



THE CITY OF COLORADO SPRINGS

REQUEST FOR PROPOSAL

Services Project

R21-028AM

Date Issued: February 24, 2021

SHARED SCOOTER PILOT PROGRAM

Contact

Alyssa Mendelsohn, Contracts Specialist

107 N. Nevada, Suite 125

City of Colorado Springs, Colorado 80903

(719) 385-7629

Alyssa.Mendelsohn@ColoradoSprings.gov

The City of Colorado Springs requests Time and Materials proposals, as detailed in this Request for Proposals (RFP), for the Shared Scooter Pilot Program Project.

This RFP is posted to BidNet's Rocky Mountain E-Purchasing System.

SUBMITTALS FOR THIS PROJECT WILL ONLY BE ACCEPTED ON BIDNET

Please login to the following website to register to submit a proposal for this project. All required documents will be uploaded to the website:

<https://www.rockymountainbidsystem.com>

SECTION INDEX

SECTION I	PROPOSAL INFORMATION
SECTION II	PROPOSAL CONTENT
SECTION III	EVALUATION FACTORS
SECTION IV	RESERVED
SECTION V	EXHIBITS

SECTION I – PROPOSAL INFORMATION

1.0 PROPOSAL INFORMATION

Section I provides general information to potential Offerors, such as proposal submission instructions and other similar administrative elements. This RFP is available on Rocky Mountain E-Purchasing System (www.rockymountainbidsystem.com). All addenda or amendments shall be issues through the Rocky Mountain E-Purchasing System and may not be available through any other source.

1.1 RFP SCHEDULE OF EVENTS

The schedule of events is as follows:

<u>Event</u>	<u>Date</u>
Issue Request for Proposal	February 26, 2021
Pre-Proposal Conference	March 4, 2021

A pre-proposal conference will be held via Microsoft Teams at 2:00 PM Thursday, March 4, 2021. This meeting is not mandatory.

Meeting Information:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODJIZWFIOTUtNzcxZS00OWVILWFmNzUtZTk4YjFiZGRmNTYw%40thre ad.v2/0?context=%7b%22Tid%22%3a%2290f74bf0-a593-4c12-9591-fb8ef4ba6ad1%22%2c%22Oid%22%3a%22dc36abda-78bf-461c-a321-a528ac3cb37a%22%7d

Or call in (audio only)

+1 720-617-3426,,232107479# United States, Denver
Phone Conference ID: 232 107 479#

Cut Off Date for Questions	2:00 PM March 11, 2021
----------------------------	------------------------

Questions about the RFP must be emailed in writing and directed to [Alyssa Mendelsohn](mailto:Alyssa.Mendelsohn@ColoradoSprings.gov) at the following email address:
Alyssa.Mendelsohn@ColoradoSprings.gov.

A written response to any inquiry may be provided in the form of an Amendment to the solicitation. See 1.7 Amendments. Questions MUST be received no later than 2:00 PM March 11, 2021.

DO NOT CONTACT ANY OTHER INDIVIDUAL AT THE CITY OF COLORADO SPRINGS REGARDING THIS SOLICITATION

The only acceptable method of submitting questions is by email to the above-named Contract Specialist. Faxes or physical mail delivery are not acceptable.

Proposal Due Date	2:00 PM March 24, 2021
Award of Contract	Tentatively March 2021
Notice to Proceed	April 2021

1.2 SUBMISSION OF PROPOSAL

Proposals are to be submitted to be submitted electronically on BidNet Direct (www.bidnetdirect.com).

Please review the submission requirements *well in advance* of submission date and time; and allow for ample time to upload each required document. It is recommended that Offerors begin the submission process at least one (1) day in advance of the proposal deadline.

Offerors are solely responsible to ensure their bid documents are uploaded and submitted correctly, and that a **confirmation number** is obtained upon successful submission.

Customer Support Team for www.bidnetdirect.com can be reached 1-800-835-4603.

NO LATE OFFERS WILL BE ACCEPTED

Date/Time: Proposals shall be received on or before 2:00 PM MT March 24, 2021.

1.3 NUMBER OF COPIES

The Offerors shall submit two (2) electronic copies on BidNet Direct (www.bidnetdirect.com).

One (1) copy of your proposal must be submitted for public viewing and should be marked '**PUBLIC**'. The purpose of this copy is to meet the requirements of the Colorado Open Records Act and should not contain your proprietary information.

Upon submission, all proposal documents shall become and remain the property of the City of Colorado Springs.

1.4 SPECIAL TERMS

Please note the following definitions of terms as used herein:

The term "City" means the City of Colorado Springs.

The term "Contractor" or "Consultant" means the Offeror whose offer is accepted and is awarded the contract to provide the products or services specified in the RFP.

The term "Offer" means the proposal.

The term "Offeror" means the person, firm, or corporation that submits a formal proposal or offer and that may or may not be successful in being awarded the contract.

The term "Project" refers to the Shared Scooter Pilot Program.

The term "Request for Proposal" or "RFP" means this solicitation of a formal, negotiable proposal/offer. Any offer that is accepted will be the offer that is deemed by the City of Colorado Springs to be most advantageous in terms of the criteria designated in the RFP.

1.5 RFP OBJECTIVE

The objective of this RFP is to provide sufficient information to enable qualified Offerors to submit written proposals to the City of Colorado Springs. The RFP is not a contractual offer or commitment to purchase products or services.

All information included in proposals must be legible. Any and all corrections and/or erasures must be initialed by Offeror. The contents of the proposal submitted by the successful Offeror may become part of any contract awarded as a result of this solicitation.

1.6 CONFIDENTIAL OR PROPRIETARY INFORMATION

If an Offeror believes that parts of an offer are confidential, then the Offeror must so specify. The Offeror must include in bold letters the term "CONFIDENTIAL" on that part of the offer which the Offeror believes to be confidential. The Offeror must submit in writing specific detailed reasons, including any relevant legal authority, stating why the Offeror believes the material to be confidential. Vague and general claims as to confidentiality will not be accepted. The City of Colorado Springs will be the sole judge as to whether a claim is acceptable. Decisions regarding the confidentiality of information will be made when requests are made to make the information public. All offers and parts of offers which are not marked as confidential will automatically be considered public information after the contract is awarded. The successful offer may be considered public information even though parts are marked confidential.

1.7 AMENDMENTS

Amendments to this RFP may be issued at any time prior to the time set for receipt of proposals. Offerors are required to acknowledge receipt of any amendments issued to this RFP by returning a signed copy of each amendment issued. Signed copies of each amendment must be received on or before the time set for receipt of offers.

The City of Colorado Springs will post all amendments on the Rocky Mountain E-Purchasing System (www.rockymountainbidsystem.com). It is the Offeror's

responsibility to check the website for posted amendments or contact the Contracts Specialist listed to confirm the number of amendments which have been issued.

1.8 WITHDRAWAL OR MODIFICATION OF OFFERS

Any Offeror may modify or withdraw an offer in writing at any time prior to the deadline for submission of an offer.

1.9 ACCEPTANCE

Any offer received and not withdrawn shall be considered an offer, which may be accepted by the City of Colorado Springs based on initial submission without discussions or negotiations.

By submitting an offer in response to this solicitation, the Offeror agrees that any offer it submits may be accepted by the City of Colorado Springs at any time within 90 calendar days from the date of submission deadline.

The City of Colorado Springs reserves the right (a) to reject any or all offers, (b) to waive informalities and minor irregularities in offers received, and/or (c) to accept any portion of an offer if deemed in the best interest of the City of Colorado Springs. Failure of the Offeror to provide in its offer any information requested in the RFP may result in rejection of the offer for non-responsiveness.

1.10 PROPOSAL PREPARATION COST

The cost of proposal preparation is not a reimbursable cost. Proposal preparation shall be at the Offeror's sole expense and is the Offeror's total and sole responsibility.

1.11 AWARD(S)

The City of Colorado Springs intends to make an award or awards using the evaluation criteria listed in this RFP to determine the best value, considering all factors and criteria in the proposals submitted. Best value means the expected outcome of an acquisition that, in the City's estimation, provides the greatest overall benefit in response to the requirements detailed in the RFP. The City of Colorado Springs reserves the right to reject any or all offers and to not make an award.

1.12 PERFORMANCE PERIOD

It is the intent of the City to award the winning contractor(s) with a Pilot Program Agreement for a twelve (12) month term with a six (6) month "check-in" to evaluate successes, difficulties, and to make adjustments as necessary. Each selected company will have the option, upon mutual agreement confirmed in writing, to renew the Program for two (2) additional 12-month terms, not to exceed a total of three (3) years. However,

the City reserves the right not to continue to contract with any of the proposing entities if, at the end of the Pilot, the City feels that such a contract(s) is not in its best interest.

1.13 DEBRIEFING

Offerors not selected may request a debriefing on the selection process as well as discussion of the strengths and weaknesses of their proposal upon receipt of notification that their offer was not selected.

A debriefing may be scheduled by contacting the Contracts Specialist listed above. The Contracts Specialist must receive a written request for debriefing no later than **ten (10)** calendar days after issuance of a notification that the Offeror's offer was not selected.

1.14 SUBSTANTIVE PROPOSALS

By responding to this RFP, the Offeror certifies (a) that Offeror's proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person, firm, or corporation; (b) that Offeror has not directly or indirectly induced or solicited any other Offerors to put in a false or sham proposal; (c) that Offeror has not solicited or induced any other person, firm, or corporation to refrain or abstain from proposing an offer or proposal; (d) that Offeror has not sought by collusion to obtain for themselves any advantage over any other Offerors or over the City of Colorado Springs; and (e) that Offeror has not violated or caused any person to violate, and shall not violate or cause any person to violate, the City's Code of Ethics contained in Article 3 of Chapter 1 of the City Code and in the City's Procurement Rules and Regulations.

1.15 OFFEROR'S QUALIFICATIONS

Each Offeror must complete Exhibit 6 – Qualification Statement.

No contract will be awarded to any Offeror who is in arrears to the City, upon any debt or contract, or who is in default, in any capacity, upon any obligation to the City or is deemed to be irresponsible or unreliable by the City based on past performance.

1.16 NON-COLORADO ENTITIES

If Offeror is a foreign entity, Offeror shall comply with C.R.S. section 7-90-801, "Authority to transact business or conduct activities required," and section 7-90-802, "Consequences of transacting business or conducting activities without authority."

Before or at the time that the contract is awarded to an entity organized or operating outside the State of Colorado, such entity shall obtain authorization to do business in the State of Colorado, designate a place of business herein, and appoint an agent for service of process.

Such entity must furnish the City of Colorado Springs with a certificate from the Secretary of the State of Colorado to the effect that a certificate of authority to do business in the State of Colorado has been issued by that office and is still valid. The entity shall also provide the City with a certified copy of the designation of place of business and appointment of agent for service of process from the Colorado Secretary of State, or a letter from the Colorado Secretary of State that such designation of place of business and agent for service of process has been made.

1.17 PROCUREMENT RULES AND REGULATIONS

All projects advertised by the City of Colorado Springs are solicited in accordance with the City's Procurement Rules and Regulations. The City's Procurement Rules and Regulations can be reviewed and/or downloaded from the City website: <https://www.coloradosprings.gov>. The Contracts Specialist may also provide a softcopy of the Rules and Regulations upon request. Any discrepancies regarding conflicting statements, decisions, irregularities, clauses, or specifications will be rectified utilizing the City's Procurement Rules and Regulations, when applicable. It is the Offeror's responsibility to advise the Contracts Specialist listed in this RFP of any perceived discrepancies prior to the date and time the offer is due.

1.18 FAIR TREATMENT OF OFFERORS

The City Procurement Services Division shall be responsible for ensuring the procurement of products, commodities, and services are in a manner that affords all responsible businesses a fair and equal opportunity to compete. If an Offeror believes that a procurement is not conducted in a fair and equitable manner, the Offeror is encouraged to inform the City Procurement Services Manager as soon as possible.

1.19 ORDER OF PRECEDENCE

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order:

- A. Sections I – IV of this Solicitation
- B. Statement of Work
- C. Other Appendices, Schedules, Exhibits or Attachments

1.20 INTERPRETATION OF PLANS AND SPECIFICATIONS

Any change to proposal forms, plans, or specifications prior to the opening of proposals will be issued by the City in the form of an Amendment. Certain individuals may be named in the RFP that have authority to provide information, clarification or interpretation to Offerors prior to opening of proposals. Information obtained from persons other than those named individuals is invalid and shall not be used for proposal purposes.

1.21 COMBINATION OR CONDITIONAL PROPOSALS

If an RFP is issued for projects in combination and separately, the Offeror may submit proposals either on the combination or on separate units of the combination. The City reserves the right to make awards on combination or separate proposals to the advantage of the City. Combination proposals will be considered, only when specified.

1.22 ANTI-COLLUSION AFFIDAVIT

The Offeror by signing their proposal submitted to the City is certifying that the Offeror has not participated in any collusion or taken any action in restraint of free competitive bidding. This statement may also be in the form of an affidavit provided by the City and signed by the Offeror. The original of the signed anti-collusion affidavit, if separately required and provided with the RFP, shall be submitted with the proposal. The proposal will be rejected if it does not contain the completed anti-collusion affidavit.

1.23 PIGGY BACK PROVISION

The successful Offeror may elect to extend the opportunity to utilize the resultant award at the price(s) and structure to other governmental agencies and districts. Requests for participation will be coordinated by the applicable government agency or district, and that agency will be responsible for contracting with the successful Offeror.

SECTION II – PROPOSAL CONTENT

2.0 PROPOSAL CONTENT

Section II provides instructions regarding the format and content required for proposals submitted in response to this solicitation.

2.1 PROPOSAL FORMAT

Offeror's written proposal should include concise, but complete, information, emphasizing why the Offeror is best or best qualified to provide the required services. The Offeror's written proposal should include the information in the format outlined below and must be limited to no more than twenty-five (25) pages. **A page shall be defined as 8-1/2" x 11"; single sided, with one inch margins, and a minimum font of Times New Roman 10.** The only exception to the 8-1/2" x 11" paper size are the proposed project schedule. It may be submitted on 11" x 17" paper. Each 11" x 17" page for the schedule shall be counted in the overall page limitation of twenty-five (25) pages above. Each section of the proposal should be labeled to clearly follow the requirements sections identified in this section of the RFP.

The following listed Exhibits must be filled out and returned with the proposal and are not counted against the page limit:

BidNet Envelope #1 (Electronic Submission):	
Exhibit 1	Proposal Certification
Exhibit 3	Exceptions
Exhibit 4	Minimum Insurance Requirements
Exhibit 6	Qualification Statement
Acknowledged Addenda	If Applicable

2.2 COVER LETTER

The cover letter shall be no more than two pages. The cover letter shall contain at least the following information:

- A. RFP Number and Project Name
- B. Statement that the Offeror is qualified to perform the work
- C. Certification Statement that the information and data submitted are true and complete to the best knowledge of the individual signing the letter
- D. Name, telephone number, email address, and physical address of the individual to contact regarding the proposal
- E. The signature of an authorized principal, partner, or officer of the Offeror.

2.3 PROPOSAL CERTIFICATION

The Offeror must fill out and submit Exhibit 1 with its Proposal.

2.4 ORGANIZATIONAL BACKGROUND AND OVERVIEW

The Offeror must provide a brief history and overview of its company and its organizational structure, with special emphasis on how this project will fit within that structure. Also include principal place of business location(s), office locations, size of firm, and assessment of financial stability.

2.5 PROPOSAL REQUIREMENTS

All firms interested in being considered for this project should submit proposals that include:

A. Company Overview. Provide an overview of your company, along with:

- a) North American cities similar in size and urban development patterns to Colorado Springs where you currently operate a Shared Scooter service, a local regulatory contact, and the number of Shared Scooters deployed in each of those cities.
- b) List all legal or regulatory enforcement actions, by type, initiated against the company.

B. Shared Scooter Description. Provide a detailed description of your Shared Scooter Device(s), including images of the branded Shared Scooters Devices you propose for Colorado Springs.

- a) The City of Colorado Springs would like to ensure that Shared Scooters in operation during the Pilot Program include the latest in innovative technology and features designed to improve rider safety, durability, convenience, and compliance with parking/riding restrictions. Please describe how your Shared Scooters are designed to address each of these issues. Will the Shared Scooters you deploy in the City be the latest and most up-to-date generation that your Company offers? Please describe if the proposed scooters have the ability for tethering and if you have deployed scooters with tethering successfully in other communities.
- b) During the proposal evaluation period, select operators may be given the opportunity to demonstrate scooter technology and design features to the selection committee.
- c) Please note that your Shared Scooters must comply with the following standards:
 - i. The motor-assist speed for all Shared Scooters must not exceed 15 miles per hour.
 - ii. Shared Scooters must be equipped with front and rear lights that are visible from a distance of at least 300 feet under normal atmospheric conditions at night.
 - iii. Each Shared Scooter must have and display a unique identification number that is provided to the City.
 - iv. Each Shared Scooter must clearly display the current contact phone number for your 24-hour customer service line.
 - v. Company must have the ability to remotely lock-down individual Shared Scooters (e.g. when they are reported/deemed unsafe).

- vi. Shared Scooters must meet US Consumer Product Safety Commission (CPSC) standards for weight bearing and any other state and national standards.

C. Maintenance & Operations Plan

a) Maintenance – describe:

- i. The frequency and extent of your maintenance and cleaning of Shared Scooters
- ii. The type of labor (employees, staffing services, contract labor, etc.) conducting maintenance and cleaning
- iii. The average lifespan of the Shared Scooter and Shared Scooter disposal practice
- iv. The extent of Shared Scooter maintenance

b) Operations – describe:

- i. Hours of operation
- ii. Pricing plan
- iii. Storage of Shared Scooters during non-operational hours
- iv. Proposed fleet size and service area at launch. Please note that the City tentatively plans to restrict each Company's fleet size to a minimum of 150 to a maximum 400 deployed Shared Scooters at launch, The City will evaluate any option to phase-in an expanded or reduced fleet size throughout the term of the Pilot Period based on utilization data, performance and operational outcomes.
- v. Describe the use of GPS or geo-fencing technology to enforce parking/operating compliance; including areas that may be geo-fenced out.
- vi. Describe your proposed Program deployment areas, including your approach to site assessment and stakeholder engagement.
- vii. Provide a project schedule that describes your intended launch of the Pilot Program. Include anticipated planning and construction milestones and deliverables.
- viii. Provide samples of any proposed signage incidental to the operation of the Program, to include proposed placement, sizing, and dimensions. All signage must be compliant with the City zoning code.
- ix. Methods and frequency of deploying, redistributing and charging Shared Scooters. Please note that the City reserves the right to establish Shared Scooter parking zones in the public right-of-way during the Pilot Program in collaboration with Shared Scooter service operators and, similarly, reserves the right to designate areas as off limits to Shared Scooter parking.
- x. Process for receiving and resolving complaints and problems with Shared Scooters blocking the travel movement in real-time (e.g., sidewalk, travel lane, etc.). Include the customer intake process and staffing levels. In what time frame are complaints acknowledged and resolved? (Communication strategies with Users are listed later.)
- xi. Helmet distribution strategy

- c) Local Operator Contact Information
 - i. If available at this time, provide the name, email, and phone number of your local operator, available by phone 24 hours/7 days a week.
 - ii. If available at this time, list address(es) of Colorado Springs operations and any storage facilities.
- d) Customer Service Operations
 - i. Provide location(s) of your customer service operations.
 - ii. Provide your 24-hour customer service number.
 - iii. Does your customer service number provide the ability for translation services?

D. Infrastructure Investment

- a) Provide details on infrastructure, including any parking stations or other temporary, semi-permanent, or permanent infrastructure necessary to support the program. Details should include space requirements, marking/signage, electrical requirements, and operations & maintenance requirements
- b) Describe any physical improvements your company has implemented or contributed funding toward to improve rider safety such as physically delineating parking areas for Shared Scooters, contributing toward a bike lane construction and maintenance fund, etc. Please include an estimate of the total value of your company's contribution by infrastructure type and market.
- c) Explain your company's position on contributing toward similar infrastructure improvements in the City of Colorado Springs.

E. Safety History Summary. For each market where you operate that has the following data available, provide a summary report of safety incidents. The summary must include:

- a) Total miles travelled on your Shared Scooter fleet in each market (for calculating rates of collisions, injuries, and fatalities per mile).
- b) Total number of reported and/or observed crashes and collisions
- c) Total number of reported injuries, separated by: minor injuries, major injuries resulting in hospitalization, fatal injuries
- d) Total number of reported injuries that involved person(s) with a disability
- e) A summary of changes made by company or agency in response to safety incidents

F. Complaint History Report

- a) Include total number and nature of complaints filed by Users and non-Users, by cities, and over what timeframe for all markets where you operate that have this data available.
- b) Describe the number of times and locations your company has deployed scooters in a market without approval from local authorities.

G. Communication & Outreach Plan

- a) User Education: Describe your plan to educate and encourage User compliance with all applicable rules and regulations, including minimum age, proper parking, and prohibition of sidewalk riding.
- b) General Public Communication: Describe your plan to communicate to the public on system use, how to use shared scooters safely, driving safely around Shared

Scooters, and how to report complaints. List the languages your communications are provided in.

- c) Describe how your Shared Scooter service will help to enhance the public transit system in Colorado Springs. Specifically, please describe any coordination and outreach you have done or plan to do with Mountain Metro Transit.
- d) Describe how your Shared Scooter service will complement the existing PikeRide bicycle share system. Specifically, describe potential partnership opportunities or coordination efforts with PikeRide that you have discussed or plan to discuss with them.

H. User Equity Plan

- a) If applicable, describe your discounted pricing structure for people living on low-incomes.
- b) Describe any plans to offer a cash payment option.
- c) List the languages your services are provided in.
- d) Are your apps and websites accessible and screen reader compatible?

I. Privacy Policy

- a) Provide a copy of your privacy policy, and describe how you safeguard Users' information, including personal, financial, and travel information.
- b) List all of the parts of a User's mobile phone (e.g., camera, location services, contacts) that are required by your company for access to the Shared Scooter service. Why are they required? Does the company use this data for other commercial purposes beyond the Shared Scooter service?
- c) List additional elements of a User's mobile phone that are requested during the registration process. Why are they requested? Does the company use this data for other commercial purposes beyond the Shared Scooter service?

J. Data Breach History Report.

- a) Provide a summary report describing the date, location, and type of data accessed for all data breaches.

K. Data Sharing Agreement

- a) At time of application submission, Company must agree to provide the City, either directly or through a City-approved third-party provider, access to Shared Scooter fleet data. in General Bike Share Feed Specification (GBFS) format as well as:
 - i. Real-time location and availability data for their entire fleet;
 - ii. Archival Trip data for their entire fleet;
 - iii. Archival Collision data; and
 - iv. Archival Complaint data.
- b) APIs (application program interface) must be provided prior to commencing operations.
- c) Company must agree to distribute and provide the City access to results of a User Survey, developed by the City and distributed by the Company during the Pilot Period.

2.6 FEES

Please confirm in writing your ability to pay the following fees if selected for the Pilot Program. Shared Scooter service operator shall pay, at a minimum, a contractual fee in the following amounts:

- a) \$75 per device deployed
- b) \$40 per parking location

2.7 PRICE AREA

This is a qualifications-based selection; cost and price are not evaluated, but will be negotiated during the award process.

2.8 PROPOSAL PRESENTATION

Presentation is an important factor. Offerors should provide a highly professional product, which is complete, accurate, easily understood, and effectively presented.

2.9 EXCEPTIONS

All Offerors must complete Exhibit 3, Exceptions Form and return it with their proposal. Some terms and conditions are not negotiable. Exceptions may be grounds for rendering the proposal unacceptable without further discussions.

2.10 INSURANCE REQUIREMENTS

All Offerors must complete Exhibit 4, Minimum Insurance Requirements and return with their proposal. Lack of responsiveness in this area may be grounds for rendering the proposal unacceptable without further discussions.

SECTION III – EVALUATION FACTORS

3.0 EVALUATION AND AWARD

Section III provides information regarding evaluation criteria and scoring. It also includes information regarding proposal selection and award of the resultant contract.

3.1 EVALUATION CRITERIA

3.1.1 PROPOSAL REQUIREMENTS, QUALIFICATIONS AND EXPERIENCE

See Section II – Item 2.5.A

3.1.2 MAINTENANCE AND OPERATION PLAN

See Section II – Item 2.5.C and D

3.1.3 COMMUNICATION AND OUTREACH PLAN

See Section II – Item 2.5.G and H

3.1.4 SHARED SCOOTERS DESCRIPTION

See Section II – Item 2.5.B

3.1.5 SAFETY AND COMPLIANCE HISTORY

See Section II – Item 2.5.E and F

3.1 SCORING

A. The order of ranking or importance in the evaluation shall be as follows:

- First: Qualifications and Experience
- Second: Maintenance and Operations Plan
- Third: Communication and Outreach Plan
- Fourth: Shared Scooter Description
- Fifth: Safety and Compliance History
- Sixth: Proposal Presentation

Exceptions and Insurance areas will be scored as pass or fail. Failure in this area may result in disqualification from award.

B. Possible scores for each criterion shall be as follows:

- 5 – Exceptional
- 4 – Very Good
- 3 – Satisfactory
- 2 – Marginal
- 1 – Unacceptable

C. Definitions for scoring are as follows:

The following apply to the Expertise and Qualifications Area:

Exceptional – The proposal meets all and exceeds many of the requirements of the RFP to the benefit of the City, and the information provided is of such a nature as to answer all questions without need for further inquiry. There are no corrective actions required, and no compromise of requirements is needed.

Very Good – The proposal meets all and exceeds some of the requirements of the RFP to the benefit of the City, and the information provided is of such a nature as to answer most questions without need for further inquiry. There are no corrective actions required, and no compromise of requirements is needed.

Satisfactory – The proposal meets the requirements of the RFP, and the information provided is of such a nature as to answer many questions without need for further inquiry. There are very few corrective actions required, and no substantive compromise of requirements is needed.

Marginal – The proposal does not meet some of the requirements of the RFP, and the information provided is of such a nature as to require some clarification. There are some corrective actions required, and some non-substantive compromise of requirements is needed.

Unacceptable – The proposal does not meet many of the requirements of the RFP, and the information provided is of such a nature as to require much clarification. There are many corrective actions required, and substantive compromise of requirements is needed.

The following apply to the Price Area:

This is a Qualifications-based award; price is not evaluated.

The following apply to the Proposal Presentation Area:

Exceptional – The proposal is professionally communicated, complete in all areas, provides sufficient detail, and is presented in a clear and effective manner. The quality far exceeds that of the competition, industry standard, or reasonable expectation.

Very Good – The proposal is professionally communicated, complete in all areas, provides sufficient detail, and is presented in a clear and effective manner. The quality exceeds that of the competition, industry standard, or reasonable expectation.

Satisfactory – The proposal is professionally communicated, complete in all areas, provides sufficient detail, and is presented in a clear and effective manner. The quality is equal to that of the competition, industry standard, or reasonable expectation.

Marginal – The proposal is not professionally communicated and is incomplete in some areas, provides insufficient detail, and is not presented in a clear and effective manner. The quality is below that of the competition, industry standard, or reasonable expectation.

Unacceptable – The proposal is not professionally communicated and is incomplete in many areas, provides insufficient detail, and is not presented in a clear and effective manner. The quality is far below that of the competition, industry standard, or reasonable expectation.

The following apply to the Exceptions and Insurance Areas

Exceptions and insurance will be evaluated as pass or fail. Whether or not exceptions to City terms and conditions are acceptable or unacceptable will be determined at the sole discretion of the City. Any exceptions deemed unacceptable may result in a “fail” rating. The Insurance Area will be rated as “pass”, unless the Offeror fails to meet any stated insurance requirement provided in this RFP. If the Offeror fails to meet any stated insurance requirement provided in this RFP, the Offeror will be rated “fail” in the Insurance Area. A rating of “fail” in either of these areas may result in disqualification from award.

D. Area Scoring

The score for each area will be determined by multiplying the sum of the criteria in each area by the area evaluation factor. The area evaluation factors are as follows:

Qualifications and Experience:	0.30
Maintenance and Operations Plan	0.25
Communication and Outreach Plan:	0.20
Shared Scooter Description:	0.15
Safety and Compliance History:	0.10

E. Final/Overall Scoring

The final proposal score will be determined by adding the area scoring. The sum of the area scores will be the final/overall score.

3.2 SELECTION COMMITTEE

A selection committee will review all proposals. Through this process, the City will determine which proposals are acceptable or unacceptable. The City will notify, in writing, the Offerors whose proposals are deemed to be unacceptable. Those Offerors offering proposals deemed to be acceptable by the City will be evaluated and scored by the selection committee. This scoring will determine which Offerors are considered to be in the competitive range and may be the basis for an award decision without further steps.

If the selection committee elects not to award based upon evaluation scoring, it may engage in a forced elimination process. To inform this process, it may require oral presentations or interviews with the Offerors considered to be in the competitive range. If oral presentations or interviews are conducted, they may also be scored, or they may simply be considered as information supporting the forced elimination process. The selection committee may request revisions to the proposal from each of the Offerors at the conclusion of the interviews. The intent of the forced elimination process is to reach consensus. The decision will be based on all relevant factors, and based upon perception of best value. The final decision may or may not exactly reflect scoring ranking.

The City also reserves the right to request best and final offers from all Offerors at any point in the proposal evaluation process.

3.3 AWARD OF CONTRACT

It is anticipated that there will be negotiations or discussions with Offerors. However, the City reserves the right to award without negotiations or discussions. The City also reserves the right to award a contract not necessarily or merely to the Offeror with the most advantageous price. The City intends to award to the Offeror that demonstrates the best value to the City and the most substantiated ability to fulfill the requirements contained in this Request for Proposal. A contract prepared by the City will be finalized and/or negotiated with the successful Offeror. In the event a contract cannot be negotiated with the top ranked Offeror, the City may enter into negotiations with the second highest ranked Offeror, or the City may decide to call for new proposals. Immediately after the notice of award, the successful Offeror will begin planning in conjunction with the City of Colorado Springs staff (to be designated by the City) to ensure fulfillment of all its obligations. The successful Offeror may be expected to attend regular meetings as required by the City to assist in the preparation for startup.

SECTION IV – RESERVED

SECTION V – EXHIBITS

5.0 EXHIBITS

Exhibit 1	Proposal Certification
Exhibit 2	2.1: Sample Contract & 2.2: Sample Operating Agreement
Exhibit 3	Exceptions
Exhibit 4	Minimum Insurance Requirements
Exhibit 5	Statement of Work
Exhibit 6	Qualification Statement
Exhibit 7	Evaluation Scoresheet

EXHIBIT 1 PROPOSAL CERTIFICATION

Check or Mark the space after each number to indicate compliance.

1. _____ Address of Offeror’s Principal Place of Business:

Does Offeror have an established office or facility in Colorado Springs?

Yes _____ No _____

If yes, indicate address below if different than Principal Place of Business.

Colorado Springs Facility – Year established _____

Address of Colorado Springs Facility:

Percent of Work to be Performed from Principal Place of Business? _____

Percent of Work to be Performed from Colorado Springs Facility? _____

2. _____ Indicate your ability to provide a certificate of insurance evidencing the required coverage types and limits specified in Minimum Insurance Requirements Exhibit. (The certificate of insurance must reflect the City of Colorado Springs and Pikes Peak Rural Transportation Authority as Additional Insured, as applicable.)

Indicate your ability to comply with the following requirements:

The City shall be added as an Additional Insured to all liability policies:

Yes _____ No _____

Your property and liability insurance company is licensed to do business in Colorado:

Yes _____ No _____

Provide the name of your property and liability insurance company here:

Name: _____

Your property and liability insurance company has an AM best rating of not less than B+ and/or VII:

Yes _____ No _____

Worker's Compensation Insurance is carried for all employees and covers work done in Colorado.

Yes _____ No _____

3. _____ Provide one (1) copy of current financial statements (if required). Enclose financial information in a separate envelope; do not bind with the other proposal copies. If review of the information is to be restricted to the City's financial officer, it must be marked accordingly.

4. _____ Provide the completed and signed proposal. (Proposals must be identified as specified in this RFP document). All required Exhibits are attached.

By signing below, the Offeror certifies that no person or firm other than the Offeror or as otherwise indicated has any interest whatsoever in this offer or any Contract that may be entered into as a result of this offer and that in all respects the offer is legal and firm, submitted in good faith without collusion or fraud.

Offeror has appointed _____ as the Offeror's representative and contact for all questions or clarifications in regard to this Offeror.

Telephone: (____) _____

Email: _____

The undersigned acknowledges and understands the terms, conditions, Specifications and all Requirements contained and/or referenced and are legally authorized by the Offeror to make the above statements or representations.

(Name of Company)

(Signature)

(Address)

Date

(City, State and Zip)

(Telephone Number)

(Name typed/Printed)

(Title)

(E-Mail Address)

FEDERAL TAX ID # _____
This Company Is: Corporation ___ Individual ___ Partnership ___ LLC ___

Offeror hereby acknowledges receipt of the following amendments, if applicable
Offeror agrees that it is bound by all Amendments identified herein.

AMENDMENT #1 _____ DATED: _____
AMENDMENT #2 _____ DATED: _____
AMENDMENT #3 _____ DATED: _____

Please Note the attached Representations and Certifications must be initialed by Offeror in the spaces provided and returned with this certification.

REPRESENTATIONS AND CERTIFICATIONS

Exhibit 1 Continued

1. INSURANCE REQUIREMENTS

Offeror shall comply with all insurance requirements and will submit the Insurance Certificates prior to performance start date. If limits are different from the stated amounts, Offeror shall explain variance. Certain endorsements and “additionally insured” statements may require further clarification and specific statements on a project specific basis and should have been described in the Offeror’s proposal.

_____ (Initials for 1)

2. ETHICS VIOLATIONS

- A. The Offeror shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this clause in its own operations and direct business relationships.
- B. Offeror certifies the Offeror has not violated or caused any person to violate, and shall not violate or cause any person to violate, the City’s Code of Ethics contained in Article 3, of Chapter 1 of the City Code and in the City's Procurement Rules and Regulations
- C. When the Offeror has reasonable grounds to believe that a violation described in this clause may have occurred, the Offeror shall promptly report the possible violation to the City Contracts Specialist in writing.
- D. The Offeror must disclose with the signing of this proposal, the name of any officer, director, or agent who is also an employee of the City and any City employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the Offeror’s firm or any of its branches.
- E. In addition, the Offeror must report any conflict or apparent conflict, current or discovered during the performance of the Contract, to the City Contracts Specialist.
- F. The Offeror shall not engage in providing gifts, meals or other amenities to City employees. The right of the Offeror to proceed may be terminated by written notice issued by City Contracts Specialist if Offeror offered or gave a gratuity to an officer, official, or employee of the City and intended by the gratuity to obtain a contract or favorable treatment under a contract.
- G. The Offeror shall cooperate fully with the City or any agency investigating a possible violation on behalf of the City. If any violation is determined, the Offeror will properly compensate the City.
- H. The Offeror agrees to incorporate the substance of this clause (after substituting “Contractor” for “Offeror”) in all subcontracts under this offer.

_____ (Initials for 2)

3. ILLEGAL ALIENS

- A. If Offeror has any employees or subcontractors, Offeror shall comply with § 8-17.5-101, et seq., C.R.S. regarding Illegal Aliens – Public Contracts for Services, and this section of this Agreement. 8-17.5-102 includes, in part, that:
- B. Offeror shall not:
 - a. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
 - b. Enter into a contract with a subcontractor that fails to certify to Offeror that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- C. Offeror has verified or attempted to verify that Offeror does not employ any illegal aliens and, will participate in the E-Verify Program or State Department program in order to confirm eligibility of all employees who are newly hired to perform work under public contract for services.
- D. Offeror will not use E-Verify Program or State Department program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
- E. If Offeror obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Provider shall:
 - a. Notify the subcontractor and the City within three days that Offeror has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - b. Terminate the subcontract with the subcontractor if within three days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien. However, the Offeror shall not terminate the contract with the subcontractor if during this three day period:
 - i. The subcontractor provides information which establishes that the subcontractor has not knowingly employed or contracted with an illegal alien, and
 - ii. The Offeror will not employ the illegal aliens in the performance of any City contract.
- F. Offeror shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in §8-17.5-102(5), C.R.S.
- G. If Offeror violates this provision, the City may terminate the contract for a breach of contract. If the Agreement is terminated, the Offeror shall be liable for actual and consequential damages.

_____ (Initials for 3)

4. COOPERATION WITH OTHER CONTRACTORS

Other City activities/contracts may be in progress or start during the performance of this contract. The Offeror shall coordinate the work harmoniously with the other contractors or City personnel, if applicable.

_____ (Initials for 4)

5. INTERNET USE

Should the Offeror require access to City Internet resources in the performance of this requirement, a "Contractor's Internet Use Agreement" form must be separately signed by each individual having access to the City Network. The completed Contractor's Internet Use Agreement will be maintained with this agreement. Inappropriate use of the City Network will be grounds for immediate termination of any awarded contact.

_____ (Initials for 5)

6. LITIGATION

If awarded a contract, Offeror shall notify the City within five (5) calendar days after being served with a summons, complaint, or other pleading in any matter which has been filed in any federal or state court or administrative agency. The Offeror shall deliver copies of such document(s) to the City's Procurement Services Manager. The term "litigation" includes an assignment for the benefit of creditors, and filings of bankruptcy, reorganization and/or foreclosure.

_____ (Initials for 6)

7. CONTRACTOR'S REGISTRATION INFORMATION

Offeror's firm verifies and states that they are (check all that apply):

- _____ Large Business (i.e. do not qualify as a small business or non-profit)
- _____ Nonprofit
- _____ Small Business
- _____ Minority Owned Business/Small Disadvantaged Business
- _____ Woman Owned Business
- _____ Veteran Owned Business
- _____ Service-Disabled Veteran Owned Business
- _____ HUBZone Business

Note: The City accepts self-certification for these categories in accordance with Small Business Administration (SBA) standards. The SBA size standards are found on the SBA website <https://www.sba.gov/content/am-i-small-business-concern>.

_____ (Initials for 7)

8. CONTRACTOR PERSONNEL

- A. The Offeror shall appoint one of its key personnel as the “Authorized Representative” who shall have the power and authority to interface with the City and represent the Offeror in all administrative matters concerning this proposal and any awarded contract, including without limitation such administrative matters as correction of problems modifications, and reduction of costs.
- B. The Authorized Representative shall be the person identified in the Offeror’s proposal, unless the Offeror provides written notice to the City naming another person to serve as its Authorized Representative. Communications received by the City Contracts Specialist from the Authorized Representative shall be deemed to have been received from the Offeror.

The individual, _____ (Name)
 with position, _____ (Title)
 Can be reached at _____
 Work telephone number: _____
 Home telephone number: _____
 Cellular telephone number: _____
 E-mail address: _____

_____(Initials for 8)

9. OFFEROR’S CERTIFICATION

The undersigned hereby affirms that:

- A. He/She is a duly authorized agent of the Offeror;
- B. He/She has read and agrees to the City’s standard terms and conditions attached.
- C. The offer is presented in full compliance with the collusive prohibitions of the City of Colorado Springs. The Offeror certifies that no employee of its firm has discussed, or compared the offer with any other Offeror or City employee and has not colluded with any other Offeror or City employee.
- D. The Offeror certifies that it has checked all of its figures, and understands that the City will not be responsible for any errors or omissions on the part of the Offeror in preparing its proposal.
- E. By submitting an offer the Offeror certifies that it has complied and will comply with all requirements of local, state, and federal laws, and that no legal requirements have been or will be violated in making or accepting this solicitation.
- F. I hereby certify that I am submitting the proposal based on my company's capabilities to provide quality products and/or services on time.

_____(Initials for 9)

10.OFFEROR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS:

- A. The Offeror certifies to the best of its knowledge and belief, that (i) the Offeror and/or any of its Principals

- a. Are (), Are not () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - b. Have (), Have not (), within a three year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, local) contract or subcontract; violation of Federal or state antitrust statutes relation to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, tax evasion, or receiving stolen property; and
 - c. Are (), Are not () presently indicated for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in any paragraphs above.
- B. The Offeror shall provide immediate written notice to the City Contracts Specialist if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reasons of changed circumstances.
- C. The certification in paragraph 1 above, is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City Contracts Specialist may terminate the contract resulting from this solicitation for default. Termination for default may result in additional charges being levied for the costs incurred by the City to initiate activities to replace the awarded Contractor.

_____ (Initials for 10)

11. ACCEPTANCE OF CITY CONTRACTS SPECIALIST’S SOLE AUTHORITY FOR CHANGES

Unless otherwise specified in the Contract, the Offeror hereby agrees that any changes to the scope of work, subsequent to the original contract signing, shall be generated in writing and an approval signature shall be obtained from the City Contracts Specialist prior to additional work performance.

_____ (Initials for 11)

12. CITY CONTRACTOR SAFETY PROGRAM

The Offeror hereby agrees to adhere to a worker safety program for contractor employees on a City job site or location. By initialing below, the Offeror has reviewed the information and will abide by the City Policy which is available for review:

<https://coloradosprings.gov/finance/page/procurement-regulations-and-documents>

_____ (Initials for 12)

13. ACCEPTANCE OF CITY ENVIRONMENTALLY PREFERRED PURCHASING (EPP) POLICY

The City of Colorado Springs is committed to buying more environmentally preferable goods and services, as long as they meet performance needs, are available within a reasonable time and at a reasonable cost. The Offeror hereby acknowledges review of this policy by initialing below.

<https://coloradosprings.gov/finance/page/procurement-regulations-and-documents>

_____ (Initials for 13)

14. FRAUD, WASTE AND ABUSE

Everyone has a duty to report any suspected unlawful act impacting the City of Colorado Springs operations and its enterprises. Anyone who becomes aware of the existence or apparent existence of fraud, waste, and abuse in City of Colorado Springs is encouraged to report such matters to the City Auditor’s Office in writing or on the telephone hotline 385-2387 (ADTR). Written correspondence can be mailed to:

City Auditor
P.O. Box 2241
Colorado Springs CO 80901

Or via email CityAuditManagement@springsgov.com. Any of these mechanisms allow for anonymous reporting. For more information, please go to the website <https://coloradosprings.gov/cityfraud>.

_____ (Initials for 14)

Name of Company: _____

Federal Tax ID Number: _____

DUNS Number: _____

Principal Place of Business: _____

Signature of Authorized Representative

Printed Name: _____

Title: _____

Date: _____

EXHIBIT 2.1 SAMPLE CONTRACT

The City has not determined whether it will employ a contract or an operating agreement for the pilot program. Samples of both are provided as reference.

SERVICES CONTRACT

Contract Number:		Project Name/Title	Shared Scooter Pilot Program
Vendor/Contractor			
Contact Name:		Telephone:	
Email Address:			
Address:			
Federal Tax ID #		Please check one:	<input type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Partnership
City Contracting Specialist	Alyssa Mendelsohn (719) 385-7629	City Dept Rep	Name & Phone# & Department Name
Contract Type:	Fixed Unit Price	Period of Performance:	Notice to Proceed – March 31, 2022

1. INTRODUCTION

THIS FIXED UNIT PRICE CONTRACT ("Contract") is made and entered into this XX day of XX, 2021, by and between the City of Colorado Springs, a Colorado municipal corporation and home rule city, in the County of El Paso, State of Colorado, (the "City"), and XX (the "Contractor").

THE CITY AND THE CONTRACTOR HEREBY AGREE AS FOLLOWS:

The City has heretofore prepared the necessary Contract Documents for the following Activity: Shared Scooter Pilot Program.

The Contractor did on the XX day of March, 2021, submit to the City the Contractor's written offer and proposal to do the work therein described under the terms and conditions therein set forth and furnish all materials, supplies, labor, services, transportation, tools, equipment, and parts for said work in strict conformity with the accompanying Contract Documents, which are attached hereto and incorporated herein by this reference, including the following:

1. This Contract Document
2. Appendix A – Additional Terms and Conditions
3. Appendix B – Statement of Work.
4. Appendix C – Insurance Requirements

2. COMPENSATION/CONSIDERATION

THIS FIRM FIXED PRICE CONTRACT is established at firm fixed amount of \$XX.

Subject to the terms and conditions of the Contract Documents, Contractor shall provide all materials, supplies, labor, services, transportation, tools, equipment, and parts to perform Shared Scooter Pilot Program Services for the City of Colorado Springs in a good and workmanlike manner to the satisfaction of the City for the total contract amount designated above and in the Notice of Award, to be paid by the City to the Contractor.

The parties estimate that performance of this Contract will not exceed the Not to Exceed estimate. The Contractor shall notify the City Contracts Specialist in writing whenever it has reason to believe that the costs the Contractor expects to incur under this Contract in the following 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified herein; or the total cost for the performance of this Contract will be either greater or substantially less than had been previously estimated. As part of the notification, the Contractor shall provide the Contracts Specialist a revised estimate of the total cost of performing this Contract.

The City is not liable for any costs above the Not to Exceed estimate, and the Contractor is not obligated to continue performance under this Contract (including actions under the Termination clause of this Contract) or otherwise incur costs in excess of the Not to Exceed estimate specified herein, until the City Contracts Specialist:

1. notifies the Contractor in writing that the estimated cost has been increased and
2. provides a revised estimated total not to exceed price of performing this Contract.

3. TERM OF CONTRACT

It is further agreed that the Contractor will start work promptly and continue to work diligently until completed. The Contract Period of Performance shall be as follows:

Contractor will start work promptly after the Notice to Proceed and continue to work diligently until completed. The Contractor shall complete all work on an as ordered basis throughout the Contract period which is **April 1, 2021 – March 31, 2022**. The City may, in writing, award two (2) additional one year option periods at the City's sole discretion. Option year periods, if awarded, will be:

Option Year One: April 1, 2022 – March 31, 2023
Option Year Two: April 1, 2021 – March 31, 2024

4. INSURANCE

The Contractor shall provide and maintain acceptable Insurance Policy(s) consistent with the Minimum Insurance Requirements attached as Appendix C, which includes Property, Liability and Professional Errors and Omissions coverage, and as otherwise listed in Appendix C. The City of Colorado Springs shall be reflected as an additional insured on the Property and Liability policy(s).

Further, Contractor understands and agrees that Contractor shall have no right of coverage under any existing or future City comprehensive, self, or personal injury policies. Contractor shall provide insurance coverage for and on behalf of Contractor that will sufficiently protect Contractor, or Contractor's agents, employees, servants or other personnel, in connection with the services which are to be provided by Contractor pursuant to this Contract, including protection from claims for bodily injury, death, property damage, and lost income. Contractor shall provide worker's compensation insurance coverage for Contractor and all Contractor personnel. Contractor shall file applicable insurance certificates with the City and shall also provide additional insurance as

indicated in this Contract. ***A CURRENT CERTIFICATE OF INSURANCE IS REQUIRED PRIOR TO COMMENCEMENT OF SERVICES LISTING THE CITY AS ADDITIONALLY INSURED.***

5. RESPONSIBILITY OF THE CONTRACTOR

- A. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all Scope of Work services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in services provided under this Contract to the satisfaction of the City.
- B. The City's review, approval of, acceptance of, or payment for the services required under this Contract shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the City for any and all damages to the City caused by the Contractor's negligent performance of any of the services furnished under this Contract.
- C. The rights and remedies of the City provided for under this Contract are in addition to any other rights and remedies provided by law.
- D. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

6. WORK OVERSIGHT

- A. The extent and character of the work to be done by the Contractor shall be subject to the general approval of the City's delegated Project Manager.
- B. If any of the work or services being performed does not conform with Contract requirements, the City may require the Contractor to perform the work or services again in conformity with Contract requirements, at no increase in Contract amount. When defects in work or services cannot be corrected by re-performance, the City may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce the Contract price to reflect the reduced value of the work or services performed.
- C. If the Contractor fails to promptly perform the defective work or services again or to take the necessary action to ensure future performance is in conformity with Contract requirements, the City may (1) by Contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such work or service or (2) terminate the Contract for breach of contract.

7. SUBCONTRACTORS, ASSOCIATES, AND OTHER CONTRACTORS

- A. Any subcontractor, outside associates, or other contractors used by the Contractor in connection with Contractor's work under this Contract shall be limited to individuals or firms that are specifically identified by the Contractor in the Contractor's proposal and agreed to by the City. The Contractor shall obtain the City's Project Manager's written consent before making any substitution of these subcontractors, associates, or other contractors.
- B. The Contractor shall include a flow down clause in all of its subcontracts, agreements with outside associates, and agreements with other contractors. The flow down clause shall cause all of the terms and conditions of this Contract, including all of the applicable parts of the Contract Documents, to be incorporated into all subcontracts, agreements with outside associates, and agreements with other contractors. The flow down clause shall provide clearly that there is no privity of contract between the City and the Contractor's subcontractors, outside associates, and other contractors.

8. KEY PERSONNEL

The key personnel listed in the proposal and/or below will be the individuals used in the performance of the work. If any of the listed key personnel leave employment or are otherwise not utilized in the performance of the work, approval to substitute must be obtained by the Contractor from the City's Project Manager. Any substitute shall have the same or a higher standard of qualifications that the key personnel possessed at the time of Contract award.

9. START AND CONTINUANCE OF WORK

It is further agreed that the Contractor will start work promptly and continue to work diligently until this Contract is completed.

10. APPROPRIATION OF FUNDS

This Contract is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Contract, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Contract.

11. CHANGES

The Contractor and the City agree and acknowledge as a part of this Contract that no change order or other form or order or directive may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for this Contract as listed above, unless the Contractor has been given a written assurance by the City that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision of this Contract. The Contractor and the City further agree and acknowledge as a part of this Contract that no change order or other form or order or directive which requires additional compensable work to be performed under this Contract shall be issued by the City unless funds are available to pay such additional costs, and, regardless of any remedy-granting provision included within this Contract, the Contractor shall not be entitled to any additional compensation for any change which increases or decreases the Contract completion date, or for any additional compensable work performed under this Contract, and expressly waives any rights to additional compensation, whether by law or equity, unless, prior to commencing the additional work, the Contractor is given a written change order describing the change in Contract completion date or the additional compensable work to be performed, and setting forth the amount of compensation to be paid, and such change order is signed by the authorized City representative, as defined below. The amount of compensation to be paid, if any, shall be deemed to cover any

and all additional, direct, indirect or other cost or expense or profit of the Contractor whatsoever. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any change order under this Contract.

No change, amendment, or modification to this Contract shall be valid unless duly approved and issued in writing by the City of Colorado Springs Procurement Services Division. The City shall not be liable for any costs incurred by the Contractor resulting from work performed for changes not issued in writing by the City of Colorado Springs Procurement Services Division.

The following personnel are authorized to sign changes, amendments, or modifications to this Contract.

The Project Manager: Changes up to \$14,999.99

The City of Colorado Springs Chief of Staff: Changes up to \$499,999.99

The Mayor of the City of Colorado Springs: Unlimited

12. ASSIGNMENT

No assignment or transfer by the Contractor of this Contract or any part thereof or of the funds to be received thereunder by the Contractor will be recognized unless such assignment has had the prior written approval of the City and the surety has been given due notice of such assignment. Such written approval by the City shall not relieve the Contractor of the obligations under the terms of this Contract. In addition to the usual recitals in assignment contracts, the following language must be included in the assignment:

It is agreed that the funds to be paid to the assignee under this assignment are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of all persons, firms, or corporations rendering such services or supplying such materials.

13. CHOICE OF LAW

This Contract is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado home rule city. Court venue and jurisdiction shall be exclusively in the Colorado District Court for El Paso County, Colorado. The Parties agree that the place of performance for this Contract is deemed to be in the City of Colorado Springs, El Paso County, State of Colorado. The Contractor shall ensure that the Contractor and the Contractor's employees, agents, officers and subcontractors are familiar with, and comply with, applicable Federal, State, and Local laws and regulations as now written or hereafter amended.

14. WORKERS' COMPENSATION INSURANCE

Contractor shall take out and maintain during the Period of Performance, Colorado Worker's Compensation Insurance for the Contractor and all employees of the Contractor. If any service is sublet by the Contractor, the Contractor shall require the subcontractor to provide the same coverage for the subcontractor and subcontractor's employees. Workers' Compensation Insurance shall include occupational disease provisions covering any obligations of the Contractor in accord with the provisions of the Workers' Compensation Act of Colorado.

15. INDEMNIFICATION

Contractor agrees that the Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Contractor's obligations or actions under this Contract caused by any willful or negligent error, omission or act or a failure to observe any applicable standard of care by the Contractor or any person employed by it or anyone for whose acts the Contractor is legally liable. In consideration of the award of this Contract, to the extent damages are covered by insurance, the Contractor agrees to waive all rights of subrogation against the City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers for losses arising from the work performed by the Contractor for the City. The indemnification obligation shall survive the expiration or termination of this Contract

16. INDEPENDENT CONTRACTOR

In the performance of the Contractor's obligations under this Contract, it is understood, acknowledged and agreed between the parties that the Contractor is at all times acting and performing as an independent contractor, and the City shall neither have nor exercise any control or direction over the manner and means by which the Contractor performs the Contractor's obligations under this Contract, except as otherwise stated within the Contract terms. The City shall not provide any direction to the Contractor on the work necessary to complete the project. Contractor understands that it is an independent contractor responsible for knowing how to perform all work or tasks necessary to complete project. The Contractor understands and agrees that the Contractor and the Contractor's employees, agents, servants, or other personnel are not City employees. The Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to the Contractor or any of the Contractor's employees, agents, servants or other personnel performing services or work under this Contract, whether it is of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither the Contractor nor the Contractor's employees, agents, servants or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever.

17. APPLICABLE LAW AND LICENSES

In the conduct of the services or work contemplated in this Contract, the Contractor shall ensure that the Contractor and all subcontractors comply with all applicable state, federal and City and local law, rules and regulations, technical standards or specifications. The Contractor shall qualify for and obtain any required licenses prior to commencement of work.

18. PRIOR AGREEMENTS

This is a completely integrated Contract and contains the entire agreement between the parties. Any prior written or oral agreements or representations regarding this Contract shall be of no effect and shall not be binding on the City. This Contract may only be amended in writing, and executed by duly authorized representatives of the parties hereto.

19. INTELLECTUAL PROPERTY

The Parties hereby agree, and acknowledge, that all products, items writings, designs, models, examples, or other work product of the Contractor produced pursuant to this Contract are works made for hire, and that the City owns, has, and possesses any and all ownership rights and interests to any work products of the Contractor made under this Contract, including any and all copyright, trademark, or patent rights, and that compensation to the Contractor for Agreement and acknowledgment of this intellectual property right section of this Contract is included in any compensation or price whatsoever paid to the Contractor under this Contract. It is the intent of the parties that the City shall have full ownership and control of the Contractor's work products produced pursuant to this Contract, and the Contractor specifically waives and assigns to the City all rights which Contractor may have under the 1990 Visual Artists Rights Act, federal, and state law, as now written or later amended or provided. In the event any products, items writings, designs, models, examples, or other work product produced pursuant to this Contract is deemed by a court of competent jurisdiction not to be a work for hire under federal copyright laws, this intellectual property rights provision shall act as an irrevocable assignment to the City by the Contractor of any and all copyrights, trademark rights, or patent rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, including all rights in perpetuity. Under this irrevocable assignment, the Contractor hereby assigns to the City the sole and exclusive right, title, and interest in and to the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, without further consideration, and agrees to assist the City in registering and from time to time enforcing all copyrights and other rights and protections relating to the Contractor's products, items writings, designs, models, examples, or other work product in any and all countries. It is the Contractor's specific intent to assign all right, title, and interest whatsoever in any and all copyright rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, in any media and for any purpose, including all rights of renewal and extension, to the City. To that end, the Contractor agrees to execute and deliver all necessary documents requested by the City in connection therewith and appoints the City as Contractor's agent and attorney-in-fact to act for and in Contractor's behalf and stead to execute, register, and file any such applications, and to do all other lawfully permitted acts to further the registration, prosecution, issuance, renewals, and extensions of copyrights or other protections with the same legal force and effect as if executed by the Contractor; further, the parties expressly agree that the provisions of this intellectual property rights section shall be binding upon the parties and their heirs, legal representatives, successors, and assigns.

20. WAIVERS

No waiver of default by the City of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the Contractor shall be construed, or shall operate, as a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained to be performed, kept, and observed by the Contractor.

21. THIRD PARTIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person or entity on such Contract. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Contract, receiving services or benefits under this Contract shall be deemed to be incidental beneficiaries only.

22. TERMINATION

A. Termination for Convenience.

By signing this Contract, Contractor represents that it is a sophisticated business and enters into the Contract voluntarily, has calculated all business risks associated with this Contract, and understands and assumes all risks of being terminated for convenience, whether such risks are known or not known. Contractor agrees that the City may terminate this Contract at any time for convenience of the City, upon written notice to the Contractor. Contractor expressly agrees to and assumes the risk that the City shall not be liable for any costs or fees of whatsoever kind and nature if termination for convenience occurs before Contractor begins any work or portion of the work. Contractor further expressly agrees and assumes the risks that the City shall not be liable for any unperformed work, anticipated profits, overhead, mobilizations costs, set-up, demobilization costs, relocation costs of employees, layoffs or severance costs, administrative costs, productivity costs, losses on disposal of equipment or materials, cost associated with the termination of subcontractors, costs associated with purchase orders or purchases, or any other costs or fees of any kind and nature, if Contractor has started or performed portions of the Contract prior to receiving notice from the City. The City shall be liable only for the portions of work Contractor actually satisfactorily completed up to the point of the issuance of the Notice of Termination for convenience. Upon receipt of this notice the Contractor shall immediately: discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.

B. Termination for Cause: The occurrence of any one or more of the following events ("Event of Default") will justify termination for cause:

- i. Contractor's failure to perform the work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule as adjusted from time to time.
- ii. Contractor's disregard of the laws or regulations of any public body having jurisdiction.
- iii. Contractor's disregard of the authority of Project Manager.
- iv. Contractor's violation in any material provision of the Contract Documents.
- v. Contractor's failure to make prompt payments to its subcontractors, and suppliers of any tier, or laborers or any person working on the work by, through, or under the Contractor or any of them, any all of their employees, officers, servants, members, and agents.
- vi. Contractor files a petition commencing a voluntary case under the U.S. Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other U.S. or state bankruptcy Laws, or shall be adjudicated a debtor or be declared bankrupt or insolvent under the U.S. Bankruptcy Code, or any other federal or state laws relating to bankruptcy, insolvency, winding-up, or adjustment of debts, or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the U.S. Bankruptcy Code or an answer proposing the adjudication of Contractor as a debtor or bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code or any other U.S. federal or state bankruptcy laws is filed in any court and Contractor consents to or acquiesces in the filing of that pleading or the petition or answer is not discharged or denied within sixty (60) Calendar Days after it is filed.
- vii. A custodian, receiver, trustee or liquidator of Contractor, all or substantially all of the assets or business of Contractor, or of Contractor's interest in the Work or the Contract,

is appointed in any proceeding brought against Contractor and not discharged within sixty (60) Calendar Days after that appointment, or if Contractor shall consent to or acquiesces in that appointment.

- viii. Contractor fails to commence correction of defective work or fails to correct defective work within a reasonable period of time after written notice.

If one or more of the events identified in Paragraphs i-viii above occur, City may give Contractor written notice of the event and direct the event be cured. Any such Notice to Cure will provide Contractor a minimum of ten (10) calendar days to prepare and submit to the Project Manager a plan to correct the Event of Default. If such plan to correct the Event of Default is not submitted to the Project Manager within ten (10) days after the date of the written notice or such plan is unacceptable to the City, the City may, give Contractor (and the Surety, if any) written notice that Contractor's services are being terminated for cause. Upon delivery of the termination notice, City may terminate the services of Contractor in whole or in part, exclude Contractor from the site, and take possession of the work and of all Contractor's tools, appliances, equipment, and machinery at the project site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the work all materials and equipment stored at the site or for which City has paid Contractor but which are stored elsewhere, and finish the work as City may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until Certificate of Completion of the work. In the event City terminates this Contract for Cause and the cost of completing the work exceeds the unpaid balance of the Contract price, Contractor shall pay City for any costs of completion which exceed the Contract price when combined with all amounts previously paid to Contractor. When exercising any rights or remedies under this paragraph City shall not be required to obtain the lowest price for the work performed. Should the cost of such completion, including all proper charges, be less than the original Contract price, the amount so saved shall accrue to the City. Neither the City nor any officer, agent or employee of the City shall be in any way liable or accountable to the Contractor or the Surety for the method by which the completion of the said work, or any portion thereof, may be accomplished or for the price paid.

Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor or Surety then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor from liability.

- C. Termination Notice. Upon receipt of a termination notice, whether for convenience or cause, the Contractor shall immediately: discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.
- D. Removal of Equipment. Except as provided above, in the case of termination of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of Contractor's equipment and supplies from the property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

23. BOOKS OF ACCOUNT AND AUDITING

The Contractor shall make available to the City if requested, true and complete records, which support billing statements, reports, performance indices, and all other related documentation. The City's authorized representatives shall have access during reasonable hours to all records, which are deemed appropriate to auditing billing statements, reports, performance indices, and all other related documentation. The Contractor agrees that it will keep and preserve for at least seven years all documents related to the Contract which are routinely prepared, collected or compiled by the Contractor during the performance of this Contract.

The City's Auditor and the Auditor's authorized representatives shall have the right at any time to audit all of the related documentation. The Contractor shall make all documentation available for examination at the Auditor's request at either the Auditor's or Contractor's offices, and without expense to the City.

24. ILLEGAL ALIENS

Illegal Aliens - Public Contracts for Services - Compliance with Title 8, Article 17.5, Colorado Revised Statutes: The Contractor acknowledges, understands, agrees, and certifies that: In the performance of any work or the provision of any services by the Contractor under this Contract, the Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract; or enter into a contract with any subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or under the subcontract to this Contract. The Contractor certifies in accord with Section 8-17.5-102(1) C.R.S. that, on the date the Contractor signs this Contract, the Contractor does not knowingly employ or Contract with an illegal alien who will perform work under this Contract and that the Contractor shall participate in the e-verify program or Colorado Department of Labor and Employment program in order to confirm the employment eligibility of all employees who are newly hired for employment or to perform work under this Contract. The Contractor is expressly prohibited from using the e-verify program or Colorado Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while this Contract and any services under this Contract are being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract for services knowingly employs or contracts with an illegal alien, the Contractor shall notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, and terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the Contract with the subcontractor if during the three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor shall comply with any request by the City, federal government, or the Colorado Department of Labor and Employment made in the course of an investigation. If the Contractor violates or fails to comply with any provision of C.R.S. 8-17.5-101 et seq, the City may terminate this Contract for breach of contract. If this Contract is so terminated, the Contractor shall be liable for any actual and consequential damages to the City.

25. COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT OF 1986

Contractor certifies that Contractor has complied with the United States Immigration Reform and Control Act of 1986. All persons employed by Contractor for performance of this Contract have completed and signed Form I-9 verifying their identities and authorization for employment.

26. LABOR

The Contractor shall employ only competent and skilled workmen and foremen in the conduct of work on this Contract. The Contractor shall at all times enforce strict discipline and good order among Contractor's employees. The Project Manager shall have the authority to order the removal from the work of any person, including Contractor's or any subcontractor's employees, who refuses or neglects to observe any of the provisions of these Plans or Specifications, or who is incompetent, abusive, threatening, or disorderly in conduct and any such person shall not again be employed on the Project.

In no event shall the City be responsible for overtime pay.

27. GRATUITIES

- A. This Contract may be terminated if the Mayor, the Mayor's designee, and/or the Procurement Services Manager determine, in their sole discretion, that the Contractor or any officer, employee, agent, or other representative whatsoever, of the Contractor offered or gave a gift or hospitality to a City officer, employee, agent or Contractor for the purpose of influencing any decision to grant a City contract or to obtain favorable treatment under any City contract.
- B. The terms "hospitality" and "gift" include, but are not limited to, any payment, subscription, advance, forbearance, acceptance, rendering or deposit of money, services, or anything of value given or offered, including but not limited to food, lodging, transportation, recreation or entertainment, token or award.
- C. Contract termination under this provision shall constitute a breach of contract by the Contractor, and the Contractor shall be liable to the City for all costs of re-letting the contract or completion of the project. Further, if the Contractor is terminated under this provision, or violates this provision but is not terminated, the Contractor shall be subject to debarment under the City's Procurement Regulations. The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

28. NON-DISCRIMINATION

- A. In accordance with section 24-34-402, C.R.S., the Contractor will not discriminate against any employee or applicant for employment because of disability, race, creed, color, sexual orientation, religion, age, national origin, or ancestry. But, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to take into consideration disability if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job. The Contractor will take affirmative steps to ensure that applicants are employed, and that employees are treated during employment without regard to their disability, race, creed, color, sexual orientation, religion, age, national origin, or ancestry. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship.
- B. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- C. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment

without regard to disability, race, creed, color, sexual orientation, religion, age, national origin, or ancestry.

- D. Contractor will cooperate with the City in using Contractor's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts or work under this Contract.

29. ORDER OF PRECEDENCE

Any inconsistency in this Contract shall be resolved by giving precedence in the following order:

- A. This Contract document with its terms and conditions
- B. The Statement of Work
- C. Other Appendices, Attachments, Exhibits, or Schedules

30. HEADINGS

The section headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract.

31. DISPUTES

- A. All administrative and contractual disputes arising from or related to this Contract shall be addressed in the following manner:
 - i. If either Party disputes or disagrees with a Contract term or the other Party's interpretation of a Contract term or has any other administrative or contractual dispute not addressed in the Unanticipated Circumstances provisions, such Party shall promptly give the other Party written notice of said dispute.
 - ii. The Parties shall hold a meeting as soon as reasonably possible, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled unless otherwise agreed to by the Parties in writing.
 - iii. If, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
 - iv. The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint a third mediator who shall conduct mediation for the Parties as the sole mediator.
 - v. The Parties agree to participate in good faith in the mediation and negotiations for a period of thirty (30) calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to pursue any other remedy afforded by the laws of the State of Colorado.
 - vi. Until final resolution of any dispute hereunder, the Contractor shall diligently proceed with the performance of this Contract as directed by the City. For purposes of this Contract, termination for convenience shall not be deemed a dispute. The City of Colorado Springs and the Contractor agree to notify each other in a timely manner of any claim, dispute, or cause of action arising from or related to this Contract, and to negotiate in good faith to

resolve any such claim, dispute, or cause of action. To the extent that such negotiations fail, the City of Colorado Springs and the Contractor agree that any lawsuit or cause of action that arises from or is related to this Contract shall be filed with and litigated only by the Colorado District Court for El Paso County, CO.

32. DELIVERY

The City may cancel this Contract or any portion thereof if delivery is not made when and as specified, time being of the essence in this Contract. Contractor shall pay the City for any loss or damage sustained by the City because of failure to perform in accordance with this Contract.

33. PAYMENTS

All invoices shall be sent to the Project Manager identified in this Contract.

The City will pay the Contractor, upon submission of proper invoices, the prices stipulated in the Contract for services rendered and accepted, less any deductions provided in this Contract within 30 days (Net 30). The City will not pay late fees or interest. Any discount payment terms offered on the invoice may be taken by the City.

Each invoice must contain at least the following information:

Contract number, issued purchase order number, invoice number, invoice date, timeframe covered by invoice, type and amount of labor and materials used for that time period, dollar amount in unit price, extended price, and total value of invoice.

34. INSPECTION OF SERVICES

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the services furnished under this Contract conform to Contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any City inspection and testing required in the Contract's specifications, except for specialized inspections or tests specified to be performed solely by the City.

- A. Definition of "services", as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City during Contract performance and for as long afterwards as the Contract requires.
- C. The City has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The City will perform inspections and tests in a manner that will not unduly delay the work.
- D. If the City performs inspections or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

35. SECURITY

The City maintains security requirements regarding access to City buildings and other City workplaces and worksites on City property. All Contractor personnel accessing City buildings, workplaces, or worksites, may be required to produce a valid, Government issued picture identification. Contractor personnel lacking such identification may not be allowed access to such sites. No costs incurred by the Contractor due to City security requirements shall be allowable or payable under this Contract.

36. TIME IS OF THE ESSENCE

In as much as the Contract concerns a needed or required service, the terms, conditions, and provisions of the Contract relating to the time of performance and completion of work are of the essence of this Contract. The Contractor shall begin work on the day specified and shall prosecute the work diligently so as to assure completion of the work within the number of calendar days or date specified, or the date to which the time for completion may have been extended.

37. EMPLOYMENT OF LABOR

The Contractor shall comply with, and defend and hold the City harmless from any violation of all laws and lawful rules and regulations, both of the State of Colorado and of the United States, relating to Workmen's Compensation, unemployment compensation, Social Security, payment for overtime, and all other expenses and conditions of employment under this Contract.

38. RESERVED

39. SEVERABILITY

If any terms, conditions, or provisions of this Contract shall be held unconstitutional, illegal, or void, such finding shall not affect any other terms, conditions, or provisions of this Contract.

40. LIABILITY OF CITY EMPLOYEES

All authorized representatives of the City are acting solely as agents and representatives of the City when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the City.

41. USE OF CITY NAME OR LOGO

Except as otherwise provided in this Contract, the Contractor shall not refer to this Contract or the City of Colorado Springs in any advertising or promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the City of Colorado Springs, its employees, or its Departments, or is considered by these entities to be superior to other products or services. Any use of the name or logo of the City of Colorado Springs in advertising or promotions must be approved in writing by the City of Colorado Springs Contracts Specialist assigned to the Contract prior to such use.

42. TRAVEL

If travel expenses are included as a line item in this Contract, all travel expenses incurred and billable by the Contractor are subject to City approval. Air travel shall be limited to the round trip "economy coach" fare. Travel from the Colorado Springs Airport is encouraged. Unless there are extenuating circumstances, the Contract should take advantage of lower airfares by purchasing

tickets more than 14 days in advance of travel. In-state travel by air must be more economical than travel by private vehicle. Use of a private vehicle may be reimbursed per mile at the current rate published by the IRS annually. Short-term parking, long-term parking or cab fare associated with airport departure and arrival may be allowable expenses. Valet parking will not be allowed unless it is the least expensive or only option. Car rental rates may be reimbursed for car rentals no greater than the intermediate or standard classification. The City will not reimburse any other travel methods or expenses. The City will pay for lodging, meals, and miscellaneous expenses on a per diem basis only, in accordance with the current per diem rates published by the IRS annually. The City will not pay for Contractor expenses exceeding the per diem rates. Receipts for all reimbursable expenses must be provided with the Contractor's invoice.

43. ELECTRONIC SIGNATURES

This Agreement and all other documents contemplated hereunder may be executed using electronic signatures with delivery via facsimile transmission, by scanning and transmission of electronic files in Portable Document Format (PDF) or other readily available file format, or by copy transmitted via email, or by other electronic means and in one or more counterparts, each of which shall be (i) an original, and all of which taken together shall constitute one and the same agreement, (ii) a valid and binding agreement and fully admissible under state and federal rules of evidence and (iii) enforceable in accordance with its terms.

44. APPENDICES

The following Appendices are made a part of this Agreement:

1. Appendix A – Responsibilities
2. Appendix B – Statement of Work.
3. Appendix C – Insurance Requirements
4. Appendix D – Revenue Sheet

CONTRACT SIGNATURE PAGE

The Contractor certifies in accord with Section 8-17.5-102(1) C.R.S. that, on the date the Contractor signs this Contract, the Contractor does not knowingly employ or Contract with an illegal alien who will perform work under this Contract and that the Contractor shall participate in the e-verify program or Colorado Department of Labor and Employment program in order to confirm the employment eligibility of all employees who are newly hired for employment or to perform work under this Contract. The Contractor is expressly prohibited from using the e-verify program or Colorado Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while this Contract and any services under this Contract are being performed.

IN WITNESS WHEREOF, the parties have caused these presents to be executed on the day and the year first above written.

This Contract is executed in one (1) original copy.

THE CITY OF COLORADO SPRINGS, COLORADO:

SECOND PARTY: SAMPLE CONTRACT ONLY	
Corporate Name	
Signature	Date
Title	

EXHIBIT 2.2 SAMPLE OPERATING AGREEMENT

The City has not determined whether it will employ a contract or an operating agreement for the pilot program. Samples of both are provided as reference.

OPERATING AGREEMENT FOR IMPLEMENTATION OF A DOCKLESS SHARED SCOOTER OPERATION

THIS OPERATING AGREEMENT ("Agreement") is made and entered into this ____ day of XX, 2021, (the "Effective Date") by and between the City of Colorado Springs, Colorado, a Colorado municipal corporation and home rule city, in the County of El Paso, State of Colorado (hereinafter referred to as "City"), and _____, a _____ corporation located in _____ (hereinafter referred to as "Company") (together the "Parties").

RECITALS

WHEREAS, the City issued a Request for Proposals ("RFP"), attached hereto as Exhibit "A" and incorporated herein by this reference, for the purpose of inviting respondents to participate in a comprehensive Dockless Shared Scooter Pilot Program ("Pilot Program") for the regulation of the operation and use of shared electric scooters, with input from stakeholders, including Company, which shall provide a comprehensive framework for shared active transportation operations in the future; and

WHEREAS, Company provides dockless scooters as part of a Shared Active Transportation Operation and wishes to implement its operation within Colorado Springs's corporate boundaries; and

WHEREAS, the Company's introduction of Shared Scooters into Colorado Springs's corporate boundaries will provide a low-cost transportation option for the City's residents; and

WHEREAS, the Company's operation requires use of the City's right-of-way; and

WHEREAS, the Parties wish to enter into this Agreement to establish the terms and conditions governing the Company's operation within the City, so such operations are consistent with the safety and well-being of the City's resident and users of public right-of-way.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the City and Company hereby enter into this Agreement, subject to the following terms and conditions:

Section 1. Scope of Agreement. The purpose of this Agreement is to establish rules and regulations governing the Company's Shared Active Transportation Operation within the City and to ensure that such Shared Active Transportation Operation is administered in a manner consistent with the safety and well-being of pedestrians, bicyclists, motorists, and other users of the City's right-of-way.

Section 2. Term. This Agreement, unless earlier terminated as provided for herein, shall commence on the Effective Date and shall expire on XXX, except in the event of termination, as provided for in Section 6 of this Agreement.

Section 3. Definitions. The following terms have the meaning and/or usage ascribed herein, except where an alternative definition or usage is specifically provided:

- A. City or City Limits shall mean the City of Colorado Springs, a municipal corporation, and its corporate boundaries of the City of Colorado Springs, but shall not include the City's extra territorial jurisdiction.
- B. Company shall mean the entity owning the Shared Active Transportation, its agents and contractors (including independent contractors) and every person or entity retained by the Company to maintain the Company's Shared Scooters.
- C. Fleet shall mean all of Company's Shared Scooters in operation within the City's corporate boundaries at any one time
- D. Frontage Zone shall mean the area adjacent to the property line where transitions between public sidewalk and the space within buildings occur.
- E. Furnishing Zone shall mean that portion of the sidewalk used for street trees, landscaping, transit stops, street lights, and site furnishing.
- F. Rider shall mean any person using the Shared Scooter.
- G. Shared Active Transportation shall mean a dockless network or system of Shared Scooters, placed in public right-of-way and for rent in short term increments, that provides increased mobility options over short distances.
- H. Shared Active Transportation Operation shall mean the Company's Shared Active Transportation as well as any incidental use or patronage thereof.
- I. Shared Scooter shall mean dockless scooters or e-scooters designed specifically for shared-use and deployed by Shared Active Transportation companies.
- J. Pedestrian Thoroughway Zone shall mean the portion of the sidewalk for pedestrian travel along the street.

Section 4. Company's Obligations.

- A. Licensure and Fees. As a condition precedent to this Agreement, and prior to commencement of operations, Company shall apply, procure and remit payment for a business license from the City, as set for on Exhibit "B", attached hereto and incorporated herein by this reference, together with any other requirements necessary to conduct a Shared Active Transportation in the City. The Company shall be required to remit to the City monthly all fees and fines set forth on Exhibit "B". Company shall remain in good standing through the course of the Company's Shared Active Transportation Operation in the City.
- B. Contact Information. Company shall provide contact information, including a 24-hour toll-free phone number and e-mail address on each Shared Scooter for use by members of the public to report safety concerns, complaints or to ask questions. This required contact information shall be easily visible on each Shared Scooter deployed by the Company. The City shall refer members of the public who report concerns regarding Shared Scooters to contact the Company via the required toll-free phone number or email address and may publish this required contact information on its website, social media platforms, and in other literature or educational materials. In addition, Company shall also provide City with contact information of a locally-based manager or operations staff with decision-making power who can respond to City requests, emergencies, and other issues at any time.
- C. Fleet Size. Company shall begin operations in the City limits with a Fleet of up to seven hundred and fifty (750) Shared Scooters. Company may not reduce the Fleet to less than 100 Shared Scooters during the Term of this agreement without written notice to the City, except in instances of Default and Termination as provided under "Section 6. Default and Termination." Company may only increase the size of its Fleet upon the City's approval pursuant to "Section 5. City's Obligations."
- D. Consideration. In addition to any taxes and fees imposed pursuant to this Agreement, Company shall remit a one-time Pilot Program fee of \$10,000 and all such other operation

and ridership fees as forth on Exhibit "B" for the Shared Active Transportation Operation to the City to defray various costs incurred by the City.

- E. **Parking Regulations.** Company shall ensure that Shared Scooters are parked as follows:
- i. Shared Scooters shall not be in the street unless the City grants the right to park in specified areas within the street;
 - ii. Small Vehicles shall be parked in a manner so as not to block the Pedestrian Throughway Zone of the sidewalk or in a manner that would impede normal and reasonable pedestrian access on a sidewalk, any ADA ramp or access points, fire hydrant, call box, or other emergency facility, or utility pole or box;
 - iii. Shared Scooters shall be parked upright on hard surfaces in either the Frontage Zone or Furnishing Zone of the sidewalk; beside bicycle racks, transit stops, or bike share stations; or in another area specifically designated for Shared Scooter parking which do not inhibit access;
 - iv. Shared Scooters shall not be parked in such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building or access to or from off-street parking lots or garages;
 - v. Shared Scooters shall not be parked in such a manner as to impede or interfere with the reasonable use of any bicycle rack or news rack;
 - vi. Shared Scooters shall not be parked in the Furnishing Zone directly adjacent to or within the following areas, such that access is impeded:
 - a. Loading zones;
 - b. Disabled parking zones;
 - c. Street furnishings that requires pedestrian access (for example – benches, parking pay stations, bus shelters, transit information signs, etc.)
 - d. Curb ramps;
 - e. Entryways;
 - f. Driveways; and
 - g. Portions of transit zones, including bus stops and streetcar stops, shelters, passenger waiting areas and bus layover and staging zones, which would inhibit access.
 - vii. To the extent Company desires to park Shared Scooters in areas other than the City's right-of-way, Company must first obtain permission from the applicable owner and shall communicate the right to park at that location to Riders.
 - viii. Shared Scooters shall not be parked in a manner that would impede vehicular traffic on a street or alley. Shared Scooters shall not be parked in a manner that would pose a threat to public health or safety.
 - ix. The Company shall stage Shared Scooters on any street that does not have a sidewalk.
- F. **Notice.** Company shall provide notice to all Riders by means of a mobile or web application that:
- i. Shared Scooter is to be ridden only on streets, and where available, in bike lanes or bike paths and not on sidewalks, Pedestrian Throughway Zones or areas designated by the City to be closed for Shared Scooter traffic. Such restricted or closed areas are identified in Exhibit "C", attached hereto and incorporated herein by this reference, and the City reserves the right to, in consultation with the Company, make additions or modifications to these restricted or closed areas during the term of this agreement;
 - ii. Shared Scooter shall not be ridden along multi-lane roads where the posted speed limit is 35 mph or more, unless in a designated bike lane or bike path.
 - iii. Shared Scooter is to be ridden to the right of street lanes and should offer the right of way to bicycles on bike lanes and bike paths;
 - iv. Helmet use is encouraged when using a Shared Scooter;

- v. Shared Scooter must be parked only in designated areas, as may be identified on Exhibit “C”, or otherwise agreed to by the Parties;
 - vi. The Company shall require Riders to take a photo of the Shared Scooter when they park it at the end of the ride; and
 - vii. Riding responsibly, with courtesy and respect, is required; and
 - viii. Riders are, at all times, to operate the device in a manner consistent with the City’s Code of Ordinances and any other applicable laws, including stopping at stop signs and traffic lights, signaling turns and following the direction of traffic;
 - ix. Rider may be ticketed for operating the device in a manner which violates the City’s Municipal Code.
 - x. The company shall not make Shared Scooters available for operation prior to 5:00 a.m. or after 10:30 p.m., daily. Prior to each Rider’s first use of a Shared Scooter, the Company shall provide notice to each Rider, through a mobile application specific to the City, of the rules, regulations and requirement identified above.
- G. Data Sharing. Upon request and at no cost to the City or a third party data aggregator designated by the City as long as such aggregator has an executed agreement with Company, Company shall provide the City with data related to utilization of the Shared Scooters. Data should be provided to the City in the Mobility Data Specification (MDS) format. Aggregated reports on system use, compliance, operations – including but not limited to parking complaints, crashes, damaged or lost Shared Scooters – shall be made available to the City at the end of each month, or upon request. Anonymized/De-identified demographic data – origin and destination, trip duration, distance, date and time of the trip and general trip purpose, etc. – collected by Company shall be provided to the City on a monthly basis, or upon request, and shall include for that month the total rides, total number of Shared Scooters in service, number of rides per day.
- H. Speed. Shared Scooters which do not rely solely on human propulsion and are equipped with an electric motor that is capable of propelling the device shall be governed at a speed not to exceed fifteen (15) miles per hour on a paved level surface. The City reserves the right to designate, in consultation with the Company, low-speed zones in which Shared Scooters shall be operated at a mutually agreed speed that is lower than 15 miles per hour.
- I. Lights and Audible Signals. All Shared Scooters shall be equipped with properly functioning lights sufficient to make the Shared Scooters visible during non-daylight hours. All Shared Scooters shall also be equipped with an audible signal or other warning device capable of making a sound sufficient to alert pedestrians that the Shared Scooter is approaching.
- J. Maintenance. Company shall maintain its Shared Scooters in a good working manner. In the event a safety or maintenance issue is reported for a specific Shared Scooter, that Shared Scooter shall be made unavailable to users and shall be removed within the timeframes provided in this section. Any inoperable or unsafe Shared Scooter shall be repaired before it is placed back in service. City shall not have any obligation with regards to the maintenance of the Company’s Shared Scooters. Company shall respond to requests for rebalancing or reports of unsafe/inoperable Shared Scooter by removing the Shared Scooter, as appropriate, within two (2) hours of receiving notice from a Rider, representative of the City, or any other person/entity.
- K. Signage. Company agrees that, as it relates to all signage on Shared Scooters; it will abide by applicable local, state, and federal law relating to signs. The Shared Scooters are not a public forum for public debate or discourse. Company agrees that in addition to any restrictions set forth by city ordinance, the content of any sign located on Company’s Shared Scooters will not include any message that is illegal, obscene, libelous or fraudulent. A violation of this section shall be cause for the City to terminate this Agreement if said violation is not corrected within twenty- four (24) hours’ notice to Company. The determination that

there has been a violation of these signage guidelines shall be solely at the City's discretion.

- L. Education and Outreach. The Company shall implement and engage in a marketing and targeted community outreach plan at its own costs. This outreach shall include, at a minimum, the following: Company shall provide education to Shared Scooter riders on the City's existing rules and regulations and those set forth in this Agreement, safe and courteous riding, and proper parking. Within the first month of operation, the Company shall engage in an initial week-long on-the-ground safety campaign ("Safety Campaign"), targeting areas of peak usage, to further educate Riders on these rules, regulations and responsibilities. As many Riders may be students, Company shall coordinate with local colleges and universities to maximize student participation in the Safety Campaign. Company shall provide this educational material to the City for review prior to disseminating the information to Riders. Company shall also provide city-specific website that explains the terms of service, user instructions, privacy policies, fees, penalties, unexpected charges, and local management and operations contact information.
- M. Inclement Weather. On days where severe weather (specifically snow, heavy rain or wind) is anticipated, Company may halt its Shared Active Transportation Operation. On days where snow is anticipated, Company shall use its discretion as to whether it should remove its Shared Scooters from City right of way. Company shall be liable for all claims resulting from continuing its Shared Active Transportation Operation during severe weather. Company shall not hold City liable for damage to Shared Scooters caused by City's snow removal operations.
- N. Environment. Company shall embrace transparency in recycling efforts and recycle or otherwise dispose of Shared Scooters and Shared Scooter parts in an environmentally-friendly at end of life cycle.

Section 5. City's Obligations.

- A. Use of Right of Way. The City agrees to allow Company, its representatives, employees, consultants and contractors, non-exclusive use of those portions of the public right-of-way reasonably necessary for operation of the Company's Shared Active Transportation Operation, but subject to the limitations imposed by the City's Code of Ordinances and the terms of this Agreement. The grant of this use shall not constitute a conveyance of any interest in the public right-of-way. Notwithstanding anything herein, the Parties agree that City shall have right to work within and restrict access to portions of the right-of-way, whether by its own forces or contracted forces.
- B. Approval. The City shall, at its sole discretion, approve and permit reasonable increases to Company's Fleet based on utilization of the Fleet, with the approval not unreasonably withheld.

Section 6. Default and Termination

- A. Except where specifically provided for elsewhere in this Agreement, in the event Company shall default in any of the covenants, agreements, commitments, or conditions herein contained, or if any of the conditions set forth below shall occur, and any such default shall continue unremedied for a period of three (3) business days after written notice thereof to Company, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Company, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of Company under this Agreement.
- B. Notwithstanding anything to the contrary herein, either party, for any reason, or for no reason, may terminate this agreement prior to the expiration date of this agreement, upon delivery of at least thirty (30) days' written notice to the receiving party prior to the intended date of

termination.

- C. Company's obligation with regards to indemnification as provided in Sections 10 and 11 of this Agreement shall survive the expiration or termination of this Agreement with regards to any claims arising during such time as this Agreement was in effect.

Section 7. Removal of Shared Scooters. Upon instances of Default and Termination under Section 7, Company shall remove its Shared Scooters from the right-of-way within two (2) days of being notified. If Company shall not remove the same upon due notice, any remaining Shared Scooters shall be removed by the City at Company's expense. Company shall not be entitled to damages for the removal of the Shared Scooters by the City.

Section 8. Abatement. In the event the Company's Shared Active Transportation Operation does not conform to all requirements of Section 4, Part E Parking Regulations, or if Company's Shared Active Transportation Operation creates a nuisance or dangerous condition (as determined by City), Company shall relocate, re-park, remove or otherwise abate the condition within two (2) hours of receiving notice. Failure to abate such condition within two (2) hours may constitute a default of this Agreement and City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Company, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of Company under this Agreement

In the event any Shared Scooter is properly parked (pursuant to Section 4, Part E of this Agreement) in one location for more than 72 hours without moving, such Shared Scooter may be removed by City personnel and taken to a City facility for storage at the Company's expense. In such instance, Company shall retrieve Shared Scooters from City within 24 hours. If Company does not retrieve the Shared Scooters, the City shall dispose of Shared Scooters at Company's expense.

Section 9. Notices. All notices required by this Agreement shall be in writing sent by regular U.S. mail, postage prepaid, or delivered by courier to the following:

CITY Procurement Services:

With a copy to:
City Attorney

Company:

With a copy via email to: Alyssa.Mendelsohn@ColoradoSprings.gov.

All notices are effective on the date mailed or upon receipt if delivered by a courier. Either of the Parties may provide the other party a change of address in writing which change shall be effective ten (10) days after delivery.

Section 10. General Indemnification.

- A. Company shall defend, indemnify, and hold harmless City and any of its agencies, officials, officers, and employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from acts or omissions in connection with the performance under this Agreement by Company, Company's

employees, agents, or contractors, or others for whom Company is legally liable. Company shall be released from its obligations under this section if the loss or damage was caused solely by the willful misconduct or negligence of the City, its agencies, officials, officers, or employees and in the event Company and City are both be liable, liability shall be apportioned comparatively. The contract requires Contractor to obtain specified limits of insurance to insure the indemnity obligation and claims filed against such insurance shall be limited to claims in which Company has agreed to indemnify the City.

- B. Company's contract with every Rider shall require such persons or entities to release the City and any of its agencies, officials, officers and employees to the same extent that Company is required by this section to defend

Section 11. Indemnification for Professional Negligence. If Company hires any architect or engineer in connection with design and manufacture of its Shared Scooters, then Company shall indemnify and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, but only to the extent caused by the negligent acts, efforts, or omissions of such employees, agents or others.

Section 12. Insurance. Company shall procure and maintain in effect throughout the Term of this Agreement, insurance coverage not less than the types and amounts specified below. Company shall ensure that City is named as additional insured, and such coverage shall only extend for claims in which Company has agreed to indemnify the City, pursuant to Section 10.

- A. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000, 000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - i. Body Injury or Property Damage \$2,000,000 Aggregate
 - ii. Products and Completed Operations \$2,000,000 Aggregate
 - iii. Personal and Advertising Injury \$1,000,000
- B. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:
 - i. Workers' Compensation as required by Nebraska Statutes
 - ii. Employers' Liability with limits of: \$500,000 each accident, injury of illness
- C. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of operation of motor vehicles, as to acts done in connection with this Agreement.
- D. Cyber Liability Insurance with limits of not less than \$1,000,000 per claim protecting against any and all claims arising out of breach of privacy, security breach, denial of service, remediation, fines, and penalties associated with Company's collection and/or transmission of electronic data, including that of personal and/or financial nature, in connection with the Pilot Program.
- E. Company shall deliver to City, prior to introduction of its Shared Active Transportation Operation within the City, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to City. The receipt of acceptance of a certificate of insurance that does not incorporate the required terms and coverage shall not constitute a waiver by City of the insurance requirements contained in this Agreement.
- F. All policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Company will contain waiver provisions. The certificates of insurance will also contain a provision stating that should any of the policies described in the

certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

- G. If the coverage afforded is cancelled or changed or its renewal is refused, Company shall give at least thirty (30) days prior written notice to City. Regardless of any approval by City, it is the responsibility of Company to ensure that the required insurance coverage is procured and maintained in effect at all times. In the event Company fails to ensure that the required insurance is procured and maintained in effect, or that city is named as an additional insured, City may order that the Company's Shared Active Transportation Operation immediately stop and, upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

Section 13. Controlling the Law. This Contract shall be construed and governed in accordance with the laws of the State of Colorado without giving effect to Colorado's choice of law provisions. City and Company: (1) shall submit to the jurisdiction of the state and federal courts located in El Paso County, Colorado or the District of Colorado; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non conveniens as an objection to the location of any litigation.

Section 14. Compliance with Laws. Company its employees, agents and contractors, including independent contractors, shall comply with all federal, state and local laws, ordinances, regulations applicable to the maintenance of the devices.

Section 15. Default and Remedies. If Company shall be in default or breach of any provision of this Agreement, City may terminate this Agreement, suspend City's performance and invoke any other legal or equitable remedy after giving Company notice and opportunity to correct such default or breach.

Section 16. Waiver. No consent or waiver, express or implied, by any party to this Agreement or any breach or default by any other party in the performance of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any party to complain of any act or failure to act or to declare any of the other parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. The parties reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the parties reserve the right to exercise any and all of their rights and remedies under this Agreement irrespective of any waiver granted.

Section 17. Modification. This Agreement shall not be amended, modified or cancelled without the written consent of the parties to this Agreement.

Section 18. Headings; Construction of Agreement. The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number and gender.

Section 19. Severability of Provisions. Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the

remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Section 20. Assignment. Company may not assign or transfer any part or all of their obligations or interests under this Agreement without City's prior written approval. Company shall notify City, in writing, at least (30) days prior to any proposed assignment or transfer and shall provide with that notice, the proposed assignee's or transferee's written acceptance of the terms and conditions of this Agreement. Company shall not be released from its obligations under this Agreement unless and until such time as it is released, in writing, by the Director of Public Works.

Section 21. Conflicts of Interest. Company certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of the City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Company or its contractors under this Agreement.

Section 22. No Partnership. It is expressly understood that the parties are no now, nor will be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this Agreement.

Section 23. Tax Compliance. Company shall be in compliance with City's tax ordinances administered by the City's Commissioner of Revenue. Company shall, upon request, furnish to City proof that it is in compliance with the City's tax ordinances administered by the City's Commissioner of Revenue and not delinquent on any payment or other obligation imposed by such ordinances.

Section 24. Further Acts. The parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement.

Section 25. Cooperation. The parties shall cooperate in the implementation and performance of the acts, undertakings and obligations as set forth in this Agreement.

Section 26. Binding Effect. This Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest.

Section 27. Representations. The parties certify that they have the power and authority to execute and deliver this Agreement and to perform this Agreement with accordance with its terms.

THIS AGREEMENT CONTAINS AN INDEMNIFICATION REQUIREMENT

CITY OF COLORADO SPRINGS.

By:

Approved as to form:

Title

Date

Title

Date

EXHIBIT 3 EXCEPTIONS

Print the words "no exceptions"(here)_____ if there are no exceptions taken to any of the terms, conditions, or specifications of these proposal documents or contract.

If there are exceptions taken to any of the terms, conditions, or specifications of the proposal document or contract, they must be clearly stated on a separate sheet of paper attached to this sheet and returned with your proposal.

Note: All potential Offerors are hereby advised that exceptions taken may be considered during the evaluation phase which may affect the final scoring of proposals. Offerors stipulating that the City must use their contract or agreement may be determined non-responsive and their Proposal determined unacceptable.

Company Name: _____

Address: _____
(City, State and Zip Code)

Authorized Signature: _____

Date: _____

Printed Name/Title: _____

Return this form with your Proposal.

EXHIBIT 4 MINIMUM INSURANCE REQUIREMENTS

The following listed minimum insurance requirements shall be carried by all contractors and consultants unless otherwise specified in the City’s solicitation package, Special Provisions, or Standard Specifications.

1.	X	Commercial General Liability for limits not less than \$2,000,000 combined single limit for bodily injury and property damage for each occurrence. Coverage shall include: a. Premises and Operations b. Personal/Advertising Injury c. Products/Completed Operations d. Liability assumed under an Insured Contract (including defense costs assumed under contract)
2.	X	Workers’ Compensation and Employers Liability as required by statute. Employers Liability coverage is to be carried for a minimum limit of \$100,000.
3.	X	Automobile Liability covering any auto (including owned, hired, and non-owned autos) with a minimum of \$1,000,000 each accident combined single limit.

Except for workers’ compensation and employer’s liability insurance, the **City of Colorado Springs must be named as additional insured**. Certificates of Insurance must be submitted before commencing the work and provide 30 days’ notice prior to any cancellation, non-renewal, or material changes to policies required under the contract.

All coverage furnished by contractor is primary, and any insurance held by the City of Colorado Springs is excess and non-contributory.

The undersigned certifies and agrees to carry and maintain the insurance requirements indicated above throughout the contract Period of Performance.

(Name of Company)

(Signature) (Date)

EXHIBIT 5 STATEMENT OF WORK FOR THE SHARED SCOOTER PILOT PROGRAM (R21-028AM)

5.1 INTRODUCTION

The City of Colorado Springs (the “City”) acknowledges that deployment of alternate micro mobility sharing systems is an emerging business model. Shared Mobility is a network or system of Shared Mobility Vehicles placed in the public rights-of-way within the City of Colorado Springs jurisdictional boundaries, and for rent in short time increments, that provides increased mobility options over short distances. A Shared Mobility Device is capable of moving itself or being moved from place to place upon wheels and includes a Bicycle, Electrical Assisted Bicycle, EPAMD, and Electric Scooter as these are defined in Chapter 10 of the City Code. A shared mobility device does not include a wheel chair, off-highway vehicle, and snowmobile.

In order to evaluate appropriate regulations for such systems, the City is requesting proposals from responsible firms or teams to provide a “turn-key” automated Shared Scooter System” (“Pilot Program”, or “Program”). The selected proposer(s), up to a maximum of three (3), will be allowed to design, implement, own, operate, and maintain a Shared Scooter System. The Pilot Program will provide the City ample time and information to study the usage, public safety of, and potential public desire for the Program.

5.2 BACKGROUND

The City believes in increased multimodal approaches with a focus on maximizing the multimodal capacity of the current and future transportation system, with an emphasis to improve mobility options while protecting health, safety and general welfare of the public.

The City anticipates that successful proposing entities will 1) understand local priorities and challenges specific to the Colorado Springs market and community; 2) have a successful history of implementing and operating shared mobility programs with a good safety record in the United States; and 3) demonstrate the willingness to promote public safety and operate a Program that respects public property and access.

5.3 OBJECTIVES

The City intends to enter into a Pilot Program Agreement with one or more firms or teams that provide “turn-key” services to implement and operate a successful automated on-demand shared mobility system pilot program. The program should utilize information technology to operate a fleet of shared mobility devices that may be rented for short periods of time by the general public, providing a transportation alternative to motor vehicle trips for Colorado Springs residents and visitors.

The Contractor shall provide and own all system equipment. The cost for all design, installation, operating, maintenance, and promotional responsibilities will be borne and insured by the Contractor.

The City anticipates the Contractor will collect user fees, sponsorships, and generate other revenue streams to cover the Program capital and operating costs. The City will not provide any funding or financial support for the Program or related costs. Proposals requesting or relying on funding from the City will not be considered.

The City will enter into a Pilot Program agreement with the Contractor to allow the placement of scooters, parking racks, or other approved system infrastructure on sidewalks and other City-owned property. Site specific infrastructure installation will be reviewed as revocable permits through the City's Planning Department. The Contract may also allow for Program equipment to be placed on private property with the property owner's written approval.

The Contractor will be responsible for defining the desired location and densities of Program stations and other infrastructure, but all locations must be approved by the City under the Pilot Program Agreement and revocable permit regulations.

5.4 DEFINITIONS

- A. "Shared Scooter" means a vehicle that:
 - a. Is designed to be operated on the ground with a wheel diameter no greater than 16 inches
 - b. Has handlebars and a foot support or seat for the User;
 - c. Can be propelled by an electric motor or human propulsion; and
 - d. Is made available for rental or public shared use in the public Right-of-Way.

- B. "User" means the person who is in actual physical control of a Shared Scooter.

EXHIBIT 6 – QUALIFICATION STATEMENT

CITY OF COLORADO SPRINGS QUALIFICATION STATEMENT

This statement will provide information which will enable the City to evaluate the qualifications of your firm and staff with regard to the requirements of this Request for Proposal. Please complete this form in its entirety and submit it (in the number of copies requested) along with the other required proposal documents. If a request in the Qualification Statement is contained in the proposal, indicate the section in the proposal where that information can be found.

(PRINT)

FIRM NAME: _____
ADDRESS: _____
CITY STATE ZIP: _____
AUTHORIZED REPRESENTATIVE: _____
TITLE: _____
AUTHORIZED SIGNATURE: _____
PHONE: _____ FAX: _____
E-MAIL ADDRESS: _____

1. TYPE OF BUSINESS

CORPORATION INDIVIDUAL
PARTNERSHIP JOINT VENTURE
OTHER: _____

2. TYPE OF LICENSE & LOCATION

3. TYPE OF SERVICE TO BE PROVIDED FOR RFP: _____

4. NUMBER OF YEARS IN BUSINESS: _____

5. ON A SEPARATE SHEET PROVIDE A BRIEF HISTORY OF YOUR FIRM, STAFF SIZE AND EXPERIENCE. SUBMIT A RESUME FOR THE PROJECT MANAGER AND EACH KEY PERSONNEL ASSIGNED TO THIS PROJECT.

6. WHAT OTHER NAME(S) HAS YOUR COMPANY OPERATED UNDER: _____

7. HAVE YOU OR YOUR FIRM EVER FAILED TO COMPLETE ANY WORK AWARDED TO YOU? YES NO IF "YES", EXPLAIN:

8. HAS ANY OFFICER OR PARTNER OF YOUR ORGANIZATION EVER BEEN AN OFFICER OR PARTNER OF ANOTHER ORGANIZATION THAT FAILED TO COMPLETE A CONTRACT WITHIN THE LAST FIVE (5) YEARS? YES NO
IF "YES", EXPLAIN:

R21-028AM

QUALIFICATION STATEMENT

9. HAS YOUR FIRM OR ANY PARTNERS OR OFFICERS EVER BEEN INVOLVED IN ANY BANKRUPTCY ACTION? YES NO IF "YES", EXPLAIN:

10. ARE YOU PRESENTLY INVOLVED IN ANY LITIGATION WITH ANY GOVERNMENT AGENCY? YES NO IF "YES", EXPLAIN TYPE, KIND, PLAINTIFF, DEFENDANT, ETC., AND STATE THE CURRENT STATUS:

11. BANK REFERENCE: _____
ADDRESS: _____
CONTACT: _____ PHONE: _____

12. LIST THREE (3) SIMILAR PROJECTS (LOCAL OR STATE-WIDE) **FROM LAST FIVE (5) YEARS**-INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT), CONTACT NAME, ADDRESS, TELEPHONE NUMBERS
NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.

- 1. Location of Project: _____
Size of Project: _____
Contract Amount: _____
Contact Name and Title: _____
Contract Address: _____
Contact telephone and FAX Numbers: _____
- 2. Location of Project: _____
Size of Project: _____
Contract Amount: _____
Contact Name: _____
Contract Address: _____
Contact telephone and FAX Numbers: _____
- 3. Location of Project: _____
Size of Project: _____
Contract Amount: _____
Contact Name: _____
Contract Address: _____
Contact telephone and FAX Numbers: _____

13. LIST **CURRENT** SIMILAR PROJECTS (LOCAL OR STATE-WIDE) UNDER CONTRACT- INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT) CONTACT NAME, ADDRESS, TELEPHONE NUMBERS.
NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.

- 1. Location of Project: _____
Size of Project: _____
Contract Amount: _____
Contact Name and Title: _____

Contact Address:

Contact telephone and FAX Numbers:

- 2. Location of Project: _____
Size of Project: _____
Contract Amount: _____
Contact Name and Title: _____
Contact Address: _____
Contact telephone and FAX Numbers: _____

- 3. Location of Project: _____
Size of Project: _____
Contract Amount: _____
Contact Name and Title: _____
Contact Address: _____
Contact telephone and FAX Numbers: _____

14. LIST OF SUB-CONTRACTORS TO BE USED FOR THIS PROJECT:
(INCLUDE NAME, ADDRESS, TELEPHONE NUMBER, TYPE OF WORK)

- 1. Name: _____
Address: _____
Telephone Number: _____
Type of Work: _____
- 2. Name: _____
Address: _____
Telephone Number: _____
Type of Work: _____
- 3. Name: _____
Address: _____
Telephone Number: _____
Type of Work: _____

IF ADDITIONAL INFORMATION IS PROVIDED ON A SEPARATE SHEET FOR ANY OF THE ITEMS, CLEARLY SPECIFY WHERE IT CAN BE LOCATED IN YOUR PROPOSAL PACKAGE.

EXHIBIT 7 – EVALUATION SCORESHEET

PROPOSAL EVALUATION SCORE SHEET R21-028AM SHARED SCOOTER PILOT PROGRAM

Proposer's Name: _____

Evaluator's Name: _____

RFP EVALUATION CRITERIA DESCRIPTION	SCORE
1. QUALIFICATION AND EXPERIENCE	
1. Does the Offeror have experience in North American cities similar in size and urban development patterns to Colorado Springs? 2. Does the Offeror provide a local regulatory contact, and the number of Shared Scooters deployed in each of those cities? 3. Does the Offeror provide legal or regulatory enforcement actions, by type, initiated against the company? COMMENTS:	5 – Exceptional 4 – Very Good 3 – Satisfactory 2 – Marginal 1 – Unacceptable Rating: ___
Rating in Qualifications and Experience Area (Enter Number from Number 1):	
Evaluation Factor:	0.30
Qualification and Experience Evaluation Score (Multiply the Qualifications and Experience score by the evaluation factor):	
2. MAINTENANCE AND OPERATIONS	
A. Maintenance Plan	
1. Does the Offeror describe the frequency and extent of their maintenance and cleaning of Shared Scooters? 2. Does the Offeror describe the type of labor (employees, staffing services, contract labor, etc.) conducting maintenance and cleaning? 3. Does the Offeror provide the average lifespan of the Shared Scooter and Shared Scooter disposal practice? COMMENTS:	5 – Exceptional 4 – Very Good 3 – Satisfactory 2 – Marginal 1 – Unacceptable Rating: ___
B. Operations Plan	
1. Does the Offeror describe their proposed hours of operations, pricing plans, and storage of scooters during non-operational hours? 2. Does the Offeror describe the proposed fleet size and service area at launch, how they may phase-in an expanded or reduced fleet size based on utilization data, performance and operational outcomes? 3. Does the Offeror describe the use of GPS or geo-fencing technology to enforce parking/operating compliance; including areas that may be geo-fenced out?	5 – Exceptional 4 – Very Good 3 – Satisfactory 2 – Marginal 1 – Unacceptable Rating: ___

<ol style="list-style-type: none"> 4. Does the Offeror describe their proposed Program deployment areas, including their approach to site assessment? 5. Did the Offeror provide a project schedule that describes their intended launch of the Pilot Program and include any anticipated planning and construction milestones and deliverables? 6. Did the Offeror provide samples of any proposed signage incidental to the operation of the Program and include information on proposed placement, sizing, and dimensions? 7. Does the Offeror describe the methods and frequency of deploying, redistributing and charging Shared Scooters? 8. Does the Offeror describe their process for receiving and resolving complaints and problems with Shared Scooters blocking the travel movement in real-time (e.g., sidewalk, travel lane, etc.). 9. Does the Offeror describe their customer intake process and time frame customer complaints are acknowledged and resolved? <p>COMMENTS:</p>	
C. Operator Contact and Customer Service	
<ol style="list-style-type: none"> 1. Does the Offeror plan to have a local contact available by phone or email? 2. Does the Offeror plan to have a local base of operations and storage facilities? 3. Does the Offeror have a 24-hour customer service number? 4. Does the customer service number have translation services available? 	<p>5 – Exceptional 4 – Very Good 3 – Satisfactory 2 – Marginal 1 – Unacceptable</p> <p>Rating: ___</p>
D. Infrastructure Investment	
<ol style="list-style-type: none"> 1. Does the Offeror provide details on infrastructure, including any parking stations or other temporary, semi-permanent, or permanent infrastructure necessary to support the program? 2. Does the Offeror describe any physical improvements your company has implemented or contributed funding toward to improve rider safety such as physically delineating parking areas for Shared Scooters, contributing toward a bike lane construction and maintenance fund, etc.? 3. Did the Offeror provide an explanation of their company’s position on contributing toward similar infrastructure improvements in the City of Colorado Springs? <p>COMMENTS:</p>	<p>5 – Exceptional 4 – Very Good 3 – Satisfactory 2 – Marginal 1 – Unacceptable</p> <p>Rating: ___</p>

Sum of Ratings in Maintenance and Operations Area (Add numbers in Sections 2.A., 2.B., 2.C., and 2.D.)	
Evaluation Factor:	0.25
Maintenance and Operations Area Evaluation Score (Multiply the sum of ratings in Management Area by the evaluation factor):	
3. COMMUNICATION AND OUTREACH	
A. Communication and Outreach	
<ol style="list-style-type: none"> 1. Does the Offeror describe their plan to educate and encourage User compliance with all applicable rules and regulations, including minimum age, proper parking, and prohibition of sidewalk riding? 2. Does the Offeror describe their plan to communicate to the public on system use, how to use shared scooters safely, driving safely around Shared Scooters, and how to report complaints. 3. Does the Offeror describe how your Shared Scooter service will help to enhance the public transit system in Colorado Springs and how they plan to coordinate with Mountain Metro Transit? 4. Does the Offeror describe how your Shared Scooter service will complement the existing PikeRide bicycle share system? 5. Does the Offeror describe potential partnership opportunities or coordination efforts with PikeRide? <p>COMMENTS:</p>	<p>5 – Exceptional 4 – Very Good 3 – Satisfactory 2 – Marginal 1 – Unacceptable</p> <p>Rating: ___</p>
B. User Equity Plan	
<ol style="list-style-type: none"> 1. Does the offer describe their discounted pricing structure for people living on low-incomes? 2. Does the Offeror describe any plans to offer a cash payment option? 3. Does the Offeror list the languages services are provided in? <p>COMMENTS:</p>	<p>5 – Exceptional 4 – Very Good 3 – Satisfactory 2 – Marginal 1 – Unacceptable</p> <p>Rating: ___</p>
Sum of Ratings in Communication and Outreach (Add numbers in Sections 3.A. and 3.B.)	

