

ADMINISTRATIVE ACTION FORM

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|-----------------------|--|--------------|----------|
| Contact Person: | Bill Fiander | Date: | 3/9/2021 |
| Document Type: | Contract/Agreement | Document #: | 493160 |
| Second Party: | Bird Rides, Inc. | Project #: | |
| Subject: | Scooters - Pilot Project | HTE #: | |
| Department/Division: | Planning & Development - PLDV | CIP Project? | |
| Category/Subcategory: | 007 Contracts and Amendments / 018 Other | | |

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|-------------------|------------------------------|------------------------|----|
| Requested Action: | Approve and Execute Document | Open Record Exception? | NO |
|-------------------|------------------------------|------------------------|----|

MAR 26 2021

Financial Implications:

Bird Rides, Inc. will pay \$500 to the City to begin conducting business. They will then pay the City a fee of 15 cents per ride per Scooter per day which will be remitted on the 15th day of each month.

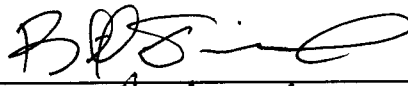
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Description:

The agreement is for the City to allow Bird Rides, Inc. to deploy no less than 100 and no more than 400 Scooters pursuant to the terms of the agreement. This will be a Pilot Project to allow the City to evaluate potential benefits as well as evaluate rules, regulations and requirements that will allow for the operation of Scooters in the City in a way which is consistent with the safety and well-being of all users of the public right-of-way, including users of the Scooters, bicyclists, pedestrians and motors.

Agreement will be in effect April 1, 2021 -- October 2, 2022.

Form Approval Routing:

| | | | |
|--------------|---|-------|------------|
| Approved By: |  | Date: | 3/9/21 |
| Approved By: | Department/Division <u>PLANNING & DEVELOPMENT</u> | Date: | 3/12/21 KB |
| Approved By: | Contracts & Procurement | Date: | 3-16-21 |
| Approved By: | Legal | Date: | 3/16/21 |
| Approved By: | Rcv'd in Finance <u>3/16/21 Mendola/KA</u> | Date: | 3/17/21 |
| Approved By: | Finance | Date: | |
| Return To: | City Clerk | | |
| Return To: | Contracts & Procurement | | |
| Return To: | LEGAL / Feishny. will return executed contract to Bird | | |

PILOT PROJECT LICENSE AGREEMENT
for the
TEMPORARY PERMITTED USE OF PUBLIC RIGHT-OF-WAY
related to the
OPERATION OF A DOCKLESS VEHICLE PROGRAM

This Pilot Project License Agreement (the "Agreement") is made and entered into this 17th day of March, 2021, (the "Effective Date") by and between the City of Topeka, Kansas, a municipal corporation (the "City"), and Bird Rides, Inc., located at 406 Broadway, #369, Santa Monica, CA (the "Company") (collectively referred to as the "Parties").

WHEREAS, the Company has approached the City seeking the City's approval of the deployment of a limited number of dockless, electric-assisted scooters ("Scooters"); and

WHEREAS, the City is willing to allow the Company to deploy the Scooters pursuant to the terms of this Agreement and in compliance with all applicable federal, state and local laws, rules and regulations (the "Pilot Project"); and

WHEREAS, the Company will conduct this Pilot Project at no cost or expense to the City.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Company agree as follows:

Article I
Scope of Agreement

The purpose of the Pilot Project is to allow the City to evaluate the potential benefits to the City of a Shared Active Transportation system. The purpose of this Agreement is to evaluate rules, regulations and requirements for the Pilot Project that allow for the operation of the Scooters in the City. These rules, regulations and requirements are meant to ensure that the operation of a Shared Active Transportation system is consistent with the safety and well-being of all users of the public right-of-way, including users of the Scooters, bicyclists, pedestrians and motorists.

Article II
Definitions

"City" means the City of Topeka, Kansas, its officers, employees and agents.

"Company" means Bird Rides, Inc.

"Electric-Assisted Scooter" or "Scooter" means: a self-propelled vehicle that has at least two wheels in contact with the ground, an electric motor, handlebars, a brake and a deck that is designed to be stood upon while riding.

"Fleet" means all of the Company's Scooters in operation within the City's corporate

boundaries at any one time.

“Rider” means any person using a Scooter.

“Service Area” means the corporate boundary of the City of Topeka.

“Shared Active Transportation” means a dockless network or system of Scooters, placed in public right-of-way and for rent in short term increments, which provides increased mobility options over short distances.

Article III Duration of Pilot Project

The duration of the Pilot Project shall commence on April 1, 2021 and terminate on October 1, 2022. This License Agreement shall be effective on the Effective Date and shall terminate on the date the Pilot Project terminates; unless earlier terminated as provided herein. Upon expiration, the Company shall have no legal right to continue to operate in the City of Topeka unless the City expressly permits the Company to continue to operate in the City. Upon expiration of its legal right to operate in the City, the Company shall have thirty (30) calendar days to remove all Scooters from the City right-of-way and cease operation.

Article IV Permitting and Fees

- A. **Permit.** The execution of this Agreement by the Parties, accompanied with the payment of Five Hundred Dollars (\$500.00) to the Director of Administrative and Financial Services shall permit the Company to begin conducting its business in the City; provided, however, that the Company’s business is conducted in accordance with the provisions of this Agreement, which includes payment of the fees set out in Article IV (B), and is in compliance with all applicable federal and state laws.
- B. **Daily Fee.** During the term of this Agreement, the Company shall pay the City a fee of 15 cents per ride per Scooter per day, the total of which shall be remitted on the 15th day of each month for rides provided during the previous month to the Director of Administrative and Financial Services, along with any supporting data required by the Director.

Article V Operating Requirements

- A. **General.**
 - 1. **Number of Scooters.** The Company shall begin operations within the Service Area with a fleet of one hundred (100) Scooters. The Company may not reduce the size of its Fleet below one hundred (100) Scooters except during periods of inclement weather or reduced demand, nor exceed four hundred (400) Scooters throughout the duration of the Pilot Project.

2. Marketing. Company will implement a marketing and targeted community outreach plan at its cost and promote the use of Scooters, particularly among low-income communities.
3. Fleet Size. Upon approval by the City Manager or designee, Company may be permitted to increase its fleet size above 400 if such an increase is supported by utilization or in order to increase access throughout the city and Company has satisfactorily complied with the terms of this Agreement.
4. Notification of Problems; Contact. When notified by a member of the public or the City, the Company will relocate Scooters within three (3) hours of receiving notification to address an over-concentration, broken scooters, public access or safety concerns. Company shall provide contact information, including a toll-free phone number and/or e-mail address on each Scooter or through a mobile or web application.
5. Equitable Distribution. The Company shall ensure the Fleet is equitably distributed within the Service Area to provide reasonable access for all citizens including underserved neighborhoods.
6. Speed. Scooters shall not be capable of exceeding a speed of fifteen (15) miles per hour on a paved level surface.

B. Scooter Placement

1. Staging. Company may stage its Scooters in permitted parking areas. To the extent Company desires to stage Scooters in areas other than the public right-of-way (e.g. parks, plazas, parking lots, private property, or transit stations), Company must first obtain the right to do so from the appropriate City department, property owner, or public agency.
2. Parking Prohibitions. The City reserves the right to prohibit the parking of Scooters on certain block faces or in certain locations.
3. Public Improvement Projects. The City reserves the right to work within and, in its sole discretion, restrict access to portions of the right-of-way.

C. Riding Scooters. The Company shall provide notice to all Riders, by means of signage and through a mobile or web application, that:

1. Age. Riders must be a minimum of 18 years-of-age.
2. Compliance with Laws. Riders must operate Scooters in a manner consistent with federal, state or local law, including the Topeka Municipal Code (TMC), specifically TMC 10.35.030, 10.35.040, and 10.35.050.

D. Maintenance, Repair and Deployment of Scooters.

1. Removal from Service. The Company shall maintain its Scooters in good working order. In the event a safety or maintenance issue is reported for a specific Scooter, that Scooter shall be removed from service. Any unsafe or inoperable Scooter shall be repaired before it is placed back in service. The City shall not have any obligation with regard to the maintenance and/or repair of the Company's Scooters.
2. Response Time. The Company shall respond to reports of unsafe or inoperable Scooters by removing the Scooter within three (3) hours of receiving notice from a Rider, representative of the City or any other person/entity.

E. Advertising; Logos. The Company will not use the name or logo of the City of Topeka or any of its departments or agencies to state or imply sponsorship or support of the Company's business, without prior written permission.

F. Data Sharing. Subject to reasonable restrictions for the protection of confidential, proprietary and personal information, Company shall do the following:

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

Article VI

Non-Compliance; Removal of Scooters

- A. **Non-Compliance with Parking Regulations.** In the event a Rider's parking of a Scooter does not conform to the parking requirements in TMC 10.35.050 or if a Scooter creates a nuisance or dangerous condition (as determined by the City, in its sole discretion), the Company shall relocate, re-park, remove or otherwise remedy the condition within six (6) hours of receiving notice.
- B. **Removal.** In the event a Scooter is not relocated, re-parked, or removed within the timeframe specified in this Agreement, or any Scooter is parked in one location for more than forty-eight (48) hours without moving, such Scooter may be removed by City personnel and taken to a facility designated by City for storage at the expense of Company. Scooters may also be removed or relocated by law enforcement or City personnel immediately if the Scooter is blocking pedestrian travel or presenting a traffic or safety hazard. City will notify Company in writing within five (5) business day of impoundment of the Scooter and its location. Failure to timely pay any storage or impound fees may result in termination of this agreement.

Article VII

Indemnification

Company agrees to indemnify, defend and hold harmless City and City's employees and agents from and against all actions, damages or claims brought against City arising out of Company's negligence or willful misconduct, except that Company's indemnification obligation shall be limited by City or City's employees and agents' negligence or willful misconduct. City expressly acknowledges that in no event shall Company be liable for any special, indirect, consequential or punitive damages. Company's indemnification obligations shall survive for a period of two (2) years after expiration of this Agreement. City's right to indemnification shall be contingent on City notifying Company promptly following receipt or notice of any claim. Neither party shall consent to the entry of a judgment or enter into any settlement without the prior written consent of the other party. The Company's obligation as provided in this Article VII shall survive the expiration or termination of this Agreement with regard to any claims arising during the time within which such Agreement was in effect.

Article VIII

Insurance

The Company shall procure and maintain in effect throughout the Term of this Agreement, insurance coverage no less than the types and amounts specified below:

1. Commercial General Liability insurance coverage with a limit of no less than \$1,000,000.00 each occurrence;

2. Automobile Insurance coverage with a limit of no less than \$1,000,000.00 each occurrence;
3. Umbrella or Excess Liability coverage with a limit of no less than \$5,000,000.00 each occurrence; and
4. Where Company employs persons within the City, Workers' Compensation coverage of no less than the statutory requirement.

Article IX Termination

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

Following termination of this Agreement, Company agrees to collect and remove all Scooters and any other equipment or items located on the City's sidewalks, streets or right of ways within thirty (30) days of the termination date of this Agreement. Failure to do so within this time parameter will entitle City to collect and dispose of the Scooters and any other equipment for which Company shall have no claim for damages.

Article X Notices

All notices required by this Agreement shall be in writing sent by regular U.S. certified mail, return receipt requested, or delivered by courier to the following:

CITY: City of Topeka
Attn.: City Clerk
215 SE 7th Street
Topeka, KS 66603

With a Copy to: City of Topeka
Director of Planning & Development Services
620 S.E. Madison
Topeka, KS 66607

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

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

All notices are effective upon receipt. Either Party may provide the other with a change of address in accordance with this Article X. Such change shall become effective ten (10) calendar days following its receipt by the other Party.

Article XI Miscellaneous

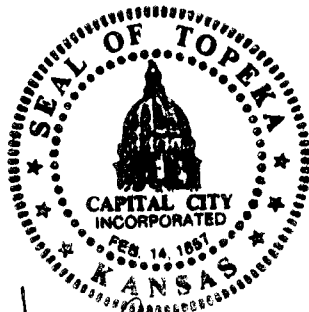
- A. **Controlling Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Kansas.
- B. **Compliance with Laws.** The Company, its employees, agents and contractors, including independent contractors, shall comply with all federal, state and local laws, ordinances and regulations applicable to Shared Active Transportation system or Scooter operations and the maintenance of the Scooters.
- C. **No Waiver.** Unless otherwise stated in this Agreement, the Parties acknowledge that the failure by either Party to enforce any term of this Agreement shall not constitute a waiver of any rights or deprive either Party of the right to insist thereafter upon strict adherence to that or any other term of this Agreement; nor shall a waiver of any breach of this Agreement constitute a waiver of any preceding or succeeding breach. No waiver of any of the provisions of this Agreement, unless expressly stated otherwise in this Agreement, shall be valid and binding unless it is in writing and signed by the Party against whom it is sought to be enforced.
- D. **Modification.** This Agreement shall not be amended without the written consent of the parties to this Agreement.
- E. **Severability.** 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.
- F. **Assignment.** The Company may not assign or transfer any part of all of its obligations or interests under this Agreement without the City's prior written approval. The Company shall notify the City, in writing, at least thirty (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. The Company shall not be released from its obligations under this Agreement unless and until such time as it is released, in writing, by the City Manager.

- G. **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 the performance of this Agreement.
- H. **Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest.
- I. **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.
- J. **Execution in Counterparts.** This Agreement may be signed by faxed or electronic signature, which shall be deemed to be an original signature. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as the dates set forth opposite the signatures and represent that the individuals executing this Agreement on behalf of the Parties have the express authority to do so.

CITY OF TOPEKA, KANSAS

(SEAL)

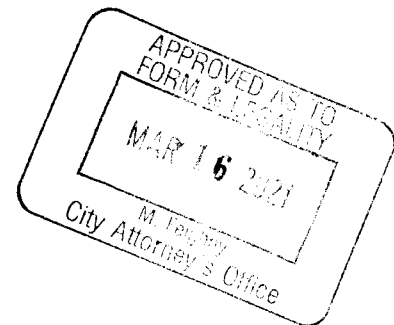


ATTEST:

By:

Brenda Younger
Brenda Younger, City Clerk

By: *Brent Trout*
Brent Trout, City Manager



BIRD RIDES, INC.

Designated by:
Matt Shaw
F158A2FE0C834BC...
By: Matt Shaw, Sr. Director, Government Partnerships