

PILOT OPERATING AND LICENSE AGREEMENT

This Pilot Operating and License Agreement (the “Agreement”) is entered into by and between Bird Rides, Inc., located at 406 Broadway #369 Santa Monica, CA 90401 (“Company”), and the City of Tualatin located at 18880 SW Martinazzi Ave, Tualatin OR 97062 (the “City”) as of _____, 2022

1. Statement and Purpose

The purpose of this Agreement is to grant limited authority to Company to operate a stand-up electric scooter sharing system on property owned or controlled by the City (the “Pilot Program”) as well as to establish interim rules and regulations governing the Pilot Program. The Pilot Program is further intended to ensure that the use of stand-up electric scooters in the City is consistent with the safety and well-being of bicyclists, pedestrians, and other users of the public rights-of-way.

2. Scope, Term and Termination

This Agreement and its terms apply to any proposed deployment of stand-up electric scooter sharing systems within City’s jurisdictional boundaries. This Agreement and the Pilot Program shall remain in effect for a period of twelve months. After the initial 12-month Pilot Program, the City will determine if it wants to continue allowing the operation of stand up electric scooter sharing programs. If the City wishes to continue to allow such operations, the City and Company will move to a permanent, long-term agreement.

City may terminate this Agreement upon written notice if Company commits a breach and fails to remedy such breach within ten (10) business days after receiving written notice. By way of example and not limitation, Company’s breach of this Agreement includes: (i) a failure to reasonably manage placement and pick-up of scooters and (ii) violation of any laws or regulations.

Without limitation on its other rights and remedies, City may terminate this Agreement immediately upon notice to Company, if Company significantly or frequently: (i) fails to reasonably manage placement and pick-up of scooters; or (ii) violates any laws or regulations. As a prerequisite to exercising its termination rights under (i) of this section, City must have previously provided Company with notice of its failures to reasonably manage placement and pick-up of scooters so as to provide Company an opportunity to remedy the issue. For avoidance of doubt, responding to rebalancing notifications within the parameters, including timelines, described under Section 5 of this agreement, regardless of frequency, would not constitute a failure to manage the placement or pick-up of the scooters.

This Agreement shall immediately and automatically terminate, unless prohibited by applicable law, if: Company enters liquidation, has a receiver or administrator appointed over any assets related to this Agreement, makes any voluntary arrangement with any of its creditors, or ceases to carry on business, or any similar event under the law of any foreign jurisdiction.

3. Authorization

The City hereby grants a revocable, non-exclusive license to Company to implement Company's operation of the Pilot Program within and upon the City's rights-of-way during the term of this Agreement, subject to all of the terms and conditions set forth herein. This authorization is not a lease or an easement, and shall not be construed to transfer any real property interest in the public right of way or other City property. Notwithstanding this general grant of a license to Company, Company and its users shall abide by all general regulations imposed on uses of the rights-of-way, including closure notices.

This Agreement shall not be construed so as to transfer ownership or control of the City's rights of way to Company, or to any other party. The City makes no representations or warranties concerning the condition of the City's rights of way, or its suitability for use by Company, its contractors or customers.

This Agreement is intended to convey limited rights and interests only as to those rights-of-way in which the City has an actual interest. It is not a warranty of title or interest in any right-of-way, it does not provide Company with any interest in any particular location within the right-of-way, and it does not confer rights other than as expressly provided in this Agreement.

Company expressly understands and agrees that this Agreement does not grant Company or its contractors the ability to exclude, or prohibit others from using, the City's rights-of-way. Company further understands and agrees that the City's uses, needs, and obligations shall at all times supersede Company's privileges under this Agreement.

The City, in its sole discretion, may temporarily suspend the all or a part of the license granted in this section upon a significant weather event or other emergency, or if any other significant event or occurrence alters or causes the City to alter the everyday use of City rights-of-way, including but not limited to closures due to construction activities. Such a temporary suspension shall begin immediately upon notice and shall continue until the circumstances that created the need for the suspension have ceased.

4. Procedures

Upon effectiveness of this Agreement, Company shall provide an affidavit of compliance with the terms of this Agreement and provide evidence of appropriate indemnification and insurance.

5. Operating Regulations

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.

- a. Stand-up electric scooters shall meet the definition of a "Motor Assisted Scooter" per ORS 801.348.
- b. Company, and/or its service providers, agents or assigns, must obtain a valid business license from the City.

- c. While this Agreement and Pilot are in effect, Company shall pay the City a revenue-share of \$0.10 per ride to help fund protected bike lanes within the pilot areas. Company shall pay the revenue-share to the City on a quarterly basis, in arrears within 45 days from the end calendar quarter.
- d. 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 and in compliance with State law.
- e. 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/mixed use 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.
- f. Company shall provide easily visible contact information, including toll-free phone number and 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.
- g. Company shall make stand-up electric scooters available to rent 24 hours a day. City may, in its sole discretion and at any time, choose to limit such hours of operation.
- h. At any time, City may request Company to establish geo-fencing or reduced hours of operation to limit the operation of scooters in specific areas, during events, or to address other issues that arise during the Pilot Program. Company shall implement any such reasonable request within 3 business days of City making request in writing via email to Company.
- i. 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 mobile app customer interface that is available 24 hours a day, seven days a week. All contact methods must be compliant with the Americans with Disabilities Act. All reported issues must include location of stand-up electric scooter.
- j. 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 below. Any inoperable or unsafe device must be repaired before it is put back into service.
- k. In the event that the Company receives a report that a stand-up electric scooter has been incorrectly parked, parked in same location for greater than 72 hours, or reported as unsafe/inoperable, Company must respond within 4 hours during regulars business hours (8 am – 5 pm) or the next business day if outside normal business hours-to remediate the reported issue. Reported issues will be addressed by relocating, re-parking, or removing the stand-up electric scooter from service.
- l. 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.
- m. Company will provide education to Stand-up electric scooter riders on the City's existing rules and regulations, safe and courteous riding, and proper parking. Education materials will be created in coordination with the City and may be required throughout the pilot as necessary to address issues that arise.
- n. City may, in its reasonable discretion, require Company to rebalance the distribution of the stand-up scooters in specified areas if City deems the distribution too dense or too sparse, or if doing so will help promote equitable access. Company will comply with all such reasonable requests within 24 hours of receiving notice from the City.

6. Parking

- a. Users of stand-up electric scooters should 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 must not park stand-up electric scooters in such a manner as to impede sidewalks/walkways so they are impassible for pedestrian travel or block any curb ramp; 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, mailbox, 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 areas that impede access to:
 - i. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except next to an 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;
 - vii. Driveways;

- viii. Crosswalks; and
- ix. Underground utility, sewer or water facilities.
- h. Users of stand-up electric scooters who violate these provisions may be fined by City consistent with fines for cyclists. Company will be solely responsible for informing its users as to the requirements for properly parking stand-up scooters.
- 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.
- j. Company will undertake proactive, reasonable measures to prevent and deter improper parking or dumping of stand-up scooters on private property or public property outside of the right-of-way.
- k. Company must require stand-up electric scooter users to take a photo whenever they park their scooter at the end of a ride.
- l. Company must remove from the rights-of-way any or all stand-up scooters or other property owned or controlled by Company upon being ordered to do so by the City. Company shall be responsible for restoring the City's rights-of-way to its original condition as needed upon such removal, and the City shall not be liable for any damages resulting to Company by reason of such an order. Such removal and restoration of the City rights-of-way will be at the sole expense of Company. Upon failure of Company to remove stand-up scooters or other property as ordered within a reasonable time period, the City may perform the removal or work at Company's cost and/or initiate a claim against Company.
- m. Company will be fully responsible for re-parking or relocating stand-up scooters where a complaint has been received by the City or Company, or where stand-up scooters are otherwise found to be in violation of parking rules stated herein. Company is also solely responsible to third parties for addressing unauthorized stand-up scooters dumped or left unattended on private property, or on other public property, City will not be responsible under this Agreement for monitoring stand-up scooter parking or dumping on private property, or other public property.
- n. City may, but is not obligated to, impound stand-up scooters not parked in accordance with this Agreement or dumped on private or other public property. City must provide post-seizure notice to Company if impounding a scooter and shall supply a photograph demonstrating the violation for which the scooter was impounded. Prior to impounding a scooter, City must ensure compliance with Section 5.k. of this agreement. If the City incurs any costs or damages arising out of stand-up scooter parking or dumping complaints, violations, or other related costs that are not otherwise recovered with the City's collection of an impoundment release charge, Company shall reimburse the City for such costs within 30 days of receiving written or emailed notice.
- o. A per occurrence impoundment fee will be applied to any and all devices owned or controlled by Company as follows:
 - i. Initial impoundment fee of \$25 per device
 - ii. If not paid for and retrieved by Company within 24 hours of notice of impoundment, a \$20 storage fee per scooter, per day shall be added to the initial impoundment fee.

If an impounded scooter is not picked up within 30 days of notice of impoundment, the City will consider them to be abandoned property and will dispose of them in accordance with applicable law.

7. Data Sharing

Company will provide anonymized fleet and ride activity data for all trips starting or ending within the jurisdiction of City on any stand-up scooter of Company or of any person or company controlled by, controlling, or under common control with Company, 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 released by City under a public records request unless required by law and shall not be shared to third parties without Company's consent, which shall not be unreasonably withheld.

8. Indemnification

To the maximum extent allowed by law, Company hereby agrees to defend and indemnify the City and its elected officials, officers, employees, agents, and representatives from any and all claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Company (or its employees, agents, representatives or subcontractors) relating to this Agreement, whether such claims arise in contract, tort, or any other legal theory. Company is obligated to defend and indemnify the City and its elected officials, officers, employees, agents, and representatives pursuant to this Section whether a claim is asserted directly or indirectly against the any of them, e.g., a claim is asserted against someone else who then seeks contribution or indemnity from the City. Company's duty to defend and indemnify pursuant to this Section is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of Company. Company's indemnification obligations under this agreement shall not extend to claims of City's (or City's employees', agents' or affiliates') negligence or willful misconduct. Company's indemnification obligations shall survive for a period of two (2) years after expiration of this Agreement or the length of the applicable statute of limitations period for the claim in question, whichever is greater.

For the purposes of this Section, the term "claim" includes, but is not limited to, any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damages, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Company employs or engages others to perform work under this Agreement, including subcontractors, then Company shall ensure that each such persons or entities (and subsequent tiers of subcontractors) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as Company pursuant to this section.

9. Insurance

Company must maintain in full force and effect during the term of this Agreement the following liability insurance policies that protect Company and the City, as well as the City's officers, employees, and agents:

- (a) Comprehensive general liability insurance with limits of not less than:
 - (i) \$3,000,000.00 for bodily injury or death to each person;
 - (ii) \$3,000,000.00 for property damage resulting from any one accident; and
 - (iii) \$3,000,000.00 for all other types of liability.
- (b) Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of \$1,000,000.00 for each person and \$3,000,000.00 for each accident; and
- (c) Worker's compensation within statutory limits and employer's liability with limits of not less than \$1,000,000.00.

The insurance provided must be without prejudice to coverage otherwise existing and must name the City, its officers, employees, and agents as additional insureds. The coverage must apply to claims between insureds on the policy. Company must provide the City 30 days prior written notice of any cancelation or material alteration of insurance. If the insurance is canceled or materially altered, the Company must maintain continuous uninterrupted coverage in the terms and amounts required. The Company may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage in accordance with Oregon law. Company must maintain on file with the City sufficient proof of insurance or self-insurance acceptable to the City, certifying the coverage required.

10. Exclusivity

a. The parties acknowledge that Company may utilize independent business logistics providers to facilitate local operations. The parties further acknowledge that Company may perform any or all of the services contemplated hereunder, including the owning and/or operation of Stand-up electric scooters in City, through one or more of its wholly owned subsidiaries. Company's use of these logistics providers or performance through its wholly owned subsidiaries does not constitute a transfer or assignment of this Agreement, and Company remains responsible for all obligations and requirements under this Agreement.

b. 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.

11. Miscellaneous

a. All notices and communications to the City from Company shall be made in writing (includes electronic communications) and sent to the address below (mailing address and email address to be provided).

- b. In carrying out their responsibilities, the parties shall remain independent contractors, and nothing herein shall be interpreted or intended to create a partnership, joint venture, employment, agency, franchise or other form of agreement or relationship.
- c. Neither party may assign or sublet this Agreement without the written consent of the other party, which consent may be withheld at that party's sole discretion.
- d. If any provision of this Agreement is unenforceable to any extent, the remainder of this Agreement (or the application of that provision to any persons or circumstances other than those as to which it is held unenforceable) will not be affected by that unenforceability and will be enforceable to fullest extent permitted by law.
- e. No waiver of satisfaction of any condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.
- f. Company agrees to comply with all applicable Federal, State, and local laws as they may be adopted or amended from time to time. Company further acknowledges that its rights hereunder are subject to the lawful exercise of the power of the City to adopt, amend, and enforce ordinances, resolutions, and policies.
- g. No amendment to this Agreement will be effective unless it is in writing and signed by the parties
- h. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to the conflict of law principles thereof, and applicable federal law. Any action or suit brought by the Parties relating to this Agreement shall be brought and conducted solely and exclusively in the Circuit Court of Washington County for the State of Oregon. By execution of this Agreement, Company hereby consent to the *in personam* jurisdiction of such courts, waives any objection to venue in such courts, and waives any claim that such forum is an inconvenient forum; provided, however, that if a claim must be brought in a federal forum, then it will be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. In no way will this Section or any other provision of this Agreement be construed as a waiver by City of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, or otherwise, from any claim or from the jurisdiction of any court.
- i. All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations and declarations intended by their nature to continue.
- j. This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement. This Agreement supersedes and replaces all other written or oral agreements thereto.

City of Tualatin, Oregon

10699 SW Herman Rd

Tualatin, OR 97062

Signed By:

Signature: _____

Print Name: _____

Title: _____

Bird Rides, Inc.

Signature: _____

Print Name: _____

Title: _____