



**REQUEST FOR PROPOSALS
RFP #2021-011
DOCKLESS MOBILITY PROGRAM**

NOTICE TO RESPONDENTS

The City of Edinburg is soliciting competitive sealed proposals, to be received by the City Secretary's Office located at 415 W. University Drive, Edinburg, Texas 78541. The City of Edinburg's normal business days are Monday through Friday, between the hours of 8:00 a.m. to 5:00 p.m., and the City is closed on recognized holidays.

Proposals will be received until **3:00 p.m. Central Time** on **Monday, June 14, 2021**. Shortly thereafter, all submitted proposals will be gathered and taken to the Edinburg City Hall Community Room, 1st Floor, to be publicly opened and read aloud. Any proposal received after the closing time will not be accepted and will be returned to the submitter unopened. It is the responsibility of the submitter to see that any proposal submitted shall have sufficient time to be received by the City Secretary's Office prior to the RFP deadline date and time. The receiving time in the City Secretary's Office will be the governing time for acceptability of the proposals. Proposals will not be accepted by telephone or facsimile machine. All proposals must bear original signatures and figures. The RFP shall be for:

RFP #2021-011 DOCKLESS MOBILITY PROGRAM

If you have any questions or require additional information regarding this RFP, please contact Ms. Lorena Fuentes, Purchasing Agent, at (956) 388-1895 or lfuentes@cityofedinburg.com.

The City of Edinburg reserves the right to refuse and reject any or all proposals and to waive any or all formalities or technicalities and to accept the proposal deemed most advantageous to the City, and hold the proposals for a period of **90** days without taking action.

Proposals must be submitted in a sealed envelope and prominently marked on the lower left hand corner of the envelope with corresponding RFP number and title.

Please read the requirements thoroughly and be sure that your proposal complies with all requirements/specifications noted. Any variation from the solicitation requirements/specifications must be clearly indicated by letter, on a point by point basis, attached to and made a part of your proposal. If no exceptions are noted, and you are the successful respondent, it will be required that the service(s) be provided as specified.

SECTION I GENERAL TERMS AND CONDITIONS

PURPOSE

The City of Edinburg is soliciting proposals from qualified companies interested in designing, implementing, and operating dockless mobility solutions for Edinburg residents and visitors.

INTENT

The services to be provided under this RFP shall be in accordance with and shall meet all specifications and/or requirements as shown in this solicitation for RFP. There is no intention to disqualify any respondent who can meet the requirements.

SUBMITTALS

Proposals shall be submitted in sealed envelopes containing three complete sets of the response, including one original marked "**ORIGINAL**," and two copies marked "**COPY**." Proposals submitted by facsimile (fax) or electronically shall **NOT** be

accepted. Submittal of a proposal in response to this solicitation constitutes an offer by the respondent. Once submitted, proposals become the property of the City of Edinburg, and, as such, the City reserves the right to use any ideas contained in any proposal regardless of whether that respondent/firm is selected. Submitting a proposal in response to this solicitation, by any respondent, shall indicate that the respondent(s) has/have accepted the conditions contained in the RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the successful respondent. Proposals which do not comply with these requirements may be rejected at the option of the City. Proposals must be filed with the City of Edinburg before the deadline day and hour. No late proposals will be accepted. Late proposals will be returned unopened, if respondent is properly identified. Failure to meet RFP requirements may be grounds for disqualification.

Hand Delivery:

415 W. University Drive
c/o City Secretary Department (1st Floor)

Land Courier (i.e. FedEx, UPS):

City of Edinburg
c/o City Secretary
415 W. University Drive
Edinburg, Texas 78541

Mail:

City of Edinburg
c/o City Secretary
P.O. Box 1079
Edinburg, Texas 78540-1079

TIME ALLOWED FOR ACTION TAKEN

The City of Edinburg may hold proposals for 90 days after the deadline without taking action. Respondents are required to hold their responses firm for the same period of time.

RIGHT TO REJECT/AWARD

The City of Edinburg reserves the right to reject any or all proposals, to waive any or all formalities or technicalities, and to make such awards of contract as may be deemed to be the best and most advantageous to the City of Edinburg.

ASSIGNMENT

Respondents are advised that the City of Edinburg shall not allow the successful respondent to sell, assign, transfer, or convey any part of any contract resulting from this RFP in whole or in part, to a third party without the written approval of the City.

AWARD

Respondents are advised that the City of Edinburg is soliciting proposals and an award shall be made to the respondent that in the opinion of the City is the best qualified.

NUMBER OF CONTRACTS

The City reserves the right to award one or no contract in response to this RFP.

STATUTORY REQUIREMENTS

It shall be the responsibility of the successful respondent to comply with all applicable State and Federal laws, Executive Orders and Municipal Ordinances, and the Rules and Regulations of all authorities having jurisdiction over the work to be performed hereunder and such shall apply to the contract throughout, and that they will be deemed to be included in the contract as though written out in full in the contract documents.

ALTERATIONS/AMENDMENTS TO RFP

Proposals **CANNOT** be altered or amended after opening time. Alterations made before opening time must be initialed by respondent guaranteeing authenticity. No proposal may be withdrawn after opening time without acceptable reason in writing and only after approval by the City of Edinburg.

LIST OF EXCEPTIONS

The respondent shall attach to his/her proposal a list of any exceptions to the RFP specifications/requirements.

PAYMENT

The City will execute payment by mail in accordance with the State of Texas Pay Law after services have been completed, introduced to the City, and found to meet City specifications/requirements. No other method of payment will be considered.

RESPONDENT'S EMPLOYEES

Neither the Respondent nor his/her employees engaged in fulfilling the terms and conditions of this Service Contract shall be considered employees of the City. The method and manner of performance of such undertakings shall be under the exclusive control of the vendor on contract. The City shall have the right of inspection of said undertakings at any time.

INDEMNIFICATION CLAUSE

The Respondent agrees to indemnify and save harmless the City from all suits and actions of every nature and description brought against them or any of them, for or on account of the use of patented appliances, products or processes, and he shall pay all royalties and charges which are legal and equitable. Evidence of such payment or satisfaction shall be submitted upon request of the Purchasing Agent, as a necessary requirement in connection with the final estimate for payment in which such patented appliance, products or processes are used.

INTERPRETATIONS

Any questions concerning the project and/or specifications/requirements with regards to this solicitation for statement(s) of qualifications shall be directed to the designated individuals as outlined in the RFP. Such interpretations, which may affect the eventual outcome of this request for statements of qualifications, shall be furnished in writing to all prospective Respondents via Addendum. No interpretation shall be considered binding unless provided in writing by the City of Edinburg in accordance with paragraph entitled "**Addenda and Modifications**".

VERBAL THREATS AND OFFICIAL CONTACT

Any threats made to any employee of the City, be it verbal or written, to discontinue the providing of item/material/services for whatever reason and/or reasons shall be considered a breach of contract and the City will immediately sever the contract with the Respondent/Consultant on contract.

Respondents shall not offer gratuities, favors or any monetary value to any official or employee of the City for purpose of influencing the selection. Any attempt by any Respondent to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds from exclusion from the selection process. Once the project is advertised, there shall be no contact with any city official or employee unless using the formal process through the Purchasing Department. Failure to comply will result in the firm being disqualified from the process.

CONFIDENTIAL INFORMATION

Any information deemed to be confidential by the respondent should be clearly noted on the pages where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under Texas Public Information Act, since information deemed to be confidential by the respondent may not be considered confidential under Texas Law, or pursuant to a Court order.

PAST PERFORMANCE

Respondent's past performance shall be taken into consideration in the evaluation of proposals.

JURISDICTION

Contract(s) executed as part of this solicitation shall be subject to and governed under the laws of the State of Texas. Any and all obligations and payments are due and performable and payable in Hidalgo County, Texas.

RIGHT TO AUDIT

The City of Edinburg reserves the right to audit the vendor's books and records relating to the performance of this contract. The City of Edinburg, at its own expense, shall have the right at all reasonable times during normal business hours and upon at least twenty-four hours' advance notice, to audit, to examine, and to make copies of or extracts from the books of account and records maintained by the vendor(s) with respect to the Supply/Service and/or Purchase Contract. If such audit shall disclose overpayment by City to vendor, written notice of such overpayment shall be provided to the vendor and the amount of overpayment shall be promptly reimbursed by vendor to the City. In the event any such overpayment is not paid within ten business days after receipt of such notice, the unpaid amount of such overpayment shall bear interest at the rate of one percent per month from the date of such notice until paid.

VENUE

The parties agree that venue for purposes of any and all lawsuits, cause of action, arbitration, and/or any other dispute(s) shall be in Hidalgo County, Texas.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS "C" MISDEMEANOR.

CONFLICT OF INTEREST

CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Edinburg not later than the 7th business day after the date the person becomes aware of facts that require the statement be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. For more information or to obtain Questionnaire CIQ go to the Texas Ethics Commission web page at www.ethics.state.tx.us/forms/CIQ.pdf.

CERTIFICATE OF INTERESTED PARTIES (Form 1295)

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016. For more information go to the Texas Ethics Commission web page at www.ethics.state.tx.us/forms/CIQ.pdf.

CONFIDENTIALITY OF INFORMATION AND SECURITY

Should the successful respondent become the holder of and have access to confidential information in the process of fulfilling its responsibilities in connection with an awarded contract the successful respondent agrees that it shall keep such information confidential and will comply fully with the laws and regulations of the State of Texas, ordinances and regulations of the City, and any applicable federal laws and regulations relating to confidentiality.

TERMINATION OF CONTRACT

The City reserves the right to terminate the contract if, in the opinion of the City, the successful vendor's performance is not acceptable, no funds are available, or if the City wishes, without cause, to discontinue this contract. Termination will be in written form allowing a 30-day notice.

RESPONSE DEADLINE

Responses to this RFP must be delivered to City Secretary, City of Edinburg, 415 W. University Drive by **3:00pm on Monday, June 14, 2021**, for consideration. **One original and two copies** of complete sets of the response must be submitted in a **sealed envelope** indicating that its contents are in response to the RFP for the **"Dockless Mobility Program"**. **Respondents are advised that all confidential records must be submitted in a separate sealed envelope and marked accordingly.**

ADDENDA AND MODIFICATIONS

Any changes, additions, or clarifications to the RFP are made by amendments (addenda). Any respondent in doubt as to the true meaning of any part of the RFP or other documents may request an interpretation from the Purchasing Division. At the request of the respondent, or in the event the Purchasing Division deems the interpretation to be substantive, the interpretation will be made by written addendum. Said Addenda shall be mailed, e-mailed, hand delivered and/or faxed, to all prospective respondents. All Addenda issued in respect to this RFP shall be considered official changes to the original documents. Verbal statements in response to inquiries and/or requests for explanations shall not be authoritative or binding. It shall be the respondent's responsibility to ensure that they have received all Addenda in respect to this project. Furthermore, respondents are advised that they must recognize, comply with, and attach a signed copy of each Addendum which shall be made part of their proposal. Respondent's signature on Addenda shall be interpreted as the respondent's "recognition and compliance to" official changes as outlined by the City of Edinburg and as such are made part of the original solicitation documents. Failure of any respondent to receive any such addendum or interpretation shall not relieve such respondent from its terms and requirements. The City may issue a written addendum no later than five calendar days prior to the date bids must be received. Addendums are available online at www.cityofedinburg.com.

PROPOSAL PREPARATION COSTS

The City of Edinburg shall not be held liable for any costs incurred by any respondent for work performed in the preparation of and production of a proposal, or for any work performed prior to execution of contract.

EQUAL EMPLOYMENT OPPORTUNITY

Respondent agrees that they will not discriminate in hiring, promotion, treatment, or other terms and conditions of employment based on race, sex, national origin, age, disability, or in any way violate Title VII of 1964 Civil Rights Act and amendments, except as permitted by said laws.

AUTHORIZATION TO BIND RESPONDENT TO PROPOSAL

Proposals MUST give full firm name and address of respondent, and be manually signed. Failure to do so will disqualify your proposal. Person signing bid must show title or **AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT**. Firm name and authorized signature must appear on each page that calls for this information. The legal status of the Respondent, whether corporation, partnership, or individual, shall also be stated in the proposal. A corporation shall execute the proposal by its duly authorized officers in accordance with its corporate by-laws and shall also list the state in which it is incorporated. A partnership

Respondent shall give full names and addresses of all partners. All partners shall execute the proposal. Partnership and Individual Respondent shall state in the proposal the names and addresses of all persons with a vested interest therein. The place of residence of each Respondent, or the office address in the case of a firm or company, with county and state and telephone number, shall be given after the signature.

FINAL SELECTION AND CITY COUNCIL APPROVAL

The City may accept any proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of the City. However, final selection of a company submitting a proposal is subject to City Council approval.

REMEDY OF TECHNICAL ERRORS

The City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. The City also reserves the right to terminate this RFP, and to reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.

QUESTIONS AND CLARIFICATIONS

Questions and clarifications that change or substantially clarify the RFP will be affirmed in writing and copies will be provided to all firms on record responding to RFP. **Any inquiries to this RFP must be submitted to Ms. Lorena Fuentes, Purchasing Agent, at (956) 388-1895 or at lfuentes@cityofedinburg.com, no later than Friday, May 28, 2021, at 5:00 p.m.**

HB 89

The 85th Texas Legislature approved legislation, effective Sept. 1, 2017, amending Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code, by adding Chapter 2270, which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: 1) does not boycott Israel; and 2) will not boycott Israel during the term of the contract

Confidential Information Respondents are advised that all confidential records must be submitted in a separate sealed envelope and marked accordingly.

SECTION II **REQUIREMENTS**

OVERVIEW

The City of Edinburg is soliciting proposals from firms interested in designing, implementing, and operating a public, dockless mobility solution in the city. An example of such a solution is a participant paid, publicly available scooter program. However, rather than use a prescriptive approach, where the City specifies a given solution or technology (e.g., scooter, bike, etc.) in this RFP, the City seeks to leverage respondent understanding of best-in-class solutions available to Edinburg today, while ensuring that the system can adapt to evolving technology and customer preferences in the future.

The City wants to ensure that this RFP results in a partnership with a company (or team) that can deliver a system that continuously innovates and responds to opportunities for enhancing customer experience and mobility in the city.

BACKGROUND

In September 2019, City Council approved a six-month Shared Active Transport System License Agreement Pilot Program with San Antonio-based Blue Duck Scooters. At the time, the City intended to evaluate the pilot program and use the results

to inform the City's approach to a longer-term dockless mobility strategy. Unfortunately, Covid-19 ended the pilot program prematurely, and, as a result, the City was not able to conduct a thorough evaluation that could inform this RFP.

For reference, the pilot program agreement with Blue Duck Scooters is attached as Exhibit A (Contract No. C-422-19).

DURATION OF SERVICE

The proposed contract will be for a term of two years, with the option to renew for one additional year (exercisable in writing upon mutual agreement between the City and the Vendor).

PROPOSALS

For proper comparison and evaluation, proposals must follow the following format and answer the questions indicated:

1) Cover Letter

Please provide a brief introductory letter. The cover letter shall include the history of the firm (or team, if applicable) and summarize its experience operating dockless mobility systems, including in cities of similar size to Edinburg.

2) Project Understanding

Please explain why your firm is interested in this opportunity. Describe Edinburg's market for dockless mobility solutions and what a successful program would look like in this city. Explain the opportunities and challenges of launching a new dockless mobility program in the Covid-19 environment and why your firm is best positioned to help the City successfully navigate the risks and uncertainty presented by these circumstances.

3) Project Approach

The City realizes that Covid-19 has dramatically impacted the dockless mobility industry, and that many of the features of the pilot program approved in September 2019 may need to be re-evaluated based on the market today.

Please review the pilot program contract (Exhibit A) and describe your firm's approach to the following issues, identifying specific areas where your proposed approach is similar or different compared to the pilot program, and why:

- Fleet (type and number)
- Fees (license and per device)
- Scope
- Procedures
- Operating Regulations
- Parking Guidelines
- Operations
- Data Sharing
- Indemnification, Limitation of City's Liability, and Insurance

In addition, proposals must include answers to the following questions:

- The City is aware that some cities include a per-ride surcharge as part of their dockless mobility program. Does that make sense for Edinburg, and, if so, how would the surcharge impact your proposed fee structure? Should the City consider any revenue sharing opportunities as part of the financing model for this program?
- How will your firm evaluate the performance of the system and respond to the evolving needs of the market in terms of adoption and deployment of new technology, operational innovations, or consumer preferences? What will be the process for suggesting and obtaining approval from the City for enhancements to the system?
- Personal Transportation Devices will not be permitted on the University of Texas Rio Grande Valley campus through this agreement with the City. Please see UTRGV's policy: <https://www.utrgv.edu/ehsrm/news/2020-01-06/index.htm>. What experience does your firm have helping cities navigate these issues with universities? How does your approach incorporate strategies that have proven successful?
- Please describe your firm's approach to marketing and customer service. What have you learned in terms of best practices, especially in markets of a similar size to Edinburg? What support, if any, will you require from the City?
- Equitable access to an affordable system is important to the City. How does your approach advance equity in the City's program and ridership base? At a minimum, all program materials including marketing, health and safety training, customer service, and the mobile app must be available in English and Spanish. What other strategies do you propose to ensure equitable access to an affordable system?

4) References and Experience

Proposals shall include firm and team member bios and up to five references or case studies, all of which have obtained or retained services from the proposer of a same or similar scope to the one requested in this RFP. Vendor must provide a brief description of the services provided for each reference.

5) Project Schedule

Please include a timeline or Gantt chart with key milestones for each phase of the proposed scope of work over the two-year contract period.

SECTION III **EVALUATION**

A five-person selection committee will evaluate and rank the proposals. The evaluation system consists of a 100-point system:

Project Understanding	15 points
Project Approach	50 points
References and Experience	25 points
Project Schedule	10 points

ATTACHMENT I LITIGATION DISCLOSURE FORM

Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your submittal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One YES NO

- 1 Have you or any member of your Firm or Team to be assigned to this engagement ever been terminated (for cause or otherwise) from any work being performed for the CITY or any other Federal, State or Local Government, or Private Entity?

Circle One YES NO

3. Have you or any member of your Firm or Team to be assigned to this engagement ever been involved in any claim or litigation with the CITY or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One YES NO

If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your submittal.

ATTACHMENT II
COMPANY PROVIDING PROPOSAL GENERAL QUESTIONNAIRE

1. Name/Name of Agency/Company: _____
(Full, correct legal name)
- Address: _____

 - Telephone/Fax: _____
 - Email address: _____
2. Does your Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its submittal?
- Yes____ No____
3. Is your Company authorized and/or licensed to do business in Texas?
- Yes____ No____
4. Where is the Company's corporate headquarters located? _____
5. a. Does the Company have an office located in Edinburg, Texas?
- Yes____ No____
- b. If the answer to the previous question is "yes", how long has the Company conducted business from its Edinburg office?
- ____ (years) ____ (months)
- c. State the number of full-time employees at the Edinburg office. _____
6. Has the Company or any of its principals been debarred or suspended from contracting with any public entity? Yes____
No____
- If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension. _____

7. Indicate person whom The CITY may contact concerning your submittal.
- Name: _____
- Address: _____
- Telephone: _____

Fax: _____
Email: _____

8. Surety Information

Have you or the Company ever had a bond or surety instrument "called," canceled, or forfeited?

Yes () No ().

If yes, state the name of the bonding company, date, amount of bond and reason for such bond being "called," or its cancellation or forfeiture. _____

9. Bankruptcy Information

Have you or the Company ever been declared bankrupt or filed for protection from creditors under state or federal proceedings? Yes () No ()

If yes, state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets. _____

10. Provide any other names under which your business has operated within the last 10 years.

**ATTACHMENT III
HOUSE BILL 89 VERIFICATION**

I, _____, the undersigned representative of

_____, (Company or Business name) (hereafter referred to as company) **being an adult over the age of eighteen (18) years of age, verify that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:**

1. Does not boycott Israel currently; and

2. Will not boycott Israel during the term of the contract.

3) Is not currently listed on the State of Texas Comptroller's Companies that Boycott Israel List located at <https://comptroller.texas.gov/purchasing/publications/divestment.php>

Pursuant to Section 2270.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

SIGNATURE OF COMPANY REPRESENTATIVE:

TYPE/PRINT NAME AND TITLE:

DATE:



CONTRACT NO.

C-422-19

City Council Approved:

September 23, 2019

To:

Juan G. Guerra, CPA, City Manager/Dora
Tomas Reyna, Assistant City Manager/Dora
Dagoberto Soto, Finance Director/Lorena
Ludy Leal, City Secretary
Joe Rios, Central Files



From:

Martha Jenkins
Martha Jenkins, Legal Assistant
City Attorney's Office
415 W. University
P.O. Box 1079
Edinburg, Texas 78540

Phone: (956) 388-8208

Fax: (956) 292-2113

Email: legal@cityofedinburg.com

Shared Active Transport System License Agreement Pilot Program between the City of Edinburg and Blue Duck Express, Inc., dba Blue Duck Scooters, 2019 Ave. B, San Antonio, Texas, for Shared Active Transportation System (SATS), which enables customers, through the use of smart phone apps, to use motorized scooters deployedY throughout the City of Edinburg, for a fee of \$500.00 for the pilot license and \$10 per scooter fee, with payment no later than October 25, 2019.

10-22-19 Omar, please approve.

10-22-19 Dora, please have City Manager sign originals and return to me for further processing.

10-24-19 Ludy, please attest and return all originals to me for further processing.

10-25-19 Lorena, attached is the Form 1295 for processing.

10-25-19 Dora, an original for your files. I have mailed the other original to Blue Duck.

10-25-19 Joe, an original for Central Files.

SHARED ACTIVE TRANSPORT SYSTEM LICENSE AGREEMENT
{PILOT PROGRAM}

This Pilot License Agreement (the "Agreement") is entered into by and between Blue Duck Express, Inc., dba: Blue Duck Scooters located at 2018 Ave. B, San Antonio, TX 7821S ("Company"), and the City of Edinburg, Texas, (the "City") as of October 20, 2019 (the "Effective Date") and shall remain in effect for a period of 180 days from either (a) the date of initial deployment, if certified in writing and provided to the City within 60 days of the Effective Date, or (b) the Effective Date, whichever is later. The Parties may revisit this Agreement thereafter. Company shall pay a one-time license fee of \$500 for this pilot license ("License Fee"), \$10 per scooter fee and such payment shall be made no later than Friday, October 25, 2019. This Agreement is contingent upon the City's further agreement to the terms of any related contracts (i.e. Company's license agreement for API).

WHEREAS, the City is a home-rule municipality authorized by the State of Texas to regulate vehicular and pedestrian traffic on public streets, sidewalks, and other public rights of way; and

WHEREAS, Company is an operator of a Shared Active Transportation System ("SATS"), which enables customers, through the use of smart phone applications, to use motorized scooters deployed throughout the City, in exchange for a fee; and

WHEREAS, the City further desires to preserve and protect the existing uses of public streets, sidewalks, and rights of way and needs to regulate the deployment of SATS small vehicles to protect the public health, safety, and welfare; and

WHEREAS, the present Agreement is intended to be a short-term Agreement for a pilot program; and

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Statement and Purpose

The purpose of this Agreement is to establish interim rules and regulations governing the pilot operation of a Stand-up electric scooter sharing system (the "Pilot") within the City and to ensure that such pilot is consistent with the safety and well-being of bicyclists, pedestrians, and other users of the public rights-of-way.

2. Scope

This Agreement applies to any proposed deployment of Stand-up electric scooter sharing systems within City's jurisdictional boundaries during the Pilot. The City reserves the right to terminate this pilot license at any time and require the entire fleet of Stand-up electric scooters to be removed within 14 days, or immediately in the event of an emergency.

3. Procedures

While this Agreement is in effect, Company shall be the sole provider of Stand-up electric scooter sharing systems within City's jurisdictional boundaries, contingent upon compliance with the terms of this Agreement.

4. Operating Regulations

- a. Stand-up electric scooters shall mean a device with no more than two wheels that has handlebars, is designed to be stood upon by the user, and is powered by an electric motor that is capable of propelling the device with or without human propulsion at a speed no more than twelve (12) miles per hour on a paved level surface.
- b. Stand-up electric scooters are to be ridden on streets, and where available, in bike lanes and bike paths. Stand-up electric scooters are to stay to the right of street lanes and to offer the right of way to bicycles in bike lanes and on bike paths.
- c. Company shall provide its contact information in an easily visible form, including toll-free phone number and/or e-mail address, on each Stand-up electric scooter so that City employees and/or members of the public may contact Company, including but not limited to the purposes of making relocation requests or to report other issues with devices. Each Stand-up electric scooter shall have a unique identifier that is clearly displayed and visible to the user.
- d. Company shall begin operations with a fleet size maximum of 100 Stand-up electric scooters. Upon providing written notice to the City, and unless instructed otherwise by the City, Company is permitted to increase its fleet size in the event that Company's fleet provides on average more than two rides per Stand-up electric scooter per day. City may require Company to reduce its fleet size on a monthly basis in the event Company's fleet provides on average less than one-half ride per Stand-up electric scooter per day. City may request data from Company on a monthly basis to determine and demonstrate the utilization rate of vehicles in Company's fleet, pursuant to Section 7.

5. Parking Guidelines

Company acknowledges and understands the following guidelines for parking Stand-up electric scooters:

- a. Users of Stand-up electric scooters shall park devices upright on hard surfaces in the furniture zone of the sidewalk, beside a bicycle rack or in another area specifically designated for bicycle parking, or on the street next to an unmarked curb.
- b. Users shall not park Stand-up electric scooters in such a manner as to block the pedestrian clear zone area of the sidewalk, or in a manner which would reduce the pedestrian clear

zone to less than 6 feet; any fire hydrant, call box, or other emergency facility; bus bench; or utility pole or box.

- c. Users shall not park Stand-up electric scooters 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.
- d. shall not park Stand-up electric scooters in such a manner as to impede or interfere with the reasonable use of any bicycle rack or news rack.
- e. Users may park Stand-up electric scooters in on-street parking spaces in the following circumstances:
 - I. When marked parking spaces are officially designated stations for such devices in business districts;
 - II. Where the furniture zone is less than three feet wide;
 - III. Where there is no furniture zone;
 - IV. In neighborhoods with rolled curbs, or with inadequate sidewalk space;
 - V. In marked parking spaces designated for motorcycles.
- f. Users may park Stand-up electric scooters on blocks without sidewalks only if the travel lane(s) and 6-foot pedestrian clear zone are not impeded.
- g. Users shall not park Stand-up electric scooters in the landscape/furniture zone directly adjacent to or within the following areas, such that access is impeded:
 - I. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging
 - II. zones, except at existing bicycle racks;
 - III. Loading zones;
 - IV. Disabled parking zone;
 - V. Street furniture that requires pedestrian access (for example - benches, parking pay stations, bus shelters, transit information signs, etc.);
 - VI. Curb ramps;
 - VII. Entryways; and
 - VIII. Driveways.
- h. Company may stage its Stand-up electric scooters in permitted parking areas as described in this section. To the extent Company desires to stage Stand-up electric scooters in areas other than the public right-of-way (e.g. parks, plazas, parking lots, private property, or transit stations), Company must first obtain the right to do so from the appropriate City department, property owner, or public agency.

6. Operations

- a. Company may deploy up to 125 devices in the designated “deployment” locations.
- b. Company shall maintain 24-hour customer service for customers to report safety concerns,

complaints, or to ask questions. Company will maintain a bilingual website, call center, and/or mobile app customer interface that is available twenty-four hours a day, seven days a week. The aforementioned shall be compliant with the Americans with Disabilities Act.

- c. Company will implement a marketing and targeted community outreach plan at its own cost or pay an in-lieu fee to the City to provide these services and promote the use of Stand-up electric scooter sharing citywide, particularly among low-income communities.
- d. Company shall work with local businesses or other organizations to promote the use of helmets by system users through partnerships, promotional credits, and other incentives.
- e. In the event a safety or maintenance issue is reported for a specific device, that Stand-up electric scooter shall be made unavailable to users and shall be removed within the timeframes provided herein. Any inoperable or unsafe device shall be repaired before it is put back into service.
- f. Company shall respond to requests for rebalancing, reports of incorrectly parked Stand-up electric scooters, by relocating, re-parking, or removing the Stand-up electric scooters, as appropriate, within 2 hours of receiving notice. Company will respond to urgent and/or critical issues such as a damaged or unsafe/inoperable vehicle, scooters in banned zones, or blocked ADA ramps within 1 hour.
- g. In the event a Stand-up electric scooter is not relocated, re-parked, or removed within the timeframe specified herein, or any Stand-up electric scooter is parked in one location for more than 72 hours without moving, such Stand-up electric scooters may be removed by City crews and taken to a City facility for storage at the expense of Company, not to exceed \$20 per Stand-up electric scooter.
- h. Company shall provide notice to all users by means of signage and through a mobile or web application that
 - i. Stand-up electric scooters are to be ridden on streets, and where available, in bike lanes and bike paths;
 - ii. Stand-up electric scooters are to stay to the right of street lanes and to offer the right of way to bicycles on bike lanes and bike paths;
 - iii. Helmets are encouraged for all users and required for minors (to the extent minors are permitted as users);
 - iv. Parking must be done in the designated areas; and
 - v. Riding responsibly is encouraged.
- i. Company shall provide education to Stand-up electric scooter riders on the City's existing rules and regulations, safe and courteous riding, and proper parking.
- j. Company shall not use Stand-up electric scooters for sale or display of third-party advertising without agreement from the City.

7. Data Sharing

Subject to reasonable restrictions for the protection of confidential, proprietary and personal information:

- a. Company shall provide the City with real-time information on the entire City fleet through a documented application program interface (API) built to Mobility Data Specification (MDS), pursuant to Company's license agreement for such API. The MDS API will provide a standardized closed data feed that contains information with respect to individual rides, including without limitation: start-time, end-time, start location, end location, route information, vehicle ID, total trip distance. In addition, it provides an open availability feed built to the General Bikeshare Feed Specification (GBPS).
- b. City may require Company to provide the City with access to a dashboard which provides aggregate, anonymized data on the distance and duration of trip activity within the City. Such dashboard may include maps of real time availability and heat maps allowing for analysis of rides taking place within certain geographic portions within municipal city limits.
- c. Company shall provide the City with rider-reported collision data which will include, but is not limited to, Vehicle ID, Time, Date, Location.

8. Indemnification

To the maximum extent allowed by law, Company agrees to indemnify, defend and hold harmless City (and City's employees, agents and affiliates) from and against all actions, damages or claims brought against City arising out of Company's operations or its customers' use of its Stand-up electric scooters, except that Company's indemnification obligation shall be limited by City's (or City's employees', agents' or affiliates') negligence or willful misconduct. Company's indemnification obligations shall survive for a period of one (1) year after expiration of this Agreement. City's right to indemnification shall be contingent on City notifying Company promptly following receipt or notice of any claim; Company shall have sole control of any defense; City shall not consent to the entry of a judgment or enter into any settlement without the prior written consent of Company.

9. Limitation of City's Liability.

Company agrees to limit the City's liability arising from City's acts, errors, or omissions such that the total liability of City shall not exceed the License Fee paid by the Company to the City. Company agrees that City will not be liable for any indirect, incidental, special, or consequential punitive or multiple damages, including without limitation any damages resulting from loss of use, loss of business, loss of revenue, loss of profits, or loss of data, arising in connection with this Agreement, even if City has been advised of the possibility of such damages. The foregoing limitation of liability shall apply to the maximum extent allowed by law for limitation of City's liability, regardless of the cause of action under which such damages are sought

10. Insurance

The insurance requirement is in the public interest and the City does not assume any liability for acts of the company and/or their employees and/or their subcontractors in the performance of this Agreement.

Company agrees to maintain, at a minimum, the following insurance coverage on a primary basis and at its sole expense for the duration of this Agreement and shall provide City with proof of insurance. Insurance coverage shall be provided by companies admitted to do business in Texas and rate A-:VI or better by A.M. Best Insurance Rating. The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed the Company under the Agreement.

- a. Commercial General Liability insurance coverage with a limit of no less than \$3,000,000.00 each occurrence, and with a \$4 million annual aggregate. Coverage must extend to all scooters deployed or operating in furtherance of company's business. Coverage shall be written on a standard ISO "occurrence" form. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. The City and its agents, officers, officials, and employees shall be listed as an Additional Insured;
- b. If Company will utilize motor vehicles in its operations, Business Auto Liability Insurance coverage with a limit of no less than \$1,000,000.00 each occurrence providing coverage for all owned, non-owned, and hired automobiles.
- c. Where Company employs persons within the City, Workers' Compensation coverage in accordance with Texas State Statutes and Employers Liability Insurance with limits of no less than \$1,000,000.00 each accident or bodily injury.

If the Company's insurance does not afford coverage on behalf of any Subcontractor(s) hired by the Company, the Subcontractor(s) shall maintain insurance coverage equal to that required of the Company. It is the responsibility of the Company to assure compliance with this provision. Failure to meet the insurance requirements and provide the required evidence of coverage may cause the Agreement to be terminated. Company must provide ten (10) days prior written notice to the City of policy cancellation, material change, or exhaustion of aggregate limits. Upon request, Company shall furnish the City with certified copies of all insurance policies.

Company grants to the City of Edinburg a waiver of any right of subrogation which any insurer may acquire against the City of Edinburg by virtue of payment of any loss. This provision applies regardless of whether the City of Edinburg has received a waiver of subrogation endorsement.

11. Miscellaneous

- a. **No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or laws.

- b. **Governing Law and Venue.** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Texas and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Contract, shall be in Hidalgo County, Texas. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Texas.
- c. **Alternate Dispute Resolution.** If any dispute, controversy, or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a "Dispute"), the Parties shall first attempt in good faith to settle and resolve such Dispute by meeting at a mutually agreeable time and place to discuss the Dispute within seven (7) days following the original written notice of any Dispute by the party making such a claim. The Parties shall seek to resolve the Dispute in writing within fourteen (14) days following the original written notice of any Dispute by the party making such a claim. If a mutual resolution and settlement are not obtained at the meeting, the Parties shall participate in good faith in formal mediation, within thirty (30) days following the original written notice of any Dispute, with a mutually agreeable mediator at a mutually agreeable time and place. No settlement reached under this provision shall be binding on the Parties until reduced to a writing signed by a representative of each Party. Unless the parties expressly agree otherwise, each party shall bear its own costs and legal and expert fees incurred in the mediation, and evenly share the costs of the mediator. If after proceeding in good faith the parties, with the assistance of a neutral mediator, do not resolve the dispute within forty-five (45) days following the original written notice of any Dispute, either party may initiate litigation to resolve the dispute.
- d. **Attorneys' fees.** In the event of any litigation between the parties, the Parties shall bear their own attorneys' fees, costs, and expenses.
- e. **General Laws.** Company shall comply with all federal, state and local laws, rules, regulations and ordinances.
- f. **Notices.** Any notice, demand, request, or communication required or authorized by this Agreement, unless otherwise specified herein, shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt request, with postage prepaid to:

IF TO CITY:

City of Edinburg
ATTN: City Manager
415 W. University Dr.
Edinburg, TX 78539

IF TO COMPANY:

Blue Duck Scooters
ATTN: Alec Martinez
312 Pearl Parkway Ste. 2403
San Antonio, TX 78215

Any notice required by this Agreement to be given in writing, or that either City or Company wishes to give to the other in writing, shall be signed by or on behalf of the Party giving notice. The notice shall be deemed to have been completed when sent by certified

or registered mail to the other Party at the address set forth herein, or delivered in person to said Party or their authorized representative.

- g. **No Third-Party Beneficiary.** No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such person a third-party beneficiary under this Agreement.
- h. **Amendment. No amendment,** addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
- i. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the Parties relative to the contracted services herein. All previous or contemporaneous contracts, representations, promises and conditions relating to the contracted services herein are superseded.
- j. **Assignment.** This Agreement is not assignable.
- k. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
- l. **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
- m. **No Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
- n. **Incorporation of Recitals.** The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

COMPANY

BLUE DUCK EXPRESS, INC.

M Keane
Michael Keane, CEO
18 October 2019
Date

CITY OF EDINBURG, TEXAS

BY: Juan G. Guerra
Juan G. Guerra, CPA,
City Manager
10/23/19
Date



ATTEST:

By: Ludivina Leal
Ludivina Leal, City Secretary

APPROVED AS TO FORM:

OMAR OCHOA LAW FIRM, P.C.

By: Omar Ochoa
Omar Ochoa, City Attorney
10/23/19
Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/18/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER FounderShield, LLC 119 W 24th Street, 3rd Floor New York, New York, 10011	CONTACT NAME: PHONE (A/C No. Ext): 646-854-1058 FAX (A/C No): E-MAIL ADDRESS: col@foundershield.com
INSURED Blue Duck Express, Inc. d/b/a Blue Duck Scooters 312 Pearl Pkwy #2403 San Antonio, Texas, 78215	INSURER(S) AFFORDING COVERAGE INSURER A: UNDERWRITERS AT LLOYD'S LONDON INSURER B: UNDERWRITERS AT LLOYD'S LONDON INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER			D191156	03/22/2019	03/22/2020	EACH OCCURRENCE \$1,000,000.00 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000.00 MED EXP (Any one person) Excluded PERSONAL & ADV INJURY \$1,000,000.00 GENERAL AGGREGATE \$2,000,000.00 PRODUCTS - COMP/OP AGG \$2,000,000.00 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE			B0180ME1918977	10/17/2019	10/17/2020	Each occurrence \$2,000,000.00 Aggregate \$2,000,000.00
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The City of Edinburg, Texas and its agents, officers, officials, and employees is included as an Additional Insured with Waiver of Subrogation applied on the above referenced policy where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Edinburg PO Box 1079 Edinburg, TX 78540-1079	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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