

DOCKLESS SHARED MOTORIZED SCOOTER PILOT PROGRAM OPERATING AGREEMENT AND PERMIT

This Motorized Scooter Pilot Program Operating Agreement and Permit (“Agreement”) is made this ____ day of _____ 2019, by and between the City of Tallahassee, a Florida municipal corporation, whose address is 300 South Adams Street, Tallahassee, Florida 32301 (“City”) and _____, a _____, whose address is _____ (“Vendor”). The City and Vendor are each individually referred to as “Party,” and collectively as the “Parties.”

WHEREAS, the City desires to provide safe and affordable multimodal transportation options to all residents and visitors, reduce traffic congestion and maximize carbon-free mobility; and

WHEREAS, on May 15, 2019, the City Commission authorized a three-month pilot program for dockless shared motorized scooters (“Pilot Program”); and

WHEREAS, this Agreement will authorize the Vendor to participate in the Pilot Program subject to the terms and conditions of this Agreement.

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 July 15, 2019 and shall automatically expire after three-months, October 15, 2019, unless the City Commission authorizes the 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 Motorized Scooters from the City. Failure to remove all Motorized Scooters within the two (2) business day timeframe, may result in the impoundment of the Motorized Scooters and Vendor will have to pay applicable fees to recover Motorized Scooters from impound. Upon expiration of the Pilot Program, shared dockless Motorized Scooters shall not be permitted to operate within the City until and unless the City Commission adopts an ordinance authorizing the operation of shared dockless Motorized Scooters within the City.
2. Permit. (a) The Vendor is hereby granted a temporary, non-exclusive license to operate a dockless shared motorized scooter during the pilot program in accordance with the Code of General Ordinances of the City of Tallahassee Chapter 17, Article IV and subject to the terms and conditions of this Agreement. The Vendor is authorized to deploy no more than 200 Motorized Scooters 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. 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.

(b) The City reserves the right, at a future date, to authorize the Vendor to deploy bicycles or e-bikes during the Pilot Program and shall notify Vendors in writing if bicycles or e-bikes are authorized. Deployment of any bicycles or e-bikes shall count towards the 200 maximum devices permitted under the Pilot Program and shall be subject to the same regulations as Motorized Scooters.

3. Definitions and Applicable City Codes. The definitions and all regulations contained in the Code of General Ordinances of the City of Tallahassee, Chapter 17, Article IV, are hereby incorporated by reference and shall apply to this Agreement.

4. Permit Fees. Prior to deploying Motorized Scooters in the City's ROW, the Vendor shall pay to the City: (i) \$5,000 non-refundable Permit Fee to participate in the Pilot Program; and (ii) \$100 nonrefundable per device deployed in the Pilot Program fee. 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 that its Motorized Scooters are operated in accordance with all applicable local, state and federal laws, including without limitation, Code of General Ordinance of the City of Tallahassee, Chapter 17, Article IV, and the Florida Uniform Traffic laws, as amended. The Vendor represents and warrants that it knows, and will comply with, the foregoing laws. Vendor acknowledges that Motorized Scooters shall not be able to exceed 15 mph.

6. Parking. Vendor shall provide parking instructions to Users, indicating that the Motorized Scooter 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 should indicate that scooters should be prohibited from blocking the sidewalk and should ensure that there is ADA accessibility at all times. E-scooters should be parked upright at all times, and parking should be prohibited on private property without the private property owner's permission. Parking must also maintain a minimum four-foot pedestrian path on sidewalks, and e-scooters should be prohibited from blocking:

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

7. Deployment Locations; Geofencing Capabilities. (a) Deployment locations for Motorized Scooters shall be set by the City. Vendor shall deploy motorized scooters 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. It is anticipated the campuses, and immediate surrounding areas, of Florida Agriculture and Mechanical University, Florida State University and Tallahassee Community College will not be available for Motorized Scooter use.

(b) Vendor shall have the capability to restrict Motorized Scooter 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 Motorized Scooters are only deployed and utilized within the designated deployment locations as set forth in Exhibit "A" or approved in writing by the City.

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

9. Markings. Vendor shall ensure that each Motorized Scooter is conspicuously marked with Vendor's unique branding, a unique serial number and Vendor's contact information, including a 24-hour toll-free phone number and e-mail address to respond to User and City issues with the Motorized Scooters. Vendor shall not apply any other markings or advertising to any Motorized Scooter.

The User support contact information is:

Phone:

Email:

Website:

Social Media (FaceBook/Twitter):

10. Maintenance. Vendor shall maintain Motorized Scooters in a good and safe working manner and in accordance with all applicable laws and shall promptly remove from the ROW any Motorized Scooter 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 E-scooters in circulation;
- Number of daily, weekly, and monthly riders;
- Total number of miles traveled by users (daily, monthly, quarterly, annually)
- Average time each E-Scooter spends available (not in use);
- Number of rides per user per day;
- Number of rides per E-Scooter 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 scooter pick up and drop offs;
- Monthly summary of E- Scooter distribution and GPS-based natural movement in heat map format;

- Summary of fleet numbers lost to vandalism;
- Details of complaints and issues, including accidents or injuries;
- Summary of customer comments/complaints, resolution, and time it took to resolve each complaint;
- Summary of repairs per E-scooter per month;
- Average lifespan of a scooter;
- Median lifespan of a scooter;
- Average trip in miles per day of the week;
- Average charging costs per ride;
- Average repair cost per ride;
- Average revenue per ride;
- Other data requested by the City.

Additionally, accidents 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 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 Motorized Scooters, 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 accident 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 \$1,000,000 per accident. Workers' Compensation coverage is required 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 Commission, 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 Commission, 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 Commission, boards, commissions and committees, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, members of its City Commission, 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 Commission, boards, commissions and committees, officers, agents, employees and volunteers.

Coverage shall state that 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, member of its City Commission, 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.

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 requirement 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 of 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 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 for 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. In no event will Vendors be liable for special, indirect, incidental or consequential damages (including any damages arising from loss of use, loss of data, lost profits, business interruption, or costs of procuring substitute software or services) arising out of or relating to the Pilot Program Operating Agreement and Permit.

Vendor's contracts or end user agreements with User of Motorized Scooters, to the fullest extent permitted by law, 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 Motorized Scooters in the City, Vendor must provide to City an emergency preparedness plan, approved by the City, that details where the Motorized Scooters will be located and the amount of time it will take to secure all Motorized Scooters once a tropical storm or hurricane warning has been issued by the National Weather Service. The Vendor must promptly secure, all Motorized Scooters within 24 hours of an active tropical storm 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 Motorized Scooters 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.

The City's direct contact for Vendor is _____; phone number:
; email: .

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 Motorize Scooters, except to the extent the damage is due to the negligence or willful misconduct of the City or its agents or 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 the Motorized Scooters. Vendor shall not allow any use of its Motorized Scooters by third-parties/Users unless they have first reviewed these materials.

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. Motorized Scooters Seized by the City; Impoundment. (a) Any shared Motorized Scooter that is inoperable/damaged, improperly parked, blocking ADA accessibility, does not comply with City Code, applicable law, 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 Motorized Scooter 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 Motorized Scooter 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 Motorized Scooter will require the Tallahassee Police Department (“TPD”) to authorize the vehicle to be impounded in accordance with TPD 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 Motorized Scooter(s).

The Vendor of a Motorized Scooter 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 Motorized Scooters, or bicycles/e-bikes if authorized by the City, shall count towards the permitted maximum of 200 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 Motorized Scooters 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 Manager, 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 \$100 per device per day for an initial offense, and \$200 per device 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 U.S. mail, postage prepaid or delivered by courier to the following:

City: Planning Department
ATTN: Julie Christesen
435 North Macomb Street
Tallahassee, FL 32301
Julie.christesen@talgov.com

With a copy to: City Attorney's Office
ATTN: Kristen Coons McRae
300 South Adams Street
Tallahassee, Florida 32301
Kristen.mcrae@talgov.com

Vendor: Insert Information

With a copy to:

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

23. Condition of 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 Motorized Scooters or other property. Vendor agrees that the City is not responsible for providing security at any location where Vendor's Motorized Scooters, or other property, is stored or located. Vendor hereby waives any claim against the City in the event Vendor's Motorized Scooters, 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 of real or personal property that is damaged, lost or destroyed as a result of Vendor's, or its User's, use of the ROW. 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 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 is cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provisions(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.

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 Motorized Scooters shall be filed in either the courts of Leon 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 that 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 that it is the sole owner of the Motorized Scooters.

34. Conflicts of Interest. Vendor represents and warrants 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.

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 Motorized Scooters 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 understanding 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: _____

Title: _____

CITY OF TALLAHASSEE

By: _____

Reese Goad, City Manager

ATTEST TO:

By: _____

James O. Cooke, IV, City Treasurer-Clerk

Approved as to form:

By: _____

Kristen Coons McRae, Asst. City Attorney