

## **PILOT OPERATING AGREEMENT**

This Pilot Operating Agreement (the “Agreement”) is entered into by and between Bird Rides Inc. (the “Company”) located at \_406 Broadway #369, Santa Monica, CA 90401 and the City of Wichita located at 455 N. Main, Wichita, Kansas 67202 (the “City”).

### **1. Statement and Purpose**

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

### **2. Scope**

This Agreement applies to any proposed deployment of electric assisted scooter sharing systems within City’s corporate city limits during the Pilot.

### **3. Length of Agreement**

This Agreement shall commence on October 1, 2020 and shall remain in effect for a period of 6 months. Following successful completion of the Agreement, Company will be required to obtain all applicable licenses from City relating to electric-assisted scooters (Scooters) and pay all applicable licensing and administrative fees.

### **4. Relationship between the Parties**

The parties agree that their relationship is between two separate and independent entities. There is not a joint venture, partnership, employer/employee, or principal/agent relationship established by this agreement.

### **5. Definitions**

“City” means the City of Wichita.

“Company” means a company or person that engages in or operates a dockless electric-assisted scooter business or enterprise.

“Dockless Electric-Assisted Scooter Sharing System” means an electric-assisted scooter share program in which companies distribute electric-assisted scooters throughout a city to be rented per trip. These scooters can be locked at any lawful location and not at a set location. Scooters are tracked via GPS and can be located by users.

“Geo-Fencing” means the use of Global Positioning Systems (GPS) or Radio Frequency Identification (RFID) technology to create a virtual geographic boundary, enabling software to trigger a response when a mobile device enters or leaves a particular area.

“Scooter” means a self-propelled vehicle that has at least two wheels in contact with the ground, an electric motor, handlebars, a brake and a deck that is designed to be stood upon by the user when riding.

“User” means a user of a scooter which is part of a Dockless Electric-Assisted Scooter Sharing System.

**6. Procedures**

While this Agreement is in effect, Company shall be a provider of electric-assisted scooter sharing systems within City’s corporate city limits, contingent upon compliance with the terms of this Agreement.

**7. Operating Regulations**

- a. Scooters are not to be operated on public sidewalks. Scooters are to be ridden on streets, and where available, in bike lanes and bike and multiuse paths. Scooters are to stay to the right of street travel lanes and to yield the right of way to bicycles in bike lanes and on bike or multiuse paths. City reserves the right upon five (5) business day’s written notice to Company to limit the use of Scooters in designated areas due to public safety or traffic concerns. Additionally, Company agrees following written notification from the City to Geofence Scooters from operating in any geographic area designated by the City in which the use of such Scooters is prohibited due to public safety or traffic concerns.
- b. Company shall provide easily visible contact information, including toll-free phone number and/or e-mail address on each Scooter for City employees and/or members of the public to make relocation requests or to report other issues with devices.
- c. Company shall begin operations with a fleet size of at least 100 but not more than 500 Scooters. Following a written request to the City, Company may be permitted to increase its fleet size in the event that Company’s fleet provides on average more than three rides per Scooter per day and that Company has satisfactorily complied with the terms of this Agreement. City may require Company to reduce its fleet size on a monthly basis in the event Company’s fleet provides on average less than one-half ride per Scooter per day. Company will provide data as specified in Section 10 to City to determine and demonstrate the utilization rate of vehicles in Company’s fleet.

8. **Parking Guidelines.** Company acknowledges and understands the following guidelines for parking Scooters:

- a. Users of electric-assisted scooters shall park Scooters upright on hard surfaces outside of the pedestrian pathway of sidewalks, beside a bicycle rack or in another area specifically designated for bicycle parking, or on the street next to an unmarked curb. Users may park Scooters in on-street parking spaces in the following circumstances:
  - i. When marked parking spaces are officially designated stations for such devices;
  - ii. In neighborhoods with rolled curbs, or with inadequate sidewalk space;and
  - iii. In marked parking spaces designated for motorcycles.
- b. Users shall not park Scooters in such a manner as to block pedestrian traffic; any fire hydrant, call box, or other emergency facility; bus bench; or utility pole or box (minimum of three (3) feet of accessibility to pedestrian).
- c. Users shall not park 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 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 Scooters on blocks without sidewalks only if the travel lane(s) and 6-foot pedestrian pathway of at least three (3) feet are not impeded.
- f. Users shall not park Scooters in the area 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 (for example - benches, parking pay stations, bus shelters, transit information signs, etc.);
  - v. Curb cuts;
  - vi. Entryways;
  - vii. Driveways;
  - viii. Motor Vehicle Parking Spaces;

- ix. Motor vehicle driving lanes or bicycle lanes; or
  - x. Entrances to private property or driveways.
- g. Company may stage its Scooters in permitted parking areas as described in this section. To the extent Company desires to stage Scooters in areas other than the public right-of-way (e.g. parks, plazas, parking lots, private property, or transit stations), Company must first obtain the right to do so from the appropriate City department, property owner, or public agency. Company is responsible for all applicable license or permit fees for such right of way privileges.

**9. Operations**

- a. Company shall maintain twenty-four (24) hour customer service for users to report safety concerns, complaints, or to ask questions. Company will maintain a multilingual website, call center, and/or mobile app customer interface that is available twenty-four (24) hours a day, seven (7) days a week. Such website and customer service call center shall be fully accessible and compliant with the Americans with Disabilities Act.
- b. Company will implement a marketing and targeted community outreach plan at its own costs and promote the use of Scooter sharing citywide, particularly among low-income communities.
- c. Company shall work with local businesses or other organizations to promote the use of helmets by users through partnerships, promotional credits, and other incentives.
- d. Company shall agree that all Scooters shall become inoperable by dusk or 9:00 p.m. (CST), whichever is earlier. Scooters shall remain inactive until sunrise (CST) of the following day.
- e. Company shall maintain all Scooters in good mechanical working order. Items such as, but not limited to, inoperable headlight or tail lights, faulty brakes, dead battery, bent or broken handlebars, or bent kickstand shall deem the scooters to not be in good mechanical working order. In the event a safety or maintenance issue is reported for a specific device, that Scooter shall be made unavailable to users and shall be removed within the timeframes provided herein. Any inoperable or unsafe device shall be repaired before it is put back into service.
- f. All Scooters will be properly marked with the Company name and appropriate Company contact information.

- g. Scooters shall not be allowed to operate at a speed in excess of fifteen (15) miles per hour.
- h. Company shall respond to requests for rebalancing, reports of incorrectly parked Scooters, or reports of unsafe/inoperable Scooters by relocating, re-parking, or removing the Scooters, as appropriate, within six (6) hours of receiving notice.
- i. In the event a Scooter is not relocated, re-parked, or removed within the timeframe specified herein, or any Scooter is parked in one location for more than forty-eight (48) hours without moving, such Scooters may be removed by City personnel and taken to a City facility for storage at the expense of Company, not to exceed \$32 per Scooter. Scooters may be removed or relocated by law enforcement or city personnel immediately if the scooter is blocking pedestrian travel or presenting a traffic or safety hazard. City is to notify Company in writing within one (1) business day of impoundment of the Scooter and its location. Company will be billed monthly for any applicable reasonable storage fees. Such bill shall be paid within sixty (60) days of its issuance. Failure to timely pay any storage or impound fees may result in termination of this agreement.
- j. Company shall provide notice to all users by means of signage and through a mobile or web application that:
  - i. Scooters are to be ridden on streets, and where available, in bike lanes, or bike multiuse paths; bike lanes must be used by Scooters if one is present.
  - ii. Scooters are to stay to the right of traffic lanes and to offer the right of way to bicycles on bike lanes and bike or multiuse paths;
  - iii. Helmets are encouraged for all users;
  - iv. Parking must be done in the designated areas;
  - v. Riding responsibly is encouraged; and
  - vi. Scooters are not to be operated on public sidewalks.
- k. Users are required to take a photo whenever they park their Scooter at the end of a ride. Users are required to be eighteen years of age.
- l. Company shall provide education to users on Kansas and City's existing rules and regulations, applicable ordinances, safe and courteous riding, and proper parking.

10. **Data Sharing**

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

- a. Company shall provide to the City a report to be submitted no later than the 15<sup>th</sup> day of each month with the following standardized data from operations for the previous month. Such report shall contain the following information with respect to individual rides: start-time, end-time, start location, end location, route information, vehicle ID, total trip distance and cost of trip. In addition, such report shall contain fleet data regarding the number of accidents or incidents reported, any information gathered by the company regarding customer satisfaction and a status report of scooter inventory and counts including the total number of scooters out of service the previous month needing repair or replacement.
- b. The City shall be provided a link to access the company's real time data feed regarding scooter usage and deployment, as well as to access photographs submitted to Company regarding the termination of a ride and location of the scooters. Any data shared by Company with City will comply with Company's terms of service and privacy agreements with Riders and will not reveal proprietary information that puts at risk Company or its employees, agents or Riders. Company will be expected to comply with all data sharing requirements in order to remain compliant with this Agreement. The City reserves the right to request in writing additional data deemed necessary to fully evaluate Company's compliance with this agreement.
- c. City may require Company to provide the City with access to a dashboard which provides aggregate, anonymized data on the distance and duration of trip activity within the City. Such dashboard may include maps of real time availability and heat maps allowing for analysis of rides taking place within certain geographic portions within municipal city limits.
- d. All documents received by the City of Wichita from Company may be subject to disclosure pursuant to the Kansas Open Records Act, K.S.A. 45-221 *et seq.*

11. **Fees**

Company shall pay an annual administrative fee of two hundred and fifty (\$250) dollars for a fleet of less than five hundred (500) Scooters.

In addition to the yearly administration fee, Company will submit to City on a monthly basis, .15 cents per ride per Scooter per day. Such payment shall be due to the City Treasurer within 60 days of the completion of the ride.

12. **Indemnification**

Company agrees to indemnify, defend and hold harmless City (and City's employees, agents and affiliates) from and against all actions, damages or claims brought against City arising out of Company's negligence or willful misconduct, except that Company's indemnification obligation shall be limited by 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 two (2) years after expiration of this Agreement. City's right to indemnification shall be contingent on City notifying Company promptly following receipt or notice of any claim; Neither party shall consent to the entry of a judgment or enter into any settlement without the prior written consent of the other party.

13. **Governing Law**

The parties agree that the law of the State of Kansas shall govern this Agreement, and that any suit or cause of action by either party against the other shall be filed in the Eighteenth Judicial District Court, Sedgwick County, Kansas.

14. **Insurance**

Company shall provide City with proof of insurance coverage including:

- (a) Commercial General Liability insurance coverage with a limit of no less than \$1,000,000.00 each occurrence;
- (b) Automobile Insurance coverage with a limit of no less than \$1,000,000.00 each occurrence;
- (c) Umbrella or Excess Liability coverage with a limit of no less than \$5,000,000.00 each occurrence; and
- (d) Where Company employs persons within the City, Workers' Compensation coverage of no less than the statutory requirement.

15. **Assignment**

The parties agree that this agreement may not be assigned without the prior approval of both parties hereto, any such assignment shall relieve assigning party of all responsibility and liability hereunder for future acts pursuant hereto.

16. **Amendment**

No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the parties.

**17. Complete Agreement**

The parties agree that this agreement constitutes the entire agreement of the parties and that no prior agreement or representations, oral or written, shall be binding or of any force or effect. Further, this agreement may not be amended, modified, altered or enlarged except in writing signed by the duly authorized representatives of the parties hereto, their successors or assigns.

**18. Agreement Binding**

The parties agree that this agreement shall be binding upon successors and legal representatives of the parties hereto.

**19. Termination**

Either party may terminate this agreement for violation of any terms of this agreement by providing thirty (30) days' written notice to the respective party. Notwithstanding anything to the contrary herein, City may suspend or terminate this Agreement at any time if City finds, in its sole and reasonable discretion that company's operation is not in the best interest of the health, safety or welfare of City's residents and visitors.

Following termination or non-renewal of this or any subsequent agreement, Company agrees to collect and remove all scooters and any other equipment or items located on the City's sidewalks, streets or right of ways within thirty (30) days of the termination date of this agreement.

**20. Notices**

All notices with respect to this agreement shall be given by first-class mail or hand-delivery to the parties as follows:

**CITY**

Mr. Michael Tann  
Director of Transit  
214 S. Topeka St.  
Wichita, Kansas 67202

**SCOOTER COMPANY**

Bird Rides, Inc.  
406 Broadway #369  
Santa Monica, CA 90401

**21. Severability**



If any term, provision, covenant or condition of this agreement is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this Agreement will nevertheless remain in full force and effect as to all remaining terms, provisions, covenants, and conditions hereof.

- 22. **Non Discrimination:** Company agrees that it will observe the provisions of the Ordinances of the City of Wichita Against Discrimination and will not discriminate against any person in the performance of services under this Agreement because of race, color, sex, religion, national origin, ancestry, marital status, age or disability, except where criteria based on age or absence of disability is a bona fide occupational qualification.

IN WITNESS HEREOF, the duly authorized representatives of the parties have hereunto set their hand on the date and year written.

City of Wichita

By: Matt Shaw

Director of Government Relations

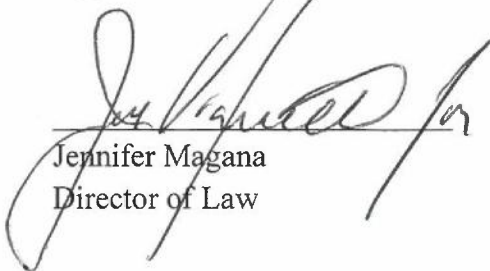
By: 

City Manager

Date: 9/23/2020

Date: 9-21-2020

Approved as to Form:

  
Jennifer Magana  
Director of Law