being placed on the convicted contractors list.

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

Form C - Drug-Free Workplace

In the event a tie exists at the conclusion of evaluations, preference will be given to the supplier(s) who certifies it has a drug-free workplace program in accordance with Section 287.087, Florida Statutes. The drug-free workplace preference is applied as follows:

TIE: Whenever two or more proposals are equal with respect to scoring for the evaluation criteria (e.g., price, experience, quality, service) are received for the procurement of commodities or contractual services, a proposal received from a supplier that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing a tie will be followed if none of the tied suppliers have submitted this Form C and/or have a drug-free workplace program.

As the person authorized to sign this statement, I certify that this firm complies fully with the following requirements:

- 1) This firm publishes a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) This firm informs employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) This firm gives each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), this firm notifies the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) This firm imposes a sanction on or requires the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) This firm will continue to make a good faith effort to maintain a drug-free workplace through implementation of this section.

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

Form D - Conflict of Interest Disclosure

The award of the agreement is subject to the provisions of Chapter 112, Florida Statutes. All Proposers must disclose within their Proposal, the name of any officer, director, or agent who is also an employee or relative of an employee of the City of Delray Beach.

Furthermore, all Proposers must disclose the name of any City employee or relative(s) of a City employee who owns, directly or indirectly, an interest in the Proposers firm or any of its branches.

The purpose of this disclosure form is to give the City the information needed to identify potential conflicts of interest for key personnel involved in the award of this contract.

The term "conflict of interest" refers to situations in which financial or other personal considerations may adversely affect, or have the appearance of adversely affecting, an employee's professional judgment in exercising any City duty or responsibility in administration, management, instruction, research, or other professional activities.

Please check one of the following statements and attach additional documentation if necessary:

☐ To the best of our knowledge, the undersigned firm has no potential conflict of interest as defined in Chapter 112, Florida Statutes and Section 2-443, Palm Beach County Code of Ordinances.

☐ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other Cities, Counties, contracts, or property interest for this RFP.

Acknowledged by:

Firm Name

Signature

Date

Printed Name and Title

Form E - Acknowledgment of Addenda

The Proposer hereby acknowledges the receipt of the following addenda, which were issued by the City and incorporated into and made part of this RFP. It is the sole responsibility of the Proposer to ensure that all addenda have been received and receipt of each has been acknowledged. Failure to submit acknowledgement of each addendum issued may result in the Proposer being deemed non-responsive.

ADDENDA NUMBER	ADDENDA DATE

Signature of Proposer's Agent

Title

Printed Name

Date

Appendix A
AGREEMENT

BETWEEN

THE CITY OF DELRAY BEACH

AND

FOR

This is an Agreement ("Agreement"), made and entered into by and between: Delray Beach, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

and

_____, a Florida corporation, hereinafter referred to as "Second Party," (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Annual Management Fee** - The annual fee paid by the City to the Second Party for the management and operation of the Bike Share Program in accordance with the terms and conditions of this Agreement.
- 1.3 **City Manager** - The administrative head of City appointed by the Board.
- 1.4 **City Attorney** - The chief legal counsel for City appointed by the Board.

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- 1.5 Commission** - The City Commission of Delray Beach, Florida.
- 1.6 Contract Administrator** - The Delray Beach City Manager or the Director of the Delray Beach _____ Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Second Party and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.6 Equipment/Furnishings** –The equipment and furnishings used by the Second Party in the operation of the Bike Share Program. The Equipment/Furnishings owned by the City and to be used by the Second Party are identified in Exhibit D, Equipment, attached hereto.
- 1.6 Project** - The Project consists of the services described in Exhibit A, Scope of Services.
- 1.7 Operating Budget** - The budget for the Bike Share Program operation as described herein.
- 1.8 Operating Expenses** - All expense(s) that are incurred by the Second Party in the operation of the Bike Share Program
- 1.9 Parking Revenues** - All parking related charges and fees collected by Second Party or City. Parking Revenues includes sales taxes collected from patrons of the Bike Share Program.
- 1.10 Bike Share Program** - Collectively includes the various bikes, docking stations and pay station kiosks, infrastructure, and technology as described in this Agreement.

ARTICLE 2 SCOPE OF SERVICES

- 2.1** Second Party shall perform all work identified in this Agreement and Exhibit A. The Scope of Services is a description of Second Party's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Second Party impractical, illogical, or unconscionable.

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Second Party shall provide all personnel, materials and services necessary to manage and operate the City's Bike Share Program.

- 2.2 Second Party acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 This contract is in full force and effect upon full contract execution by the City of Delray Beach. The term of this Agreement shall be for four years commencing on _____ (Commencement Date) and continue through _____ with the option to renew for three, one-year periods.
- 3.2 Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 3.3 In the event services are scheduled to end due to the expiration of this Agreement, the Second Party agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than six months beyond the term of this Agreement. The Second Party shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended. The Chief Purchasing Officer shall notify Second Party of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS

- 4.1 Second Party will receive no compensation from the City for the provision of services.
- 4.2 At the sole discretion of the City, Revenues will be paid by check or deposited directly into the designated City bank account.
- 4.3 Second Party may, with City prior written approval, purchase and install equipment or improvements for the benefit of the Bike Share Program. Title to such equipment and improvements so purchased and installed by Second Party shall remain vested to Second Party. Second Party agrees that it will not make or construct any improvements, additions or alterations to the Bike Share Program without the prior written consent of City, including for all purchase, installation and all related costs.

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4.4 PAYMENTS TO SUBCONTRACTORS

Second Party shall pay its subcontractors and suppliers within thirty (30) days for such subcontracted work or supplies.

ARTICLE 5 INDEMNIFICATION

Second Party shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Second Party, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Second Party shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Second Party under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

ARTICLE 6 INSURANCE

- 6.1 Second Party shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit "C" in accordance with the terms and conditions stated in this Article.
- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. Second Party shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City of Delray Beach, Florida. This official title shall be used in all insurance documentation.

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- 6.3 Within ten calendar days of notification of award, Second Party shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. City reserves the right to obtain a certified copy of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the City determines all performance required of Second Party is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit "C." City shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.
- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.
- 6.5 If Second Party uses a subconsultant or subcontractor, Second Party shall ensure that each subconsultant or subcontractor names "City of Delray Beach, Florida" as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

ARTICLE 7 TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Second Party's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Second Party is placed on the Scrutinized

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Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Second Party provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board:

- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Second Party shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Second Party acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Second Party, for City's right to terminate this Agreement for convenience.
- 7.5 In the event this Agreement is terminated for any reason, any amounts due Second Party shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

ARTICLE 8 NON-DISCRIMINATION

- 8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Second Party to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Second Party shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Second Party shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its

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obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Second Party shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Second Party shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Second Party represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle City to terminate this Agreement and recover from Second Party all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

ARTICLE 9 MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Second Party grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Second Party, whether finished or unfinished, shall become the property of City and shall be delivered by Second Party to the Contract Administrator within eight (8) days of termination of this Agreement by either party. Any compensation due to Second Party shall be withheld until all documents are received as provided herein.

9.2 PUBLIC RECORDS

9.2.1 IF THE SECOND PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SECOND PARTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK MAY BE REACH BY PHONE AT 561-243-7050 OR VIA EMAIL

AT PUBLICRECORDSREQUEST@MYDELRAYBEACH.COM.

9.2.2 Second Party shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Second Party does not transfer the records to the City.
- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Second Party or keep and maintain public records required by the City to perform the service. If the Second Party transfers all public records to the City upon completion of the Agreement, the Second Party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Second Party keeps and maintains public records upon completion of the Agreement, the Second Party shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- v. If the Second Party does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

9.3 INSPECTOR GENERAL.

Second Party is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Second Party and its sub licensees and lower tier sub licensees. Second Party understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Second Party or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Second Party and its subcontractors that are related to this Project. Second Party and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Second Party and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Second Party and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Second Party shall ensure that the requirements of this Section 9.3 are included in all agreements with its subcontractor(s).

9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Second Party's compensation under this Agreement is based upon representations supplied to City by Second Party, and Second Party certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

9.6 PUBLIC ENTITY CRIME ACT

Second Party represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a

Appendix A

contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Second Party further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Second Party has been placed on the convicted vendor list.

9.7 INDEPENDENT CONTRACTOR

Second Party is an independent contractor under this Agreement. Services provided by Second Party pursuant to this Agreement shall be subject to the supervision of Second Party. In providing such services, neither Second Party nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Second Party or Second Party's agents any authority of any kind to bind City in any respect whatsoever.

9.8 THIRD PARTY BENEFICIARIES

Neither Second Party nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

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For City:

City Manager
City Hall
100 N.W. 1st Avenue
Delray Beach, Florida 33444

For Second Party:

9.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Second Party shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Second Party of this Agreement or any right or interest herein without City's written consent.

Second Party represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Second Party shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Second Party's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

9.11 CONFLICTS

Neither Second Party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Second Party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Second Party's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative

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proceeding in which he, she, or Second Party is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Second Party or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Second Party is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Second Party shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

9.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.13 COMPLIANCE WITH LAWS

Second Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Second Party elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

9.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been

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their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

9.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR

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JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

9.19 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Second Party or others delegated authority to or otherwise authorized to execute same on their behalf.

9.20 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.21 PAYABLE INTEREST

9.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Second Party waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All Exhibits are incorporated into and made a part of this Agreement.

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9.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.25 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

9.26 CONDITIONS OF USE

9.26.1 City warrants and represents that, on the Commencement Date and throughout the term of this Agreement, the Bike Share Program is and shall, at City's expense, be kept in good condition and repair for use as parking facilities and shall be maintained to comply with all laws, regulations, ordinances and codes now in effect or which become effective during the term hereof including, without limitation.

9.26.2 City and Second Party shall cooperate in the planning and development of the Bike Share Program and to modification of any area that has the effect of changing the number of public parking spaces. During construction, additions or alterations to the Bike Share Program, Second Party shall assist in minimizing or limiting the interference with vehicle and/or patron access to the affected area.

9.27 CONFLICTS OF INTEREST

Second Party and its employees shall not have or hold any employment or contractual relationship that is antagonistic or incompatible with Second Party's obligations related to its performance under this Agreement.

OPERATOR agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, Second Party agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude the City or any other persons from representing themselves in any action or in any administrative or legal proceeding.

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In the event OPERATOR is permitted to utilize subcontractors to perform any services required by this Agreement, Second Party agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

Second Party agrees that no officer or employee of the City, during his or her term of employment or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

9.28 TRUTH IN NEGOTIATION

By execution of this agreement, second Party affirms that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

9.29 INTELLECTUAL PROPERTY

Second Party hereby grants to City, during the term of this Agreement only, a non-assignable, non-exclusive right and license to use Second Party's intellectual property, including but not limited to its trade names, trademarks and any and all on-site parking amenities programs (the Intellectual Property), to the extent related to Operator's administration, management and operation of the Bike Share Program. Upon termination of this Agreement for any reason, City shall have the right, at its sole cost and expense, to remove the Intellectual Property from the Bike Share Program, and City shall refrain from all further use of the Intellectual Property.

ARTICLE 10 ORDER OF PRECEDENCE

The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- A. Terms and conditions as contained in this Agreement;
- B. RFP No. 2017-003, Bicycle Share Program, dated September 13, 2016, and all its addenda;
- C. Second Party's response to RFP No. 2017-003, and any subsequent information submitted by Second Party during the evaluation and negotiation process.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: City through its Board, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 20____, and Second Party, signing by and through its _____, duly authorized to execute same.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By _____
Cary D. Glickstein, Mayor

_____ day of _____, 20____.

APPROVED AS TO FORM:

Janice Rustin, Interim City Attorney

Appendix A
AGREEMENT BETWEEN DELRAY BEACH, FLORIDA
AND

SECOND PARTY

By _____
(Signature)

(Printed name, Title)

_____ day of _____, 20____

WITNESS:

(Signature)

(Printed name)

WITNESS:

(Signature)

(Printed name)

(SEAL)

Appendix A
EXHIBIT A
SCOPE OF SERVICES

[Scope of Services will be inserted prior to execution]

SAMPLE

Appendix A

EXHIBIT B

CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

RFP/RLI/Bid/Contract No. _____

Project Title _____

The undersigned CONTRACTOR hereby swears under penalty of perjury that:

1. CONTRACTOR has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this project in accordance with Section 4.2.3 of the Agreement, except as provided in paragraph 2 below.
2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

Subcontractor or
Supplier's name
and address

Date of disputed
invoice

Amount in
dispute

_____	_____	_____
_____	_____	_____
_____	_____	_____

3. The undersigned is authorized to execute this Certification on behalf of CONTRACTOR.

Dated _____, 20____

Contractor

By _____
(Signature)

By _____
(Name and Title)

Appendix A
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS
(Continued)

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 20____.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)

typed, printed, or stamped

(Title or rank)

My commission expires:

(Serial number, if any)

Appendix A
EXHIBIT C
INSURANCE REQUIREMENTS

Second Party shall supply proof of insurance, detailing terms and provisions of coverage. Coverage must be received by the Purchasing Department and approved by the City Risk Manager within 10 days of final execution of the Agreement.

Second Party shall carry the following minimum types of insurance:

- A. Workers' Compensation Insurance: with the statutory limits.
- B. Employers' Liability insurance with a limit of not less than \$100,000 for each accident, \$100,000 for each disease, and \$500,000 for aggregate disease.
- C. Comprehensive General Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence and two million (\$2,000,000) in the aggregate for Bodily Injury and Property Damage.

The Comprehensive General Liability insurance policy must include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and Contractual Exclusions removed.

- D. Automobile Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence.
- E. Commercial Crime Liability: with limits of not less than one million (\$1,000,000) dollars per occurrence.

All insurance policies shall be issued by companies that (a) are authorized to do business in the State of Florida; (b) have agents upon whom service of process may be made in Palm Beach County, Florida; and (c) have a Best's rating of A- or better. All insurance policies shall name the City of Delray Beach as an additional insured. The Second Party agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

Appendix A
EXHIBIT D
EQUIPMENT

<To be inserted prior to final execution>

SAMPLE