

**DOCKLESS SHARED MICROMOBILITY DEVICE PILOT PROGRAM
OPERATING AGREEMENT AND PERMIT**

This Micromobility Device Pilot Program Operating Agreement and Permit (“Agreement”) is made this 30th day of June 2021, by and between the City of Pensacola, a Florida municipal corporation, whose address is 222 West Main Street, Pensacola, Florida 32502 (“City”) and Bird Rides, Inc., whose address is 406 Broadway Santa Monica, CA 90401 (“Vendor”). The City and Vendor are each individually referred to as “Party,” and collectively as the “Parties.”

WHEREAS, the Florida Uniform Traffic Control Law allows municipalities to enact ordinances to permit, control or regulate the operation of vehicles, golf carts, mopeds, micromobility devices, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law as long as such vehicles are restricted to a maximum speed of 15 miles per hour. Section 316.008(7)(a), Florida Statutes; and

WHEREAS, the City strives to keep the City rights-of-ways compliant with the Americans with Disabilities Act (ADA), and other federal and state regulations, and is committed to keeping the City accessible for the mobility challenged; and

WHEREAS, the regulated and permitted operation of dockless shared micromobility devices is recognized as an alternative means of personal transportation; and

WHEREAS, dockless shared micromobility devices left unattended and parked or leaned on walls or left on sidewalks creates a hazard to pedestrians and individuals needing access and maneuverability for ADA mobility devices; and

WHEREAS, the City has a significant interest in ensuring the public safety and order in promoting the free flow of pedestrian traffic on streets and sidewalks; and

WHEREAS, the City desires to study the impacts of dockless shared micromobility devices; and

WHEREAS, the City Council authorizes the City to engage in a 12-month pilot program to permit, control and regulate the use of dockless shared micromobility devices on sidewalks and sidewalk areas within the City to begin on or after January 1, 2020; and

WHEREAS, Chapter 11-4 of the City Code of the City of Pensacola provides standards relating to the regulation of City rights-of-way; and

WHEREAS, the City's intent for instituting the Pilot Program is to ensure public safety, minimize negative impacts on the public rights-of-way, and analyze data in a controlled setting to inform the City on whether to engage a future procurement process for a dockless shared micromobility device program, or other modes of dockless shared transportation, as a permanent transportation program,

WHEREAS, the circumstances related to the spread of COVID-19 have caused a delay in the Pilot Program as public safety concerns have been considered,

WHEREAS, because Vendor has committed to practices for employees and members of the public that are consistent with minimizing the spread of COVID-19, and with conditions improving regarding the spread of COVID-19, the City has determined the Pilot Program may begin,

NOW, THEREFORE, in consideration of the promises and mutual covenants of the Parties hereto, the City and Vendor hereby enter into this Agreement subject to the following terms and conditions:

1. **Term.** Unless earlier lawfully terminated, this Agreement shall commence on the 19th day of July, 2021, and shall automatically expire after 12-months, on the 18th day of July, 2022, unless the City Council authorizes an extension of the Pilot Program. Upon expiration of the Pilot Program, Vendor shall cease operations and within two (2) business days of the expiration of the Pilot Program, remove all Micromobility Devices from the City. Failure to remove all Micromobility Devices within the two (2) business day timeframe, may result in the impoundment of the Micromobility Devices and Vendor will have to pay applicable fees to recover Micromobility Devices from impound. Upon expiration of the Pilot Program, dockless shared Micromobility Devices shall not be permitted to operate within the City until and unless the City Council adopts an ordinance authorizing the operation of dockless shared Micromobility Devices within the City.

2. **Permit.** The Vendor is hereby granted a temporary, non-exclusive license to operate a dockless shared micromobility device during the pilot program in accordance with the City Code of the City of Pensacola, Chapter 7-12, and subject to the terms and conditions of this Agreement. The Vendor is authorized to deploy no more than 250 Micromobility Devices during the Pilot Program. Nothing in this Agreement shall be construed to grant Vendor any other rights or interest in the Public Rights-of-Way (ROW). This agreement shall not be deemed or construed to create an easement, lease, fee, or any other interest, in the ROW, shall be personal to Vendor, and shall not run with the land. This Agreement shall not be recorded or any memorandum of it. The City may terminate this Agreement, as provided under its terms, without the need for court action or court order and shall not be deemed to breach the peace as a result of such termination or other exercise of self-help under this Agreement.

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3. **Definitions and Applicable City Codes.** The definitions and all regulations contained in the City Code of the City of Pensacola, Chapter 7-12, are hereby incorporated by reference and shall apply to this Agreement.

4. **Permit Fees.** Prior to deploying Micromobility Devices in the City's ROW, the Vendor shall pay to the City:

- (i) \$500.00 non-refundable Permit Fee to participate in the Pilot Program;
- (ii) \$10,000.00 minimum Performance Bond;
- (iii) \$100.00 non-refundable one time per unit fee, \$100.00 per unit;
- (iv) \$75.00 per device City Fee for device Removal or Relocation by the City;
- (v) first offense \$250.00 per day, second offense \$500.00 per day for Operating Without a Valid Operating Agreement & Permit Fine; and
- (vi) first offense \$100.00 per device per day, second offense \$200.00 per device per day for Permit Violation Fine.

The Vendor, upon City's request, shall provide the City with any documents or data appropriate for the City to calculate its entitlement under this Section.

5. **Operation.** Vendor shall use reasonable efforts to ensure its Micromobility Devices are operated in accordance with all applicable local, state and federal laws, including without limitation, City Code of the City of Pensacola, Chapter 7-12, and the Florida Uniform Traffic laws, as amended. The Vendor represents and warrants it knows, and will comply with, the foregoing laws. Vendor acknowledges Micromobility Devices shall not be able to exceed 15 miles per hour.

6. **Parking.** Vendor shall provide parking instructions to Users, indicating the Micromobility Devices should be parked next to a bicycle rack, if possible, or in other parking areas designated by the City. If there is no bicycle rack or designated parking area nearby, instructions shall indicate ADA accessibility is ensured and Micromobility Devices are prohibited from blocking the sidewalks. Micromobility Devices shall be parked upright, and parking must maintain a four-foot minimum pedestrian path on sidewalks. Micromobility Devices shall be prohibited from blocking:

- Handicap accessible areas (ramps, parking spaces, etc.)
- Business or residential entryways
- Emergency exits
- Sidewalks
- Curb ramps
- Street furniture such as benches, parklets, refuse and recycling receptacles, parking meters and parking kiosks
- Fire hydrants
- Driveways
- Parking spaces

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7. Deployment Locations; Geofencing Capabilities. (a) Deployment locations for Micromobility Devices shall be set by the City. Vendor shall deploy Micromobility Devices in identified locations as depicted on Exhibit "A," attached hereto and incorporated by reference. Deployment locations may be amended by written notice to the Vendors.

(b) Vendor shall have the capability to restrict Micromobility Device usage in areas not authorized by the City for deployment. Vendor represents it will utilize proper technology (i.e., geofencing) or other appropriate measures to ensure Micromobility Devices are only deployed and utilized within the designated deployment locations as set forth in Exhibit "A" or approved in writing by the City. Vendor shall have the capability to restrict Micromobility Devices as stated in City Code of the City of Pensacola, Chapter 7-12, Section 7-12-5.

8. Abandonment. Vendor shall promptly recover and take custody of all abandoned Micromobility Devices. Vendor shall respond to a City-initiated request to relocate a Micromobility Device within one (1) hour. Failure to timely respond may result in the Micromobility Device being impounded or removed by the City subject to applicable fines and fees.

9. Markings. Vendor shall ensure each Micromobility Device is conspicuously marked with Vendor's unique branding, a unique serial number and Vendor's contact information, including a 24-hour toll-free telephone number and email address to respond to User and City issues with the Micromobility Devices. Vendor shall not apply any other markings or advertising to any Micromobility Device.

The User support contact information is:

Telephone:

Email:

Website:

Social Media (Facebook/Twitter):

10. Maintenance. Vendor shall maintain Micromobility Devices in a good and safe working manner and in accordance with all applicable laws and shall promptly remove from the ROW any Micromobility Device that is not in good and safe working manner or fails to comply with applicable laws.

11. Data Sharing; Customer Survey. (a) During the term of this Agreement, on a monthly basis, or as reasonably requested by the City, the Vendor shall provide City the following data, if collected, by the Vendor, in a format acceptable to the City:

- Number of Micromobility Devices in circulation;
- Number of daily, weekly, and monthly riders;
- Total number of miles traveled by users (daily, monthly, quarterly, annually)

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- Average time each Micromobility Device spends available (not in use);
- Number of rides per user per day;
- Number of rides per Micromobility Device per day;
- Duration of rides per rider per day;
- Average duration of ride per day of the week;
- Start point of ride;
- End point of ride;
- Trip patterns;
- Location of Micromobility Device pick up and drop offs;
- Monthly summary of Micromobility Device distribution and GPS-based natural movement in heat map format;
- Summary of fleet numbers lost to vandalism;
- Details of complaints and issues, including crashes and injuries;
- Summary of customer comments/complaints, resolution, and time it took to resolve each complaint;
- Summary of repairs per Micromobility Device per month;
- Average lifespan of a Micromobility Device;
- Median lifespan of a Micromobility Device;
- Average trip in miles per day of the week;
- Average charging cost per ride;
- Average repair cost per ride;
- Average revenue per ride;
- Other data requested by the City.

Crashes and injuries should be reported to the City immediately. Upon request from the City, Vendor shall provide information relating to dispute resolutions and settlements with Users based on issues arising in Pensacola.

(b) During the term of this Agreement, Vendor shall distribute a customer service satisfaction survey, the summary and raw results of which shall be provided to the City.

12. Insurance, Performance Bond and Indemnity.

(a) Insurance. Prior to deploying Micromobility Devices, Vendor shall procure and maintain, at their own expense, for the duration of this Agreement the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work or services hereunder by Vendor, their agents, representatives, employees or subcontractors.

Vendor shall maintain limits no less than:

a) Commercial General/Umbrella Liability Insurance - \$1,000,000 per occurrence limit for property damage and bodily injury. The insurance shall include coverage for the following:

- Premise/Operations

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- Explosion, Collapse, and Underground Property Damage Hazard
 - Products/Completed Operations
 - Contractual
 - Independent Vendors
 - Broad form Property Damage
 - Personal Injury
- b) Business Automobile/Umbrella Liability Insurance - \$1,000,000 per crash for property damage and personal injury.
- Owned/Leased Autos
 - Non-owned Autos
 - Hired Autos
- c) Workers' Compensation and Employers'/Umbrella Liability Insurance-Workers' Compensation coverage with benefits and monetary limits as set forth in Chapter 440, Florida Statutes. This policy shall include Employers'/Umbrella Liability coverage for \$100,000 each person – accident, \$100,000 each person – disease, \$500,000 aggregate – disease as a condition of performing Work or services for the City whether or not the Vendor is otherwise required by law to provide such coverage.

Other Insurance Provisions:

Commercial General Liability and Automobile Liability Coverage:

The City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Vendor; products and completed operations of the Vendor; premises owned, leased or used by the Vendor or premises on which Vendor is performing services on behalf of the City. The coverage shall contain no special limitations on the scope of protection afforded to the City, members of the City Council, boards, commissions and committees, officers, agents, employees and volunteers

The Vendor's insurance coverage shall be primary insurance as respects the City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers shall be in excess of Vendor's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers.

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Coverage shall state the Vendor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Workers' Compensation and Employers' Liability and Property Coverage:

The insurer shall agree to waive all rights of subrogation against the City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers for losses arising from activities and operations of Vendor in the performance of services under the Contract.

All Coverage:

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) calendar days prior Written Notice has been provided to the Engineer.

If the Vendor, for any reason, fails to maintain insurance coverage that is required pursuant to the Contract, the same shall be deemed a material breach of the Contract. City, at its sole option, may terminate the Contract and obtain damages from the Vendor resulting from said breach. Alternatively, City may purchase such required insurance coverage (but has no special obligation to do so), and without further notice to Vendor, the City may deduct from sums due to Vendor any premium costs advanced by City for such insurance.

All insurance certificates must read as follows: CANCELLATION "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 calendar days Written Notice to the certificate holder named to the left."

All insurance coverages shall be placed with companies who are either licensed by the state of Florida or admitted as a surplus lines carrier by the state. All companies shall have at least a B+10 rating by A.M. Best or other recognized rating agency.

City named as "additional insured" as its interest may appear.

Certificate of insurance(s) filed with the City Treasurer-Clerk on or before commencement of Work.

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Deductibles and Self-Insured Retention:

Any deductibles or self-insured retention's must be declared to the City.

Verification of Coverage:

Vendors are reminded that regardless of what the State of Florida requirements for insurance are (including the exemption for Workers Compensation Insurance), the insurance specified herein is the minimum requirements for firms wishing to enter into a contract with the City. Bidders, must supply proof with their bid, of insurance meeting the above mentioned requirements or provide a letter from an authorized agent of Florida admitted insurers stating that if awarded a contract the vendor will be eligible to buy insurance in the amounts required by the contract.

The Vendor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences.

Subvendors:

The Vendor shall include each of its subvendors as insureds under the policies of insurance required herein.

(b) **Performance Bond.** Prior to the issuance of this Agreement, Vendor shall, at their own expense, obtain and file with the City a performance bond in the amount of no less than \$10,000.00, in a form acceptable to the City. The performance bond shall serve to guarantee proper performance under the requirements of this Agreement and City Ordinance; restore damage to the City's rights-of-way; and secure and enable City to recover all costs or fines permitted under the City Code if the Vendor fails to comply with such costs or fines. The performance bond must comply with the requirements of the City Code. Prior to the City filing a claim on Vendor's performance bond, City shall provide Vendor notice of its intent to use performance bond funds describing the Vendor's violation with this Agreement or the City Ordinance and such notice shall be supported by evidence showing proof of the violation. Within ten (10) business dates from the date of the notice, Vendor may respond to City with evidence showing proof of cure of the violation or to support Vendor's basis that such violation is not warranted. Notwithstanding the above language, the City may still file a claim on Vendor's performance bond if the Vendor does not respond within the ten (10) business day timeframe or, after reviewing the Vendor's documentation, the City still finds the Vendor is in violation and proceeds with filing a claim on the performance bond.

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(c) Indemnification. Vendor agreement to indemnify, hold harmless and defend the City, its representatives, employees, elected and appointed officials, from and against all ADA accessibility claims and liability and any and all other liability, claims, damages, suits, losses and expenses of any kind, including reasonable attorney's fees and costs of appeal, associated with or arising out of, or from the permit, the use of the rights-of-way or City-owned property for Pilot Program operations or arising from any negligent act, omission or error of the Vendor, owner or managing agents, its agents or employees or from failure of the Vendor, its agents or employees, to comply with each and every requirements of the City Code, this Agreement, or with any applicable federal, state or local law, including traffic laws, or any combination of same. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the City for its own negligence. These terms shall not be construed to waive or alter any statutory or constitutional sovereign immunity rights, limitations or extend the liability provided to the City. .

Vendor's contracts or end user agreements with Users of Micromobility Devices, to the fullest extent permitted by law, consistent with Florida Statutes Chapter 768, shall obligate Users to release the City and its officers, affiliated entities, employees, agents and contractors from the same claims, damages, losses, expenses, including attorney fees, and suits for which Vendor is obligated to indemnify, defend and hold the City harmless.

13. Emergency Preparedness Plan; Tropical Storm or Hurricane Warnings. Before deploying Micromobility Devices in the City, Vendor must provide to City an emergency preparedness plan, approved by the City, that details where the Micromobility Devices will be located and the amount of time it will take to secure all Micromobility Devices once a tropical storm or hurricane warning has been issued by the National Weather Service (NWS). The Vendor must promptly secure, all Micromobility Devices within 24 hours of an active tropical storm or hurricane warning issued by the NWS. Following the tropical storm or hurricane, the City will notify the Vendor when, and where, it is safe to redistribute the Micromobility Devices within the City.

14. Vendor Local Representative. Vendor shall designate one or more representatives who, as needed, can address any issues related to this Agreement in the City, in person, at any time and has authority to act on behalf of Vendor.

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The City's direct contact for Vendor is Evanne Holloway; telephone number: 334-703-1908; email: eholloway@bird.co.

15. **Damage to City Property.** To the fullest extent lawful, Vendor shall be liable to, and shall promptly reimburse the City for any damage to City property, including without limitation ROW, related to or arising from the Micromobility Devices for which Vendor is liable under Sec. 7-9-9(a) of the City's ordinance and other laws, except to the extent the damage is due to the negligence or willful misconduct of the City or its agents and employees.

16. **Education.** Vendor shall, to the City's satisfaction, develop materials to instruct Users of all applicable laws, and provisions of this Agreement, that relate to operation and parking of Micromobility Devices. Vendor shall not allow any use of its Micromobility Devices by third parties/Users unless they have first reviewed these materials. Further, Vendor shall, to the City's satisfaction, educate Users regarding the necessity that Users take personal responsibility to follow all guidance regarding reducing the spread of the COVID-19 virus, including but not limited to 1) notifying Users that CDC-approved cleaning agents are being used by Vendor to maintain cleanliness; 2) advising Users to practice social distancing and good personal hygiene; 3) warning Users not to use Micromobility Devices if Users are feeling unwell; and 4) informing Users of the possibility that COVID-19 may be contracted by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes.

17. **Compliance with Laws.** Vendor shall comply with all applicable laws, this Agreement and City ordinances and policies, and guarantees its employees, agents and contractors, including independent contractors, do the same.

18. **Micromobility Devices Seized by the City; Impoundment.** (a) Any shared Micromobility Device that is inoperable/damaged, improperly parked, blocking ADA accessibility, does not comply with City Code, applicable law, or left unattended on public property, including sidewalks, sidewalk areas, rights-of-way and parks, may be impounded, removed, or relocated by the City. A shared Micromobility Device is not considered unattended if it is secured in a designated parking area, rack (if applicable), parked correctly or in another location or device intended for the purpose of securing such devices.

(b) The City may, but is not obligated to, Remove or Relocate a Micromobility Device that is in violation of this Division. A Vendor shall pay a \$75.00 fee per device that is Removed or Relocated by the City.

(c) Impoundment shall be done in accordance with F.S. § 713.78. Impoundment of a Micromobility Device will require the Pensacola Police Department (PPD) to authorize

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the vehicle to be impounded in accordance with PPD policies and regulations. The Vendor shall be solely responsible for all expenses, towing fees and costs required by the towing company to retrieve any impounded Micromobility Device(s).

The Vendor of a Micromobility Device impounded under this Division will be subject to all liens and terms described under F.S. § 713.78, in addition to payment of all applicable penalties, costs, fines or fees that are due in accordance with this Division and applicable local, state and federal law.

(d) Impounded or Removed Micromobility Devices shall count towards the permitted maximum of 250 devices per Vendor.

19. Termination; Revocation. (a) Vendor may terminate this Agreement by providing a ten (10) day written notice to City and removing all Micromobility Devices from the City. (b) The City reserves the right to revoke any Pilot Program Operating Agreement and Permit, if there is a violation of the City Code, this Agreement, public health, safety or general welfare, or for other good and sufficient cause as determined by the City in its sole discretion.

(c) A Vendor is subject, at the discretion of the City Administrator, to a fleet size reduction or total Pilot Program Operating Agreement and Permit revocation should the following occur:

(i) If the violations of the regulations set forth in this Division are not addressed in a timely manner or;

(ii) 15 unaddressed violations of the regulations set forth by this Division within a thirty (30) day period or;

(iii) Submission of inaccurate or fraudulent data.

(d) The City's rights of termination or revocation are in addition to all other rights and remedies which it may have at law or in equity.

20. Violations; Fines. Violations of the City Code or this Agreement shall be enforced as non-criminal infractions of City ordinances and shall be fined at \$250.00 per device per day for an initial offense, and \$500.00 per day for any repeat offenses within thirty (30) days of the last same offense by the same Vendor. Each day of non-compliance shall be a separate offense.

21. Appeals. Vendors who have been subject to imposition of violation fines or Agreement revocation, may appeal the imposition of violation fines or the revocation in accordance with the applicable City Code.

22. Notices. All notices or other correspondence or communications required by or related to this Agreement shall be in writing sent by email or, in the event of a notice of

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termination, revocation or violation fines, sent by regular United States Postal Service mail, postage prepaid or delivered by courier to the following:

City:

Engineering
ATTN: Mark Jackson
222 W. Main St.
Pensacola, FL 32502

With copy to:

City Attorney's Office
222 W. Main St.
Pensacola, FL 32502

Vendor:

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

With a copy to:

Bird Rides, Inc.
ATTN: Evanne Holloway
406 Broadway Ave #369
Santa Monica, CA 90401

The Parties may change notice information with ten (10) days written notice to all Parties.

23. Condition of Rights-of-Way (ROW). The City makes the ROW available to Vendor in an "as-is" condition. The City makes no representations or warranties concerning the condition of the ROW or its suitability for use by Vendor or its Users and the City assumes no duty to warn either Vendor or User concerning conditions that exist now or may arise in the future.

24. Damages to Vendor Property. The City assumes no liability for loss or damage to Vendor's Micromobility Devices or other property. Vendor agrees that the City is not responsible for providing security at any location where Vendor's Micromobility Devices, or other property, is stored or located. Vendor hereby waives any claim against the City in the event Vendor's Micromobility Devices or other property is lost or damaged.

25. Damages to City ROW. Vendor expressly agrees to repair, replace or otherwise restore any part or item or personal property damaged, lost or destroyed as a result of Vendor's, or its User's, use of ROW. Should the Vendor fail to repair, replace or

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otherwise restore such real or personal property, Vendor expressly agrees to pay the City's cost in making such repairs, replacements or restorations. In addition, the City shall have the right to make a claim on Vendor's performance bond to recover said costs.

26. **Modification.** This Agreement shall not be amended, modified or canceled without the written consent of the Parties.

27. **Headings; Construction of Agreement.** The headings of each section of this Agreement are for reference only.

28. **Severability of Provisions.** In the event any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

29. **Assignment.** Vendor shall not assign, delegate or transfer any right or obligation under this Agreement without City's prior written approval. Any assignment, delegation or transfer made or attempted without such approval shall be void.

30. **Binding Effect.** This Agreement shall be binding upon the Parties and upon any successor-in-interest.

31. **Controlling Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida. Any lawsuit arising out of or related to this Agreement, the license it grants, the Permit or the Micromobility Devices shall be filed in either the courts of Escambia County, Florida or in the United States District Court for the Northern District of Florida, to the general personal jurisdiction of which Vendor submits.

32. **Waiver.** No consent or waiver, express or implied, by any Party to this Agreement or any breach or default by any other Party in the performance of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any Party to complain of any act or failure to act or to declare any of the other Parties in defaults, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. The parties reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only

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as to the matter waived and the Parties reserve the right to exercise any and all of the rights and remedies under this Agreement irrespective of any waiver granted.

33. Representations. The Parties certify they have the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with its terms. Vendor represents and warrants it is the sole owner of the Micromobility Devices.

34. Conflicts of Interest. Vendor represents and warrants no officer or employee of City as, or will have, a direct or indirect financial or personal interest in this Agreement, and no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Company or its contractors under this Agreement.

35. No Partnership. The Parties are not joint ventures or partners and do not have an employer-employee or master-servant relationship. City shall not be vicariously liable for Vendor or any of the Users.

36. Licensing and Taxes. Prior to deploying Micromobility Devices in the City: (a) Vendor shall obtain any applicable licenses or permits required by applicable local, state or federal law to transact business in the City and to provide City with a copy of the same and

(b) Vendor shall be a Florida corporation or properly registered with the Florida Secretary of State to conduct business in Florida and provide evidence of the same to the City.

37. Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to its subject matter and supersedes all prior agreements and understandings of the Parties with respect to its subject matter. Nothing in this Agreement shall be construed to limit City's regulatory authority or waive any immunity to which the City is entitled by law.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement to be effective on the Effective Date.

VENDOR

DocuSigned by:

By: Blanca Laborde
76308C4E0E1549C

Blanca Laborde

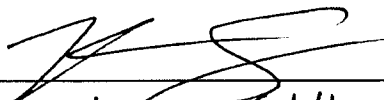
Print Name: _____

Director, Government Partnerships

Title: _____

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CITY OF PENSACOLA

By: 

Print Name: Kerrith Fiddler

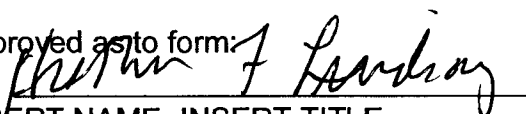
Title: Deputy City Administrator

ATTEST TO:

By: 

INSERT NAME, INSERT TITLE

Approved as to form:

By: 

INSERT NAME, INSERT TITLE

Assistant City Attorney
Heather F. Lindsay

Certificate Of Completion

Envelope Id: F99F35453AE24B1A9D16702054FD7561
 Subject: Please DocuSign: BIRD Rides Inc. Operating Agreement Signed by CoP.pdf
 Source Envelope:
 Document Pages: 15 Signatures: 1
 Certificate Pages: 4 Initials: 0
 AutoNav: Enabled
 EnvelopeId Stamping: Enabled
 Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

Envelope Originator:
 Christopher Larkin
 2501 Colorado Ave
 2nd Floor
 Santa Monica, CA 90401
 christopher.larkin@bird.co
 IP Address: 207.181.200.206

Record Tracking

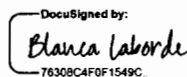
Status: Original
 6/28/2021 2:26:36 PM
 Holder: Christopher Larkin
 christopher.larkin@bird.co

Location: DocuSign

Signer Events

Blanca Laborde
 blanca@bird.co
 Director, Government Partnerships
 Security Level: Email, Account Authentication
 (None)

Signature



Signature Adoption: Pre-selected Style
 Using IP Address: 23.127.74.7

Timestamp

Sent: 6/28/2021 2:36:51 PM
 Viewed: 6/29/2021 11:17:06 AM
 Signed: 6/29/2021 11:17:33 AM

Electronic Record and Signature Disclosure:
 Accepted: 6/29/2021 11:17:06 AM
 ID: b1bc4c89-1cbd-4e6b-8981-dfce571b50e4

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent Hashed/Encrypted
 Certified Delivered Security Checked
 Signing Complete Security Checked
 Completed Security Checked

6/28/2021 2:36:51 PM
 6/29/2021 11:17:06 AM
 6/29/2021 11:17:33 AM
 6/29/2021 11:17:33 AM

Payment Events

Status

Timestamps

Electronic Record and Signature Disclosure

CONSUMER DISCLOSURE

From time to time, Bird (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

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At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Bird:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: prakes@bird.co

To advise Bird of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at prakes@bird.co and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

To request paper copies from Bird

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to prakes@bird.co and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Bird

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to prakes@bird.co and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

| | |
|--------------------|---|
| Operating Systems: | Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X |
| Browsers: | Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only) |
| PDF Reader: | Acrobat® or similar software may be required to view and print PDF files |
| Screen Resolution: | 800 x 600 minimum |

| | |
|----------------------------|---------------------------|
| Enabled Security Settings: | Allow per session cookies |
|----------------------------|---------------------------|

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Bird as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Bird during the course of my relationship with you.

MEMORANDUM

TO: Mayor's Office
FROM: Mark Jackson, Sustainability Coordinator
DATE: 6/25/2021
SUBJ: Micromobility Operating Agreement

The City of Pensacola staff has reviewed and worked with Bird Rides, Inc. to draft the attached Operating Agreement in accordance with the City Ordinances. Departmental review of the Operating Agreement was conducted by the following: Transportation Engineering, Legal, Risk, Pensacola Police Department, Code Enforcement, Planning, Parking, and Sustainability. Staff agrees that the proposed Operating Agreement, covers the City to the fullest extent and we are prepare to host micormobility devices within the designated area set forth by City Council.

At your earliest convenance please signed the attached Operating Agreement.

Thank you.

Attachment
Operating Agreement

Ch. 7-9 Dockless shared Micormobility Device Pilot Program

Operating area May

CHAPTER 7-9. - DOCKLESS SHARED MICROMOBILITY DEVICE PILOT PROGRAM

Sec. 7-9-1. - Establishment of dockless shared micromobility device pilot program.

The purpose of this chapter is to establish, permit and regulate a dockless shared micromobility device pilot program in the city. The provisions of this chapter shall apply to the dockless shared micromobility device pilot program and dockless shared micromobility devices. For the purpose of this chapter, the applicant, managing agent or vendor, and owner shall be jointly and severally liable for complying with the provisions of this chapter, the operating agreement and permit.

(Code 1986, § 7-12-1; Ord. No. 17-19, § 1, 9-12-2019)

Sec. 7-9-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The definitions in F.S. ch. 316 apply to this chapter and are hereby incorporated by reference.

Dockless shared micromobility device (micromobility device) means a micromobility device made available for shared use or rent to individuals on a short-term basis for a price or fee.

Dockless shared micromobility device system means a system generally, in which dockless shared micromobility devices are made available for shared use or rent to individuals on a short-term basis for a price or fee.

Geofencing means the use of GPS or RFID technology to create a virtual geographic boundary, enabling software to trigger a response when a mobile device enters or leaves a particular area.

Micromobility device shall have the meaning ascribed to it in F.S. § 316.003, as amended. Micromobility devices are further defined as a vehicle that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground.

Motorized scooter means any vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground.

Pedestrian means people utilizing sidewalks, sidewalk area or rights-of-way on foot and shall include people using wheelchairs or other ADA-compliant devices.

Rebalancing means the process by which shared micromobility devices, or other devices, are redistributed to ensure their availability throughout a service area and to prevent excessive buildup of micromobility devices or other similar devices.

Relocate or relocating or removal means the process by which the city moves the micromobility device and either secures it at a designated location or places it at a proper distribution point.

Rights-of-way means land in which the city owns the fee or has an easement devoted to or required for use as a transportation facility and may lawfully grant access pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface of such rights-of-way.

Service area means the geographical area within the city where the vendor is authorized to offer shared micromobility device service for its users/customers as defined by the pilot program operating agreement and permit.

Sidewalk means that portion of a street between the curb line, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

Sidewalk area includes trail in the area of a sidewalk, as well as the sidewalk and may be a median strip or a strip of vegetation, grass or bushes or trees or street furniture or a combination of these between the curb line of the roadway and the adjacent property.

User means a person who uses a digital network in order to obtain a micromobility device from a vendor.

Vendor means any entity that owns, operates, redistributes, or rebalances micromobility devices, and deploys a shared micromobility device system within the city.

(Code 1986, § 7-12-2; Ord. No. 17-19, § 2, 9-12-2019)

Sec. 7-9-3. - Pilot program for shared micromobility devices on public rights-of-way; establishment; criteria.

- (a) The city hereby establishes a 12-month shared micromobility device pilot program for the operation of shared micromobility devices on sidewalks and sidewalk areas within the city limits.
- (b) It is anticipated the pilot program will commence on January 1, 2020, or on such other date as directed by the city council ("commencement date"), and will terminate 12 months after the commencement date.
- (c) Shared micromobility devices shall not be operated in the city unless a vendor has entered into a fully executed operating license agreement and permit ("pilot program operating agreement and permit") with the city. The mayor is authorized to develop, and execute, the pilot program operating agreement and permit and any other documents related to the pilot program.
- (d) If two or more shared micromobility devices from a vendor, without a valid pilot program operating agreement and permit with the city, are found at a particular location within the city, it will be presumed that they have been deployed by that vendor, and it will be presumed the vendor is in violation of this chapter and the shared micromobility devices are subject to impoundment.
- (e) A vendor shall apply to participate in the pilot program. The mayor shall select up to two vendors to participate in the pilot program, unless otherwise directed by the city council.
- (f) No more than a total of 500 micromobility devices, distributed equally among the vendors selected to participate in the pilot program, or as directed by the mayor, will be permitted to operate within the city during the pilot program. Micromobility devices that are impounded or removed by the city shall count towards the maximum permitted micromobility devices authorized within the city.
- (g) Once selected as a pilot program participant, a vendor shall submit a one-time, nonrefundable permit fee of \$500.00, prior to entering into the pilot program operating agreement and permit, which shall be used to assist with offsetting costs to the city related to administration and enforcement of this chapter and

the pilot program.

- (h) In addition to the nonrefundable permit fee set forth herein, prior to entering into the pilot program operating agreement and permit, a vendor shall remit to the city a one-time, nonrefundable fee in the amount of \$100.00 per device deployed by the vendor.
- (i) Prior to entering into a pilot program operating agreement and permit, a vendor shall, at its own expense, obtain and file with the city a performance bond in the amount of no less than \$10,000.00. The performance bond shall serve to guarantee proper performance under the requirements of this chapter and the pilot program operating agreement and permit; restore damage to the city's rights-of-way; and secure and enable city to recover all costs or fines permitted under this chapter if the vendor fails to comply with such costs or fines. The performance bond must name the city as obligee and be conditioned upon the full and faithful compliance by the vendor with all requirements, duties and obligations imposed by this chapter and the pilot program operating agreement and permit. The performance bond shall be in a form acceptable to the city and must be issued by a surety having an A.M. Best A-VII rating or better and duly authorized to do business in the state. The city's right to recover under the performance bond shall be in addition to all other rights of the city, whether reserved in this chapter, or authorized by other law, and no action, proceeding or exercise of a right with respect to the performance bond will affect or preclude any other right the city may have. Any proceeds recovered under the performance bond may be used to reimburse the city for such additional expenses as may be incurred by the city as a result of the failure of the vendor to comply with the responsibilities imposed by this chapter, including, but not limited to, attorney's fees and costs of any action or proceeding and the cost to relocate any micromobility device and any unpaid violation fines.
- (j) The pilot program operating agreement and permit will be effective for a 12-month period and will automatically expire at the end of the 12-month period, unless extended, or otherwise modified, by the city council. Upon expiration of the pilot program, vendors shall immediately cease operations and, within two business days of the expiration of the pilot program, vendors shall remove all micromobility devices from the city, unless otherwise directed by the mayor. Failure to remove all micromobility devices within the two business day timeframe, may result in the impoundment of the micromobility devices and the vendor will have to pay applicable fees to recover the micromobility devices from impound in accordance with this chapter.
- (k) In the event the pilot program is extended, or otherwise modified by the city council, the pilot program operating agreement and permit may be extended consistent with such direction.
- (l) Upon expiration of the pilot program, micromobility devices shall not be permitted to operate within the city until and unless the city council adopts an ordinance authorizing the same.

(Code 1986, § 7-12-3; Ord. No. 17-19, § 3, 9-12-2019)

Sec. 7-9-4. - Operation of a dockless shared micromobility device system—Vendors' responsibilities and obligations; micromobility device specifications.

- (a) The vendor of a shared micromobility device system is responsible for maintenance of each shared micromobility device.
- (b) The micromobility device shall be restricted to a maximum speed of 15 miles per hour within the city.

- (c) Each micromobility device shall prominently display the vendor's company name and contact information, which may be satisfied by printing the company's uniform resource locator (URL) or providing a code to download the company's mobile application.
- (d) Vendors must comply with all applicable local, state and federal regulations and laws.
- (e) Vendors must provide to the city an emergency preparedness plan that details where the micromobility devices will be located and the amount of time it will take to secure all micromobility devices once a tropical storm or hurricane warning has been issued by the National Weather Service. The vendor must promptly secure all micromobility devices within 12 hours of an active tropical storm warning or hurricane warning issued by the National Weather Service. Following the tropical storm or hurricane, the city will notify the vendor when, and where, it is safe to redistribute the micromobility devices within the city.
- (f) Micromobility devices that are inoperable/damaged, improperly parked, blocking ADA accessibility or do not comply with this chapter must be removed by the vendor within one hour upon receipt of a complaint. An inoperable or damaged micromobility device is one that has non-functioning features or is missing components. A micromobility device that is not removed within this timeframe is subject to impoundment and any applicable impoundment fees, code enforcement fines, or penalties.
- (g) Vendors shall provide the city with data as required in the pilot program operating agreement and permit.
- (h) Vendors must provide details on how users can utilize the micromobility device without a smartphone.
- (i) Vendors must rebalance the micromobility devices daily based on the use within each service area as defined by the pilot program operating agreement and permit to prevent excessive buildup of units in certain locations.
- (j) The vendor's mobile application and website must inform users of how to safely and legally ride a micromobility device.
- (k) The vendor's mobile application must clearly direct users to customer support mechanisms, including, but not limited to, phone numbers or websites. The vendor must provide a staffed, toll-free customer service line which must provide support 24 hours per day, 365 days per year.
- (l) The vendor must provide a direct customer service or operations staff contact to city department staff.
- (m) All micromobility devices shall comply with the lighting standards set forth in F.S. § 316.2065(7), as may be amended or revised, which requires a reflective front white light visible from a distance of at least 500 feet and a reflective rear red light visible from a distance of at least 600 feet.
- (n) All micromobility devices shall be equipped with GPS, cell phone or a comparable technology for the purpose of tracking.
- (o) All micromobility devices must include a kickstand capable of keeping the unit upright when not in use.
- (p) The only signage allowed on a micromobility device is to identify the vendor. Third-party advertising is not allowed on any micromobility device.
- (q) The mayor, at his or her discretion, may create geofenced areas where the micromobility devices shall not be utilized or parked. The vendor must have the technology available to operate these requirements upon request.

- (r) The mayor, at his or her discretion, may create designated parking zones (i.e., bike corrals) in certain areas v the micromobility devices shall be parked.

(Code 1986, § 7-12-4; Ord. No. 17-19, § 4, 9-12-2019)

Sec. 7-9-5. - Operation and parking of a micromobility device.

- (a) The riding and operating of micromobility devices and motorized scooters is permissible upon all sidewalks, sidewalk areas and other areas a bicycle may legally travel, located within city limits, except those areas listed below:
- (1) Micromobility devices and motorized scooters are prohibited from operating or parking at all times on streets, sidewalks, bike paths or sidewalk street areas on Palafox Street between Wright and Pine Streets;
 - (2) Micro micromobility devices and motorized scooters are prohibited from operating at all times on sidewalks along DeVilliers Street between Gregory and Jackson Streets;
 - (3) Veterans Memorial Park as designated by signage;
 - (4) Where prohibited by official posting; or
 - (5) As designated in the pilot program operating agreement and permit.
- (b) A user of a micromobility device and motorized scooter has all the rights and duties applicable to the rider of a bicycle under F.S. § 316.2065, except the duties imposed by F.S. § 316.2065(2), (3)(b) and (3)(c), which by their nature do not apply to micromobility devices and motorized scooters.
- (c) Micromobility devices and motorized scooters shall be restricted to a maximum speed of 15 miles per hour.
- (d) A user operating a micromobility device and motorized scooter upon and along a sidewalk, sidewalk area, or across a roadway upon and along a crosswalk, has all the rights and duties applicable to a bicyclist under the same circumstances and shall yield the right-of-way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian.
- (e) A user operating a micromobility device and motorized scooter must comply with all applicable local, state and federal laws.
- (f) Use of public sidewalks for parking micromobility devices and motorized scooters:
- (1) Adversely affect the streets or sidewalks.
 - (2) Inhibit pedestrian movement.
 - (3) Inhibit the ingress and egress of vehicles parked on- or off-street.
 - (4) Create conditions which are a threat to public safety and security.
 - (5) Prevent a minimum four-foot pedestrian clear path.
 - (6) Impede access to existing docking stations, if applicable.
 - (7) Impede loading zones, handicap accessible parking zones or other facilities specifically designated for handicap accessibility, on-street parking spots, curb ramps, business or residential entryways, driveways, travel lanes, bicycle lanes or be within 15 feet of a fire hydrant.
 - (8) Violate Americans with Disabilities Act (ADA) accessibility requirements.

(Code 1986, § 7-12-5; Ord. No. 17-19, § 5, 9-12-2019)

Sec. 7-9-6. - Impoundment; removal or relocating by the city.

- (a) Any shared micromobility device that is inoperable/damaged, improperly parked, blocking ADA accessibility, does not comply with this chapter or are left unattended on public property, including sidewalks, sidewalk areas, rights-of-way and parks, may be impounded, removed, or relocated by the city. A shared rental micromobility device is not considered unattended if it is secured in a designated parking area, rack (if applicable), parked correctly or in another location or device intended for the purpose of securing such device.
- (b) Any micromobility device that is displayed, offered, made available for rent in the city by a vendor without a valid pilot program operating agreement and permit with the city is subject to impoundment or removal by the city and will be subject to applicable impoundment fees or removal fines as specified in this chapter.
- (c) The city may, but is not obligated to, remove or relocate a micromobility device that is in violation of this chapter. A vendor shall pay a \$75.00 fee per device that is removed or relocated by the city.
- (d) Impoundment shall occur in accordance with F.S. § 713.78. The vendor shall be solely responsible for all expenses, towing fees and costs required by the towing company to retrieve any impounded micromobility device. The vendor of a micromobility device impounded under this chapter will be subject to all liens and terms described under F.S. § 713.78, in addition to payment of all applicable penalties, costs, fines or fees that are due in accordance with this chapter and applicable local, state and federal law.

(Code 1986, § 7-12-6; Ord. No. 17-19, § 6, 9-12-2019)

Sec. 7-9-7. - Operation of a shared micromobility device program—Enforcement, fees, fines and penalties.

- (a) The city reserves the right to revoke any pilot program operating agreement and permit, if there is a violation of this chapter, the pilot program operating agreement and permit, public health, safety or general welfare, or for other good and sufficient cause as determined by the city in its sole discretion.
- (b) Violations of sections 7-9-1 through 7-9-9 shall be enforced as non-criminal violations of city ordinances.
- (c) Violations of operating a shared micromobility device system without a valid fully executed pilot program operating agreement and permit, shall be fined \$250.00 per day for an initial offense, and \$500.00 per day for any repeat offenses within 30 days of the last offense by the same vendor. Each day of noncompliance shall be a separate offense.
- (d) Violations of this chapter or of the pilot program operating agreement and permit shall be fined at \$100.00 per device per day for an initial offense, and \$200.00 per device per day for any repeat offenses within 30 days of the last same offense by the same vendor. Each day of non-compliance shall be a separate offense.
- (e) The following fees, costs and fines shall apply to vendors:

| | |
|--------------------------|------------------------|
| Pilot program permit fee | \$500.00—nonrefundable |
|--------------------------|------------------------|

| | |
|---|---|
| Performance bond | \$10,000.00 minimum |
| One time per unit fee | \$100.00 per unit—nonrefundable |
| Removal or relocation by the city | \$75.00 per device |
| Operating without a valid operating agreement and permit fine | \$250.00 per day; \$500.00 per day for second offense |
| Permit violation fine | \$100.00 per device per day; \$200.00 per device per day for second offense |

- (f) At the discretion of the mayor, a vendor is subject to a fleet size reduction or total pilot program operating agreement and permit revocation should the following occur:
- (1) If the violations of the regulations set forth in this chapter are not addressed in a timely manner;
 - (2) 15 unaddressed violations of the regulations set forth by this chapter within a 30-day period; or
 - (3) Submission of inaccurate or fraudulent data.
- (g) In the event of fines being assessed as specified herein or a pilot program operating agreement and permit revocation, the mayor shall provide written notice of the fines or revocation via certified mail or other method specified upon in the operating user agreement, informing the vendor of the violation fines or revocation.

(Code 1986, § 7-12-7; Ord. No. 17-19, § 7, 9-12-2019; Res. No. 2019-58, § 1, 10-10-2019)

Sec. 7-9-8. - Appeal rights.

- (a) Vendors who have been subject to the imposition of violation fines pursuant to section 13-3-2 or a pilot program operating agreement and permit revocation may appeal the imposition of violation fines or the revocation. Should a vendor seek an appeal from the imposition of violation fines or the pilot program operating agreement and permit revocation, the vendor shall furnish notice of such request for appeal to the city code enforcement authority no later than ten business days from the date of receipt of the certified letter informing the vendor of the imposition of violation fines or revocation of the pilot program operating agreement and permit.
- (b) Upon receipt of a notice of appeal, a hearing shall be scheduled and conducted by the special magistrate in accordance with the authority and hearing procedures set forth in section 13-2-6. The hearing shall be conducted at the next regular meeting date of the code enforcement authority or other meeting date of the code enforcement authority as agreed between the city and the vendor.
- (c) Findings of fact shall be based upon a preponderance of the evidence and shall be based exclusively on the evidence of record and on matters officially recognized.

- (d) The special magistrate shall render a final order within 30 calendar days after the hearing concludes, unless parties waive the time requirement. The final order shall contain written findings of fact, conclusions of law, recommendation to approve, approve with conditions or deny the decision subject to appeal. A copy of the order shall be provided to the parties by certified mail or, upon mutual agreement of the parties, by electronic communication.
- (e) A vendor may challenge the final order by a certiorari appeal filed in accordance with state law with the circuit court no later than 30 days following rendition of the final decision or in any court having jurisdiction.



(Code 1986, § 7-12-8; Ord. No. 17-19, § 8, 9-12-2019)

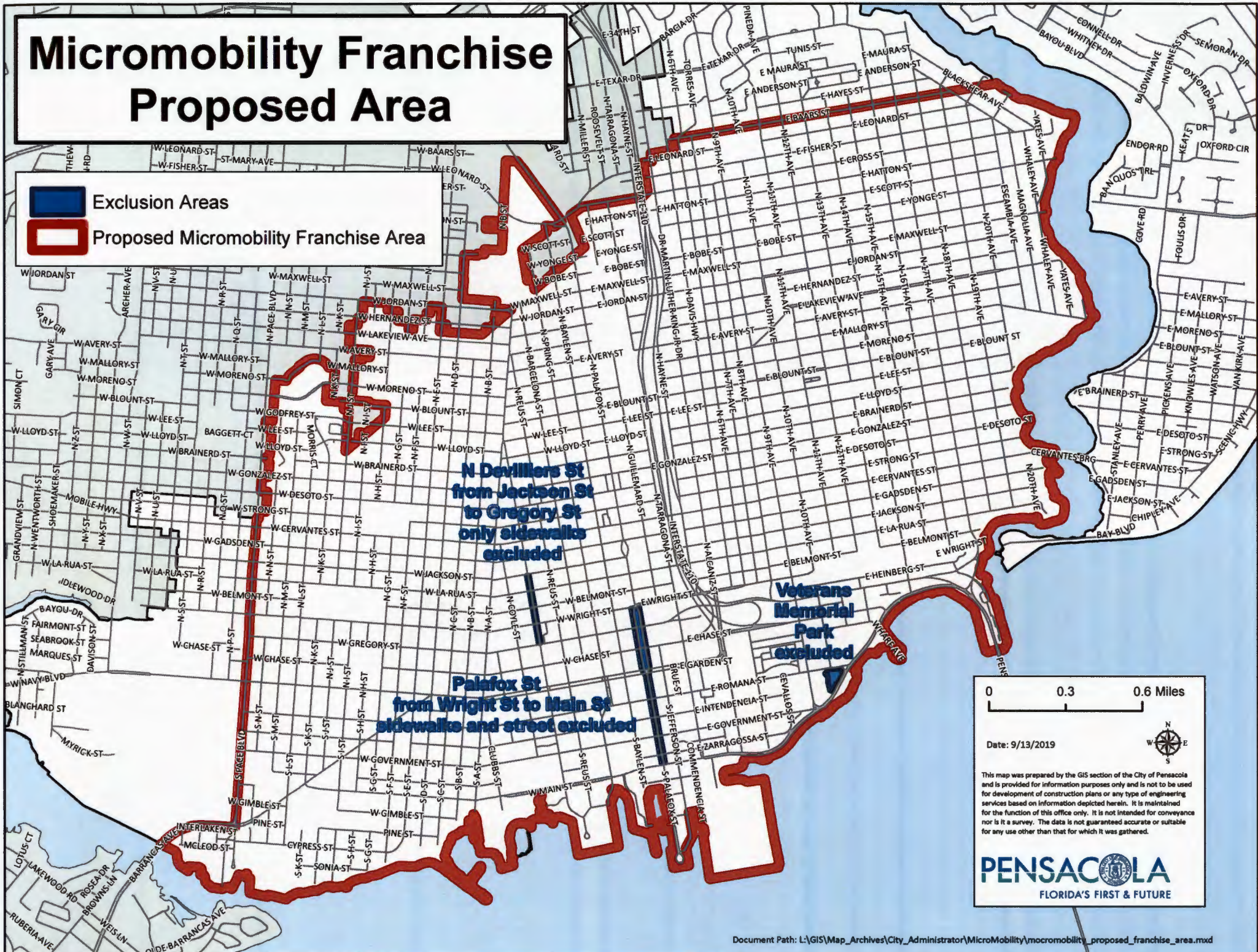
Sec. 7-9-9. - Indemnification and insurance.

- (a) As a condition of the pilot program operating agreement and permit, the vendor agrees to indemnify, hold harmless and defend the city, its representatives, employees, and elected and appointed officials, from and against all ADA accessibility and any and all liability, claims, damages, suits, losses, and expenses of any kind, including reasonable attorney's fees and costs for appeal, associated with or arising out of, or from the pilot program operating agreement and permit, the use of right-of-way or city-owned property for pilot program operations or arising from any negligent act, omission or error of the vendor, owner, or managing agent, its agents or employees or from failure of the vendor, its agents or employees, to comply with each and every requirement of this chapter, the pilot program operating agreement and permit or with any other federal, state, or local traffic law or any combination of same.
- (b) Prior to commencing operation in the pilot program, the vendor shall provide and maintain such liability insurance, property damage insurance and other specified coverages in amounts and types as determined by the city and contained in the pilot program operating agreement and permit, necessary to protect the city its representatives, employees, and elected and appointed officials, from all claims and damage to property or bodily injury, including death, which may arise from any aspect of the pilot program or its operation.
- (c) A vendor shall include language in their user agreement that requires, to the fullest extent permitted by law, the user to fully release, indemnify and hold harmless the city.
- (d) In addition to the requirements set forth herein, the vendor shall provide any additional insurance coverages in the specified amounts and comply with any revised indemnification provision specified in the pilot program operating agreement and permit.
- (e) The vendor shall provide proof of all required insurance prior to receiving a fully executed pilot program operating agreement and permit.

(Code 1986, § 7-12-9; Ord. No. 17-19, § 9, 9-12-2019)

Micromobility Franchise Proposed Area

-  Exclusion Areas
-  Proposed Micromobility Franchise Area



0 0.3 0.6 Miles

Date: 9/13/2019

This map was prepared by the GIS section of the City of Pensacola and is provided for information purposes only and is not to be used for development of construction plans or any type of engineering services based on information depicted herein. It is maintained for the function of this office only. It is not intended for conveyance nor is it a survey. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

PENSACOLA
FLORIDA'S FIRST & FUTURE

CONTRACTS/AGREEMENTS REQUIRING MAYORAL SIGNATURE
FINAL DOCUMENT REVIEW FORM
(blue)

DEPARTMENT

Document Title: Operating Agreement

Project Contract Lease Other (Check One)

Brief Description: Dockless Shared Micromobility Device Pilot Program Operating Agreement and Permit

Contract Cost: \$ N/A Department: Engineering

Approved by Mayor: / / Dept Contact Person: Blimote/Scarlett

OR
Approved By Council: 10/10/2019 Sent to Contract Admin. (Purchasing) 6/30/21

CONTRACT ADMINISTRATOR (PURCHASING) Date Received 6/30/21

N/A Department Check

 Pending (See comments below): (Signature) Sent to Department / /

Approved: [Signature] (Signature) Sent to Contract/Lease Counsel 6/30/21

Comments:

CONTRACT/LEASE COUNSEL Date Received / /

 Pending (See comments below): (Signature) Sent to Department / /

 Approved: (Signature) Sent to Budget Review / /

Comments:

BUDGET REVIEW Date Received / /

 Pending (See comments below): (Signature) Sent to Department / /

Approved: [Signature] (Signature) Sent to Risk Manager 6/30/21

Comments:

CONTRACTS/AGREEMENTS REQUIRING MAYORAL SIGNATURE
FINAL DOCUMENT REVIEW FORM
(page 2)

RISK MANAGER

Date Received / /

Pending (See comments below): _____ (Signature)

Sent to Department / /

Approved: Ryan Fitzgerald
(Signature)

Sent to City Attorney 6/30/21

Comments: _____

CITY ATTORNEY

Date Received 6/30/21

Pending (See comments below): _____ (Signature)

Sent to Department / /

Approved: Summit Fry
(Signature)

Sent to Mayor 6/30/21

Comments: _____

MAYOR'S OFFICE (CITY ADMINISTRATOR)

Date Received 6/30/21

Pending (See comments below): _____ (Signature)

Sent to Department / /

Approved: [Signature]
(Signature)

Sent Original to City Clerk 6/30/21

Comments: _____

CITY CLERK

Date Received 6/30/21

Pending (See comments below): _____ (Signature)

Sent to Dept/Admin/Legal / /

Approved: Chucka L. Burnett
(Signature)

Retained original copy in Fortis

Comments: _____
Retained original. Will email electronic
copy Mark Jackson.

Returned 0 original(s) to Department 6/30/21

Initials: FLB