

**INTERIM OPERATING AGREEMENT FOR IMPLEMENTATION OF A
SHARED ACTIVE TRANSPORTATION OPERATION**

THIS INTERIM OPERATING AGREEMENT (“Agreement”) is made and entered into this 30th day of July, 2018, (the “Effective Date”) by and between the City of Kansas City, Missouri, a constitutionally chartered Municipal corporation (hereinafter referred to as “City”), and Bird Rides, Inc., a Delaware corporation located in Venice, California (hereinafter referred to as “Company”) (together the “Parties”).

WHEREAS, Company wishes to immediately implement its Shared Active Transportation Operation within Kansas City’s corporate boundaries; and

WHEREAS, the Company’s introduction into Kansas City’s corporate boundaries will provide a low-cost transportation option for the City’s residents and visitors including opportunities for transportation, recreation, and fitness; and

WHEREAS, the Company’s Shared Active Transportation Operation requires use of the City’s right-of-way; and

WHEREAS, the City is developing a comprehensive Shared Active Transportation Pilot Program (“Pilot Program”) with input from stakeholders, including Company, which shall provide a comprehensive framework for Shared Active Transportation Operations in the future; and

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

Section 1. Scope of Agreement. The purpose of this Agreement is to establish interim rules and regulations governing the Company’s Shared Active Transportation Operation within the City and to ensure that such Shared Active Transportation Operation is managed in a manner consistent with the safety and well-being of pedestrians, bicyclists, motorists, and other users of the City’s right-of-way.

Section 2. Term. This Agreement, unless earlier terminated as provided for herein, shall commence on the Effective Date and shall expire six (6) months thereafter. Notwithstanding the foregoing, this Agreement shall be terminated upon creation and adoption of a Pilot Program. The Company, at the sole discretion of City, may have the opportunity to participate in the Pilot Program.

Section 3. Definitions. The following terms have the meaning and/or usage ascribed herein, except where an alternative definition or usage is specifically provided:

1. Company shall mean the entity owning the Shared Active Transportation, its agents and contractors (including independent contractors) and every person or entity retained by the Company to maintain the Company’s Small Vehicles.

2. Fleet shall mean all of Company’s Small Vehicles in operation within the City’s

corporate boundaries at any one time

3. Frontage Zone shall mean the area adjacent to the property line where transitions between public sidewalk and the space within buildings occurs.

4. Furnishing Zone shall mean that portion of the sidewalk used for street trees, landscaping, transit stops, street lights, and site furnishing.

5. Rider shall mean any person using the Small Vehicle.

6. Shared Active Transportation shall mean a dockless network or system of Small Vehicles, placed in public right-of-way and for rent in short term increments, that provides increased mobility options over short distances.

7. Shared Active Transportation Operation shall mean the Company's Shared Active Transportation as well as any incidental use or patronage thereof.

8. Small Vehicle shall mean dockless bikes, scooters, e-bikes, e-scooters, skateboards, and other small, wheeled vehicles designed specifically for shared-use and deployed by Shared Active Transportation companies.

9. Throughway Zone shall mean the portion of the sidewalk for pedestrian travel along the street.

Section 4. Company's Obligations.

1. Licensure. As a condition precedent to this Agreement, and prior to commencement of operations, Company shall apply, procure and remit payment for a business license from the City, together with any other requirements necessary to conduct a Shared Active Transportation in the City. Company shall remain in good standing through the course of the Company's Shared Active Transportation Operation in the City.

2. Contact Information. Company shall provide easily visible contact information, including a 24-hour toll-free phone number and e-mail address on each Small Vehicle for use by members of the public to report safety concerns, complaints or to ask questions. In addition, Company shall also provide City with contact information of a locally-based manager/operations staff with decision-making power who can respond to City requests, emergencies, and other issues at any time.

3. Fleet Size. Company shall begin operations in Kansas City, Missouri corporate limits with a Fleet of one hundred (100) Small Vehicles. During the term of this Agreement, Company may not reduce the size of its Fleet below one hundred (100) Small Vehicles. Company may only increase the size of its Fleet upon the City's approval pursuant to "Section 5. City's Obligations." Notwithstanding the foregoing, Company's Fleet shall not exceed five hundred (500) Small Vehicles.

4. Consideration. In addition to any taxes and fees imposed by the City's Code of Ordinances to operate a business, Company shall remit a regulatory fee of \$500 and a ridership fee of \$1 for each Small Vehicle in operation each day to the City to defray various costs incurred by the City, such fees to be remitted as follows:

\$500 regulatory fee prior to commencement of Shared Active Transportation Operation

\$1 per Small Vehicle per day at the conclusion of each calendar month

5. Parking Regulations. Company shall ensure that Small Vehicles are parked as follows:

- i. Small Vehicles shall not be parked in the street unless the City grants the right to park in specified areas within the street;
- ii. Small Vehicles shall be parked in a manner so as not to block the Throughway Zone of the sidewalk, any ADA ramp or access points, fire hydrant, call box, or other emergency facility, or utility pole or box;
- iii. Small Vehicles shall be parked upright on hard surfaces in either the Frontage Zone or Furnishing Zone of the sidewalk; beside bicycle racks, transit stops, or bike share stations; or in another area specifically designated for Small Vehicle parking which do not inhibit access;
- iv. Small Vehicles shall not be parked in such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building or access to or from off-street parking lots or garages;
- v. Small Vehicles shall not be parked in such a manner as to impede or interfere with the reasonable use of any bicycle rack or news rack;
- vi. Small Vehicles shall not be parked in the Furnishing Zone directly adjacent to or within the following areas, such that access is impeded:
 - a. Loading zones;
 - b. Disabled parking zones;
 - c. Street furnishings that requires pedestrian access (for example – benches, parking pay stations, bus shelters, transit information signs, etc.)
 - d. Curb ramps;
 - e. Entryways;
 - f. Driveways; and
 - g. Portions of transit zones, including bus stops and streetcar stops, shelters, passenger waiting areas and bus layover and staging zones, which would inhibit access.
- vii. To the extent Company desires to park Small Vehicles in areas other than the City's right-of-way, Company must first obtain permission from the applicable owner and shall communicate the right to park at that location to Riders.

6. Notice. Company shall provide notice to all Riders by means of signage and through a mobile or web application that:
 - i. Small Vehicle is to be ridden only on streets, and where available, in bike lanes or bike paths and not on a Throughway Zone or areas designated by the City to be closed for Small Vehicle traffic;
 - ii. Small Vehicle is to be ridden to the right of street lanes and should offer the right of way to bicycles on bike lanes and bike paths;
 - iii. Helmet use is encouraged when using a Small Vehicle;
 - iv. Small Vehicle must be parked only in designated areas;
 - v. Riding responsibly is required; and
 - vi. Riders are, at all times, to operate the device in a manner consistent with the City's Code of Ordinances and any other applicable laws;
 - vii. Rider may be ticketed for operating the device in a manner which violates the City's Municipal Code.
7. Data Sharing. Upon request and at no cost to the City, Company shall provide the City with data related to utilization of the Small Vehicles. Data should be provided to the City in the General Bike Share Feed Specifications (GBFS) format. Aggregated reports on system use, compliance, operations – including but not limited to parking complaints, crashes, damaged or lost Small Vehicles – shall be made available to the City at the end of each week, or upon request. Anonymized/De-identified demographic data – such as age cohort, gender, general trip purpose, etc. – collected by Company shall be provided to the City on a monthly basis, or upon request. Company shall make available to the City any information from private entities related to requests for Small Vehicles not to be used or parked at a private location on a monthly basis, or upon request.
8. Speed. Small Vehicles which do not rely solely on human propulsion and are equipped with an electric motor that is capable of propelling the device shall be governed at a speed not to exceed fifteen (15) miles per hour on a paved level surface.
9. Education and Outreach. Company shall provide education to Small Vehicle riders on the City's existing rules and regulations, safe and courteous riding, and proper parking. Company shall provide this educational material to the City for review prior to disseminating the information to Riders. Company shall also provide city-specific website that explains the terms of service, user instructions, privacy policies, fees, penalties, unexpected charges, and local management and operations contact information.
10. Inclement Weather. On days where inclement weather (rain or snow) is anticipated, Company will halt its Shared Active Transportation Operation. On days where snow is anticipated, Company shall remove its Small Vehicles from City right of way. Company shall not hold City liable for damage to Small Vehicles caused by City's snow removal operations.
11. Environment. Company shall embrace transparency in recycling efforts and recycle

or otherwise dispose of Small Vehicles and Small Vehicle parts in an environmentally-friendly at end of life cycle.

Section 5. City's Obligations.

1. Use of Right of Way. The City agrees to allow Company, its representatives, employees, consultants and contractors, non-exclusive use of those portions of the public right-of-way reasonably necessary for operation of the Company's Shared Active Transportation Operation, but subject to the limitations imposed by the City's Code of Ordinances and the terms of this Agreement. The grant of this use shall not constitute a conveyance of any interest in the public right-of-way.

Notwithstanding anything herein, the Parties agree that City shall have right to work within and restrict access to portions of the right-of-way, whether by its own forces or contracted forces.

2. Approval. The City shall, at its sole discretion, approve and permit reasonable increases to Company's Fleet based on utilization of the Fleet at three or more rides per day, with the approval not unreasonably withheld. Notwithstanding the foregoing, Company may operate no more than five hundred (500) Small Vehicles within the City's corporate boundaries at any time.

Section 6. Signage. Company agrees that, as it relates to all signage on Small Vehicles, it will abide by applicable local, state, and federal law relating to signs. The Small Vehicles are not a public forum for public debate or discourse. Company agrees that in addition to any restrictions set forth by city ordinance, the content of any sign located on Company's Small Vehicles will not include any message that is illegal, obscene, libelous or fraudulent. A violation of this Section shall be cause for the City to terminate this Agreement if said violation is not corrected within twenty-four (24) hours' notice to Company. The determination that there has been a violation of these signage guidelines shall be solely at the City's discretion.

Section 7. Default and Termination.

1. Except where specifically provided for elsewhere in this Agreement, in the event Company shall default in any of the covenants, agreements, commitments, or conditions herein contained, or if any of the conditions set forth below shall occur, and any such default shall continue unremedied for a period of three (3) business days after written notice thereof to Company, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Company, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of Company under this Agreement.

2. Prior to the conclusion of the Term of this Agreement, City may establish a Pilot Program of formalized regulations for Shared Active Transport Operation. If such Pilot Program is established prior to the conclusion of the Term, the City shall have the right to terminate this Agreement.

3. Notwithstanding anything to the contrary herein, the City may terminate this Agreement at any time if it finds, in its sole discretion, that Company's Shared Active Transportation Operation threatens the safety and health of the City's residents and visitors.

4. Company's obligation with regards to indemnification as provided in Section 13 of this Agreement shall survive the expiration or termination of this Agreement with regards to any claims arising during such time as this Agreement was in effect.

Section 8. Removal of Small Vehicles. Upon instances of Default and Termination under Section 7, Company shall remove its Small Vehicles from the right-of-way within two (2) days of being notified. If Company shall not remove the same upon due notice, any remaining Small Vehicles shall be removed by the City at Company's expense. Company shall not be entitled to damages for the removal of the Small Vehicles by the City.

Section 9. Maintenance of Small Vehicles.

Company shall maintain its Small Vehicles in a good working manner. In the event a safety or maintenance issue is reported for a specific Small Vehicle, that Small Vehicle shall be made unavailable to users and shall be removed within the timeframes provided in this section. Any inoperable or unsafe Small Vehicle shall be repaired before it is placed back in service. City shall not have any obligation with regards to the maintenance of the Company's Small Vehicles.

Company shall respond to requests for rebalancing or reports of unsafe/inoperable Small Vehicle by removing the Small Vehicle, as appropriate, within two (2) hours of receiving notice from a Rider, representative of the City, or any other person/entity.

Section 10. Abatement.

In the event the Company's Shared Active Transportation Operation does not conform to all requirements of Section 4, Part 5 Parking Regulations, or if Company's Shared Active Transportation Operation creates a nuisance or dangerous condition (as determined by City), Company shall relocate, re-park, remove or otherwise abate the condition within two (2) hours of receiving notice. Failure to abate such condition within two (2) hours shall constitute a default of this Agreement and City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Company, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of Company under this Agreement

In the event any Small Vehicle is properly parked (pursuant to Section 4, Part 5 of this Agreement) in one location for more than 72 hours without moving, such Small Vehicle may be removed by City personnel and taken to a City facility for storage at the Company's expense. In such instance, Company shall retrieve Small Vehicles from City within 24 hours. If Company does not retrieve the Small Vehicles, the City shall dispose of Small Vehicles at Company's expense.

Section 11. Notices. All notices required by this Agreement shall be in writing sent by regular U.S. mail, postage prepaid, or delivered by courier to the following:

CITY: Troy Schulte
City Manager
29th Floor, City Hall
414 E. 12th Street
Kansas City, MO 64106

With a Copy to: City Attorney
28th Floor, City Hall
414 E. 12th Street
Kansas City, MO 64106

COMPANY: Matt Shaw
406 Broadway, #369
Santa Monica, CA. 90401

With a Copy via email to: Birdlegal@bird.co

All notices are effective on the date mailed or upon receipt if delivered by a courier. Either of the Parties may provide the other party a change of address in writing which change shall be effective ten (10) days after delivery.

Section 12. General Indemnification.

1. Company shall defend, indemnify, and hold harmless City and any of its agencies, officials, officers and employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the performance under this Agreement, caused in whole or in part by Company, Company's employees, agents, or contractors, or others for whom Company is legally liable, regardless of whether or not caused in part by any act or omission of City, its agencies, officials, officers or employees. Company shall be released from its obligations under this section if the loss or damage was caused by the sole willful misconduct or sole negligence of the City.

2. Company's contracts with every Rider shall require such persons or entities to release the City and any of its agencies, officials, officers and employees to the same extent that Company is required by this section to defend, indemnify, and hold harmless City and any of its agencies, officials, officers and employees.

Section 13. Indemnification for Professional Negligence. If Company hires any architect or engineer in connection with design and manufacture of its Small Vehicles, then Company shall indemnify and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, but only to the extent caused by the negligent acts, efforts, or omissions of such employees, agents or others..

insurance will also contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

7. If the coverage afforded is cancelled or changed or its renewal is refused, Company shall give at least thirty (30) days prior written notice to City. Regardless of any approval by City, it is the responsibility of Company to ensure that the required insurance coverage is procured and maintained in effect at all times. In the event Company fails to ensure that the required insurance is procured and maintained in effect, or that City is named as an additional insured, City may order that the Company's Shared Active Transportation Operation immediately stop and, upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

Section 15. Controlling Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. City and Company: (1) shall submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non conveniens as an objection to the location of any litigation.

Section 16. Compliance with Laws. Company its employees, agents and contractors, including independent contractors, shall comply with all federal, state and local laws, ordinances and regulations applicable to the maintenance of the devices.

Section 17. Default and Remedies. If Company shall be in default or breach of any provision of this Agreement, City may terminate this Agreement, suspend City's performance and invoke any other legal or equitable remedy after giving Company notice and opportunity to correct such default or breach.

Section 18. 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 default, 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 their rights and remedies under this Agreement irrespective of any waiver granted.

Section 19. Modification. This Agreement shall not be amended, modified or canceled without the written consent of the parties to this Agreement.

Section 20. Headings; Construction of Agreement. The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender,

masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Section 21. Severability of Provisions. Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that 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 that 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 that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Section 22. Assignment. Company may not assign or transfer any part or all of their obligations or interests under this Agreement without City's prior written approval. Company shall notify City, in writing, at least (30) days prior to any proposed assignment or transfer and shall provide with that notice, the proposed assignee's or transferee's written acceptance of the terms and conditions of this Agreement. Company shall not be released from its obligations under this Agreement unless and until such time as it is released, in writing, by the Director of Public Works.

Section 23. Conflicts of Interest. Company certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that 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.

Section 24. No Partnership. It is expressly understood that the parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this Agreement.

Section 25. Tax Compliance. Company shall be in compliance with the City's tax ordinances administered by the City's Commissioner of Revenue. Company shall, upon request, furnish to City proof that it is in compliance with the City's tax ordinances administered by the City's Commissioner of Revenue and not delinquent on any payment or other obligation imposed by such ordinances.

Section 26. Buy American Preference. It is the policy of City that any manufactured goods or commodities used or supplied be manufactured or produced in the United States whenever possible.

Section 27. Further Acts. The parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement.

Section 28. Cooperation. The parties shall cooperate in the implementation and performance of the acts, undertakings and obligations as set forth in this Agreement.

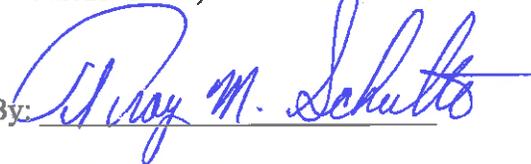
Section 29. Binding Effect. This Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest.

Section 30. Representations. The parties certify that they have the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with its terms.

THIS AGREEMENT CONTAINS AN INDEMNIFICATION REQUIREMENT

KANSAS CITY, MISSOURI

BIRD RIDES, INC.

By: 

By: 
48927D7695D3448...

Title: City Manager

Title: VP, Strategic Operations

Approved as to form:



Assistant City Attorney