

ADDENDUM NO. II

DATE: April 4, 2017

TO: All Proposers

FROM: Janice McClelland, Assistant Purchasing Agent

SUBJECT: Addendum No. 2 – Bicycle Share Services

PROPOSALS TO BE OPENED: April 11, 2017 (new date—see below), at 11:00:00 a.m.

This addendum becomes a part of the Contract Documents and modifies the original specifications as noted.

Item I. Postponement of Bid Submission Deadline

The deadline for submissions hereby is postponed until April 11, 2017.

Item II. Questions Submitted to the Office of the Purchasing Agent

Question 1. Regarding the contract language in the Request for Proposals:

6.5 - Assignment - Our company would need the ability to assign the contract without consent to its successor in event of a merger, acquisition or change of control but will require the successor to agree to assume the obligations of our company under the contract and be financially able to assume such obligations.

Response: Modification of Paragraph 6.5 may only occur during contract negotiation.

6.6 – Indemnification - Our company would like to add the following as the second to last paragraph: "Contractor's obligations in this section shall be subject to the City providing Contractor with prompt written notice of the claim for which it seeks indemnification (but failure to do so shall not relieve Contractor of its obligations unless Contractor is prejudiced by such failure) and, unless prohibited by applicable law, gives Contractor sole control over the defense and settlement of the claim. Each party agrees that it will not settle any claim without the other party's prior written consent, which will not be unreasonably withheld or delayed."

Response: The City will consider some modification of Paragraph 6.6 during contract negotiation.

6.7 – Termination – We would like to make the first sentence of the last paragraph mutual

– so that both parties can terminate for breach by the other party. Add a new sentence at the end “Contractor will have up to thirty days to remove it bicycles and bicycle sharing stations from the property of the City following any termination.”

Response: The City agrees to this modification.

6.8 Insurance – A, GL revise to read \$1M per occurrence and \$2M in the aggregate with \$4M of umbrella coverage ; In D sixth bullet – revise to read at beginning “Include all subcontractors under Contractor’s insurance or require...”

Response: The City cannot approve this change to Paragraph 6.8.

6.17 – no subcontracts – We would like to revise so that we can use subs like our bike mechanics without having to get City’s permission.

Response: Paragraph 6.17 hereby is changed to read:

"Contractor shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City, but the City's approval will not be unreasonably delayed or withheld."

Question 2. We would also like to add the following “new” provisions:

6.26 Warranties of Contractor.

Contractor warrants that the Services will comply with the Contractor’s published specifications for the Services and, as City’s remedy for any breach of the foregoing, Contractor will perform the Services. Except for the foregoing, to the maximum extent permitted by law, no representations or warranties are made with respect the services, bicycles, the bicycle stations or the subject matter of this agreement and contractor disclaims all other warranties, express, implied or statutory, including without limitation the implied warranties of fitness for a particular purpose, title, merchantability and noninfringement.

Response: The City is willing to consider such an addition to the contract during contract negotiation.

6.27 Limitation of Liability.

Except for contractor’s indemnification obligations set forth in section 6.6 above for which contractor will have unlimited liability, to the maximum extent permitted by law, neither party will be liable to the other party for any indirect, incidental, special, exemplary or consequential damages, including lost profits, loss of data or interruption of business, even if such party has been advised of the possibility of such loss and to the maximum extent permitted by law, neither

Party's liability hereunder will exceed \$5,000. Each party acknowledges that the provisions of this section represent a reasonable allocation of risk. The foregoing limitation of liability is not intended to limit either party's liability for gross negligence or willful misconduct.

Response: The City cannot agree to this change.

END OF ADDENDUM NO. II

DRUG-FREE WORKPLACE AFFIDAVIT

State of _____

County of _____

_____, being duly sworn, deposes, and says that:

- (1) He/She is a principal officer of _____, the firm that has submitted the attached Proposal, his or her title being _____ of the firm; and
- (2) He/She has personal knowledge of the policies of the above-named firm with respect to the maintenance of a drug-free workplace; and
- (3) He/She certifies that all provisions and requirements of the Tennessee Drug-Free Workplace Program, as established by Tenn. Code Ann. §§ 50-9-100 et. seq., have been met and implemented.

(Signed)

(Title)

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Commission expires _____