



REQUEST FOR PROPOSAL

Bid: 20-058 Pueblo Motorsports Park – Operation, Management, and Promotion of the Facility

Available: October 7, 2020

Pre-proposal Meeting: October 19, 2020 at 1:00 PM

Meet at Entrance Gate off Pueblo Blvd.

Pueblo Motorsports Park

3733 N. Pueblo Blvd., Pueblo, CO 81008

Submittal Deadline: October 28, 2020 at 2:00:00 PM

REQUIRED SUBMITTALS

Submittal Cover Sheet and Signature Page (Pages 2-3)
Submittal (Follow Format in Section 1) Table of Contents Submittal Summary Certificate of Good Standing Disclosures Statement of Qualifications Project Approach/Business Plan Payment/Compensation Plan
Completed Specification Exceptions Form (Appendix A)

TABLE OF CONTENTS

Submittal Cover Sheet & Signature Page		2
Section 1	Submittal Format and Required Responses	4
Section 2	Objective, Scope of Work, and Mandatory Requirements	5
Section 3	Evaluation, Selection of Successful Proposal, and Award	8
Section 4	General Requirements and Information	9
Appendix A	Agreement Exceptions Form	14
Appendix B	City of Pueblo Licensing (Sales Tax Letter)	15
Appendix C	Sample Agreement	16
Appendix D	Maps	29
Appendix E	Equipment List	Attached after page 32

SUBMITTAL COVER SHEET & SIGNATURE PAGE

Bid No. & Name:	20-058 Pueblo Motorsports Park – Operation, Management and Promotion of the Facility (Must be shown on outside of submittal package and on any correspondence)
Pre-proposal Meeting:	October 19, 2020 at 1:00 PM Meet at Entrance Gate off Pueblo Blvd. Pueblo Motorsports Park, 3733 N. Pueblo Blvd., Pueblo, CO 81008
Submit Questions to:	Purchasing@pueblo.us Questions can be submitted up to the end of business on October 21, 2020. Any questions received after that time will not be addressed.
Submit Sealed Submittals to:	City of Pueblo Purchasing Department 230 S. Mechanic Street Pueblo, CO 81003
RFP Submission Deadline:	October 27, 2020 at 2:00:00 PM (MT) Late submittals will not be accepted; <u>Proposers</u> are responsible for timely receipt Purchasing Department hours are 7:00 AM to 4:00 PM
Submit Electronic Proposals to:	Due to the concerns regarding COVID-19, we will be utilizing a special email address for the submission of all proposals for this RFP. All proposals shall be received electronically at OnlineBids@pueblo.us . Please make sure to show “PROPOSAL 20-058 – Your Company Name” in the Subject line of the email. Submittals will be opened no sooner than October 27, 2020 at 2:00:00 PM.
Purchasing Contact:	Teresa May Burns, CPPB Purchasing/Contract Administrator

Purpose of Solicitation

The City of Pueblo (City) is soliciting proposals from qualified interested parties to operate, manage, and promote drag and road racing events at the City’s Pueblo Motorsports Park (PMP) located within the Honor Farm Park and Open Space. The existing PMP facility is improved with a road course, drag strip, tower, concessions stand, bleachers, office, restrooms, fence surrounding the entire facility, and associated buildings and equipment.

The City reserves the right to reject any and all proposals for any or all items covered in the Request for Proposal, to waive informalities or defects in proposals or to accept any submittal as it shall deem to be in the best interest of the City. The procurement of these services shall be contingent upon appropriation of the necessary funds, and only after final approval and execution of an Agreement.

Disclaimer

The City provides all non-construction solicitations for interested parties to download free of charge via the Rocky Mountain E-Purchasing System (RMEPS) and on the City’s website, www.pueblo.us/purchasing. Proposers can also choose to register with RMEPS to get notifications automatically emailed to them for a nominal annual fee. Additionally, interested parties may visit the Purchasing Office during normal working hours and request hardcopies of any current solicitation at the same cost allowed for CORA requests. **If the Proposer cannot verify that the RFP documents were obtained from either of these two websites or our office, we cannot guarantee the validity of the document and their Submittal may be rejected.**

The undersigned, having carefully read and considered the Request for Proposal (RFP) for the above referenced project, does hereby offer to provide such goods and services on behalf of the City in the manner described and subject to the terms and conditions set forth in the attached RFP.

Proposer acknowledges that the company is qualified to provide these types of goods and services. At any time during the selection and award process, the City may request information substantiating the indicated requirements. Failure to provide this information may result in a Submittal being declared non-responsive.

Proposer acknowledges and accepts that all components of and responses to this RFP will be included and become a part of the award documents by reference.

By signing below, Proposer certifies that he/she is an officer or duly authorized agent of the Proposer's company with full power and authority to submit binding offers for the goods or services as specified.

MANDATORY – RETURN BOTH PAGES WITH YOUR RESPONSE. UNSIGNED SUBMITTALS WILL BE CONSIDERED NON-RESPONSIVE AND REJECTED.

Please confirm how your document was obtained:

☐ Rocky Mountain E-Purchasing ☐ City Purchasing Website ☐ Email from Purchasing Department
☐ Other (please explain) _____

Please complete all information below:

_____ Authorized Signature	_____ Signer's Printed Name/ Title
_____ Signer's Phone	_____ Signer's Email
_____ Secondary Company Contact	_____ Secondary Contact's Printed Name/Title
_____ Secondary Contact's Phone	_____ Secondary Contact's Email
_____ Company Name	_____ Company Website
_____ Company Street Address	_____ Company City, State, Zip

SECTION 1. SUBMITTAL FORMAT AND REQUIRED RESPONSES

The information set forth in the paragraphs below must be included with all proposals. **Faxed submittals will not be accepted.**

Responses shall be considered technical offers of proposal and shall be incorporated in Agreement as deemed appropriate by the City. Please attach your responses to these items to the Submittal Cover Sheet and Signature Page. Failure of Proposers to respond to any of the following technical submittal requirements may be grounds for considering a proposal non-responsive.

1.1 Submittal Cover Sheet

The Submittal Cover Sheet and Signature Page (pages 2-3) must be completed and returned with the proposal. Failure to return the signed Cover Sheet is grounds for the City to reject a proposal.

1.2 Table of Contents

The Table of Contents must indicate what documents are included in your proposal by section and page number. A proposal's table of contents should mirror this section of the Request for Proposal and must include all the items set forth in this section of the RFP.

1.3 Certificate of Good Standing

Proposer must attach a Certificate of Good Standing from the state wherein Proposer was organized. For Colorado the certificate can be downloaded at: <https://www.sos.state.co.us/biz/BusinessEntityCriteria.do>.

1.4 Submittal Summary

A letter providing the following information must be submitted with the proposal. The letter must include:

- The names of the persons who are authorized to make representations on behalf of the Proposer (include their titles, addresses, fax number, e-mail addresses and telephone numbers).
- A statement that the individual who signs the transmittal letter is authorized to contractually bind the Proposer to contract with the City of Pueblo.

1.5 Disclosures

If applicable, disclose any professional or personal financial interest, which could be a possible conflict of interest in providing products and services to the City. If not applicable, please make a brief statement indicating that.

1.6 Statement of Qualification

- Include the Proposer's name, address, phone number, and contact person. Basic information shall include the year the business was formed and what city it is located in.
- Identify all partners that will be involved in managing, operating, and promoting the facility, including their roles and responsibilities in the proposed operations. Provide each partner's history and experience. Include an organizational chart.
- The Proposer's racing management qualifications, experience, and number of year's operating (managing) similar facilities. Provide documentation that those facilities were operated at a profitable level.
- Proposer shall submit detailed, verifiable information which demonstrates that they have the necessary financial resources to operate, manage, and promote the racing facility.
- Provide a minimum of three (3) names and contact information, including addresses, phone numbers, and email addresses of specific individuals who we may contact for references.

1.7 Project Approach (Business Plan)

- Provide a narrative description of the proposed operation, management, and promotion of the racing facility at Pueblo Motorsports Park during the term of the Agreement and in accordance with this RFP including an annual proposed program/schedule for operation of different racing types and events.

- Provide a written maintenance plan that includes annual maintenance of the drag racing strip and road course as well as a plan to repair or replace facilities damaged due to usage by Proposer, or park amenities such as the scoreboard, timing equipment/computers, drag racing tree, sound system, bleachers, safety nets, and any equipment or furniture loaned to the Proposer by City. Refer to Sample Agreement for additional details.
- List an inventory of all equipment the Proposer will provide to operate and maintain the PMP facilities, infrastructure, drag strip, and racecourse in addition to the City owned equipment.
- Outline a schedule of proposed races indicating the required minimum number of races as outlined in Section 2.2.1 including any new or proposed events. Demonstrate how the different racing venues will co-exist within this facility.
- Identify if there is any potential of developing a scholarship program.
- Describe all types of proposed services including food sales, merchandise, fuel, parts, etc.
- Include a proposed fee schedule for racers, spectators, and any other service that will be offered.
- Describe marketing and promotion programs; also include information regarding sponsorships.
- The standard term of the Agreement is five (5) years; however, the City may be willing to consider alternate timeframes. Provide details regarding any alternate agreement timeframe/term options.
- The Proposer shall identify if the business plan varies from any of the responsibilities identified in Section 2.
- Include a statement indicating that all insurance requirements can be met.
- Provide a breakdown of the proposed budget (revenue, sources, amounts, personnel, and operating expenses).
- Project Approach (Business Plan) must identify all areas of operation of the racing facility, including all items identified in Section 2.

1.8 Payment/Compensation Plan

Proposal shall include a fee (whether it be a daily, monthly, or bi-annual fee) to be paid by the Contractor (awarded Proposer) as compensation to the City of Pueblo for the use of the racing facility. Proposed site improvements may be used as means of payment. If this is the Proposer's intention a detailed list of proposed improvements and cost estimates from a licensed contractor must be included. The proposed improvements shall be ordered by priority including dates of proposed improvement completion.

Additionally, Proposer shall include in the proposal means and methods of implementation of a user track improvement fee (i.e., amount per racer).

SECTION 2. OBJECTIVE, SCOPE OF SERVICE, AND MANDATORY REQUIREMENTS

2.1 Objective

The City of Pueblo is soliciting qualifications and proposals from interested parties to operate, manage, and promote drag and road racing events at the City's Pueblo Motorsports Park (PMP) located within the Honor Farm Park and Open Space property. The existing 233-acre PMP facility is improved with a 2.2 mile, 10 turn road course, drag strip, tower, concessions stand, bleachers, office, restrooms, fence surrounding the entire facility, and associated buildings and equipment (see Appendix E).

In 2009, the City of Pueblo established the Honor Farm Enterprise responsible for the operation, management, and improvement of the 2,373-acre Honor Farm Park and Open Space Property. Per Ordinance, the Enterprise is required to be operated and managed without subsidy from the City's General Fund. In 2011 the City provided funds to complete resurfacing the road course and replace the concrete drag strip.

Contractor should include the integration of Drag and Road Racing events within the Racing Facility and with the other motorsports' facilities at the park.

2.2 Scope of Service

2.2.1 Operate, promote, and manage a guaranteed minimum number of racing events within Pueblo Motorsports Park as follows:

- Twelve (12) road racing events
- Twelve (12) consecutive 'Friday Night Drag' events (June, July, August)
- Four (4) drag racing points events
- Partner with and coordinate all quarter midget track events
- Partner with the Southern Colorado Youth Development program

2.2.2 All operation, managing and promotion of the racing facility will be done at Proposer's expense.

2.3 Mandatory Requirements

Within the facility there is a quarter midget racing track and venue. The Proposer will be required to partner and sublease with the Southern Colorado Quarter Midget Association who has historically used the facility for free. The Proposer will be responsible for coordinating the midget racing events with the track events while meeting the needs of both entities.

2.3.1 The schedule and agreements with the groups renting the track must be honored, unless Proposer can agree to alternative dates with road race clubs. When scheduling events at PMP, the Proposer needs to consider the racing schedules of Bandimere, Hi-Plains, and other racing facilities, to lessen the impact of losing potential racers. Proposer should consider continuing NHRA sanctions.

2.3.2 Proposers will be responsible for the following:

- Provide repairs to all facilities and equipment
- Provide a schedule of racing events to the Honor Farm Advisory Committee every month
- Attend all monthly Honor Farm Enterprise Citizens Advisory Board meetings
- Provide all manpower and security necessary to operate each event
- Comply with all NHRA guidelines and policies. This includes, but is not limited to, safety requirements, technical preparations, inspections, etc.
- Pay for all utilities associated with running the racing facility
- Pay for all chemicals needed to prepare track for racing
- Manage or sub-contract all racing fuel to be sold on the property (must follow all regulatory guidelines)
- Provide an on-site certified technical inspector to inspect race vehicles OR ensure entities that rent the drag strip or road course provide a certified technical inspector
- Develop and implement a marketing program to promote racing events
- Solicit partners/sponsors for racing events (including maintaining existing partnerships with non-profit organizations)
- Publish event schedules
- Maintain an autonomous web site that can be linked to the City's web site
- Purchase and maintain approved insurance for all racing events
- Acquire all necessary licenses to operate the race facility and concessions
- Notify City representatives immediately of accidents or incidents that occur

- Purchase, maintain, and provide certified fire extinguishers for all events and pay for costs associated with refilling and recertifying extinguishers
- Provide Material Safety Data Sheets (MSDS) for all chemicals and products stored on site by Proposer and/or Contractor
- Provide ambulance services and fire control measures for all events at facility as necessary OR require any entities that rent the drag strip or road course to provide ambulance services and fire control measures
- Provide towing services for all racing events at facility (if required)
- Provide accounting policies and procedures
- Prepare the drag strip per NHRA standards
- Provide, maintain, and repair timing equipment and computers in race tower
- Provide sound system for announcing events
- Make any necessary changes to concession facility at Proposer's expense (with approval of the Pueblo Department of Public Health & Environment)
- Maintain all City equipment identified in Appendix E which is being loaned to Proposer. Schedule maintenance with City Fleet Services based on Fleet guidelines. Pay for all repairs, maintenance, and damages to equipment loaned to Proposer. If City equipment is repaired or maintained by City Fleet Services, applicable charges may apply and will be charged at an hourly rate plus materials.
- Work with City to utilize warranty on equipment loans for any item that becomes damaged and pay for any equipment repairs not covered by warranty.
- Provide open lapping opportunities with reasonable rates
- Provide and maintain concessions
- Immediately report damages to facility to City. Contractor shall follow the City's Purchasing Policy to obtain three (3) bids from licensed experienced contractors for repair of damages and submit all bids to Parks and Recreation Director for approval. Proposer shall be responsible to oversee all repairs and to ensure any necessary permits, approvals, licenses, insurance, etc. are obtained. Proposer shall be responsible for any damages to facility and shall be responsible for paying a portion of all facility repairs as identified in the Sample Agreement.
- Maintain PMP identity on all branding and signage
- The track will not be used for drifting events, military training, or any other type of special event without the prior approval of the City of Pueblo.

2.3.3 The City will be responsible for the following:

- The City will provide the equipment identified in Appendix E.
- Provide repairs to equipment and facilities as required per the Sample Agreement.
- Provide use of all buildings, trailers, cargo containers, sheds, booths, and garages existing within the fence boundary at PMP to the awarded Proposer.
- Provide other minimal equipment that is currently available. The final list will be determined at the time the final agreement is approved.
- Provide a link to the City website (if applicable)

SECTION 3. EVALUATION, SELECTION OF SUCCESSFUL PROPOSAL, AND AWARD

The City reserves the right to make an award on receipt of initial proposals. Proposers are encouraged to submit their most favorable proposal at the time established for receipt of proposals.

Proposals will be opened at the City's Purchasing Office then presented to the appointed selection committee for evaluation. Selection will be determined by the apparent capability of Proposer to meet all the requirements that best meet the needs of the City. The decision of the City's selection committee shall be final and conclusive. Award will be by means of a written Notice of Award to the selected Proposer.

The City shall evaluate and select Proposals to provide the required services based on the completed proposal responses. The City shall be the sole judge in determining how the evaluation process shall be conducted and what vendor shall be considered for award as deemed to be in the best interest of the City. The Evaluation Committee will make their final selections based on the submittals that receive a score of 75 percent or higher.

The City may conduct such investigations, as the City considers necessary to assist in the evaluation of any proposal to establish the responsibility, qualifications and financial ability of any potential Proposer to perform the services specified under this RFP within the prescribed time.

The evaluation criteria noted below are the criteria to be used for evaluation of this RFP. Based on the evaluation process, a rank ordered list of responsive Proposers shall be established. The Proposers shall be rank ordered with the first ranked Proposer being considered the most responsive and the second ranked Proposer being considered the second most responsive. This process shall be continued until all Proposers have been rank ordered.

Evaluation Criteria: The City of Pueblo shall evaluate proposals based upon an overall best value determination with the criteria listed below in relative order of importance:

- | | |
|------------------------------------|-----|
| • Project Approach (Business Plan) | 40% |
| • Statement of Qualifications | 30% |
| • Payment/Compensation Plan | 30% |

Interviews - Submittals will be reviewed and the committee will select a preliminary list of firms whose submissions appear to satisfy the requirements of this request. Preliminary listed firms will be notified of their selection and may be invited to personally interview, which will be scheduled as soon as possible after sufficient review of each submittal. Invited companies' key staff, including the proposed project manager must attend the interview.

Waiver and Release - By submitting a Proposal, the Proposer authorizes the City to obtain information concerning Proposer's performance on other operations, jobs, and projects it has completed during the prior ten (10) years, including those identified in the submission and those not so identified, of which the City may become aware. By submitting a Proposal, the Proposer and any partners that are included also waives and releases all claims against the City and their agents and representatives, relating to or arising from the furnishing of such information to the City concerning the Proposer's performance on prior operations of facilities. In order to effectuate the intent of this clause, each Proposer may be required by City to execute information release authorization forms, which specifically release all information providers from all claims that arise from or relate to the information provided.

The City shall then determine whether the proposal, with the highest ranking, can be accepted as is without negotiations. In the event the City determines that negotiation of the Proposer's proposal is necessary, the Proposer shall be notified, and the negotiation process will begin. Should the City be unable to negotiate an acceptable service agreement with the highest ranked Proposer then the process described in this paragraph will begin with the second highest ranked Proposal. This process shall continue until a satisfactory service agreement is negotiated or until all negotiations with qualified ranked Proposer's is exhausted. The City shall be the sole judge in determining when negotiations are to be concluded.

SECTION 4. GENERAL REQUIREMENTS AND INFORMATION

4.1 Definitions

“Contractor” shall refer to awarded Proposer

“Contract” shall indicate any binding agreement between Proposer/Contractor

4.2 Proposal Information, Requests for Clarification, and Addenda

All proposal solicitation documents are posted on the City’s Purchasing Department website and on Rocky Mountain E-Purchasing System. Any changes or revisions to our published solicitation documents will be through written addendum posted on both of these websites. It is entirely the Proposer’s responsibility to check the City Purchasing website (www.pueblo.us/purchasing) for any Addenda that may be available in the event that any emailed notifications of addenda were not received.

It is also the Proposer’s responsibility to make email, written or fax inquiries concerning this solicitation to obtain clarification of requirements; however, inquiries made by electronic mail are preferred. All inquiries must be made to the Purchasing Contact listed on the first page of the RFP at least six (6) days prior to the date of submittal openings and must indicate the Bid Number on the subject line. **Questions presented after this time will not be accepted or answered.**

4.3 Allegation of Misunderstanding

Proposers shall inform themselves of the conditions of the project site and the requirements of the project’s scope of work before submitting their proposal. No allowances shall be made by reason of any matter or thing concerning which they might not have been fully informed prior to the bidding. No Proposer will be heard after the opening of proposals to assert that there was any misunderstanding as to the nature of the operation expected in this solicitation.

4.4 Omissions

Should the City omit anything from the RFP which is necessary for a clear understanding of the work, or should it appear that various instructions are in conflict, the Proposer submitting the Proposal shall secure clarification from the Project Manager or Purchasing Contact at least seven (7) business days prior to the time of the opening date given above.

4.5 Preparation of Proposal

4.5.1 Submission: It is the responsibility of the Proposer to submit sufficient additional information to allow for a thorough evaluation of the proposal submitted.

4.5.2 References: The City of Pueblo may request a list of at least three references from other companies for which the Proposer has provided same or similar goods and/or services. Contractor’s history, personnel, references, quote, and any other information that becomes available to the City may be utilized as determining factors toward award.

The City reserves the right to investigate the references and the past performance of any Proposer with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, subcontractors, and workers. The City may postpone the award or execution of the agreement after the announcement of the apparent successful Proposer in order to complete its investigation. The City reserves the right to reject any proposal or to reject all proposals at any time prior to the City’s execution of an Agreement, upon good cause and upon the City’s finding that it is in the City’s best interest.

4.5.3 Delivery Time/Scheduled Service Time: Delivery time stated in the specifications shall apply. Deviations by the Proposer must be stated on the Exception Form, Appendix A. Time, if stated in number of days, will be consecutive calendar days.

4.5.4 Payment Terms: The City’s standard payment terms are Net 30; terms of less than thirty (30) days will not be considered. The discount term shall not begin until the goods and/or services have been delivered and accepted and the correct invoice received in the City’s Accounts Payable Office.

- 4.5.5** Taxes: The City is exempt from Federal, State and Local taxes; however, the successful Proposer is subject to such taxes on materials used in performing this agreement and may not be exempt from such taxes. It is the Proposer's sole responsibility to apply for any State Tax exemptions if applicable to the Agreement. The City is not responsible for providing assistance in obtaining any tax exemption.
- 4.5.6** Exception to Specifications: Proposers are to state any exceptions taken to this RFP on the Exception Form, Appendix A. If no exceptions are stated, the Proposer is required to furnish the items exactly as specified and to comply with all other requirements of this RFP.
- 4.5.7** The proposal **MUST** be signed by the Proposer as an officer of the company legally authorized to bind the company contractually. Signature must appear on the Submittal Cover Sheet and Signature Page of this solicitation, signed in ink, preferably blue. Signature on this referenced form shall serve as acknowledgment that the Proposer is willing to enter into an agreement with the City of Pueblo and be governed by the Terms and Conditions set forth within this solicitation if their proposal is accepted. Proposer acknowledges and accepts that all components of and responses to this RFP will be included in and become a part of the final agreement.
- 4.5.8** Failure to read the RFP and these instructions will be at the Proposer's own risk. The person signing the proposal must initial all corrections in ink. Corrections and/or modifications received after the specified solicitation closing time will not be accepted.
- 4.5.9** When approximate quantities or dollar amounts are stated, the City reserves the right to increase or decrease the quantity and/or amount as best fits its needs. No service shall be performed or become due unless a Written Agreement or Purchase Order shall first have been issued by the City's Purchasing Department.
- 4.5.10** Patent Indemnity: If any item furnished pursuant to any Agreement resulting from this RFP shall be covered by any patent, copyright, or application for patent or copyright, the Proposer shall defend, indemnify and save harmless the City from any and all loss, cost or expense or any and all claims suits, or judgments as a result of the use of such item in violation of rights under such patent, copyright, or application for patent or copyright.
- 4.5.11** Confidentiality: Each proposal shall be open to public inspection, except to the extent the Proposer designates trade secrets, or other proprietary data to be confidential. Material so designated shall accompany the proposal and each page shall be clearly marked and readily separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. The City shall endeavor to restrict distribution of the material designated as confidential to only those individuals involved in the review and analysis of the proposals. Proposers are cautioned that materials designated confidential may nevertheless be subject to disclosure to any citizen under the Colorado Open Records Act (CORA), 24-72-201 to 24-72-309, C.R.S. All Proposals, including attachments, supplementary materials, addenda, etc. shall become the property of the City and will not be returned to the Contractor. **Proposals that are copyrighted or marked "CONFIDENTIAL" in their entirety will be rejected and not receive consideration for award.**

4.6 Written Agreement

The selected Proposer shall be required to enter into an agreement with the City; in substantially the same form attached hereto as the City's Agreement (see Appendix C - Sample Agreement). The Proposer will be required to comply with all applicable Federal and State standards, orders and regulations. Proposers must identify in their responsive submittal any provisions of the Agreement form that they request be modified, together with the proposed modification language. Signature on the Submittal Cover Sheet & Signature Page shall serve as an acknowledgement that the Proposer is willing to enter into the referenced agreement with the City of Pueblo if their proposal is accepted.

4.7 City of Pueblo Licensing Requirements

Per City of Pueblo Municipal Ordinance Sections 9-1-2 and 14-4-21, any and all businesses that operate within the City are mandated to be licensed. For questions regarding licensing requirements or to obtain a licensing application please contact the Sales Tax Division at (719) 553-2659. Sales Tax Letter is attached as Appendix B.

4.8 Colorado PERA Questionnaire

At time of award, the Proposer shall fill out the questionnaire and submit the completed form to the City as part of the agreement whether PERA applies to them or not. In accordance with the PERA form (available at <https://www.pueblo.us/Admin/DocumentCenter/Document/View/19915>), and if this applies to the Proposer, the Proposer shall reimburse the City for the full amount of any employee contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement.

4.9 State-Imposed Mandates Prohibiting Illegal Aliens From Performing Work

By signing the Request for Submittal Cover Sheet and Signature Page, the Proposer acknowledges that they have read Section 21 of the attached Sample Agreement and agrees that they are in compliance with these provisions.

4.10 Insurance and Indemnity

By signing the Request for Submittal Cover Sheet and Signature Page, the Proposer acknowledges that they have read Section 13 of the attached Sample Agreement and agrees that they are in compliance, or will be upon award of Agreement, with these provisions.

4.11 Rejection of Proposal

No Proposal shall be accepted from, or Agreement awarded to, any person, company or corporation that is in arrears to the City, upon debt or agreement/contract or that is a defaulter, as surety or otherwise, upon any obligation to the City, or that may be deemed irresponsible or unreliable by the City. Proposers may be required to submit satisfactory evidence that they have the necessary financial resources and experience to perform and complete the work outlined in this RFP. The City reserves the right to request any additional information as needed to make a sound evaluation decision.

4.12 Proposal Ownership/Confidentiality

All Proposals, including inquiries, correspondence, attachments, supplementary materials, addenda, etc. shall become the property of the City and will not be returned to the Proposer. The Proposer must state specifically what elements of the proposal are to be considered confidential or proprietary and must state the statutory basis for the request under the Public (open) Records Act. (Section 24-72-201 et seq., C.R.S.). Confidential or Proprietary information must be readily identified, marked, and separated from the rest of the proposal. Co-mingling of confidential or proprietary and other information is not acceptable. Neither a proposal, in its entirety, nor proposal price information will be considered confidential and proprietary. Any information that will be included in any resulting Agreement cannot be considered confidential. Ref. Section 24-72-201 et. seq., C.R.S., as amended, Public (open) Records Act.

4.13 Suspension and Debarment

Proposer acknowledges that as of the solicitation submittal date, neither the Contractor, nor its subcontractor(s), is (a) debarred, suspended, or subject to any proceeding for debarment or suspension with a final determination still pending; declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or non-procurement transactions with any Federal, State, or City government department or agency pursuant to any of the Debarment Regulations, or (b) indicted, convicted or had a Judgment rendered against the Contractor, or its subcontractor(s) for any of the offenses listed in any of the Federal, State, or City's Debarment Regulations and no event has occurred and no condition exists that is likely to result in the debarment or suspension of the Contractor, or its subcontractor(s), from contracting with the City of Pueblo, Federal or State government, or any agency or instrumentality thereof.

4.14 Equal Opportunity

In accordance with §1.8 of the Pueblo Municipal Code (entire Code included by reference), all Proposers shall meet and comply with the following provisions which shall be contained in all municipal contracts:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, ancestry, disability, age or national origin. The Contractor will take affirmative action in all areas of employment to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to race, color, religion, sex, sexual orientation, ancestry, disability, age or national origin. *Areas of employment* shall mean and include, but shall not be limited to, the following: initial employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoffs, terminations, rates of pay, terms of compensation and selection for training, including apprenticeship. The Contractor will post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination and equal employment opportunity paragraph. Failure to subscribe to and accept the nondiscrimination and equal employment requirements of this Chapter shall render a Contractor ineligible for a municipal contract award and ineligible to participate in the work for which a municipal contract award is made. (§§1.8.3 and 1.8.4 of the PMC; Ord. No. 4479, 5-22-78)
- (2) **Federal requirements govern.** Whenever the provisions and requirements of this Section (or in any of the specifications) conflict in any way or to any degree with the nondiscrimination and equal employment opportunity requirements of the United States and any such contract under consideration is funded in whole or in part by the United States or is otherwise subject to requirements having the force of law of the United States, such requirements of the United States shall govern and control. (Ord. No. 4479, 5-22-78)

4.15 Statement of Noncommitment

All costs related to the preparation of the proposals and any related activities are the sole responsibility of the Proposer. The City assumes no liability for any costs incurred by Proposers throughout the entire selection process or should the project be cancelled. Issuance of this RFP does not commit the City of Pueblo to award an Agreement. The City of Pueblo reserves the right to reject any or all proposals and to re-advertise should the need arise. All proposals will become property of the City.

4.16 Disqualification of Proposal

The City reserves the right to reject a proposal for, including but not limited to, any one or more of the following circumstances:

- 4.16.1** The Proposer has failed to comply with previous contractual commitments or bids to the City.
- 4.16.2** In the opinion of the City, the Proposer is not capable of providing the offered goods and/or services as offered/required by the RFP or is otherwise not responsible.
- 4.16.3** The Proposer has not provided sufficient or detailed information, which allows for the evaluation of the proposal submittal.
- 4.16.4** In the opinion of the City, the offered prices are higher than the prices for which the specified items or services can be purchased on the open market.
- 4.16.5** The Proposer failed to properly fill in any space on the Quotation Record form and attached documents where information or a signature is required.
- 4.16.6** The Proposer failed to submit with their proposal (if required) other material requirements of the RFP or has otherwise submitted a non-responsive proposal.
- 4.16.7** There are unauthorized additions, conditions, alternate proposals/submittals, or other irregularities of any kind, which might make the proposal submittal incomplete, indefinite or ambiguous in meaning.
- 4.16.8** The Purchasing Agent determines that a proposal contains any misrepresentations whatsoever.

4.17 Minor or Technical Irregularities

Minor or technical irregularities in a proposal may be waived provided there is no effect on price, quality or quantity; clerical errors in a proposal may be corrected, if permitted by the Purchasing Agent and are in the best interest of the City.

4.18 Proposal Evaluation & Analysis

The City reserves the right to analyze, examine and interpret any proposal for a minimum period of ninety (90) consecutive calendar days after the scheduled opening date. Proposals may not be rescinded during this period except for good cause and with the written approval of the Purchasing Agent. In those situations where the analysis/evaluation exceeds the ninety (90) consecutive calendar days, Proposers may withdraw their proposals from consideration, or may extend their proposal by written approval from the Proposer.

4.19 Contact Persons

Contractor shall designate two people (the primary contact and an alternate) responsible for the project under this contract. The names, addresses, and telephone numbers of such person(s) shall be provided to the City and shall be kept current at all times.

4.20 Invoices and Payments

Invoices will be issued to the Contractor by the City's Finance Department and shall be due and payable within 10 days of receipt of invoice. Late payments may be eligible for late fees, processing fees, collection fees, etc. Any communications regarding invoicing or payment shall be directed to the City of Pueblo Parks and Recreation Director or authorized City representative.

4.21 Default/Termination for Cause

4.21.1 If, through any cause, the Contractor fails to fulfill the obligations under any contract resulting from this RFP in a timely and proper manner, or if the Contractor violates any of the covenants, agreements or stipulations of such contract, the City shall notify the Contractor of such violations in writing and allow a reasonable time, set out in the notice, to correct the default. If the default is not corrected within the specified time period the City shall have the right to cancel the agreement/contract and any or all other current contracts, and, if applicable, to purchase the required goods and/or services from another source or sources. The City shall provide written notice to the Contractor specifying the effective date of cancellation. The notice of cancellation may be contained in the notice of default.

4.21.2 If an agreement resulting from this RFP is canceled, the Contractor shall not be relieved of liability for damages caused by its breach of the Agreement. The City reserves the right to recover such damages, including, but not limited to, any excess cost incurred in having to purchase contract goods/services from other sources by a deduction from an unpaid balance due to the Contractor, collection against a performance or labor and materials payment bond (if required), a combination of these remedies, or any other legal method available. In addition, the Contractor may be removed from the Purchasing Department Vendor List or determined to be ineligible to respond to future solicitations, as being not responsible.

4.22 Termination for the Convenience of the City

The City may terminate any Agreement resulting from this RFP, at any time, by providing the Contractor with a thirty (30) day written notice of such termination. In such event, the Contractor shall be paid under the terms of the Agreement for all goods/services provided to and accepted by the City, if ordered or accepted by the City prior to the effective date of termination.

4.23 Termination for Lack of Appropriations

Funding for the Agreement resulting from this RFP must be appropriated by the City Council for the City's current fiscal year. Notwithstanding any other provisions in the Agreement resulting from this RFP, continuation of the Agreement beyond the end of any fiscal year is contingent upon City Council appropriating necessary funds. If sufficient appropriations are not made, the Agreement may be terminated at the end of the City's then current fiscal year upon written notice given by the City to the Contractor. Such termination shall not constitute a default. All payment obligations of the City and all of its interest in the Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

If your proposal does not meet all of our specifications you must state so on the spaces provided below:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Proposals for goods and/or services not meeting specifications may be considered by the City. However, all deviations must be listed above. (Must check one (1) response below.)

I DO NOT meet specifications, as listed on this RFP: exceptions are stated in the spaces provided above. ☐

I DO meet specifications ☐

Signed: _____ Firm Name: _____

Printed Name and Title: _____

Charles B. Hernandez
Director of Finance



One City Hall Place
Pueblo, CO 81003

Valerie A. Palumbo
Tax Audit Manager

Sales Tax Division

(719) 553-2659 – Phone
(719) 553-2657- Fax
salestax@pueblo.us

January 14, 2020

Dear Applicant:

Per the City of Pueblo Municipal Ordinance any/all businesses that operate within the City of Pueblo are mandated to be licensed.

Please see the following ordinance(s):

Sec. 14-4-21.- Definitions

When not clearly otherwise indicated by the context. The following words and phrases, as used in this Chapter, shall have the following meanings:

(9) Engaged in business in the City means performing or providing taxable services in the City or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the City. Such terms includes, but is not limited to, any one of the following activities by a person:

- a. Maintaining a building, store, office, salesroom, warehouse or other place of business within the City either directly. Indirectly or through a subsidiary;
- b. Sending one (1) or more employees, agents or commissioned salespersons into the City to solicit or to demonstrate, install, assemble, repair, service or assist in the use of its products, or for other business reasons;
- c. Maintaining one (1) or more employees, agents or commissioned salespersons on duty at a location within the taxing jurisdiction;
- d. Owning, leasing, renting or otherwise exercising control over real or personal property within the City;
- e. Making more than one (1) delivery into the City within any twelve-month period.

Sec. 9-1-2. – Application

(a) Compliance Required. It shall be unlawful for any person, either directly or indirectly, to conduct any business or nonprofit enterprise, or to use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which a license, or permit is required by this Code or any law or ordinance of this City, without a license or permit therefore being first procured and kept in effect at all such times as required by this Code or other law or ordinance of the City.

If you have any questions or would like to obtain the licensing application(s) please contact the Sales Tax Division at 719.553-2659.

A handwritten signature in blue ink, appearing to read "Valerie A. Palumbo", is written over the typed name.

Valerie A. Palumbo

Tax Audit Manager

SAMPLE AGREEMENT

**LEASE AND MANAGEMENT AGREEMENT FOR
CERTAIN FACILITIES AT PUEBLO MOTORSPORTS PARK**

This Agreement ("Agreement") is made and entered into this _ day of _____, 2021, by and between the City of Pueblo acting by and through its Honor Farm Properties Enterprise (hereinafter referred to as "City"), and _____ (hereafter referred to as "Operator").

RECITALS

WHEREAS, the City owns certain real property known as the Pueblo Motorsports Park, located at 3733 North Pueblo Boulevard, Pueblo, Colorado 81008 (the "Park"); and

WHEREAS, Operator has experience managing and conducting motor sports events and desires to manage, use, maintain, and operate certain facilities at the Park for the purpose of conducting motor sports events; and

WHEREAS, City is willing to enter into this Agreement to permit Operator to manage, use, maintain, and operate certain facilities at the Park for the purpose of conducting motor sports events at the Pueblo Motorsports Park in accordance with and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the Parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS. As used herein, the following words and phrases shall have the following meanings:

- (a) "City Fleet" means the City's Department of Fleet Maintenance, located at 300 E. "D" Street, Pueblo, CO. "City Fleet Services Supervisor" means the City's Director of Fleet Maintenance or any person that the Director of Fleet Maintenance may authorize to act in his stead.
- (b) "Director" means the City's Director of Parks and Recreation or any person that the Director of Parks and Recreation may authorize to act in his stead.
- (c) "Equipment" shall mean all equipment, supplies and/or materials listed in Agreement Exhibit B attached hereto.
- (d) "Grounds Equipment," "Concessions Equipment," "Office/Mobile Home Equipment" and "Tower Equipment" used individually shall only mean that equipment specifically designated by and listed under those headings in Agreement Exhibit B attached hereto.
- (e) "Leased Premises" means and includes all of the facilities, tracks, buildings, and land included within that area of the Park outlined in red on the map and/or aerial photo attached to this Agreement as Agreement Exhibit A. No event shall be conducted outside the leased boundary on the Honor Farm property without prior written approval of the City.
- (f) "Physical Facilities" shall mean the buildings, parking lots, tracks, plumbing system, heating system, and electrical system located on the Leased Premises.
- (g) "Profit" shall mean adjusted gross income reported on Operator's annual Federal Tax Return.

- (h) "Sponsorship Contract" means any contractual arrangement in which a third party business pays for the right to have its product used or sold at the Leased Premises, or to place advertising signs, banners, and other materials at the Leased Premises.

2. EXHIBITS TO AGREEMENT

- (a) The following exhibits are attached and incorporated as part of this Agreement:

Agreement Exhibit A: Area Map with marked perimeter designated the Leased Premises, Honor Farm Map, Race Facility Maps I & II
Agreement Exhibit B: List of Equipment
Agreement Exhibit C: Request for Proposal for Bid 20-058
Agreement Exhibit D: Certificates of Insurance
Agreement Exhibit E: PERA Questionnaire

- (b) In the event of any conflict between the terms of this Agreement and any Exhibit made a part of this Agreement, the Terms and Conditions of this Agreement shall take precedence and control over all Exhibits.

3. GRANT OF EXCLUSIVE RIGHT TO OCCUPY AND OPERATE LEASED PREMISES

- (a) City grants to Operator the exclusive right to occupy, use, manage, maintain, and operate the Leased Premises in order to conduct motor sports events, subject to:

(1) The City's right to enter the Leased Premises with or without notice to Operator to inspect the premises and to perform major repairs. City will use good faith efforts to notify Manager of its need to enter the Leased Premises.

(2) The City's right to review and approve any and all Sponsorship Contracts as set forth in Section 10 of this Agreement.

(3) The City's right to inspect the Operator's records, including but not limited to sales receipts, inventory lists, equipment logs, third party Release Agreements, purchase orders, payroll, financial records, tax returns, and bank statements, or any subcontractor contracted by Operator to work, manage, or operate all or a portion of the Leased Premises. Any subcontract agreement must include a provision reserving this right to the City. Operator shall, at least quarterly, submit financial reports evidencing profits, ticket sales, and any other financial information the Director requires.

(4) Operator holding, operating, and/or managing a guaranteed minimum number of racing events on the Leased Premises as follows:

- 12 Road Racing events (motorcycle or auto)
- 12 Non-Consecutive Friday Night Drag events (June, July, August)
- 4 Drag Racing Points events

(5) Operator shall enter into a rental agreement with Southern Colorado Quarter Midgets Association and Southern Colorado Youth Development for use of the tracks located within the Leased Premises.

4. TERM.

- (a) The initial term of this Agreement shall commence on January 1, 2021 and end on December 31, 2025 ("Term") unless sooner terminated pursuant to the terms of this Agreement.

(b) Either party may have the option to extend the term of this Agreement for up to five additional one-year terms by giving the other written notice of its intent to exercise its option within one hundred and twenty (120)

days prior to the expiration of the then current term. Any extension beyond the original term of this Agreement is contingent upon the parties negotiating in good faith any changes to the terms of this Agreement. No extension shall be effective until it is reduced to writing and signed by both parties.

5. RENT.

(a) Base Rent. Operator shall pay to the City without notice, offset or deduction base rent for the Leased Premises as follows, except as provided in paragraphs 5(a)(2) and 14(b) herein:

(1) Yearly Rental Rates:

i.	Year 1 (January 1, 2021 – December 31, 2021)	\$ _____	.00
ii.	Year 2 (January 1, 2022 – December 31, 2022)	\$ _____	.00
iii.	Year 3 (January 1, 2023 – December 31, 2023)	\$ _____	.00
iv.	Year 4 (January 1, 2024 – December 31, 2024)	\$ _____	.00
v.	Year 5 (January 1, 2025 – December 31, 2025)	\$ _____	.00

(2) The rent shall be paid as follows:

- i. [To be determined]

(b) Additional Rent. In addition to the base rent, Operator shall pay to the City additional rent for the Leased Premises as follows:

(1) [To be determined]

(c) Base Rent shall be made payable to Honor Farm Enterprise and delivered to the Director at the place designated in this Agreement for Notice to the City. Base Rent shall be paid into the Honor Farm Properties Enterprise. Base Rent shall be due without notice, offset, or deduction in two (2) equal increments each year with the first due on or before June 30 of each year and the second due on or before September 30 of each year, except as provided in paragraphs 5(a)(2) and 14(b) herein.

(d) Additional Rent, if any, shall be due and payable by May 30th of the year following the year for which the additional rent is due (i.e. for Year 1 – May 30, 2022). Any and all Additional Rent shall be made payable to the Honor Farm Enterprise and delivered to the Director at the place designated in this Agreement for Notice to the City. The City shall use seventy-five percent (75%) of all Additional Rent paid by Operator to maintain, repair, and/or upgrade the Leased Premises. The City shall consider recommendations from Operator with regard to the maintenance, repairs, and/or upgrades desired on the Leased Premises or access thereto; however, the City shall make all final decisions regarding the expenditure of the Additional Percentage within its sole and absolute discretion. Unexpended Additional Percentage shall be carried over from one year to the next on an ongoing basis.

(e) Operator shall pay to City a late fee in the amount of five percent (5%) of the Base Rent for any rent payment paid more than thirty (30) days after it is due. All rent, fees, and other sums due under this Agreement shall bear interest at the rate of eight percent (8%) per annum from the date the sum first becomes due, compounded monthly.

6. FEES.

(a) Spectator Fees. Operator will remit to the City one dollar (\$1.00) per spectator or other attendee for all events directly hosted or administered by Operator. Spectator Fees are in addition to and not part of the Rent. Spectator Fees shall be made payable to the Honor Farm Enterprise and delivered to the Director at the place designated in this Agreement for Notice to the City. Spectator Fees shall be due without notice, offset, or deduction on the first day of each month following an event, where Spectator Fees collected for all events held the previous month are due.

(b) Track Improvement Fees. Operator will remit to the City five dollars (\$5.00) per vehicle that uses a track for any event or rental. Track Improvement Fees are in addition to and not part of the Rent. Track Improvement Fees shall be made payable to the Honor Farm Enterprise and delivered to the Director at the place designated in this Agreement for Notice to the City. Track Improvement Fees shall be due without notice, offset, or deduction on the first day of each month, where all Track Improvement Fees collected in the previous month are due. Track Improvement Fees shall be set aside in a separate revenue fund account designated solely for track and road course overlay and repair.

7. UTILITIES. Operator shall pay, before delinquent, all charges for utilities, including but not limited to electric, gas, sewage, water, phone, trash, cable, and internet.

8. SECURITY DEPOSIT.

(a) Operator shall pay to City and City shall retain a deposit in the sum of Five Thousand Dollars (\$5,000) to ensure performance of Operator's obligations under this Agreement. Operator shall pay one half of the Security Deposit (\$2,500) upon execution of this Agreement. Operator shall pay the balance of the Security Deposit (\$2,500) no later than seven (7) business days after Operator holds its first revenue generating event. In the event that Operator fails, neglects or refuses to pay any rent, fee, or other sum due under this Agreement, or fails to perform any obligation under this Agreement, then City may, in its sole and absolute discretion, draw from this Security Deposit to remedy Operator's default. Nothing contained in this Agreement shall require City to remedy Operator's default in this manner, and City may instead, in its sole and absolute discretion, refuse to remedy Operator's default by drawing on the Security Deposit, and instead pursue the remedies for default provided in this Agreement or by law.

(b) In the event that City draws from this Security Deposit to remedy Operator's default, City shall notify Operator in writing and require Operator to replenish the deposit to its original level. Failure of Operator to comply with this Section shall constitute a material breach of this Agreement.

(c) Within sixty (60) days after the Term of this Agreement, including any extension thereof, expires or terminate, City shall refund to Operator the Security Deposit, less any portion of the Security Deposit that City has applied to remedy any of Operator's defaults under this Agreement, including but not limited to unpaid rent, other sums due under this Agreement, and any damages or cleaning that may be required, whether discovered during the Term of this Agreement or afterward.

9. CITY TO PROVIDE CERTAIN CAPITAL IMPROVEMENTS AND EQUIPMENT.

(a) City has paid for certain capital improvements to the Leased Premises and purchased the Equipment presently located on the Leased Premises as set forth in Exhibit B attached hereto, for Operator's use on the Leased Premises. All such improvements and Equipment shall remain Property of the City and shall be returned to the City at the termination of this Agreement. All Equipment shall be tagged with City identification within one (1) month of signing of this document.

(b) Operator shall not remove any Equipment from the Leased Premises without the express written consent of the City. Operator shall operate and maintain, at its own expense, all Equipment, except as provided in paragraphs 11(k) and 11(l). ALL EQUIPMENT PROVIDED TO OPERATOR AS SET FORTH IN AGREEMENT EXHIBIT B IS ON AN "AS IS" "WITH ALL FAULTS" BASIS, AND CITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE CONDITION OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR USE OR PURPOSE. Operator is hereby advised that Operator shall be solely responsible for personally inspecting the Equipment before execution of this Agreement and any use of the Equipment. Operator's execution of this Agreement and use of the Equipment shall constitute an expressed acknowledgement by Operator that the Equipment is safe and adequate for Operator's intended and permitted use. Operator shall have exclusive control of the Equipment during the pendency of this Agreement, subject to the City's right of inspection, and shall be responsible for all equipment and for adequate safeguard for the protection of Operator, its employees, agents, independent contractors, subcontractors, representatives, and persons engaged in any activity on the Leased Premises. Notwithstanding any provision in this Agreement to the contrary or which may be construed to the contrary, City assumes no obligation or responsibility to replace the Equipment, or to keep or maintain the Equipment in good and safe condition, appearance, or state of repair, regardless of cause of need for maintenance, repair, and/or replacement. City is not subject to the

Occupational Safety and Health Administration (“OSHA”) and shall not be liable for any fine or fee levied against Operator thereby.

10. SPONSORSHIP CONTRACTS AND WEBSITE.

(a) **Sponsorship Contracts.** Operator may enter into sponsorship contracts for less than Twenty Thousand Dollars (\$20,000) without the prior written consent of the City; however, the City reserves the right to require Operator to discontinue any sponsorship contracts and/or advertising that the City believes, in its sole and absolute discretion, is not in the City’s best interests. Any sponsorship contract over Twenty Thousand Dollars (\$20,000) or involving the naming of the whole or any portion of the Leased Premises must be approved by the City in writing, which approval may be withheld at the sole and absolute discretion of the City.

(b) **Website & Social Media Site.** Operator must work with the City and provide necessary information to the City in order to update the Pueblo Motorsports Park website at all times during the Term of this Agreement and any extension thereof. Operator must always insure a proper link from the Pueblo Motorsports Park website to the City of Pueblo website at all times during the Term of this Agreement. Operator may create and manage a separate social media site to promote the Pueblo Motorsports Park. The City has the right to require Operator to discontinue any advertising on the Pueblo Motorsports Park website or any social media site that the City believes, in its sole and absolute discretion, is not in the City’s best interests.

11. MAINTENANCE OF LEASED PREMISES AND EQUIPMENT.

(a) Operator shall operate, staff, manage, clean, repair, keep clean and sanitary, and maintain the Leased Premises and Equipment. Operator shall perform these duties with reasonable care according to the highest standards in the industry.

(b) Operator shall use and maintain the Leased Premises in a clean, safe, and orderly manner, in compliance with all federal, state, and city laws and regulations and all rules and policies promulgated by the Director. Operator shall not allow any drifting events, military training, or ramming exercises on the racetracks within the Leased Premises.

(c) Operator shall develop and follow a maintenance schedule to control the growth of natural vegetation on the Leased Premises. This program shall include a regular schedule for weeds and other vegetation to be sprayed and mowed or otherwise eliminated. Operator shall ensure that all-natural vegetation in the vicinity of the race-track and spectator areas shall not exceed five inches (5”) in height or otherwise as approved by Director. City will provide support to Operator as available to assist in the control of natural vegetation on the Leased Premises, which may include supplying information, guidance, or chemicals.

(d) Operator shall not set any portion of the Park on fire or use any incendiary or explosive devices without prior written approval of the Fire Department and Director.

(e) Operator shall repair and restore the Leased Premises and all its tracks and facilities to pre-event condition within a reasonable time after each Operator event. Operator shall report to the Director any major damage to the Leased Premises within one business day after the damage occurs.

(f) Operator shall provide dust control during its use of off-road areas when necessary, to the extent and degree determined by City in its sole and absolute discretion, which shall include the use of Equipment to spray the tracks when using off-road areas.

(g) Operator shall immediately clean up oil spills or any other fluid spills on the Leased Premises, including but not limited to the tracks, pits, and staging areas. Operator will comply with all federal, state, and local laws, rules and regulations pertaining to the cleanup and disposal of oil, chemicals, and other waste.

(h) The City may inspect the Leased Premises at any time to determine if any additional cleaning is necessary, including but not limited to fluid spills, major debris, screws, and glass. If so directed by the City after inspection of the Leased Premises, Operator shall perform all necessary additional cleanup at its sole expense.

(i) Operator shall be responsible, at its sole expense, for all maintenance of the Physical Facilities and Equipment, except as provided in paragraphs (k) through (m) below. Operator shall notify the Director of any damage or theft of Equipment or of the Physical Facilities within twenty-four (24) hours of the occurrence.

(j) Operator shall record all hours of use of each piece of Grounds Equipment in a log, which shall be provided to the City Fleet Services Supervisor the first day of each month. Once per year or as otherwise requested by City, Operator shall provide access to the Leased Premises and Grounds Equipment in order to allow the City to inspect and test the Grounds Equipment. Within ten (10) days after this Agreement is executed by both parties, and by January 15 of each year, the Agreement is in effect thereafter, Operator shall set up a yearly schedule for inspection and testing of the Grounds Equipment with Fleet Services. If requested by City, inspection and testing of the Grounds Equipment will occur at City Fleet. Operator shall be responsible for transporting Grounds Equipment to City Fleet. All inspections and/or testing work must be performed during the City Fleet Department's normal working hours Monday through Friday, from 8:00 a.m. to 5:00 p.m. Operator will only hire and use qualified persons to operate the Grounds Equipment.

(k) Operator shall be responsible for all routine maintenance of the Grounds Equipment. All routine maintenance shall be performed by a certified, licensed technician belonging to Operator's organization and approved by Director in writing. If Operator does not have available such a technician, then all routine maintenance shall be performed by City Fleet. All work must be performed during City Fleet's normal working hours, Monday through Fridays from 8:00 a.m. to 5:00 p.m. at City's Fleet's facility. Operator is responsible for transporting all equipment to City Fleet for maintenance and for all costs and fees incurred as a result. Operator shall be responsible for the cost of all parts necessary for routine maintenance of the Grounds Equipment. Operator shall obtain all parts necessary for routine maintenance from City Fleet. If the City Fleet Services Supervisor notifies Operator that it is unable to obtain the necessary parts, or that parts of like kind and quality may be obtained from an alternate source at a lower cost, then Operator, with the written approval of both the City Fleet Services Supervisor and Director, may obtain parts from such alternate source. For the purposes of this Agreement, "routine maintenance" means all simple, small-scale maintenance normally associated with regular and general upkeep, both preventative and to address normal wear and tear, and specifically includes but is not limited to the replacement or changing of fluids, filters, tires, bulbs, and fuses, but shall not include major repair or replacement of parts or subsystems.

(l) Operator shall pay the first one thousand five hundred dollars (\$1,500) per occurrence, to make major repairs and/or replacements to the Grounds Equipment. Thereafter, the City shall pay any and all remaining amounts necessary to repair and/or replace the Grounds Equipment so long as the repair and/or replacement is not necessitated by the negligence of Operator, its employees, agents, subcontractors, guests, and/or invitees; except that the City may, within its sole and absolute discretion, choose not to repair or replace Grounds Equipment if it determines the repair and/or replacement is not necessary to the operation of the Leased Premises. In addition to the requirements in paragraph 11(i), Operator shall notify the City Fleet Services Supervisor when an item of Grounds Equipment is in need of major repair within twenty-four (24) hours of the damage and schedule an appointment with the City Fleet Services Supervisor to bring the item in for repair. All repairs to the Grounds Equipment shall be performed by City Fleet during City Fleet's normal working hours, Monday through Friday, from 8:00 a.m. to 5:00 p.m. at City Fleet's facility, unless otherwise mutually agreed upon by the Parties as provided herein. Operator is responsible for transporting all equipment to City Fleet for repairs and for all costs and fees incurred as a result. All invoices provided to Operator for maintenance, repair, and/or replacement of the Physical Facilities or Grounds Equipment shall be paid within forty-five (45) days of the invoice. City and Operator may negotiate to allow an independent professional to perform repairs of the Grounds Equipment on the Leased Premises. Operator shall provide a detailed written quote describing the nature and extent of the repair, necessary parts, labor time, and any costs and fees for approval by Director and City Fleet Services Supervisor. Director and City Fleet Services Supervisor may request additional information as needed in order to evaluate the request. Operator must obtain the prior approval of Director and City Fleet Services Supervisor prior to any work being performed, which approval may be withheld by City in its sole and absolute discretion. For the purposes of this Agreement, "repair or replacement" means: a repair that necessitates the removal of an integral part; wherein replacement of a part with a new, used, or rebuilt one is necessary; or one in which a substantial amount of time to complete is required; and specifically includes but is not

limited to engine and transmission rebuilding or replacement, timing of the engine or replacement of timing chains, repair or replacement of the drive train, chassis, suspension system, axels, water pump, belts, replacement of glass, or any auto-body work.

(m) Operator shall pay the first five hundred dollars (\$500) per occurrence, to repair and/or replace the Concession, Office/Mobile Home, and Tower Equipment. Thereafter, the City shall pay any and all remaining amounts necessary to repair and/or replace the Concession, Office/Mobile Home, and Tower Equipment so long as the repair and/or replacement is not necessitated by the negligence of Operator, its employees, agents, subcontractors, guests, and/or invitees; except that the City may, within its sole and absolute discretion, choose not to repair or replace the Concession, Office/Mobile Home, and Tower Equipment if it determines the repair and/or replacement is not necessary to the operation of the Leased Premises. All invoices provided to Operator for maintenance, repair, and/or replacement of Concession, Office/Mobile Home, and Tower Equipment, or any other Equipment listed in Exhibit B, shall be paid within forty-five (45) days of the invoice.

(n) Operator shall be responsible for maintaining all tracks in substantially the same condition as they existed on the date of this Agreement except for normal and acceptable wear and tear. Operator shall be responsible for winterization and freeze protection of all plumbing on the Leased Premises during winter months. Major HVAC equipment failures due to normal wear and tear will be repaired or replaced by the City at its discretion.

12. CONSERVATION EASEMENT; SPECIAL EVENTS; POLICE DEPARTMENT USE; KEYS; AND PYROTECHNICS.

(a) **Conservation Easement.** Operator understands and agrees that this Agreement and Operator's use of the Leased Premises is subject to the conditions and limitations of the Conservation Easement recorded July 2, 2001 as Reception No. 1390542 in the records of the Pueblo County Clerk and Recorder ("Easement"). Operator acknowledges receipt of a copy of the Easement. City makes no representation or warranty that Operator's intended use of the Park or the provisions of this Agreement are approved uses or allowed under the Easement.

(b) **Special Events.** Operator shall notify Director of its intent to host special events upon the Leased Premises at least forty-five (45) days in advance of the event date. Director shall evaluate each request and shall notify Operator of his approval or disapproval in writing at least thirty (30) days prior to the event date. For purposes of this Agreement, "special events" shall be those that require the relocation, modification, or removal or a structure or improvement on the Leased Premises, or a physical modification to a feature or surface configuration of any land area within the Leased Premises, including but not limited to moving the bleachers or mobile home, or digging mud pits, holes, or other cavities.

(c) **Police Department Use.** Operator shall negotiate in good faith with the Pueblo Police Department to allow the Police Department use of the Leased Premises for training purposes. Operator shall be responsible for any damage that occurs during Pueblo Police Department or other law enforcement use of the Leased Premises unless otherwise provided by written agreement.

(d) **Keys.** Operator must provide access per City request to the Leased Premises, including but not limited to any buildings, facilities, and tracks. In the event that Operator changes any locks to any building, gate, or facilities, Operator must within twenty-four (24) hours provide a copy of all new keys to the Director. Every key should be marked or otherwise identify the purpose and/or location within the Leased Premises to which each key pertains.

(e) **No Pyrotechnic Devices.** Operator shall under no circumstance use pyrotechnic devices, explosives, fireworks, or incendiary devices of any kind anywhere in the Park without prior written approval from the Fire Department and the Director.

13. INSURANCE, INDEMNITY, AND RELEASES.

(a) **Insurance and Proof of Insurance.** Operator shall, within ten (10) days after this Agreement is executed by both parties, and on the anniversary of such execution each year, obtain the following insurance coverages and provide to the City the following Certificates of Insurance showing that Operator has obtained the following

insurance coverages. Operator shall maintain all such insurance coverages at all times during the term of this Agreement:

(1) **Workers' Compensation Insurance**, including Occupational Disease Provisions, effective during the entire Term of this Agreement and any extension thereof, fully complying with the provisions of the Workers' Compensation Act, as amended, of the State of Colorado. Such insurance shall be obtained notwithstanding that Operator may have no employees as defined under said Act or that Operator might otherwise avail itself of an exemption under the Act from any legal requirement to obtain such coverage. Such insurance shall cover all employees of Operator performing work at the Leased Premises irrespective of whether such employees may be shareholders, managers, partners, or owners of Operator or exempt employees under the Act. If any class of employees engaged in hazardous work under this Agreement at the Leased Premises is not protected by the Workers' Compensation statute, the Operator shall provide, and similarly shall cause each subcontractor to provide, special insurance for the protection of such employees not otherwise protected. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the City.

(2) **Commercial General Liability Insurance** effective during the entire Term of this Agreement and any extension thereof, issued to and covering the liability of Operator with respect to all work and events performed by Operator and its subcontractors under this Agreement, to be written on a Commercial General Liability policy form. This insurance shall be written in amounts not less than \$2,000,000 for each occurrence and \$4,000,000 aggregate. This policy of insurance shall be endorsed naming the City of Pueblo, its Enterprises, controlled Nonprofit Corporations, their officers, agents, and employees as additional insured. The policy shall also provide coverage for contractual liability assumed by Operator under the provisions of this Agreement, and "Completed Operations and Projects Liability" coverage. The Commercial General Liability Insurance policies shall contain a waiver of subrogation.

(3) **Commercial Automobile Liability Insurance** effective during the entire Term of this Agreement and any extension thereof, written with limits of liability for injury to one person in any single occurrence of not less than \$1,000,000 and for any injury to two or more persons in any single occurrence of not less than \$1,000,000. This policy of insurance shall be endorsed naming the City of Pueblo, its Enterprises, controlled Nonprofit Corporations, their officers, agents, and employees as additional insured. This insurance shall include uninsured/underinsured motorist coverage and shall protect Operator from any and all claims arising from the use both on and off the Basic Services site of motor vehicles, including any automobiles, trucks, tractors, backhoes, and similar equipment whether owned, leased, hired, or used by Operator. The Comprehensive Automobile Liability Insurance policies shall contain a waiver of subrogation.

(b) **Notices to City in Policies.** Every insurance policy and certificate of insurance specified in subsection (a) of this Section shall contain a provision and/or special endorsement requiring that the Insurer notify the City in writing, in the manner provided in this Agreement, ten (10) days prior to any formal action being taken in the event that any such policy or coverage will be revoked, terminated, rescinded, or lapse.

(c) **Releases and Claims Waiver.** Operator forever releases and waives any and all claims, known and unknown, presently existing or arising in the future, and any suit or action in law or equity against the City, its Enterprises, controlled Nonprofit Corporations, their officers, agents, independent contractors, and employees ("Released Parties") in any court or tribunal, based on tort, statute, violation of civil rights, or any other legal theory, for any physical injury, psychological injury, death, or property damage or loss that Operator, its officers, agents, independent contractors, or employees may suffer, related to or caused by the Released Parties, or any vehicle, object, thing, or activity in any building or facility owned, leased, operated or controlled by the Released Parties.

(d) **Operator Covenants Not to Sue.** Operator shall not file, pursue or prosecute any suit, action or proceeding, in law or in equity, in any court or tribunal, against the Released Parties, based on tort, statute, violation of civil rights, or any other legal theory, for any physical injury, psychological injury, death, or property damage or loss that Operator, its officers, agents, independent contractors, or employees may suffer related to or caused by the

Released Parties, or any vehicle, object, thing, or activity in any building or facility owned, leased, operated or controlled by the Released Parties.

(e) **Operator Indemnifies.** Operator shall indemnify, defend and hold harmless the Released Parties against any liability for any damages, attorney's fees, and restitution that may be imposed by any court or tribunal in any suit, action or proceeding in law or equity filed by any person or entity based on tort, statute, violation of civil rights, or any other legal theory, for any physical injury, psychological injury, death, or property damage or loss that any such third person may suffer as a result of any cause, including related to or caused by the Released Parties, or any vehicle, object, thing, or activity in any building or facility owned, leased, operated or controlled by the Released Parties.

(f) **Operator Must Obtain Releases from Third Parties.** Prior to entering the Park on any Operator Event day, all Operator employees and agents, and event participants MUST sign a Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement ("Release Agreement"), the language of which must be approved by the Director, in the presence of Operator personnel and all executed Release Agreements shall be maintained and kept on file by Operator for at least three (3) years from the date of the Release Agreements. Originals or copies of the Release Agreements shall be delivered to the City upon its request. Operator's obligation to maintain these records and provide them to the City upon request shall survive termination or expiration of this Agreement. Operator shall bear sole responsibility for full compliance with this Section. Entry into the Park by any Operator employee, agent, or event participant during an event prior to the execution of a Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement by such individual shall constitute a material breach of this Agreement by Operator.

14. IMPROVEMENTS.

(a) **Operator Fuel Storage Facility.** If Operator decides to utilize the above ground fuel storage facility, it shall utilize and maintain the system in compliance with all federal, state, and city ordinances and laws, specifically including all City fire ordinances and regulations. Any other fuel vendor hired by Operator shall also meet with the City Fire Department prior to selling fuel to ensure they are in compliance with all federal, state, and city ordinances and laws.

(b) **Costs of Improvements; Approval Required.** All costs associated with the development, installation, construction, and maintenance of any improvements shall be the sole responsibility of the Operator, unless City and Operator mutually agree to an offset or reduction in rent as provided herein. Operator shall submit to City a written proposal for all proposed improvements that includes the estimated value of the improvements and anticipated cost of development, installation, construction, and maintenance. Operator must obtain the prior written approval of the Director and Mayor for any proposed improvements and a certificate from the Pueblo Regional Building Department approving any proposed improvements. All improvements must be approved in writing by the City prior to installation or construction. Any proposed changes must meet all building permit regulations and be constructed, installed, maintained, and operated in compliance with all local, state, and federal laws and regulations. Operator shall maintain the improvements in good and safe condition, appearance and state of repair, regardless of the cause or need for maintenance and repair. City and Operator may negotiate to offset or reduce the yearly rental rates as provided in paragraph 5(a)(1) by the cost of site improvements installed or constructed by Operator. All offsets or reductions in rent shall be mutually agreed upon by Operator, Director, and Mayor and be reduced to a writing signed by both Parties prior to any work being performed. To receive a reduction or offset, Operator must submit a copy of a final invoice and proof of payment to Director in order to receive credit for any reduction in rent. If an improvement is not performed or completed, or Operator's payment for the same is not completed, rejected, or dishonored for any reason, rent shall be paid according to the provisions in paragraphs 5(a)-(c).

(c) **Improvements Become City Property Upon Termination of Agreement.** All improvements shall become the property of the City at the option of the City upon termination or expiration of this Agreement.

15. MAINTENANCE OF ACCOUNTS AND RECORDS. Operator shall keep and maintain accurate and complete accounts and records of all activities and transactions conducted by Operator on or from the Leased Premises, including without limitation sales receipts, inventory lists, equipment logs, third party Release Agreements, purchase orders, payroll, financial records, tax returns, and bank statements, or any subcontractor contracted by Operator to work, manage, or operate all or a portion of the Leased Premises, in accordance with generally accepted accounting

principles, which accounts and records shall be available for inspection, copy and audit by City during normal business hours. Operator shall retain all such accounts and records for a minimum period of three (3) years after termination or expiration of this Agreement. Operator shall, at least quarterly, submit financial reports evidencing profits, ticket sales, and any other financial information the Director requires.

16. INTELLECTUAL PROPERTY. This Agreement is solely for access to and use of the Leased Premises. Operator shall not photograph, film, or broadcast any Event or any part thereof without first obtaining the prior written consent of the City, except that Operator may post pictures and videos to the Pueblo Motorsports Park website and social media site so long as the same portray the City in a positive light. City reserves the right to remove or require the removal of any information, pictures, or videos from Operator's social media site if it determines, in its sole and absolute discretion, that the same do not positively portray the City or are misleading in any way. In addition, no footage or images obtained from City access granted herein may be reproduced, sold, broadcast, commercially exploited, or distributed without a separate written license agreement from the City authorizing such use.

17. NO REPRESENTATION OR WARRANTY OF CONDITION OR FITNESS. THE LEASED PREMISES IS PROVIDED ON AN "AS IS" "WITH ALL ITS FAULTS" BASIS, AND CITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE CONDITION OR FITNESS OF THE LEASED PREMISES FOR OPERATOR'S EVENTS OR FOR ANY PARTICULAR USE OR PURPOSE. Accordingly, Operator is hereby advised that Operator shall be solely responsible for personally inspecting the Leased Premises before execution of this Agreement and commencement of any Event. Operator's execution of this Agreement or commencement of any Event shall constitute an expressed acknowledgement by Operator that the Leased Premises is safe and adequate for Operator's permitted use. Operator shall have exclusive control of the Leased Premises during the pendency of this Agreement, subject to the City's right of access, and shall be responsible for all equipment and for adequate safeguard for the protection of Operator, its employees, agents, independent contractors, subcontractors, and representatives, and persons engaged in any activity on the Leased Premises. Notwithstanding any provision in this Agreement to the contrary or which may be construed to the contrary, City assumes no obligation or responsibility to keep or maintain the Leased Premises or any track or facility thereon in good and safe condition, appearance or state of repair, regardless of cause of need for maintenance and repair.

18. MINORS. No individual under the age of eighteen (18) years, including Junior Dragsters and Quarter Midget racers shall be allowed in any restricted area of the Leased Premises (which shall include the track surface, starting line area, garage areas, staging areas, run-off areas, trackside communications stations, and any other location as defined in generally accepted policies of liability coverage for Motorsports entities), without a (1) Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement, and (2) a Parental Consent to the Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement executed by each minor and the minor's parent or legal guardian. The language of the Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement and Parental Consent to the Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement must be approved by the Director. These documents must be signed in the presence of Operator personnel and are required before said minor's entrance into the restricted areas of the Leased Premises. All executed documents shall be delivered maintained and kept on file by the Operator for three (3) years from the dated of the Release Agreements. Originals and/or copies of the Release Agreements shall be delivered to the City upon request. Operator's obligation to maintain these records and provide them to the City upon request shall survive termination or expiration of this Agreement. Operator shall bear sole responsibility for full compliance with this Section. Entry by any individual to a restricted area prior to the execution of the Agreements listed above in this Section by the proper party shall constitute a material breach of this Agreement by Operator.

19. TERMINATION AND DEFAULT.

(a) **Default and Correction.** If either party is in default hereunder, the non-defaulting party may give written notice describing the default to the defaulting party. If the defaulting party does not correct such default within twenty (20) days after receipt of said notice, or if the default cannot be corrected within said 20-day period and the defaulting party fails to commence action to correct the default with said 20-day period and thereafter diligently pursues corrective action, the non-defaulting party may upon an additional five (5) days' notice given to the defaulting party terminate this Agreement.

(b) **Termination for Breach.** Notwithstanding the foregoing, if Operator commits a breach of any term of this contract, City may terminate this Agreement upon thirty (30) days' prior written notice to Operator specifying breach and the date of termination. Except for accrued rights and liabilities and those covenants which survive termination hereunder, upon such termination each party shall be released from all future duties and obligations hereunder. Material breaches shall include:

(c) **Termination Without Cause.** Notwithstanding the foregoing, either party may terminate this Agreement without cause by providing sixty (60) days prior written notice to the other party. No premature termination of this Agreement shall affect any right of either party accruing prior to such termination, whether such right is conferred by the terms of this Agreement or arises under general principles of law.

20. NOTICE. Any notice required or permitted to be given hereunder shall be in writing and delivered personally or by certified mail, postage prepaid, as follows:

(a) If to City: Director of Parks and Recreation, City of Pueblo, 800 Goodnight Avenue, Pueblo, Colorado 81005; and Mayor, City of Pueblo, #1 City Hall Place, 2nd Floor, Pueblo, Colorado 81003

(b) If to Operator: [Operator's Mailing Address]

21. STATE-IMPOSING MANDATES PROHIBITING ILLEGAL ALIENS FROM PERFORMING WORK.

(a) At or prior to the time for execution of this Agreement, Operator shall submit to the Purchasing Agent of City its certification that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Operator will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to §8-17.5-102(5)(c) C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Operator shall not:

(1) Knowingly employ or contract with an illegal alien to perform work under this Agreement.

(2) Enter into an Agreement with a subcontractor that fails to certify to Operator that the subcontractor shall not knowingly employ or Agreement with an illegal alien to perform work under this Agreement.

(c) The following state-imposed requirements apply to this Agreement:

(1) Operator shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or Department Program.

(2) Operator is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(3) If Operator obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Operator shall:

A. Notify the subcontractor and the City's Purchasing Agent within three (3) days that Operator 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 (3) days of receiving the notice required pursuant to subparagraph (c)(III)A. above the subcontractor does not stop

employing or contracting with the illegal alien; except that Operator shall not terminate the Agreement with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(4) Operator is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereafter referred to as "CDLE") made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

(d) Violation of this Section by Operator shall constitute a breach of Agreement and grounds for termination. In the event of such termination, Operator shall be liable for City's actual and consequential damages.

(e) As used in this Section, the term "subcontractor" shall mean any subcontractor of Operator rendering services within the scope of this Agreement.

22. MISCELLANEOUS.

(a) **Additional Documents.** The Parties agree to execute any additional documents or take any additional action that may be necessary to carry out this Agreement.

(b) **Force Majeure.** Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires not caused by a breach of this Agreement, floods, storms, lightning strikes, labor strikes, labor disputes, accidents, regulation or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

(c) **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective legal representatives, successors, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

(d) **Section Captions.** The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

(e) **Integrations, Severability, Amendment, and Counterparts.** This Agreement represents the entire agreement between the Parties and supersedes all prior discussions and written agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all the remaining provisions of this Agreement shall continue in full force and effect. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together constitute one and the same Agreement.

(f) **No Third-Party Beneficiaries; No Waiver of Immunities.** Nothing in this Agreement is intended, nor should it be construed, to create any rights, claims, or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations conferred under Federal or State law, including but not limited to the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S.

(g) **Waiver of Breach.** A waiver by any party to this Agreement or the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

(h) **Authority of Signers.** Each person signing this Agreement on behalf of a party represents and warrants that he or she has the requisite power and authority to enter into, execute, and deliver this Agreement on behalf of such party and that this Agreement is valid and legally binding obligation of such party enforceable against it in accordance with its terms.

(i) **Attorney's Fees and Costs of Collections.** In the event that it becomes necessary for the City to bring any action or proceeding to collect unpaid utilities, rent, damages, janitorial fees, costs, or other sums due under

this Agreement, to enforce any provision of this Agreement, to recover damages for Operator's breach of this Agreement, or to seek specific performance of this Agreement, the prevailing party shall be entitled to collect its reasonable attorney fees, costs of suit, and costs of collection as part of the judgement in such action or proceeding.

(j) **No Multi-year Fiscal Obligation on City.** This Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, § 20 Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after 2021, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City.

(k) **Certain Provisions Survive Expiration and Termination.** The provisions of this Agreement pertaining to insurance, releases, indemnification, payments to the City, and liability shall survive the expiration of the term of this Agreement and termination of this Agreement and continue in effect for a period of five (5) years following the termination of this Agreement and for such further time as it may take to completely and finally negotiate, settle, or litigate any claim or suit concerning the same.

(l) **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in a state court with jurisdiction located in Pueblo County, Colorado.

(m) **Assignment.** This Agreement shall not be reassigned by Operator without the prior written consent of the City, which consent may be granted, denied, or conditioned in City's sole and absolute discretion.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered on this ____ day of _____, 20____.

[OPERATOR]

CITY OF PUEBLO,
A MUNICIPAL CORPORATION

By: _____

By: _____

Name: _____

President of City Council

Title: _____

ATTEST:

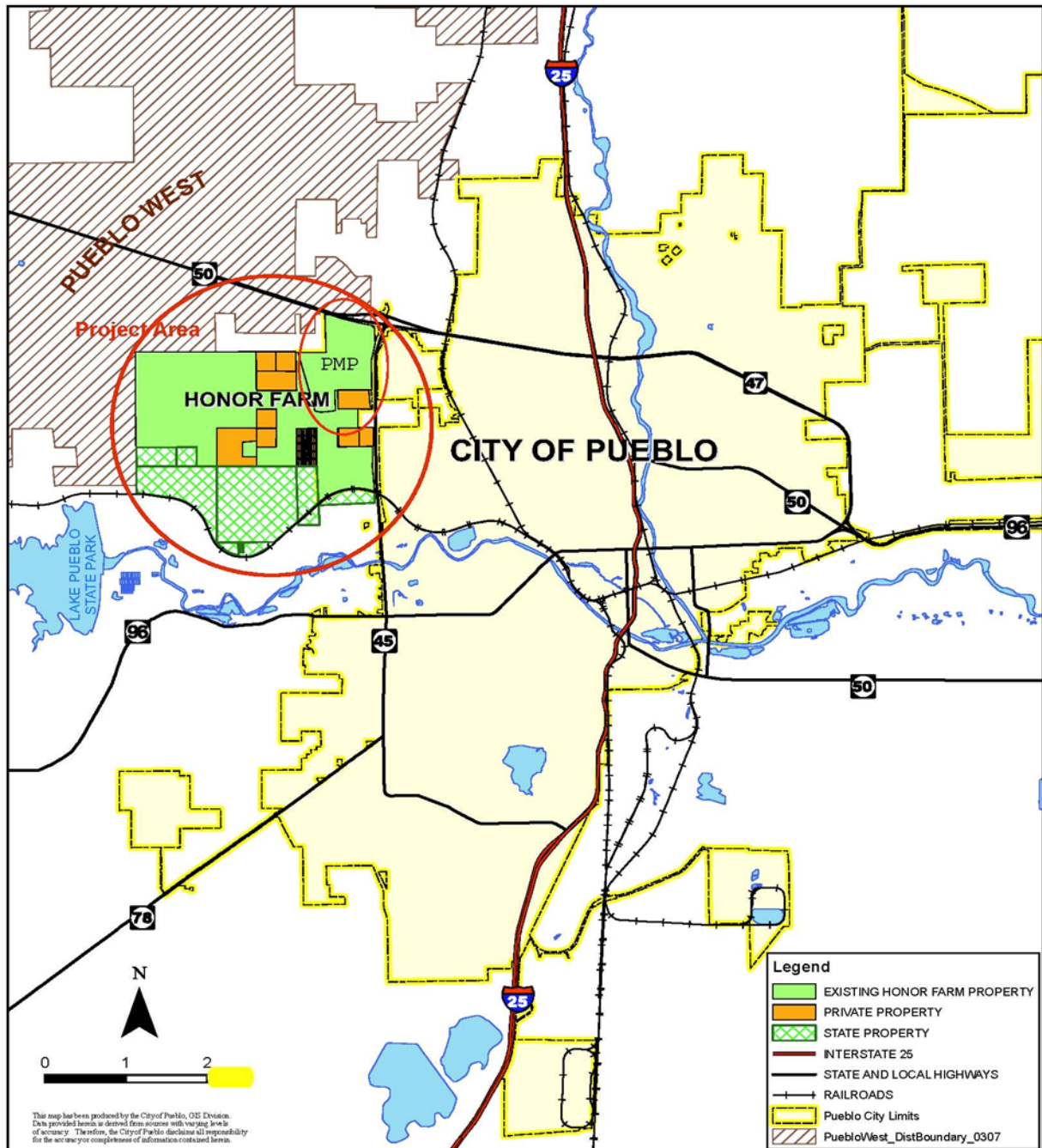
City Clerk

APPROVED AS TO FORM:

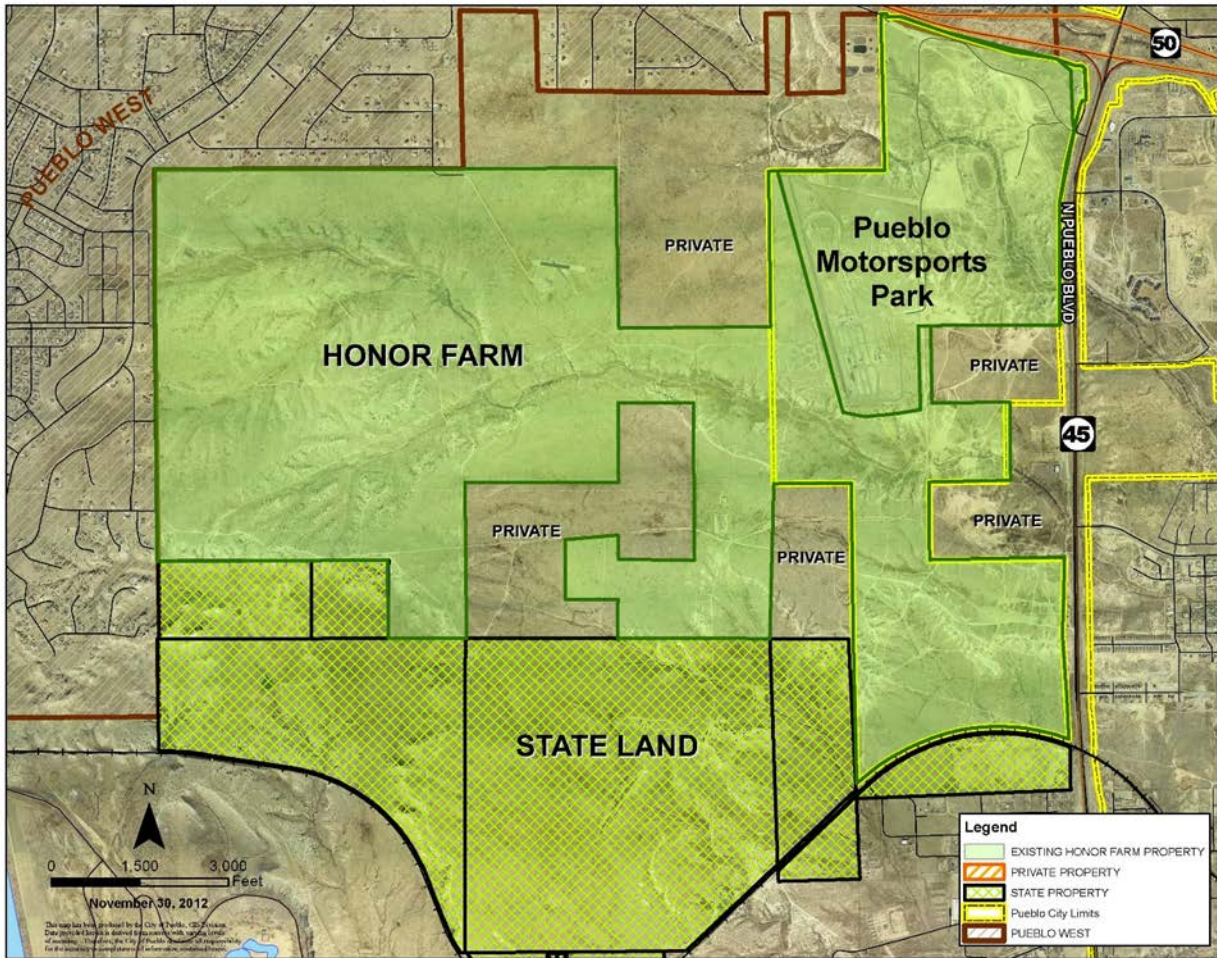
City Attorney

AREA MAP

City of Pueblo
Pueblo Motorsports Park Project
AREA MAP



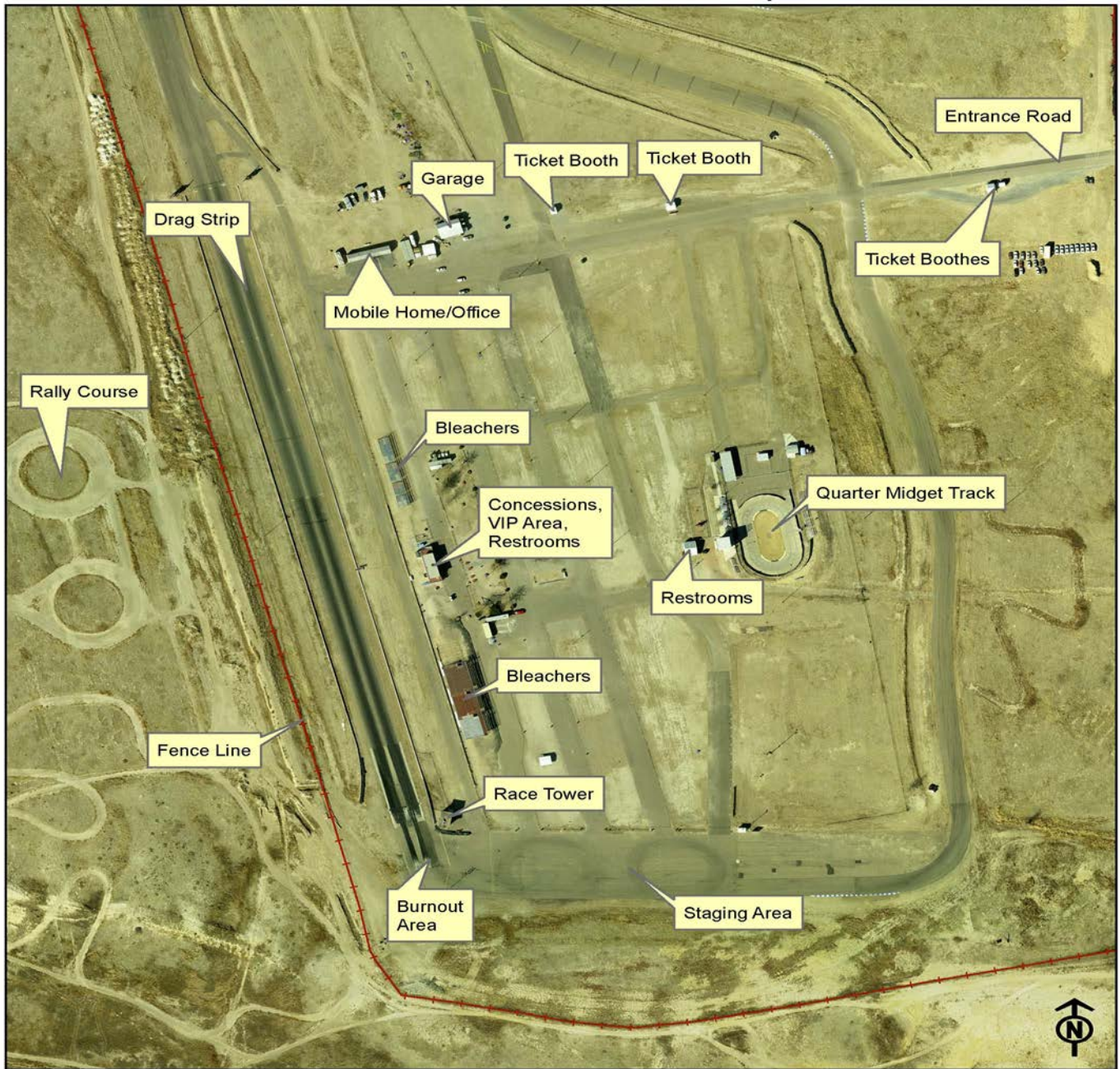
HONOR FARM MAP



RACE FACILITY MAP I



RACE FACILITY MAP II



<u>Vehicle #</u>	<u>Year</u>	<u>Description</u>	<u>Capital Asset</u>
226019	2012	SWEEPER, 2012 LAYMOR Model SM300	17716
226020	2012	TRACTOR, KUBOTA M108S	17723
226021	2012	SWEEPMASTER/RUBBER LAYDOWN ATTACHMENT	25306
226022*	2004	ATV, POLARIS 600, GREEN*	25256
226023*	2007	ATV, POLARIS 330 TRAILBOSS, YELLOW*	25257
226028*	1998	TRUCK, FORD F150 PICKUP, 1 TON, TEAL*	15126
226902*	1999	TRAILER, HANDMADE FLATBED*	17371
221814*	1978	DUMP TRUCK, C60, 2 ½ TON*	NA
221499*	1973	WATER TRUCK, C60, 2 ½ TON*	NA
		2,000 GALLON PLASTIC WATER TANK*	NA
221911*	1979	TRACTOR, FORD 5600*	NA
		JOHN DEERE BRUSH HOG MOWER, 6', MODEL #616*	NA
		(2) - 500 GALLON FUEL TANKS	NA
		FUEL CONEX STORAGE, 40' x 8'	NA
		HURST HYDRAULIC CUTTER/HYDRAULIC UNIT	NA
		WATER SUPPRESSION TANK, 70 GALLONS	NA
		HOSE REEL W/50' HOSE	NA
		(12) - FIRE EXTINGUISHERS	NA

CONCESSIONS

<u>Description</u>	<u>Capital Asset</u>
UPRIGHT FREEZER, Frigidaire	31457
GRIDDLE/RANGE, Vulcan	NA
3 BAY SINK	NA
DISPLAY COOLER, True, Model #GDM-23	NA
STAINLESS STEEL PREP TABLE	NA
FREEZER, DEEP, Frigidaire	31458
REFRIGERATOR, 2 DOOR, True	NA
(2) - STORAGE RACKS	NA
WATER HEATER	NA
EXTRA WATER TANK	NA
WALL HAND SINK	NA
REFRIGERATOR, MINI, Delfield	NA
DEEP FRYER, Dean	31466
MICROWAVE OVEN, Panasonic	NA
PRESSURE WATER TANK, BLUE	NA
(3) - METAL RACKS	NA
SINGLE BAY SINK	NA

OFFICE/MOBILE HOME

<u>Description</u>	<u>Capital Asset</u>
CLOTHES WASHER, Lady Kenmore	NA
CLOTHES DRYER, Kenmore	NA
STOVE, ELECTRIC, Whirlpool	NA
FILE CABINET, BLACK	NA
DESK, BLUE	NA

*AS IS - OPERATOR RESPONSIBLE FOR MAINTENANCE AND/OR REPLACEMENT

TOWER

Description

REFRIGERATOR, MINI, Kenmore
REFRIGERATOR/FREEZER, WHITE, Westinghouse
(9) – FIRE EXTINGUISHERS
FLOOR JACK, LARGE (In Garage)
(2) – TORCHES (In Shed next to Tower)
BLOWER
CHRISTMAS TREE LIGHT

Capital Asset

Serial #11069446
NA
NA
NA
NA
NA
NA

MISCELLANEOUS

Description

DIAL-IN BOARD
4-PIECE PA SYSTEM
ANNOUNCERS SCREEN, Dell
COMPUTER OPERATED KEYBOARD AND MONITOR, Dell
MONITOR AND KEYBOARD, Dell
CASH REGISTER, ELECTRIC, ER-380M
CONTROL CONSOLE, Daktronics, All-Sport 5000 Series
(2) – ELECTRONIC SCOREBOARDS (Dragstrip)

Capital Asset

NA
NA
24982
NA
30910
NA
NA