

PILOT OPERATING AGREEMENT

This Pilot Operating Agreement (the “Agreement”) is made and entered into this 24th of March, 2021, by and between Bird Rides, Inc., located at 406 Broadway #369 Santa Monica, CA 90401 (the “Company”), and City of Coachella (the “City”) located at 53990 Enterprise Way, Coachella, CA 92236.

1. Statement and Purpose

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

2. Scope

This Agreement and its terms apply to any proposed deployment of stand-up electric scooter sharing systems within City’s jurisdictional boundaries. No person shall deploy a stand-up electric scooter sharing system in the City in violation of this Agreement. This Agreement and the Pilot shall remain in effect for a period of twelve (12) months, which shall expire on March 24, 2022. This Agreement and the Pilot can request a renew for one additional successive twelve-month period, which shall expire on March 24, 2023, if the Company provides written notice on its intention to renew at least ninety (90) days prior to the end of the then-current term. The City will provide the Company a response within thirty (30) days of written notice if it intends to renew the Agreement and Pilot for an additional twelve-month period.

3. Procedures

Upon effectiveness of this Agreement, Company shall provide an affidavit of compliance with the terms of this Agreement and provide appropriate indemnification. Company and Agreement shall comply with all the laws and regulations under the State of California Assembly Bill No. 2989, which amended Section 21235 of the California Vehicle Code, and State Law (Vehicle Code 22411), which states no person shall operate a motorized scooter at a speed in excess of 15 mph.

4. Operating Regulations

- a. Company, and/or its service providers, agents or assigns, shall be responsible for operating a Stand-up electric scooter program in the City with the below requirements.
- b. Stand-up electric scooters shall mean a device weighing less than 150 pounds, that has (i) handlebars and an electric motor, (ii) is solely powered by the electric motor and/or human power, and (iii) has a maximum speed of no more than 20 mph on a paved level surface when powered solely by the electric motor.
- c. Except as otherwise provided herein, City shall regulate the operation of Stand-up electric scooters in a manner no more restrictive than City’s regulation of bicycles.

- d. Stand-up electric scooters are to be ridden on streets, and where available, in bike lanes and bike paths. Stand-up electric scooters are to stay to the right of street lanes and to offer the right of way to bicycles in bike lanes and on bike paths. Users of Stand-up electric scooters shall be 18 or older. Users of Stand-up electric scooters who violate these provisions may be fined by City consistent with fines for cyclists.
- e. Company shall provide easily visible contact information, including toll-free phone number and/or e-mail address on each Stand-up electric scooter for members of the public to make relocation requests or to report other issues with devices.
- f. Hours of operation when the Company's Stand-up electric scooters will be made available to rent for residents are 4 a.m. to midnight (local time).
- g. Company shall provide a minimum of 100 vehicles at launch.
- h. When at cap, Company is permitted to increase its fleet size on a monthly basis in the event that the Company's fleet provides on average of more than two rides per Stand-up electric scooter per day within that Zone. City may request data from Company on a monthly basis to determine and demonstrate the utilization rate of vehicles in Company's fleet, pursuant to Section 7.

5. Parking

- a. Users of Stand-up electric scooters shall park devices upright in the furniture zone of the sidewalk, beside a bicycle rack or in another area specifically designated for bicycle parking, or on the street next to an unmarked curb.
- b. Users shall not park Stand-up electric scooters in such a manner as to block the pedestrian clear zone area of the sidewalk; any fire hydrant, call box, or other emergency facility; bus bench; or utility pole or box.
- c. Users shall not park Stand-up electric scooters in such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building.
- d. Users shall not park Stand-up electric scooters in such a manner as to impede or interfere with the reasonable use of any bicycle rack or news rack.
- e. Users may park Stand-up electric scooters in on-street parking spaces in the following circumstances:
 - i. When marked parking spaces are officially designated stations for such devices in business districts;
 - ii. Where the furniture zone is less than three feet wide;
 - iii. Where there is no furniture zone;
 - iv. In neighborhoods with rolled curbs, or with inadequate sidewalk space;
 - v. In marked parking spaces designated for motorcycles.
- f. Users may park Stand-up electric scooters on blocks without sidewalks only if the travel lane(s) and 6-foot pedestrian clear zone are not impeded.
- g. Users shall not park Stand-up electric scooters in the landscape/furniture zone directly adjacent to or within the following areas, such that access is impeded:

- i. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
 - ii. Loading zones;
 - iii. Disabled parking zone;
 - iv. Street furniture that requires pedestrian access (e.g., benches, parking pay stations, bus shelters, transit information signs, etc.);
 - v. Curb ramps;
 - vi. Entryways; and
 - vii. Driveways.
- h. Users of Stand-up electric scooters who violate these provisions may be fined by City consistent with fines for cyclists.
- i. Company may stage its Stand-up electric scooters in permitted parking areas as described in this section. To the extent Company desires to stage Stand-up electric scooters in areas other than the public right-of-way, Company must first obtain the right to do so from the appropriate City department, property owner, or public agency.

6. Operations

- a. Company shall maintain 24-hour customer service for customers to report safety concerns, complaints, or to ask questions. Company shall maintain a multilingual website, call center, and/or mobile app customer interface that is available twenty-four hours a day, seven days a week. The aforementioned shall be compliant with the Americans with Disabilities Act.
- b. In the event a safety or maintenance issue is reported for a specific device, that Stand-up electric scooter shall be made unavailable to users and shall be removed within the timeframes provided herein. Any inoperable or unsafe device shall be repaired before it is put back into service.
- c. Company shall respond to reports of incorrectly parked Stand-up electric scooters, Stand-up electric scooters continuously parked in one location for more than 72 hours, or unsafe/inoperable Stand-up electric scooters, by relocating, re-parking, or removing the Stand-up electric scooters, as appropriate, within 24 hours of receiving notice that must include the location of the Stand-up electric scooter.
- d. Company shall provide notice to all users that:
 - i. Stand-up electric scooters are to be ridden on streets, and where available, in bike lanes and bike paths;
 - ii. Stand-up electric scooters are to stay to the right of street lanes and to offer the right of way to bicycles on bike lanes and bike paths;
 - iii. Helmets are encouraged for all users;
 - iv. Parking must be done in the designated areas; and
 - v. Riding responsibly is encouraged.
- e. Stand-up electric scooter riders are required to take a photo whenever they park their scooter at the end of a ride.
- f. Company shall provide education to Stand-up electric scooter riders on the City's existing rules and regulations, safe and courteous riding, and proper parking.

7. Data Sharing

City may require Company to provide anonymized fleet and ride activity data for all trips starting or ending within the jurisdiction of City on any vehicle of Licensee or of any person or company controlled by, controlling, or under common control with Licensee, provided that, to ensure individual privacy:

- a. such data is provided via an application programming interface, subject to Company's license agreement for such interface, in compliance with a national data format specification such as the Mobility Data Specification;
- b. any such data provided shall be treated as trade secret and proprietary business information, shall not be shared to third parties without Company's consent, and shall not be treated as owned by the local authority; and
- c. such data shall be considered personally identifiable information, and shall under no circumstances be disclosed pursuant to public records requests received by the local authority without prior aggregation or obfuscation to protect individual privacy.

8. Indemnification

Company agrees to indemnify, defend and hold harmless City (and City's/ County's employees, agents and affiliates) from and against all actions, damages or claims brought against City arising out of Company's negligence or willful misconduct, except that Company's indemnification obligation shall not extend to claims of City's (or City's employees', agents' or affiliates') negligence or willful misconduct. City expressly acknowledges that in no event shall Company be liable for any special, indirect, consequential or punitive damages. Company's indemnification obligations shall survive for a period of one (1) year after expiration of this Agreement. Company shall be released from its indemnification obligations under this section if the loss or damage was caused by the City's negligent construction or maintenance of public infrastructure. City's right to indemnification shall be contingent on City notifying Company promptly following receipt or notice of any claim; Company shall have sole control of any defense; City shall not consent to the entry of a judgment or enter into any settlement without the prior written consent of Company.

9. Insurance

Company shall provide City with proof of insurance coverage exclusively for the operation of Stand-up electric scooters including: (a) Commercial General Liability insurance coverage with a limit of no less than \$1,000,000.00 each occurrence and \$5,000,000.00 aggregate; (b) Automobile Insurance coverage with a limit of no less than \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate; (c) Umbrella or Excess Liability coverage with a limit of no less than \$5,000,000.00 each occurrence/aggregate; and (d) where Company employs persons within the City, Workers' Compensation coverage of no less than the statutory requirement.

10. Delivery of Notices

a. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

City:

City of Coachella

53990 Enterprise Way

Coachella, CA 92236

Attn: **Gabriel Martin**

Economic Development Director

Phone: (760) 398-3502

E-mail: gmartin@coachella.org

Company:

Bird Rides, Inc.

406 Broadway, Suite #369

Santa Monica, CA 90401

Attn: **Legal Department**

Phone:

E-mail: birdlegal@bird.co

b. Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

11. Exclusivity

a. This designation may not be assigned or transferred to any other party. The parties acknowledge that Company may utilize independent business logistics providers to facilitate local operations. Company's use of these logistics providers does not constitute a transfer or assignment of this Agreement, and Company remains responsible for all obligations and requirements under this Agreement.

b. This section shall not apply to the private sale or rental of Stand-up electric scooters, provided that such scooters are not placed in the public right-of-way for shared public use.

c. No exclusivity is imputed or implied as to the market for shared mobility services generally, and this agreement and designation shall not apply to the operation of any shared mobility service with any vehicle other than Stand-up electric scooters.

CITY OF COACHELLA

BIRD RIDES, INC.

By: _____
William B. Pattison, Jr.
City Manager

By: _____
Austin Marshburn
Head of City and University Partnerships

Attest:

By: _____
Andrea Carranza,
Deputy City Clerk

Approved as to Form:

****Approved Form****

By: _____
Carlos Campos,
City Attorney
Best Best & Krieger LLP