

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

This Micromobility Device Pilot Program Operating Agreement and Permit (“Agreement”) is made this 19<sup>th</sup> day of AUGUST 2021, by and between the City of Pensacola, a Florida municipal corporation, whose address is 222 West Main Street, Pensacola, Florida 32502 (“City”) and VeoRide Inc., whose address is 1001 N Milwaukee Ave., Ste. 401 Chicago, IL 60642 (“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 1st day of September, 2021, and shall automatically expire after 12-months, on the 31st day of August, 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 twenty (20) 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.

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

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: (855) 836-2256

Email: [hello@veoride.com](mailto:hello@veoride.com)

Website: [www.veoride.com](http://www.veoride.com)

Social Media (Facebook/Twitter): [@veoride.mobility](#) & [@VeoRideMobility](#)

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 quarterly 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 monthly riders;
- Total number of miles traveled by users (monthly
- Average duration of ride per day of the month;

- Start point of ride heat map;
- End point of ride heat map;
- Trip patterns heat map;
- Summary of fleet numbers lost to vandalism;
- Details of complaints on crashes and injuries;
- Summary of customer comments/complaints, resolution, and average time it took to resolve each complaint;
- Average lifespan of a Micromobility Device;
- 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.

(b) During the term of this Agreement, Vendor shall distribute a customer service satisfaction survey, the summary 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
- 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.

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:**

The Vendor must notify the City immediately upon any notice received by Vendor from its insurance carrier(s) that a policy was suspended, voided, canceled, or reduced in coverage or limits.

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 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.

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.

(c) Indemnification. Vendor agrees 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, vendor's use of the rights-of-way or City-owned property for Pilot Program operations in violation of this agreement, 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 (including its representatives, employees, elected and appointed officials) for 1) its own negligence; or (2) Vendor's action or conduct at the direction of the City or its agents or for action. 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.

Vendor's contracts or end user agreements with Users of Micromobility Devices, to the fullest extent permitted by law, shall obligate Users to release the City and its officers, affiliated entities, employees, agents and contractors from any claim, damage, loss, expense, including attorney fees, in relation to the possibility that Users may contract COVID-19 as a result of exposure while using Vendor's Micromobility Device.

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). Once a tropical storm or hurricane warning has been issued by the NWS that includes the city of Pensacola, the vendor must remove and secure all Micromobility Devices within 24 hours of the warning issued by the NWS. Following the tropical storm or hurricane, the Vendor will not redistribute the devices without permission from 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.

The City's direct contact for Vendor is Candice Xie ; telephone number: (765) 838 - 9861 ; email: Candice.xie@veoride.com .

15. Damage to City Property. To the fullest extent lawful, Vendor shall be liable to, and shall promptly reimburse the City for damage to City property, including without limitation ROW, related to or arising from a Micromobility Device user's participation in the Program, 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, 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's Parking Department or other designated personnel by the City may, but are not obligated to remove, relocate, or impound a Micromobility Device that is in violation of this Agreement. In some cases, Micromobility Devices may be removed and impounded in a secure location to be retrieved by the vendor. A Vendor shall pay a \$75.00 fee per device that is removed, relocated or impounded by the City. The City shall not be liable for damages connected with the removal, relocation or impoundment of Micromobility Devices, theft of Micromobility Devices, or theft of personal property contained in or on Micromobility Devices, provided that removal, relocation and / or impoundment has been performed with reasonable care.

(c) Impoundment, if occurs as a result of law enforcement involvement shall be done 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(s).

The Vendor of a Micromobility Device impounded by law enforcement 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 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 Street  
Pensacola, FL 32502

With copy to:

City Attorney's Office  
222 W. Main Street

Pensacola, FL 32502

Vendor:

VeoRide Inc.  
ATTN: Candice Xie  
1001 N Milwaukee Ave., Ste. 401  
Chicago, IL 60642

With a copy to:

Gutwein Law  
ATTN: Brian Casserly  
250 Main St. #590  
Lafayette, IN 47901

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 for (i) Pilot Program operations or (ii) arising from any negligent act, omission of Vendor. Should the Vendor fail to repair, replace or 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 is 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 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

By:  \_\_\_\_\_

Print Name: Bowen Xie

Title: CEO

CITY OF PENSACOLA

By:  \_\_\_\_\_

Print Name: Kerrith Fiddler

Title: Deputy City Administrator

File name: Operating Agreement

ATTEST TO:

By: Robyn M. Tice  
ASST. City Clerk, ~~Ericka L. Burnett~~ ROBYN M. TICE

Approved as to form:

By: Vanessa Moore  
Assistant City Attorney, Vanessa Moore