

SHARED MOBILITY PILOT PROGRAM AGREEMENT

This Services Agreement (“Agreement”) for Shared Mobility Devices is made this ____ day of ____ 2021, by and between the City of Nebraska City, a municipal corporation (“City”) and _____ (“Operator”). City and Operator are each individually referred to as a “Party,” and collectively, the “Parties.”

RECITALS

WHEREAS, City seeks to provide safe and affordable transportation options to all residents, reduce traffic congestion, and maximize carbon-free mobility.

WHEREAS, shared mobility device services are a component to help the City achieve its transportation goals, and the City desires to make shared mobility devices services available to residents, visitors and those who work in the City.

WHEREAS, Operator proposes to operate shared mobility devices services within the City, without the need for any physical stations or docks; and

WHEREAS, Operator will abide by relevant City ordinances and rules to efficiently and effectively provide shared mobility devices services; and

WHEREAS, Operator possesses GPS, cell and/or Bluetooth connectivity, and self-docking technology in its personal mobility products such that its vehicles may be locked and unlocked by users with an app and tracked to provide for operations and maintenance; and

WHEREAS, personal mobility vehicles used as part of shared mobility devices services refer to electric power-assisted or electric-powered devices, including electric kick-scooters; and

WHEREAS, the City’s intent for authorizing a single-operator pilot is to ensure public safety and minimize negative impacts on the public right of way, as well as to analyze data in a controlled setting to inform the City on a future RFP process

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, City and Operator hereby enter into an Agreement pursuant to the Shared Mobility Device Pilot Program as follows:

AGREEMENT

- 1. Pilot Term.** Pursuant to the terms of this Agreement, the City hereby gives Operator an exclusive, revocable, limited, and non-transferrable license to utilize the City right of way to provide shared mobility device services within the area approved by the City set forth in the map attached as “Exhibit A”. For purposes of this Agreement, the term right of

way (“ROW”) refers to sidewalks, roads, and other pathways owned and maintained by the City. City hereby grants Operator a twelve (12) month trial period for use of electric scooters, which may be renewed for an additional twelve (12) months with the approval of the City Council. The City will not approve more than one license for a pilot Shared Mobility Device for electric scooters program at a time.

2. **License to Use City Right of Way.** City authorizes Operator a license to use the public right of way solely for the purposes of offering its shared mobility device fleet within the City. No other party will be issued a license to operate dockless electric scooters in the City for the duration of the pilot program to allow for accurate data reporting during the pilot program. Authority to utilize the City right of way for this fleet is dependent on compliance with all terms of this Agreement. This authorization is not a lease or an easement, and it is not intended and shall not be construed to transfer any real property interest in City property. Shared mobility devices, limited herein to dockless electric scooters, shall only be operated in those rights of way that are authorized for the use of such shared mobility devices.
3. **Permitted Use.** Operator customers may use the sidewalk portion of the public right of way solely for parking of shared mobility devices owned and maintained by Operator for use in this pilot program. Operator shall not place or attach any personal property, fixtures, or structures on City right of way without the prior written consent of City Council or on private property without the property owners written consent. Upon termination of this Agreement by either party, Operator shall, at its sole cost and expense, remove its property from the right of way. Operator’s operations within the City, shall, at a minimum:
 - a. not adversely affect City right of way or the City’s streets or sidewalks or use thereof;
 - b. not adversely affect the property rights of any third parties;
 - c. not inhibit pedestrian movement within the public way or along other property or rights-of-way owned or controlled by the City; and
 - d. not create conditions which are a threat to public safety or security.
4. **Shared Mobility Device Parking.** Operator’s shared mobility devices may be parked in a legal manner in right of ways, where authorized by the City Council, by individuals

participating in the Shared Mobility Device Pilot Program authorized herein. Shared mobility devices parked on private property will be allowed at the discretion of the private property owner, provided however, such authorizations shall be limited to the area within the boundaries specified in Section 1 of this Agreement. Operator will actively manage the vehicle fleet to ensure orderly parking and the safe, free and unobstructed use of the right of way. The City, at its own discretion, may choose to support the Shared Mobility Device Pilot Program with the installation of additional parking racks, painted parking spots, and/or recommended parking spots without racks or painting.

5. Condition of City Right of Way.

- a. City makes the public right of way available to Operator in an “as is” condition. City makes no representations or warranties concerning the condition of the public way or its suitability for use by Operator or its customers, and it assumes no duty to warn either Operator or its customers concerning conditions that exist now or may arise in the future.
- b. City assumes no liability for loss or damage to Operator’s shared mobility devices or other property. Operator agrees that City is not responsible for providing security at any location where Operator’s vehicles are stored or located, and Operator hereby waives any claim against City in the event Operator’s vehicles or other property are lost or damaged.
- c. The City will notify Operator at EMAIL@EMAIL, by email, or through another agreed upon mechanism, for any shared mobility device authorized herein that is found to be adversely affecting the City right of way or in violation of City ordinances. Operator shall be responsible to correct improperly parked shared mobility device within the timeframes listed in “Exhibit B.”

6. Maintenance and Care of Portion of City Right of Way. Operator expressly agrees to repair, replace, or otherwise restore any part or item of real or personal property that is damaged, lost, or destroyed because of Operator or its customer’s use of City right of way. Should Operator fail to repair, replace, or otherwise restore such real or personal property within 24 hours of being notified, Operator expressly agrees to pay City’s costs in making such repairs, replacements, or restorations.

7. **Operations and Maintenance.** Operator will operate in the City no more than the maximum number of shared mobility devices that is specified in “Exhibit B,” unless this agreement is amended. Operator shall be responsible to maintain the shared mobility device fleet as set forth in “Exhibit B.” Operator shall be solely responsible for all maintenance and service costs in order to maintain the shared mobility device fleet and associated maintenance to minimum level of service and reporting outlined in “Exhibit B.”
8. **Indemnification.** Operator shall defend, pay, indemnify, and hold harmless City, its officers, officials, employees, agents, invitees, and volunteers (collectively “City Parties”) from all claims, suits, actions, damages, demands, costs, or expenses of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including without limitation court costs and reasonable attorneys’ fees, resulting from or in connection with loss of life, bodily or personal injury, or property damage arising directly or indirectly out of or from or on account of:
 - a. Any occurrence upon, at, or from City right of way or occasioned wholly or in part by the entry, use, or presence upon City right of way by Operator or by anyone making use of City right of way at the invitation or sufferance of Operator, except such loss or damage which was caused by the sole negligence or willful misconduct of City.
 - b. Use of Operator’s shared mobility devices by any individual, regardless of whether such use was with or without the permission of Operator, including claims by users of the shared mobility device or third parties.
9. **Insurance.** Prior to beginning and continuing throughout the term of this Agreement, Operator, at sole cost and expense, shall furnish the City with certificates of insurance evidencing that it has obtained and maintains insurance in the following amounts:
 - a. Workers’ compensation that satisfies the minimum statutory limits.
 - b. Commercial general liability and right of way damage insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, TWO MILLION DOLLARS (\$2,000,000) annual aggregate, for bodily injury, property damage, products, completed operations, and contractual liability coverage.

- c. Comprehensive automobile insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury and property damage including coverage for owned and non-owned vehicles.

All insurance policies shall be written on a per occurrence basis and shall name the City Indemnitees as additional insureds while any City insurance shall be secondary and in excess to Operator's insurance. If Operator's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible. The City may waive or modify any of the insurance requirements of this section.

- 10. Compliance with Law.** Operator, at its own cost and expense, shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities applicable to its operation of its Shared Mobility Device Pilot Program. If any license, permit, or other governmental authorization is required for Operator's lawful use or occupancy of City right of way or any portion thereof, Operator shall procure and maintain such license, permit, and/or governmental authorization throughout the term of this Agreement. City shall reasonably cooperate with Operator, at no additional cost to City, such that Operator can properly comply with this Section and be allowed to use City right of way as specified in Section 3, above.
- 11. Required Reports.** Operator shall provide reports to the City concerning utilization of its shared mobility devices and route usage not less than monthly. The format and type of data contained in the reports will be determined by the City, in coordination with Operator, as long as such information contains no personally identifiable information and is anonymized.

- 12. No Joint Venture.** Nothing herein contained shall be in any way construed as expressing or implying that the parties hereto have joined together in any joint venture or liability company or in any manner have agreed to or are contemplating the sharing of profits and losses among themselves in relation to any matter relating to this Agreement.
- 13. Term.** This Agreement shall commence on [_____], (the “Commencement Date”) and shall continue per the terms in Section 1, unless earlier terminated pursuant to Section 14, below.
- 14. Termination.** This Agreement may be terminated prior to the expiration date set forth in Section 13, above, upon delivery of written notice from City to Operator, or vice versa, terminating this agreement for any reason, or for no reason, by giving at least thirty (30) days’ notice of such termination. Upon the effective date of termination of this Agreement, Operator shall remove all vehicles covered in this agreement from the City and restore all City right of way to the condition of the City right of way at the Commencement Date of this Agreement.
- 15. Entire Agreement, Modification, and Non-waiver.** The agreement documents constitute the entire agreement of the parties and supersedes any prior agreements, written or oral. The agreement documents may not be modified or amended except in writing, signed by both parties hereto. The agreement documents, in general, and this paragraph, in particular, shall not be modified or amended by any acts or omissions of the parties. No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver. No waiver of the agreement documents, in whole or part, including the provisions of this paragraph, may be implied by any act or omission. However, notwithstanding anything to the contrary contained in this paragraph, an amendment to the maximum number of vehicles allowed can be made by mutual agreement with the City and the parties approval may be by email. Any other amendments shall only be effective if approved by the City Council and incorporated in a written amendment to this agreement and executed by duly authorized representatives of the parties.
- 16. Applicable Law and Venue.** The laws of Nebraska shall govern the interpretation and enforcement of this Agreement. Venue for all proceedings shall be in Otoe County, Nebraska.

17. Notices. All notices given or required under this agreement shall be deemed sufficient if sent by a method that provides written evidence of delivery, including e-mail and facsimile transmission and delivered to Operator or his designated contact person. Return of mail, sent to the address contained herein for the parties or their contact persons, as not deliverable or for failure to claim the mail shall be deemed received on the date that the mail is returned to sender.

18. Counterparts. This agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Executed the day and year first above written, by the parties as follows:

CITY OF NEBRASKA CITY, OTOE COUNTY, NEBRASKA, a municipal corporation.

By: _____
Bryan Bequette, Mayor

ATTEST:

By: _____
City Clerk-Treasurer

OPERATOR NAME.

By: _____
NAME, TITLE

Exhibit A

Authorized Area Shared Mobility Device Pilot Program City of Nebraska City, Nebraska

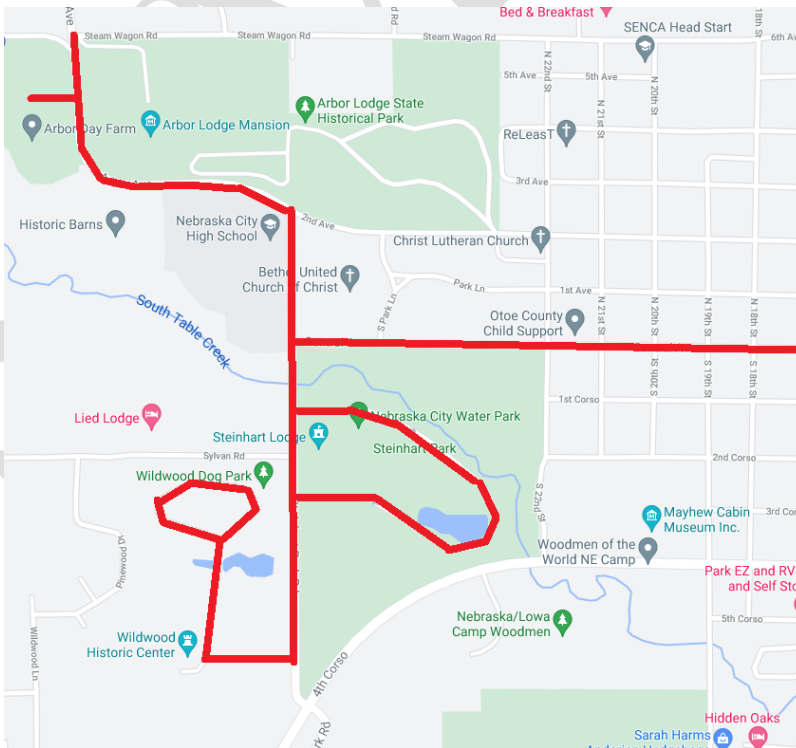
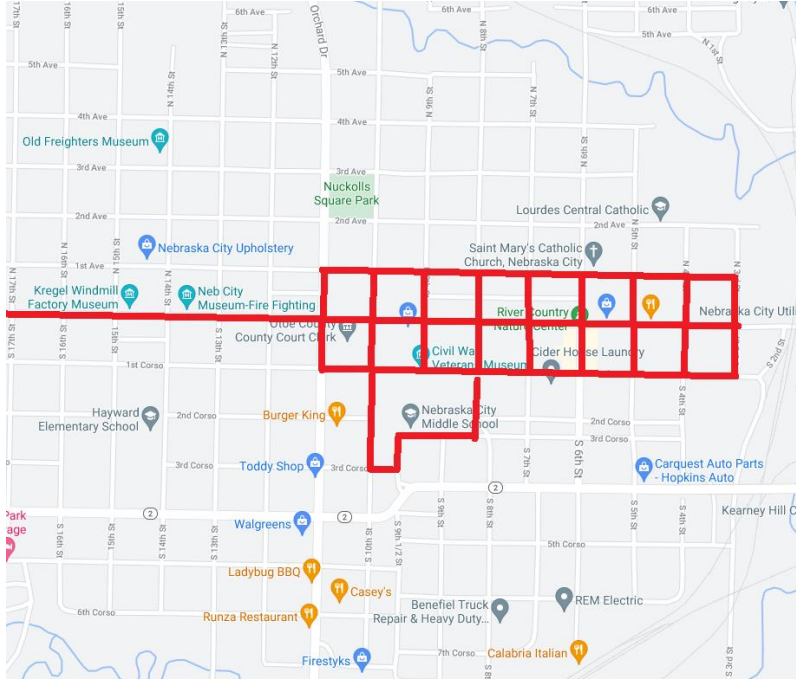


Exhibit B

Operator Operations and Maintenance Plan Shared Mobility Device Pilot Program City of Nebraska City, Nebraska

FLEET SIZE

Operator will deploy an initial fleet of up to 50 shared mobility devices (electric kick-scooters) over the course of the first month of the pilot. The vehicles will initially be deployed with an emphasis on the Central Business District, to help guide distribution based on user demand and usage trends. Operator may not operate more than 50 shared mobility devices in the City.

PLACEMENT PLAN

Scooters shall be limited to operation within the boundaries as shown in the attached map. Operator plans to initially deploy up to 50 personal mobility vehicles. Operator will also work with the City to determine where to initially deploy the vehicles. Operator's nimble and flexible operations can adjust vehicle deployment and distribution based on user demand and usage data.

Furthermore, Operator will work with relevant entities to determine areas where Operator vehicles can be placed, as well as work with companies in the City to locate Operator distribution points, in addition to locating Operator vehicles on public right of ways.

Operator's ground operations team will place Operator vehicles in a neat fashion on wide sidewalks, at or near racks and corrals, and any other locations designated or suggested by the City. Operator will ensure that personal mobility vehicles are not obstructing pedestrian or motor vehicle traffic when they are deployed.

USER EDUCATION

Operator believes that the most effective, consistent, and efficient method of providing important notices and educating users is through Operator's app. Any user may utilize the app, helping to ensure important information is seen and acknowledged (as opposed to stickers or physical signs that may be unseen or become damaged or lost).

New users will receive informational pop-ups when they use Operator's app to take a ride for the first time. The pop-ups will require the new users to affirmatively dismiss the pop-ups in order to proceed. The informational pop-ups will include:

- reminders about applicable laws;
- instructions on how to park responsibly;
- the boundaries within Nebraska City where the shared mobility devices are allowed to be operated and parked and notification that the user will be in violation of the laws of the City and of the user agreement if the shared mobility devices is operated or parked outside of this boundary; and
- the City penalty for violating its Shared Mobility Device Pilot Program Ordinance

CUSTOMER SUPPORT

Operator provides easy mechanisms through which users and the public can contact us to ask questions, report Operator vehicles that are damaged or obstructing the public right of way, or otherwise. Operator's app has a "Help" button on the user interface that enables users to report any issues. Users and members of the public can also contact Operator's customer support via email (EMAIL@EMAIL), phone, and social media for any issues or to make a relocation request. For additional details, please see WEBSITE ADDRESS.

GROUND OPERATIONS

Operator's ground operations staff are hired locally and help ensure the safety, accessibility, and responsible placement of Operator vehicles. The exact number of locally hired staff will depend on the fleet size in operation. The ground operations staff perform two primary functions:

- Maintenance
 - Every scooter is inspected for safety before deployment, with a recorded history of inspections and repairs.
 - All repairs and staff training are done by experienced mechanics.
 - Tune ups can be performed on the spot by the local operations team, who are equipped with the necessary tools.
 - Repairs are performed at the warehouse by mechanics.
 - All vehicles are inspected, at a minimum, for cleanliness, damage, and safe and reliable operation.
- Fleet Management
 - Deploy vehicles in accordance with local rules.
 - Visually survey streets and sidewalks and reposition any obstructing vehicles.
 - Respond to and retrieve vehicles that have been marked for repair, relocation, or cleaning.
 - Rebalance/redistribute scooters based on usage patterns and based on any City request or requirements.
 - Work with contractors to pick up vehicles at the end of each day to charge overnight.

PLACEMENT OF VEHICLES

Vehicles will be neatly placed by Operator staff on wide sidewalks and at or near public racks and corrals. Vehicles will be placed such that they do not obstruct the public right of way.

RELOCATION REQUESTS

The City, users and the general public can report vehicles via the website, app, email, phone, or social media. Operator will dispatch a ground operations member to deal with vehicles reported as obstructing the public right of way or in violation of this Agreement as follows:

- Within three hours after a notification is received by Operator if the notification is received between the hours of 7am-10 pm weekdays and 9am to 12 pm (midnight) weekends and holidays.
- Within 5 hours after a notification is received by Operator if the notification is received between 10:01 pm and 6:59 am on weekdays and between 12:01 am and 8:59 am on weekends and on holidays.

MAINTENANCE AND SAFETY

Every Operator vehicle is inspected for safety, with a recorded inspection history, at least once per month. Vehicles requiring charging are picked up by our local operations team as a part of its daily responsibilities or are brought in by a member of our charger network.

Operator's local operations team are trained by professional mechanics and inspect the following:

- Handlebars
- Brakes
- Brake levers
- Grips
- Tires
- Bell
- Wheel lock
- Exposed wires
- Rear fender
- Wheels
- Rear red light
- Front white light

Once a vehicle has been repaired and/or cleaned, it goes through a quality assurance check before being processed for redeployment back into the field.

REPORTING

Operator will provide, at a minimum, quarterly reports to the City with aggregate usage data including:

- Number of unique and separately total users in the system for the period
- Number of trips generated for the month
- Heat maps of usage trip showing top pick-up spots and drop-off spots.
- Average trip length and trip time
- Number of retrievals of scooters from outside of the program boundaries

Operator will also provide any additional data and information, at the request of the City, to assist with City oversight and transportation planning and to inform the City with regard to any potential future RFP for shared mobility device services.