

MEMORANDUM OF UNDERSTANDING

Operation of Bird Rides, Inc. in the City of Appleton

Pursuant to this Memorandum of Understanding (hereinafter the “MOU”) for the operation of Bird Rides, Inc. owned dockless, stand-up electric scooters (hereinafter “electric scooter”) within the City of Appleton, Bird Rides, Inc., incorporated under the laws of California (hereinafter referred to as “Bird”) and the City of Appleton, a municipal corporation (hereinafter referred to as the “City”) (collectively “parties”) hereby agree as follows:

WITNESSETH:

WHEREAS Bird, represented locally by _____, desires to operate a Bird stand-up electric scooter pilot program within the City of Appleton; and

WHEREAS the City, whose address is City of Appleton Clerk, 100 North Appleton Street, Appleton, WI 54911-4799, is willing to establish a Bird stand-up electric scooter pilot program within the City of Appleton to evaluate the desire to establish a regulatory framework for the long-term operation of Bird stand-up electric scooters within the City.

NOW, THEREFORE, in consideration of the above premises and mutual covenants of the parties hereinafter set forth, and the MOU for the operation of Bird stand-up electric scooters, the receipt and sufficiency of which is acknowledged by each party for itself, Bird and the City do agree as follows:

Section 1. DEFINITIONS

- 1.1. “Code” shall mean the Municipal Code of the City of Appleton, Wisconsin.
- 1.2. “Customer” shall mean a person who has downloaded Bird’s app to their smart phone or other device.
- 1.3. “Dockless” shall mean a system of self-service mobility devices made available for shared use to individuals on a short-term basis, which may be rented through a smart-phone app, vendor website, vendor customer service number, or a pre-paid PIN and which do not require structures at permanent, fixed locations where rides must begin and end.
- 1.4. “Electric scooter” shall mean a device weighing less than 100 pounds that has handlebars and an electric motor, is powered solely by the electric motor and human power, and has a maximum speed of not more than 20 miles per hour on a paved level surface when powered solely by the electric motor. Under this MOU, an electric scooter shall be in reference to an electric scooter owned by Bird.
- 1.5. “Equipment” shall mean dockless, stand-up electric scooters.

- 1.6 “Improperly parked” shall mean electric scooters parked in violation of section 5.5. of this MOU.
- 1.7 “Notice” and “Notification” shall mean notice from the public or notification from the City.
- 1.8 “Unsafe” shall mean any dockless, stand-up electric scooters, that could cause harm or injury to a customer or anyone else within the public right-of-way despite being operated in a reasonable manner.
- 1.9 “Unused electric scooter” shall mean any dockless, stand-up electric scooter parked in one location for more than 7 consecutive days without being used.

Section 2. PURPOSE AND GOALS

- 2.1. It is the purpose of the City to initiate a Dockless, Stand-up Electric Scooter Pilot Program (hereinafter the “pilot”) with Bird, to observe, solicit feedback on, and evaluate the effectiveness of electric scooters in Appleton. There is no guarantee electric scooters will remain in the City after the completion of the pilot. Upon the conclusion of the pilot, the City shall take time to evaluate any feedback received, determine whether the following goals have been achieved, and to develop a more long term licensing plan for the operation of Bird electric scooters, should the City create such a license. Electric scooters may provide many benefits to residents and visitors of Appleton. Electric scooters have the potential to help the City improve outcomes related to equity, congestion mitigation, health, and access to opportunity. The City also realizes the potential for disruption to pedestrian ways and other public rights of way. The parties agree that this MOU is intended to be a fluid document, subject to change in order to ensure the success of the pilot program and further agree to work together to ensure the same.
- 2.2. The Goals of this pilot are as follows:
 - 2.2.1. Increase transportation options: Electric scooters have the potential to reduce reliance on motor vehicles and ride sharing services for short trips, decreasing congestion and air quality impacts.
 - 2.2.2. Expand access to transit: Electric scooters may provide links to public transit, assisting with connectivity and solving the first mile/last-mile problem.
 - 2.2.3. Evaluate impacts on access to the public right-of-way: Bird must show a commitment to keeping pedestrian ways, streets, and other public rights-of-way unobstructed by electric scooters for other users. Most importantly, electric scooters must be parked and maintained in a manner that provides clear path for people walking and maintains access to businesses, residential units, and other buildings.

Section 3. PILOT DURATION

3.1. Term.

The term of this MOU shall be made effective upon signature by the parties and shall remain in effect, unless otherwise terminated, until December 31, 2021.

3.2. Suspension.

The pilot may be immediately suspended at any point and without cause by either the Director of the City of Appleton Department of Public Works (hereinafter "DPW") or the Chief of the City of Appleton Police Department (hereinafter "APD") for the purpose of resolving any issues prior to Termination.

3.3. Termination.

The pilot may be terminated at any point and without cause by either party upon seven (7) days prior written notice to the other party. The Director of DPW or the Chief of APD may terminated the pilot on behalf of the City.

3.4. Modification.

No term of this MOU may be modified or amended unless such modification or amendment is agreed to in writing and signed by the parties hereto.

Section 4. DUTIES OF BIRD

4.1. Bird shall provide a maximum of one hundred (100) electric scooters at launch of the pilot. Bird agrees to work with the Director of DPW, or designee, in order to determine any necessary adjustments to the maximum number of electric scooters within the City for the duration of the pilot.

4.2. Local Operations.

Bird shall have a locally based operations manager and provide name and contact information for said operations manager to the City within thirty (30) days after execution of this agreement.

4.3. Reporting and Data Sharing.

4.3.1. Aggregate customer demographic data that does not identify individual customers, payment methods, of their individual trip history, gathered by Bird shall be provided to the Director of DPW on at least a monthly basis using anonymized keys.

4.3.2. The following information shall be required on the first of each month throughout the duration of the pilot, or as directed by the Director of DPW:

4.3.2.1. Total downloads, active customers & repeat customer information;

4.3.2.2. List of reported parking complaints including: description, location of incident, description of Bird response, and response time;

4.3.2.3. Incidents of electric scooter theft and vandalism;

4.3.2.4. Electric scooter maintenance reports;

4.3.2.5. Complaints received by Bird;

4.3.2.6. Accident/crash information; and

4.3.2.7. Payment method information.

4.3.3. Customer information shall be made available to APD upon warrant or subpoena or otherwise required by law.

4.4. Submerged electric scooters.

Bird acknowledges that submerged electric scooters in the City waterways may result in the release of hazardous wastes into the environment. Bird also acknowledges that there is a prohibition on discharge of hazardous material in Sec. 6-61(a) of the Code. If a Bird electric scooter is submerged in a City waterway, Bird shall commence removal and site restoration as required in Sec. 6-61(c). If Bird fails to comply with removal, the City may respond and cause removal and require reimbursement allowed under Sec. 6-61(d) of the Code or face a citation from the City, under Sec. 6-61(g).

4.5. Relocation requests.

Bird shall respond to and relocate improperly parked or unused electric scooters within five (5) hours of notice between 6 a.m. and 10 p.m. Bird shall respond to and relocate improperly parked or unused electric scooters by 8 a.m. for notices received between 10 p.m. and 6 a.m.

4.6. Safety education.

Bird shall provide materials, videos, and signage to promote safe riding and educate riders on rider responsibilities and encourage safe and proper riding and parking as further described within this MOU.

4.7. Operation outside the City of Appleton.

Bird shall be responsible for tracking the location of electric scooters to ensure that electric scooters are not operated outside the City. Upon notification of the operation or placement of an electric scooter outside the City, Bird shall commence relocation of the electric scooter back within City limits.

4.8. Equipment maintenance.

Bird shall regularly inspect and provide necessary maintenance to each electric scooter at least once per month. Upon notification of an unsafe or inoperable electric scooter, Bird shall remove said electric scooter within two (2) hours. Bird acknowledges that the City may impound electric scooters that are deemed unsafe or inoperable and not remedied in accordance with this provision.

Section 5. OPERATING REGULATIONS

5.1. Bird shall provide easily visible contact information for Bird's locally based operations manager, including toll-free phone number and e-mail address on each electric scooter for members of the public to make relocation requests or to report other issues with devices.

5.2. Safety Requirements.

5.2.1. Each electric scooter shall meet the requirements described in Sections 347.489 (1), 347.489 (2), and 347.489 (3) of the Wisconsin State Statutes.

5.2.2. The maximum motor-assist speed for electric scooters shall be 15 mph.

5.3. Electric scooter availability and hours of operation.

5.3.1. Bird, through its locally based operations manager, shall redistribute electric scooters to ensure electric scooters are distributed throughout the City. Bird agrees to work with the Director of DPW, or designee, in order to determine the safest and most efficient distribution of electric scooters throughout the City for the duration of the pilot. The parties acknowledge that Bird may utilize independent business logistics providers to facilitate local operations. Bird's use of these logistics providers does not constitute a transfer or assignment of this MOU, and Bird remains responsible for all obligations and requirements under this MOU.

5.3.2. Hours of operation.

Electric scooters shall be made available to rent twenty-four (24) hours per day, under appropriate environmental circumstances.

5.3.3. Winter operation.

Bird shall begin to remove electric scooters from use upon the onset of snow accumulation within the City, or as directed by Director of DPW, or designee.

5.4. Proper electric scooter use.

5.4.1. Electric scooters shall be operated and regulated in the same manner as bicycles and may be operated on roadways, sidewalks, bike lanes, and bike paths, unless otherwise stated in State or City regulations.

5.4.2. Electric scooters may not be operated on the sidewalks on College Avenue between Drew Street and Badger Avenue.

5.4.3. Electric scooters shall be operated on the right of street lanes and offer the right-of-way to bicycles in bike lanes and on bike paths.

5.4.4. Electric scooters shall not be operated by individuals under the age of 18.

5.4.5. Electric scooters shall not be operated within City-owned parking ramps.

5.5. Proper electric scooter parking.

5.5.1. Bird shall provide instructions for properly parking electric scooters to customers in easily understandable formats through multiple media types.

5.5.2. Bird shall keep the sidewalk free from obstructions to pedestrians by requiring customers to park electric scooters such that a walk space not less than five (5) feet wide shall at all times be kept open for pedestrians and shall not be parked on the main traveled portion of the sidewalk or against or adjacent to windows.

5.5.3. Electric scooters shall not be parked on a sidewalk having a width of less than five and one-half (5 ½) feet.

5.5.4. Electric scooters shall not be parked at the intersection of two or more streets between the points of curvature, measured along the curb.

5.5.5. On roadways without sidewalks, electric scooters may be parked in the roadway if the right-of-way and the pedestrian way are not obstructed.

5.5.6. Electric scooters shall not be parked on private property without the express consent of the owner.

5.5.7. Electric scooters shall not be parked within, or obstruct access to, parking spaces; transit stops, including bus stops, streetcar stops, shelters, and passenger waiting areas; entryways; driveways; or crosswalks.

5.5.8. All electric scooters shall be parked in an upright position with two (2) wheels making a point of contact with the ground and in such a manner as to not constitute a hazard to pedestrians, traffic, or property.

Section 6. INSURANCE REQUIREMENTS

Bird shall comply with the requirements contained within the attached Insurance Requirements – Bird Pilot Program.

Section 7. INDEMNIFICATION

Notwithstanding any references to the contrary in the application documents, Bird assumes full liability for all of its acts in the performance of this pilot. Bird will save and indemnify and keep harmless the City against all liabilities, judgments, costs and expenses which may be claimed by a third party against the City in consequence of allowing Bird to participate in this pilot program, or which may result from the negligence or misconduct of Bird, or its agents, employees, customers or users, except to the extent arising out of or resulting from the City's sole negligence or willful misconduct. If judgment is recovered, whether in suits of law or in equity, against the City by reason of the negligence or misconduct of Bird, or its agents, employees, customers or users participating in this pilot, or utilizing Bird's equipment, Bird assumes full liability for such judgments not only as to the amount of damages, but also for the cost, attorney fees, or other expenses resulting there from. The City may tender the defense of any claim or action at law or in equity to Bird or its insurer, and upon such tender it shall be the duty of Bird or its insurer to defend such claim or action without cost or expense to the City or its officers, council members, agents, employees or authorized volunteers. Bird shall be entitled to have control over the defense and settlement of tendered lawsuits, including the selection of counsel; provided Bird may not settle any lawsuit on behalf of the City without the City's written consent that either (1) requires the City to admit liability, or (2) exceeds the limits of Bird's insurance policies. City shall cooperate in all reasonable respects with Bird and its attorneys in the defense or settlement of such lawsuit; provided, that the City shall be entitled to reasonably participate in the defense of such lawsuit and to employ its own counsel at its own expense to assist in the handling of such lawsuit.

Section 8. MISCELLANEOUS

8.1. Assignment.

Neither party shall assign nor transfer any interest or obligation in this Agreement, whether by assignment or novation, without the prior written consent of the other party.

8.2. Notices, Records, Invoices, Billings and Reports.

8.2.1. All notices required to be sent by this Agreement shall be deemed delivered as of the date of postmark if deposited in a United States mailbox, with sufficient first class postage attached and addressed as follows, which shall be directly sent to the persons stipulated herein:

For the City:

Director of Appleton Department of Public Works
City of Appleton
100 North Appleton Street
Appleton, WI 54911-4799

For Bird:

8.2.2. It shall be the duty of a party changing its address to notify the other party in writing within a reasonable time if not explicitly set forth within this MOU.

8.3. Payment.

The parties agree that no such payments shall be exchanged between the parties for participation in this pilot program.

8.4. No Waiver.

No failure to exercise, and no delay in exercising, any right, power or remedy, including payment, hereunder, on the part of the City or County shall operate as a waiver hereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

8.5. Construction of Agreement.

8.4.1. This Agreement is intended to be solely between the parties hereto. No part of the Agreement shall be construed to add, supplement, amend, abridge, or

repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employee of either of the parties.

8.4.2. It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling.

8.4.3. The entire Agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.

8.5.4. If any provision of this Agreement is determined by a court of record to be void or unenforceable, all remaining provisions shall continue to be valid and enforceable.

8.6. Public Records.

Bird understands that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this pilot are subject to and conditioned on the provisions of Wis. Stat. sec. 19.21 *et. sec.* Bird acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law and that Bird must defend and hold the City harmless from liability to its fault under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years. This provision shall survive termination of this MOU and the pilot itself.

IN WITNESS WHEREOF, the parties have executed this Agreement and its Schedules as of the day and date set forth above by their duly authorized officers.

BIRD RIDES, INC.

By:

Printed Name: _____

Date: _____

By:

Printed Name: _____

Date: _____

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

CITY OF APPLETON

By:

Jacob A. Woodford, Mayor

Date: _____

By:

Kami Lynch, City Clerk

Date: _____

Approved as to form:

Christopher R. Behrens, City Attorney

CityLaw A21-0063