

MEMORANDUM OF UNDERSTANDING

Between
[Name of Company]
and
City of Harrisonburg, Virginia

This Memorandum of Understanding (“MOU”) is entered into by and between the City of Harrisonburg, Virginia (the “City”) and [Name of Company] (“Operator”). Throughout this MOU, Operator and City may each be referred to as a “Party,” and may be referred to jointly as the “Parties.” This MOU governs the terms, responsibilities and performance measures between Operator and the City regarding Operator’s provision of shared mobility devices (SMDs) on property within City as part of a Citywide pilot program (the “Demonstration Project”).

RECITALS

WHEREAS, the purpose of this MOU is to permit Operator to operate under the Demonstration Project and ensure that Operator’s SMDs are used and parked appropriately without impeding pedestrian access or obstructing access to fire hydrants and valves, street furniture, bus stops, driveways, crosswalks, intersections, traffic operations, outside dining or retail, building access, or any other public use of right-of-way in City of Harrisonburg; and

WHEREAS, the City owns, controls, and maintains the public space on which Operator shall park its SMDs; and

WHEREAS, Virginia Code §§15.2-2001 and 15.2-2107 enable the City to regulate its right-of-way; and

WHEREAS, the City’s Department of Public Works (“DPW”) and the Harrisonburg Police Department shall be the primary City entities that shall enforce the conditions set forth in this MOU; and

WHEREAS, Operator’s Shared Mobility Devices (SMDs) are designed such that users can park them in the public space, making the Operator’s devices available to other users; and

WHEREAS, Operator desires to operate under the Demonstration Project in the City of Harrisonburg; and

WHEREAS, the City desires to facilitate the Demonstration Project to assess the viability of SMD operations within the City and to understand the parameters that will allow SMDs to operate effectively and to avoid any public nuisance in the City of Harrisonburg.

NOW, THEREFORE, based upon the above recitals, Operator hereby agrees to the terms, responsibilities, and performance measures of this MOU as follows:

Article I. Responsibilities of City of Harrisonburg

The City, by and through DPW, shall, with good faith and in an effort to achieve the City's policy goals, cooperate and communicate with Operator and the public to work towards a successful, safe, and sustainable regulatory environment for SMDs. All obligations of the City under this MOU shall be subject to and contingent upon the appropriation of funds.

- A. The City shall notify enforcement agencies not to ticket or impound Operator's SMDs if they are parked according to performance measures of this MOU, the stipulations of the required Permit, and all applicable laws.
- B. The City may, as needed, establish and update parking requirements applicable to SMDs including identification through signage, striping, or other means of areas that should serve as preferred parking locations for these devices.
- C. The City shall provide to Operator a City point of contact (POC) for the Demonstration Project.

Article II. Responsibilities of Operator

Performance Requirements: Operator shall, in good faith, through its City POC, cooperate and communicate with the City and the public to work towards a successful, safe, and sustainable Demonstration Project, conforming to all State and local laws, permit requirements, and the performance responsibilities outlined below:

1. Authorization to Operate

- a. Prior to operating in the City right-of-way, Operator shall execute a copy of this MOU; complete and submit to City of Harrisonburg the required Permit Application; and pay the required \$8,000.00 fee to cover the anticipated costs to City of administering the Demonstration Project.

2. Service Management and City Communication

- a. Upon executing this MOU, and as part of its permit application, Operator shall designate to the City a local General Manager who shall serve as a point of contact (POC). The POC shall have responsibility for, and control over, the services provided in this MOU for the duration of the Demonstration Project. If Operator changes their POC, they must notify the City of such change within 48 hours.
- b. Operator's representatives shall schedule a meeting with the City's POC within three days (or as soon thereafter as may be reasonably practicable) of any request by the City to review service status and issues. In addition to ad-hoc meetings, Operator shall meet with the City POC at least one week before launch or issuance of an SMD Permit, and in person or by phone monthly thereafter throughout the duration of the Demonstration Project.
- c. Upon the request of the City POC due to emergency, severe weather, construction, parade, public gathering, or other situation affecting the

normal operation of the right-of-way including sidewalks and trails, Operator shall collect and secure all of, or a portion of, Operator's owned or controlled SMDs to a location outside of the public right-of-way or to a location that does not otherwise impede City's access and response to the situation for the duration of the situation.

- d. In the case of a critical issue or emergency situation designated by the City POC, Operator shall be available within the Response Time to respond to emergency needs and to coordinate with the City. City has the right to take appropriate actions to respond to an emergency if the situation poses an imminent risk to public health and safety or property damage.

For the purposes of this MOU, the "Response Time" shall mean, based on the time of report:

- 1) When reported between 6 AM and 11 PM – 2 hours from the time of report
 - 2) When reported between 11 PM and 6 AM – Prior to 8 AM
- e. The Operator's POC shall respond within five business days regarding non-emergency issues or questions raised by City in meetings, through telephone inquiries, or other correspondence.
 - f. Operator shall be solely responsible for providing information to its customers on proper SMD parking prior to the launch of the Demonstration Project, and throughout its duration.

3. Safety

- a. Operator shall ensure each SMD deployed and used is fully operable, free of defects, conforms to relevant safety standards, and is well-maintained and clean.
- b. If an Operator SMD is reported in need of maintenance and/or cleaning in violation of the terms and performance measures in this MOU and all laws, Operator shall immediately prevent further use the device, and within one day of notification, shall remove it from City right-of-way.

4. Operations

- a. Fleet size.
 - i The Operator's initial Maximum Fleet Size is restricted to a maximum of 100 devices, except that an Operator that launched prior to January 1, 2019 may have an initial Maximum Fleet Size corresponding to the average number of daily rides over any 3 consecutive weeks of ridership data divided by 4.
 - ii The Operator may request increases in Maximum Fleet Size in increments of not more than 25 based upon 3 consecutive weeks of ridership data indicating an average of more than 4 rides per SMD per day.
 - iii Operator shall endeavor to maintain an active fleet size that averages 3 rides per SMD per day.

- iv If Operator averages fewer than 1 riders per SMD per day over any 3 consecutive weeks, DPW may reduce the Operator's Maximum Fleet Size.
 - v Any Operator that has its Maximum Fleet Size reduced during the period between any commencement ceremony and the opening of residence halls, as indicated on the annual academic calendar for James Madison University, will have its Maximum Fleet Size restored on the date of the opening of residence halls.
- b. Operator is responsible for maintaining their fleet size deployed within City of Harrisonburg at or below the maximum permitted fleet size.
- c. Operator shall have a customer service phone number for reporting safety concerns, complaints, and questions that is live 24 hours a day. This phone number and its website shall be clearly visibly posted on every SMD that is in service within the City of Harrisonburg.
- d. Operator shall provide their preferred contact information for SMD parking issues to the City of Harrisonburg Police Department and DPW.
- e. Operator shall affix its logo and unique identifying number for the device to each SMD in the City so that it is clearly visible and shall not allow other logos or advertisements to appear on any of its SMDs.
- f. Operator shall regularly monitor the deployment and dispersion of its SMDs to maintain service throughout City of Harrisonburg.
- g. Operator must notify SMD users of City and state regulations applicable to operating SMDs in the City. These notifications must at minimum be received through the mobile app and website for the service.
- h. Operator shall promptly respond directly to City of Harrisonburg residents and all users reporting issues or requesting information regarding services.

5. Parking

- a. Operator shall ensure that SMDs are parked in accordance with the terms and performance measures outlined in this MOU, permit requirements, and in compliance with all state and local laws.
- b. Operator shall work to ensure that SMDs are parked in a manner that does not impede pedestrian access; does not obstruct access to fire hydrants and valves, street furniture, crosswalks, driveways or private property; does not damage landscaping, street trees or other aesthetic features; and does not interfere with traffic or bus stop operations. Operator shall conduct outreach and education to its users on proper parking practices and shall continue developing and implementing technical solutions to ensure good parking behavior.
 - 1) SMDs shall not be parked with any part of the vehicle extending over the face of curb.
 - 2) SMDs shall be upright when parked.

- 3) In the Downtown Business District, Operator shall only stage and park SMDs in locations approved by the Director of Public Works or his designee.
- c. Any SMD parked on private, federal, or military property is subject to the requirements of that property owner and may be towed at any time at Operator's expense.
 - d. Within the times specified in Paragraph 2.d., above, after receiving a report from the City or others, Operator shall remove SMDs parked in violation of the parking requirements outlined above, or otherwise in conflict with applicable laws and regulations, or in violation with other SMD or bicycle parking standards to be developed and periodically updated by the City.
 - e. SMDs are not permitted to park in one single approximate location in the public right-of-way for more than seven consecutive days without rental.
 - f. Failure to adhere to these parking performance measures may result in the City removing the SMD and storing it in a City facility. Operator shall be required to pick up SMDs from such a facility and shall pay all costs associated with removal and storage of the devices, in addition to any applicable fines or fees, or other penalties as appropriate under the law. Subject to applicable laws and regulations, the City shall consider Operator's SMDs abandoned and dispose of them as the City deems fit in the event of that Operator fails to retrieve the device within 5 business days upon being notified of the removal and storage.

6. Data

- a. Without prejudice to Operator's rights to and interest in its commercially privileged and sensitive information, Operator shall provide to the DPW the following data in a Monthly Report by the 15th of each month for the previous month's activity:
 - 1) Total active customers who reside in the City
 - 2) Trips starting and trips ending, separately, in the City during the month
 - 3) Average trip duration in minutes
 - 4) Average and total distance of trips
 - 5) Daily SMDs in service in the City
 - 6) A map or heatmap of trip route data for all trips starting, ending, or passing through Harrisonburg by month
 - 7) Crashes – giving time, date, precise location, and number of parties impacted
 - 8) Injuries – giving time, date, precise location, and cause (if known)

- 9) Number and precise location of SMDs that were towed after seven (7) consecutive days in one location
 - 10) Complaints received – giving the reason with date and location, if available/appropriate
 - 11) Incorrectly parked SMD reports – giving time, date, and precise location
 - i Speeding reports
 - ii Other complaints
 - iii Other feedback received – by date, time, and precise location, if applicable
- b. If Operator collects de-identified demographic data from their customers, including age cohort, gender, and general trip purpose, such data shall be provided by Operator to the City, upon request.
 - c. Operator shall provide a City-accessible Application Program Interface (API) that provides the data outlined within, and meets the specification of, the City of Los Angeles Mobility Data Specification (MDS) as published online at <http://github.com/CityOfLosAngeles/mobility-data-specification>.

6. Surety Bond

Operator shall maintain a \$5,000 surety bond which the City may use to pay costs related to removing and storing devices that do not comply with these permit requirements, if such costs are not born by Operator.

7. Advertising

Operator shall not advertise or publish City's participation in or endorsement of the Operator on its SMDs or promotional material without the written consent of City of Harrisonburg.

Operator shall not use its SMDs for the sale or display of third-party advertising.

8. Remedies

If Operator violates its obligations under this MOU and such violation is not corrected within one week's time following written notice by the City, the City may immediately terminate Operator's participation under the Demonstration Project, this MOU, and/or suspend or revoke Operator's permit.

9. No Right, Title or Interest

Operator expressly acknowledges that this MOU does not constitute any conveyance, title, or interest in real property, in whole or in part.

Article III. Duration

1. This MOU shall become effective upon the City's signature and shall remain in effect for an initial term of twelve (12) months and may be renewed by Operator for an additional three (3) months upon ten (10) days' notice to, and the written consent of, City of Harrisonburg. This MOU may be modified only by mutual consent of authorized representatives from both parties, in writing.
2. Upon expiration of the Permit, Operator shall remove all of its SMDs from the City right-of-way.

Article IV. Service Area

This MOU, in conjunction with a completed and approved Permit Application, authorizes Operator to operate within any portion of City of Harrisonburg.

Article V. Insurance and Indemnification

1. Insurance.

Before providing any SMDs associated with this MOU or any extension of this MOU, Operator must provide to the City Point of Contact a Certificate of Insurance indicating that Operator has in force at a minimum the coverage below. Operator must maintain this coverage until the completion of the MOU or as otherwise stated in the MOU and/or permit documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractor, and products liability. The general aggregate limit must apply to this MOU.

Evidence of contractual liability coverage must be typed on the certificate.

- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Additional Insured – The City and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.

- e. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the MOU Term, Operator must notify the City Point of Contact immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this MOU. Not having the required insurance throughout the MOU Term is grounds for termination of this MOU.
 - f. Claims-Made Coverage - Any “claims made” policy must remain in force, or Operator must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
 - g. Contract Identification - All insurance certificates must state this MOU's number and/or title. Operator must disclose to the City the amount of any deductible or self-insurance component of any of the required policies. The City’s acceptance or approval of any insurance will not relieve Operator from any liability or obligation imposed by this MOU or permit documents. Operator is responsible for the for all materials, tools, equipment, appliances and property used in connection with this MOU. Operator assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with any activities associated with this MOU and for all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under this MOU or in connection in any way whatsoever with the activities performed pursuant to this MOU. Operator’s insurance shall be the primary non-contributory insurance for any work performed or activities or services provided for under this MOU.
 - h. Operator is as fully responsible to the City for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom Operator employs directly.
1. Indemnification.

Operator covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the City and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the “City Indemnitees”) from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys’ fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Operator’s acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the MOU, except to the extent such claims are based on or result from City Indemnitees’ negligence or unlawful or wrongful acts or omissions. This duty to save, defend, hold harmless and indemnify shall survive the termination of this MOU. If Operator fails or refuses to fulfill its obligations contained in this section, the Operator must reimburse the City for any and all resulting payments and expenses, including reasonable attorneys’ fees. Operator must pay such expenses upon demand by the City.

Article VI. FOIA

The Operator acknowledges that documents submitted to the City by Operator—both during the term of this MOU and/or as part of any proposal, quote, or presentation made by Operator to the City unless otherwise marked as confidential and/or proprietary—constitute public records that may be subject to public disclosure or production under the Virginia Freedom of Information Act (VFOIA). Any information contained in any document or record, which Operator considers confidential or of a proprietary nature must be noted at the time of submission. If the City receives a public disclosure request, whether informally or formally, from any person or entity, for such information or documents, the City agrees to immediately notify Operator. The City also agrees to work with Operator to determine whether any information or documents may be protected from disclosure or production under VFOIA; and will act reasonably in this regard. Nothing contained in this MOU shall affect the City’s rights and obligations with respect to disclosure or production of records in accordance with VFOIA or other applicable law.

Article VII. Termination

Either party may terminate this MOU (and in doing so, the associated Permit) with 10 days’ notice to the other party. Upon termination, Operator shall remove all of the SMDs under its ownership or control within 14 business days of the date of termination and shall cease all operations within the service area once the devices have been removed. City of Harrisonburg shall consider any of Operator’s SMDs not removed as abandoned property and shall dispose of them as it deems fit.

IN WITNESS WHEREOF, the Parties hereto have caused this MEMORANDUM OF UNDERSTANDING to be executed as of the date first above written by their duly authorized representatives.

City of Harrisonburg, Virginia

Title:

Signature: _____

Name of Company Inc.

Title:

Signature: _____