

This Agreement is entered into this 7/8/2020, by and between the City of Saint Paul, Minnesota, a municipal corporation under the laws of the State of Minnesota, ("**City**") and **Bird Rides, Inc.**, ("**Vendor**").

WHEREAS, the City intends to allow companies offering scooter sharing programs to operate in Saint Paul under certain terms and conditions which will protect and manage City property while allowing residents and visitors to the City to utilize the scooters for transportation and recreational value; and

WHEREAS, Vendor is a company which provides scooters and wishes to utilize City property as part of its business model for the parking and operation of its scooters;

Now, therefore, based upon the promises and conditions stated herein, parties agree as follows:

## **SECTION 1: Definitions**

**"Boulevard/Furnishing Zone"** means the area of the sidewalk between the Curb Zone and the Pedestrian Zone as defined in the Saint Paul Street Design Manual (2016) (<https://www.stpaul.gov/departments/planning-economic-development/planning/current-activities/complete-streets-plan>)

**"City Property"** means property which is owned, leased, or controlled by the City of Saint Paul, including but not limited to public right of way, easements, city and regional parkland, and green space surrounding City-owned buildings.

**"Outwalk"** means the sidewalk that runs perpendicular to the street across a boulevard to the main sidewalk.

**"Parklet"** means a seating area or green space created as a public amenity on or alongside a sidewalk, especially in a former roadside parking space.

**"Scooter"** means a motorized foot scooter as defined in Minnesota Statute 169.011 Subd. 46.

**"Service Zone"** means the City of Saint Paul municipal boundaries.

**"Transit Zone"** means any portion of a street, sidewalk, or other area intended for use of transit vehicles or patrons, including bus stops, shelters, passenger waiting areas, and bus layover and staging zones.

## **SECTION 2: Grant of Use of City Property and Fleet Size**

- A. City grants Vendor the use of the City property for operation of a scooter sharing system consistent with the terms and conditions contained in this Agreement.

- B. Vendor is required to have a minimum of 150 scooters available for use on City Property, and may operate up to a maximum of 500 scooters on City property.
- C. Vendor may request an increase in the maximum number of scooters by submitting a request to the City Contract Administrator via email. The request must provide justification for why additional scooters are desired.
- D. City is under no obligation to increase the maximum number of scooters as requested by Vendor. City will determine whether an increase will be permitted based on usage rates, compliance with this agreement, demonstrated effective scooter parking management by Vendor, the number of vendors operating within the City, available staff time to oversee additional vehicles, maximizing the health and welfare of the general public, and other factors. City will notify Vendor of any increases in the number of scooters permitted by this Agreement by sending written notice to Vendor. Such increases shall not require an amendment to this Agreement.

**SECTION 3: Term of Agreement.** This Agreement will be effective upon execution and approval by City Council and continue in effect until November 30, 2020, unless earlier terminated pursuant to § 12.

**SECTION 4: Fees and Reimbursement.**

- A. Vendor will pay a trip fee of \$0.10 per trip for all trips that start or end within the Service Zone. Trip fees shall be paid to the City on a monthly basis and shall be paid by the fifteenth day of the month following the month in which the trips were taken.
- B. Vendor will pay a park impact fee of \$0.20 per scooter per trip for all trips that begin or end on parkland. Park impact fees are in addition to, not in place of, trip fees as required in Section 4A. Any trip that both begins and ends on parkland shall only be subject to a single park impact fee. Impact fees shall be paid to the City on a monthly basis and shall be paid by the fifteenth day of the month following the month in which the trips were taken. Vendor must furnish to the City the geographic coordinates of both origin and destination points of all trips taken in the previous month no later than the tenth day following that month to allow for verification of park trips. For purposes of this section, a trip is taken in the calendar month that the trip is ended in.
- C. Vendor will be responsible for reimbursing the City for the costs of City staff time spent relocating or removing scooters from any location where scooter parking is prohibited under this Agreement.
  - a. If the improperly parked scooter is not impeding the real-time operations or maintenance work of City staff, before relocating the scooters and seeking reimbursement from Vendor, the City will first notify Vendor of the issue and request that the vendor relocate the scooter to an allowed location. Vendor will have 2 hours to relocate scooters if notified between 6am to 8pm on weekdays, not including holidays, and ten hours at all other times. Vendor must promptly notify the City of corrective action taken.
  - b. If an improperly parked scooter is impeding the real-time operations or maintenance work of city staff (e.g. a scooter improperly parked on the grass within a city park impedes lawn mowing), City staff is authorized to relocate the scooters without providing prior notice to Vendor, and Vendor will be

responsible for reimbursing the City for the costs of City staff time per the rates established in this Agreement.

- D. Fees for staff time are:
  - i. \$35 per scooter per move from unauthorized location or location impeding real-time operations or maintenance
  - ii. \$20 per day per scooter for storage at Dale Street facility. A partial day counts as one day.
  - iii. In order to verify that such impounds were proper and valid, with each invoice for the removal of the scooter, the City shall provide the time the scooter was removed, the location in which the scooter was removed, photo of the scooter that is in violation and reference to how such parking of the scooter violated the terms and conditions outlined by the City.
- E. Nothing herein prevents the City from moving the scooters from a location for any reason without giving prior notification to Vendor. If the scooter is not impeding the real-time operations of maintenance of City staff, or posing an immediate safety threat, City staff is not entitled to reimbursement from Vendor for these moves if prior notification is not given to Vendor.

#### **SECTION 5: Equipment Specifications, Maintenance and Security.**

- A. Scooters must meet the requirements for lighting equipment set forth in Minn. Stat. §169.225, subd. 5, and must comply with State of Minnesota requirements for rear visibility by providing a rear red light rather than a reflector.
- B. All scooters must be powered by electric motor. No scooters powered by internal combustion engines are permitted.
- C. Each scooter must have a unique identifier, such a number, visible to the user of the scooter.
- D. All scooters must include on-board GPS capabilities to ensure Vendor's ability to locate and retrieve scooters at any time as needed.
- E. Each scooter must be maintained in a safe and operable condition. Any inoperable or unsafe scooter must be immediately made unavailable for use and removed from City Property.
- F. Vendor must provide customers and Public Works staff with a 24- hour customer service phone number and electronic communication method for reporting safety or maintenance issues with scooters, or to ask questions or register complaints.
- G. Vendor must provide Public Works staff with email and phone contact information for local staff responsible for relocating scooters upon request from the City. Vendor agrees that City staff will contact local Vendor staff directly with scooter relocation requests and will not interface with Vendor centralized call centers.
- H. City is not responsible for any lost or stolen scooters, and for damage or vandalism by third parties, and Vendor waives all claims against the City for any such loss or damage.
- I. Vendor shall relocate scooters within the time frame specified in Section 4C upon receiving a request from the City to do so, even if the scooters are otherwise properly parked per the requirements of this agreement.

**SECTION 6: Vendor Responsibilities.**

- A. Vendor must ensure scooters are parked according to the following requirements:
  - i. Scooters must be parked in the boulevard/furnishing zone when parked in the public right of way.
  - ii. Scooters may not be parked where the boulevard/furnishing zone is less than 3 feet wide, or where there is no boulevard/furnishing zone.
  - iii. Scooters parked adjacent to a sidewalk must not impede normal and reasonable pedestrian traffic and must maintain a minimum clear 5' pedestrian walkway on the adjacent sidewalk.
  - iv. Scooters must be upright and stabilized with a kickstand when parked. Scooters must not be parked where slopes are sufficiently steep that scooters cannot stay upright.
  - v. Scooters must not be parked in a manner that is adjacent to, within, or blocking:
    - a. Pedestrian curb ramps;
    - b. Fire hydrants;
    - c. Parklets;
    - d. Transit zones
    - e. Signed loading zones;
    - f. Disability parking areas;
    - g. Street furniture that requires pedestrian access (for example - benches, parking pay stations, trash bins, bus shelters, transit information signs, permitted sidewalk patios, etc.);
    - h. Entryways;
    - i. Outwalks;
    - j. Driveways; and
    - k. Bike racks.
  
- B. The City reserves the right to mandate Vendor use geofencing or other in-app methods to prohibit parking or locking scooters in specified areas, and/or to direct users to specified designated parking areas. To make such requests, the City must document in writing how such geofencing measures are necessary for the public health and welfare of the City. Vendor shall also use geofencing or other in-app methods to limit speed of scooters in designated areas, including but not limited to designated parkland areas where scooters must not exceed 10 MPH. Vendor shall comply with any geofencing requirements within 15 business days of a written or emailed request made by the City. The cost of installing and maintaining geofencing equipment or facilities will be borne by Vendor.
  
- C. Vendor will take commercially reasonable measures to disinfect vehicles in its Scooter fleet, this includes but is not limited to disinfecting all surfaces using Tier 1 cleaners and associated products.
  
- D. Vendor will be solely responsible for informing its customers about Scooter parking requirements.

- E. Vendor will undertake proactive, reasonable measures to prevent and deter improper parking of scooters on private property, or other public property not owned or controlled by the City.
- F. Vendor must require its customers to acknowledge and accept the laws and regulations, including park regulations, as to how and where a customer can ride its scooters.
- G. Vendor must require its customers to acknowledge and accept the applicable laws for operation of a motorized scooter in the City of Saint Paul and as required in Minn. Stat. §169.225 and require that they comply with those laws.
- H. Vendor must require its customers to acknowledge and accept that the customer will not use the scooters in a manner that is illegal, reckless or endangers others.
- I. If customers of a Vendor excessively violate park regulations, the Director of Parks and Recreation may prohibit the Vendor from deploying scooters on parkland by providing written notice.
- J. The City, in its sole discretion, may require Vendor to rebalance the distribution of scooters in specified areas of the city if deemed too dense or too sparse, or if doing so will help promote equitable access to and from traditionally underserved areas within the City. Vendor will comply with all such requests within 24 hours of receiving notice from the City.
- K. Scooters being parked on park property may only be parked in areas designated by signage as scooter parking, or, if no designated parking is identified, near bicycle parking, parking lots, or transit stops, but outside of the Transit Zone.
- L. Vendor must publish a real-time data feed with information regarding all scooters throughout the city. Vendor must provide an application program interface (API) to access data consistent with the Mobility Data Specification (MDS) as developed by the City of Los Angeles.
- M. The City intends to secure, via a separate agreement, the services of one or more third party data management firm(s) to assist the City in managing, storing, monitoring, and displaying real-time trip information. Vendor agrees to provide the information identified in Section 6K to the third parties selected by the City. Prior to the issuance of Vendor's data to such third parties, the third party must enter into a separate data privacy and protection agreement with Vendor. Any request for release of such data provided by the Vendor to the third-party must be approved by the Vendor in writing.
- N. Vendor must provide the City with monthly trip data in .csv format containing at a minimum the following information: trip ID, start time, end time, start location, end location, trip distance. Data regarding start location and end location shall be in longitude and latitude format, with each coordinate rounded to three decimal places.
- O. Vendor agrees that trip data provided to the City may be public information, and that the City may store, distribute, display, analyze, or otherwise publish public trip data for public use.
- P. Vendor shall not engage in any anti-competitive practices related to other vendors operating in Saint Paul.
- Q. Vendor may work with the City to develop and implement a short survey of users to assist the City in evaluating the long-term use of scooters within the City's transportation and recreation plans.
- R. Vendor shall provide the City with up to five unlimited user licenses to aid in system oversight, monitoring quality control, verifying user experience and maintenance

standards, validating data, and to aid in the relocation of scooters when necessary. Any injury, damage and liability that may occur during the use of such licenses shall be indemnified and defended by the City, unless such injury, damage, and liability is the result of malfunction of the scooter, the smartphone application, or other equipment or system provided or maintained by Vendor, or by negligence of Vendor.

- S. On a daily basis, Vendor must ensure that scooters are distributed throughout the city in a manner that increases transportation equity as follows:
  - a. A minimum of 30% of the fleet must be distributed throughout Areas of Concentrated Poverty where 50% or more of the residents are people of color (ACP50) as defined by the Metropolitan Council.
  - b. A maximum of 150 scooters operated by Vendor may be distributed within the Downtown Entertainment District as defined in Municipal Code Section 409.02.
- T. Vendor must allow trips to begin or end at any location within the Service Zone, subject to all other parking requirements in the Agreement.
- U. Vendor City must remove all scooters from City Property within 24 of receiving notice if the City determines that the scooters pose a threat to public health or safety, including, but not limited to, instances of civil unrest or health pandemics.

**SECTION 7: Insurance.**

Vendor must have insurance of the kind and in the amounts shown below for the duration of the contract. Insurance certificates should state that the City of Saint Paul, its officials, employees, agents and representatives are named as Additional Insureds for General Liability.

**A. General or Business Liability Insurance**

- \$1,000,000 per occurrence
- \$2,000,000 aggregate per year
- \$5,000,000 umbrella

Policy must include an “all services, products, or completed operations” endorsement when appropriate.

**B. Workers Compensation and Employer’s Liability**

- i. Worker’s Compensation per Minnesota Statute
- ii. Employer’s Liability shall have minimum limits of
  - \$500,000 per accident;
  - \$500,000 per employee
  - \$500,000 per disease policy limit.

iii. Vendors with 10 or few employees who do not have Worker’s Compensation coverage are required to provide the City with a completed “Certificate of Compliance” (State of Minnesota form MN LIC 04) verifying their number of employees and the reason for their exemption.

**C. General Insurance Requirements**

- i. The policy is to be written on an occurrence basis or as acceptable to the City.

Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if policy includes errors omissions coverage.

**SECTION 8: Compliance with Applicable Law.** Vendor must comply with all federal, state, and local laws, and all applicable rules, regulations, and standards established by any agency of such governmental units, insofar as they related to the Vendor's performance of the provisions of this Agreement.

If, due to any change in Applicable law or the interpretation thereof by any court of law or other governing body having jurisdiction over this Agreement, performance of any provision of this Agreement shall become impracticable or impossible, the Vendor shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such provision.

**SECTION 9: Non-Discrimination.** Vendor shall not discriminate in the hiring of any person to perform services under this Agreement based upon race, sex, color, creed, religion, sexual or affectional orientation, age, disability, familial status, marital status, status with respect to public assistance, national origin or ancestry, nor will any such discrimination be practiced in the access to the services provided hereunder.

**SECTION 10: Hold Harmless.** The Vendor shall defend, indemnify and hold harmless the City, its officers, agents, and employees from all claims, actions or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property resulting from any act or omission by any person employed by Vendor in carrying out the terms of this Agreement and by claims brought by third parties regarding the location, condition, or performance of the scooters being operated within the City of Saint Paul. Vendor's indemnification and defense obligation shall not apply to claims arising out of the City's negligence or misconduct.

**SECTION 11. Conflict of Interest.**

Vendors' acceptance of this agreement indicates compliance with Saint Paul Administrative Code § 24.03: "Except as permitted by law, no city official or employee shall be a party to or have a direct financial interest in any sale, lease, or contract with the City." Vendor affirms that to the best of the Vendor's knowledge this contract does not result in a conflict of interest with any party or entity which may be affected by the terms of this contract.

**SECTION 12. Termination.** The City reserves the right to terminate this Agreement at any time with or without cause. City will give Vendor written notice of the termination delivered electronically or by U.S. Mail, with proof of delivery, addressed to the Contract Administrator at the address listed in Section 15 below. Vendor will have fifteen calendar days from receipt of notice to remove all scooters from the City property. Vendor may also terminate this Agreement at any time with or without cause by notifying the Contract Administrator listed in Section 15 below via email. Vendor will have fifteen calendar days from delivery of notice to remove all scooters from City property. In the event that the Agreement is terminated by City or Vendor, the City will not return any portion of the Fees paid to the City.

Vendor agrees to voluntarily release and waive any and all claims and causes of action for damages, costs, expenses, losses, fees and compensation arising from or related to any cancellation or termination of this Agreement by the City. Vendor agrees that it will not make or assert any claims for damages, costs, expenses, losses, fees and compensation based upon the existence, cancellation or termination of the Agreement. Vendor agrees not to sue or institute any legal action against the City based upon any of the claims released in this paragraph.

**SECTION 13: Amendment or Changes to Agreement.** Any changes or amendments to the provisions of this Agreement will be valid only when reduced to writing and duly signed by the parties.

**SECTION 14: Force Majeure.** Vendor will not be liable for any failure to perform under this Agreement caused by severe weather, acts of God, health pandemic and epidemics, civil or military emergencies, or acts of legislative or judicial bodies.

**SECTION 15: Contract Administration:** The following individuals are designated as the Contract Administrators, to whom all communications regarding this Agreement should be addressed:

CITY OF SAINT PAUL

VENDOR

Reuben Collins  
800 City Hall  
15 W. Kellogg Blvd.  
Saint Paul, MN 55102  
(651)266-6059  
Reuben.collins@ci.stpaul.mn.us

Bird Rides, Inc.  
406 Broadway Ave. #369,  
Santa Monica, CA 90401  
blanca@bird.co  
512-653-1018

**SECTION 16: Assignment.** This Agreement may not be assigned or transferred without the written consent of the City and any attempt to do so will be void.

**SECTION 17. Entire Agreement.** It is understood and agreed that the entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters hereof. The Agreement shall be interpreted and construed according to the laws of the State of Minnesota.

**COUNTERPARTS:** The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

**ELECTRONIC SIGNATURES:** The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of



business and an original written record when printed from electronic files. For purposes hereof, “electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party’s failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

**For the City:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Director of Public Works

\_\_\_\_\_  
Director of Parks and Recreation

\_\_\_\_\_  
Assistant City Attorney

**For the Vendor:**

By  \_\_\_\_\_  
Bird Rides, Inc.  
Matt Shaw  
Director, Government Partnerships