

## ATTACHMENT B:

### TERM SHEET: Contract Requirement Highlights

Any contract executed pursuant to this Council authorization shall incorporate terms and conditions of the RFP, BAFO, and Cycle Hop's successful vendor's non-price (technical) and price proposal, shall include, though not be limited to including, the following terms and conditions:

- **Schedule.** Construction and equipment procurement will be required to be completed within 9 months.
- **Term of the Contract.** The contract term includes two phases. The construction/installation period will commence upon the issuance of a Notice to Proceed by the City and last approximately six to nine months. The operational phase will commence upon successful and timely completion of procurement and installation of a fully operational system. The term will terminate at the end of three years unless extended, at the City's sole discretion, for 2 additional 2-year terms. Price commitments will be expected to extend through this period. Standard multi-year contract terms will be included in the contract.
- **Identify station areas/docking locations of operation of a bike sharing system.** The contractor shall identify stations to service each of the areas shown on the station location map in the RFP as well as additional stations for a total of at least 50 stations that can include at least 1,000 docking locations that meet the City's criteria and are approvable by the City's Planning and Community Development Department and the City's Public Works Department, as well as other departments in the case of location on City properties that are not public right-of-way.
- **Payment Schedule.** The contract will authorize a 40% equipment deposit within 30 days of execution and balance upon delivery. The operating contract will allow one month advance payment. A three-month operating advance will be payable upon the state that revenue operations begin, then the contractor shall bill monthly.
- **Cost and Budget Adjustments.** The contractor will bill monthly based on the number of bikes in service. The City may retain 10% of the monthly payment until the contractor has submitted proof that service standards established in Attachment D are being met. It is anticipated that the budget will increase 2% per year throughout the term, but each annual budget is subject to the approval of the City Council. If the usage of the system exceeds expectations by 10% or more, the City, in consultation with the contractor will consider recommending that Council approve a budget adjustment to provide additional funding for increased operational costs. Staff will propose an appropriate adjustment when the annual operating funds are subject to appropriation by the Council.
- **Incorporate by reference the selected contractor's proposal.**
- **Incorporate by reference the acquisition description.**

- Specify that the City shall have the right to inspect the system and any system elements to determine whether these are operational and in good repair.
- Specify the warranties, and remedies.
- Performance retention. 10% of fees shall be retained for any month during which City surveys demonstrate that contractor has not met performance standards incorporated in the Service Level Agreements.
- Specify the contractor's responsibility for providing liability insurance.
- Specify that all contract amendments must be in writing and signed by responsible officials.
- Specify what constitutes cause to terminate the contract, what notice must be provided prior to termination, and what opportunity will be granted to correct any problem.
- Prohibit any activity that would constitute a violation of the conflict of interest statute.
- Specify that the document is the entire contract and that there are no agreements other than those incorporated therein.
- Specify the contractor's responsibility for indemnifying the City. Contractor will agree to defend, indemnify, protect and hold harmless the City of Santa Monica, its agents, officers, boards and commissions and employees (collectively, "City") from and against any and all liability, claims, demands, damages, or costs, including, but not limited to, attorney's fees, or payments for injury to any person or property (collectively, "Losses") caused or claimed to be caused by the acts or omissions of the Contractor, or Contractor's employees, agents, officers and subconsultants. Also covered under this section is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, which may be in combination with the acts or omissions of Contractor, its employees, agents or officers or subconsultants; provided, however, that Contractor's duty to defend, indemnify, protect and hold harmless shall not include any Losses arising from the sole negligence or willful misconduct of the City. Notwithstanding Contractor's obligation to defend City hereunder, the City has the right to conduct its own defense and seek reimbursement for reasonable costs of defense from Contractor, if City chooses to do so.
- Specify the contractor's responsibility for insurance. Prior to the commencement of work, Contractor shall procure, maintain and pay for insurance against claims for injuries to person or damage to property that may arise from or in connection with the performance of the services by the Contractor, its agents, representatives, employees and subconsultants for the duration of the Agreement. Contractor must obtain insurance that, at a minimum, meets the requirements for insurance set forth in Exhibit B of RFP.
  - Commercial General Liability Insurance
  - Workers' Compensation Insurance
  - Employers' Liability Insurance
  - Automobile Liability Insurance

- The City shall have the right to approve the contractor's project manager.
- Specify that the color and design of the bicycles, stations and station maps, and website shall be subject to the approval of the City. Project delays resulting from delayed approval by the City shall be the responsibility of the City.
- Specify terms under which the Contractor could be required to buy the system back from the City before the contract expires.
- Specify that the City will own the System, including the System structures and equipment, during the term of the proposed Contract. On expiration or termination of the proposed Contract, the System and the System structures shall remain in place or be immediately removed at the option of the City. The City shall have salvage rights all or part of the entire system, should it decide to keep it. The Contractor shall restore all sites to their proper condition; removal and restoration shall be at the Contractor's sole expense.