

INTERIM OPERATING AGREEMENT

[**Enter CONTRACTOR'S Name**]

Stand-up Electric Scooter Sharing Systems

This Interim Operating Agreement (the "Agreement") is entered into by and between [company name], located at [company address] ("Company"), and the City of Riverside, a California charter city and municipal corporation ("City") on this ____ day of _____, 2019.

1. **Statement and Purpose.** The purpose of this Agreement is to establish interim rules and regulations governing the operation of Stand-up electric scooters sharing systems within the City and to ensure that such mobility sharing systems are consistent with the safety and well-being of bicyclists, pedestrians, and other users of the public right-of-way, until such time the City adopts an ordinance, rules, regulations or other procedures governing the operation of Stand-up electric scooters within the City's jurisdiction ("Operating Regulations").

2. **Scope.** This Agreement applies to any proposed deployment of Stand-up electric scooter sharing systems within the City's jurisdictional boundaries by Company.

3. **Term.** This Agreement shall remain in effect for a period of one hundred eighty (180) days after the date first written above, and shall automatically renew for successive one month terms thereafter unless terminated by either party or the City adopts a regulatory program applicable to Company's business.

4. **Procedures.**

4.1. Upon effectiveness of this Agreement, the Company shall provide an affidavit of compliance with the rules in this Agreement and comply with all provisions of this Agreement.

4.2. The City will work to establish Operating Regulations governing the operation of Stand-up electric scooter sharing systems. The City does not guarantee it will establish Operating Regulations, the content of any future Operating Regulations, or the timeframe for which Operating Regulations may become effective.

4.3. This agreement shall automatically terminate upon the effective date of any applicable Operating Regulations adopted by the City, except that if such Operating Regulations require the application for and approval of a license or permit, this Agreement will remain in effect for an additional ninety (90) days or until such time the Company is issued a license or permit, whichever is earlier.

5. Operating Regulations.

5.1. Stand-up electric scooters (“Scooter”) shall mean a device with no more than two wheels that has handlebars, is designed to be stood upon, and is powered by an electric motor that is capable of propelling the device with or without human propulsion at a speed no more than twenty miles per hour on a paved level surface.

5.2. Company shall provide easily visible contact information, including toll-free phone number and e-mail address on each Scooter for City employees and/or members of the public to make relocation requests or to report other issues with devices. A designee of the Company shall be appointed in writing to administer this Agreement on behalf of Company. The City shall be provided direct contact information for Company’s designee in order to make relocation requests, report any issue, or otherwise discuss the operation of Company’s Scooter system.

5.3. Upon City’s request, Company shall limit the geographic range of its Scooters or the Scooters’ speed limit within a particular geographic area on a temporary or permanent basis, sometimes referred to as “geofencing.”

6. Parking Regulations. Company acknowledges and agrees to the following regulations for parking Scooters:

6.1. Scooters shall be parked or staged upright on hard surfaces in the furniture zone of the sidewalk, beside a bicycle rack or in another area specifically designated for bicycle parking.

6.2. Scooters shall not be parked or staged in such a manner as to block the pedestrian clear zone area of the sidewalk; and ADA access; any fire hydrant, call box, or other emergency facility; bus bench; or utility pole or box.

6.3. Scooters shall not be parked or staged in such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building.

6.4. Scooters shall not be parked or staged in such a manner as to impede or interfere with the reasonable use of any bicycle rack or news rack.

6.5. Scooters shall not be parked or staged in on-street parking spaces, except in the following circumstances:

- i. When marked parking spaces are officially designated stations for the Stand-up electric scooter program in business districts; and
- ii. In marked parking spaces designated for motorcycles.

6.6. Except as provided in section 6.5 hereof, Scooters shall not be parked or staged on blocks without sidewalks.

6.7. Scooters shall not be parked or staged in the landscape/furniture zone directly adjacent to or within the following areas, such that access is impeded:

- i. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
- ii. Loading zones;
- iii. Disabled parking zone;
- iv. Street furniture that requires pedestrian access, including, but not limited to, benches, parking pay stations, bus shelters, transit information signs, pedestrian push buttons, etc.);
- v. Curb ramps;
- vi. Entryways; and
- vii. Driveways.

6.8. To the extent Company desires to park or stage Scooters in areas other than the public right-of-way (e.g. parks, plazas, parking lots, private property, or transit stations), the Company must first obtain the right to do so from the appropriate property owner, or public agency and shall communicate this right to users through signage approved by the respective entity and/or through a mobile or web application. If such property is City-owned, this Agreement shall be amended to reflect the authorization for use of the City-owned property.

6.9 Upon the request of the City and within seventy two (72) hours after receipt of such request, Company shall relocate or reduce the number of Scooters in a deployment or staging area.

7. Operations.

7.1. Company shall maintain a 24-hour customer service phone number for customers to report safety concerns, complaints, or to ask questions.

7.2. Company will implement a marketing and targeted community outreach plan at its own cost and promote the use of Stand-up electric scooter sharing citywide, particularly among low-income communities.

7.3. In the event a safety or maintenance issue is reported for a specific Scooter, that Scooter shall be made unavailable to users and shall be removed within two hours of receipt of notice. Any inoperable or unsafe Scooter shall be repaired before it is put back into service.

7.4. Company shall respond to requests for rebalancing, reports of incorrectly parked Scooters, or reports of unsafe/inoperable Scooters by relocating, re-parking, or removing the Scooter, as appropriate, within 2 hours of receiving notice.

7.5. In the event a Scooter is not relocated, re-parked, or removed within the timeframe specified herein, or any Scooter is parked in one location for more than 72 hours without moving, such Scooter may be removed by City crews and taken to a City facility for storage at the expense of the Company. If Company fails to retrieve a Scooter from the City's possession and

pay the City a \$25 dollar storage fee, within fifteen (15) days of receipt of notice that the Scooter is in the City's possession, City may dispose of the Scooter without further notice to Company.

7.6. Company shall provide notice to all users by means of signage and through a mobile or web application that:

- i. Scooters are to be ridden on streets, and where available, in bike lanes and bike paths;
- ii. Scooters are to stay to the right of street lanes and to offer the right of way to bicycles on bike lanes and bike paths;
- iii. Helmets are encouraged for all users and required where required by law;
- iv. All users must have a valid driver's license;
- v. All users must be 18 years or older;
- vi. Parking must be done in the designated areas; and
- vii. Riding responsibly is encouraged.

7.7. In addition to educating users on parking regulations, Company shall include methods of verification of proper parking within its mobile application.

7.8. Company shall provide education to Scooter riders on the City's existing rules and regulations, safe and courteous riding, and proper parking. Company agrees that the City is not responsible for educating Scooter riders regarding helmet requirements and other applicable laws. Neither is the City responsible for educating Scooter riders on how to ride or operate a Scooter. Company agrees to educate Scooter riders on the City's existing rules and regulations, safe and courteous riding, and proper parking.

7.9. Company shall begin operations with a fleet size of no more than 1000 Scooters. Upon written approval by City, Company may be permitted to increase its fleet size in the event that Company's fleet provides on average three or more rides per Scooter per day. Company shall, without request from City, reduce its fleet size on a monthly basis in the event a particular Scooter provides on average less than one rider per Scooter per day. Company shall on a no less than monthly basis provide reports to City demonstrating the utilization rate of devices in the Company fleet.

8. **Non-exclusive Right and No Promise of Future Entitlement.** Company acknowledges and agrees that this Agreement does not grant it the exclusive right to operate its Stand-up electric scooter sharing system within the City. Nothing in this agreement shall prevent the City from authorizing another company from operation a Stand-up electric scooter sharing system or similar system within the City. Additionally, nothing in this Agreement entitles or guarantees Company's future right to operate its Stan-up electric scooter sharing system or any other business within the City beyond the termination of this Agreement.

9. **Termination.** City shall have the right to terminate this Agreement at any time upon thirty (30) calendar days' written notice to Company. In the event of such termination, Company shall remove all of its Scooters from the City's right of way prior to the expiration of the thirty (30) days' notice. In the event of termination of this Agreement for any other reason,

except where Company is authorized to operate within the City through adopted Operating Regulations, Company shall remove all of its Scooters from the City's right of way within seven (7) calendar days.

Notwithstanding the foregoing, the City may terminate this Agreement upon seven (7) calendar days' written notice if:

- i. Company disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;
- ii. Company otherwise is guilty of breach of a provision of this Agreement;
- iii. Company attempts to assign any right, interest, or obligation in this Agreement in violation of section 10 of this Agreement;
- iv. Company becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Company's ability to satisfy its contractual obligations.
- v. A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to this Agreement. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

10. **Assignment.** Neither party shall assign any right, interest, or obligation in or under this Agreement to any other entity without prior written consent of the other party. In any event, no assignment shall be made unless the assignee expressly assumes the obligations of assignor under this Agreement, in a writing satisfactory to the parties. Company acknowledges that any assignment may, at the City's sole discretion, require City Manager and/or City Council approval.

11. **Insurance.**

11.1 General Provisions. Prior to the City's execution of this Agreement, Company shall procure at its own expense, and provide satisfactory evidence of, and shall thereafter maintain, during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

11.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Company's, its affiliates, clients, or other parties indemnification obligations under Section 12 hereof. If Company maintains broader coverage or higher limits than the minimums requested above, City of Riverside shall be entitled to the broader coverage or higher limits maintained by Company. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City of Riverside.

11.1.2 Ratings. Any insurance policy or coverage provided by Company or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to

transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

11.1.3 Cancellation. The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

11.1.4 Adequacy. The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Company pursuant to this Agreement are adequate to protect Company. If Company believes that any required insurance coverage is inadequate, Company will obtain such additional insurance coverage as Company deems adequate, at Company's sole expense.

11.2 Workers' Compensation Insurance. By executing this Agreement, Company certifies that Company is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Company shall carry the insurance or provide for self-insurance required by California law to protect said Company from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Company shall file with City either 1) a certificate of insurance showing that such insurance is in effect, or that Company is self-insured for such coverage, or 2) a certified statement that Company has no employees, and acknowledging that if Company does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days' prior written notice before modification or cancellation thereof.

11.3 Commercial General Liability and Automobile Insurance. Prior to City's execution of this Agreement, Company shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure Company against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, acting for or on behalf of Company, and/or anyone using/renting/riding Company's equipment. The City, and its officers, employees and agents, shall be named as additional insureds under the Company's insurance policies.

11.3.1 Company's Commercial General Liability (CGL) insurance policy shall be on an occurrence basis and shall cover both bodily injury (including death) and property damage (including, but not limited to, premises, products and completed operations, independent contractor's liability, personal and advertising injury, and contractual liability) in an amount not less than \$5,000,000 per occurrence and no annual aggregate.

11.3.1.a. The City of Riverside, its officers, employees and agents are to be added as additional insureds on the CGL policy, which can be done by endorsement. City will accept endorsement forms CG 20 10 11 85, or CG 20 10 / CG 20 26 / CG 20 33 / CG 20 38 with CG 2037.

11.3.1.b. Company hereby grants to City of Riverside a waiver of any rights of subrogation which any insurer of Company may acquire against City of Riverside

by virtue of payment of any loss. Company shall obtain relevant endorsement necessary to affect this waiver of subrogation and provide same to City of Riverside. This provision is applicable, regardless of whether or not City of Riverside has received a waiver of subrogation endorsement form.

11.3.2 Company's Automobile Liability (AL) policy shall be on an occurrence basis and shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Company's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Company's performance of this Agreement, which vehicles shall include, but are not limited to, Company owned vehicles, Company leased vehicles, Company's employee vehicles, non-Company owned vehicles and hired vehicles.

11.3.2.a. The City of Riverside, its officers, employees and agents are to be added as additional insureds on the AL policy.

11.3.3 Worker's Compensation (WC) policy, as required by the State of California, with statutory limits and Employer's Liability insurance with minimum limits of \$1,000,000 per accident for bodily injury or disease.

11.3.3.a. WC policy shall be endorsed with a waiver of subrogation in favor of City of Riverside for all work performed by the Operator, its employees, agents and subcontractors. This provision is applicable, regardless of whether or not City of Riverside has received a waiver of subrogation endorsement form.

11.3.3 Prior to City's execution of this Agreement, copies of insurance policies or original certificates along with relevant endorsements acceptable to the City evidencing the coverage required by this Agreement, for commercial general liability, automobile liability, and worker's compensation insurance, shall be filed. Said policies shall be on the usual ISO

11.3.4 The policy shall specify that the insurance provided by Company will be considered primary and not contributory to any other insurance available to the City.

12. **Indemnification.** Except as to the sole negligence or willful misconduct of the City, Company agrees to indemnify, protect and hold harmless the City and the City's employees, officers, managers, agents, and Council Members ("Indemnified Parties") from and against any claim for damage, charge, lawsuit, action, judicial, administrative, regulatory or arbitration proceeding, damage, cost, expense (including counsel and expert fees), judgment, civil fine and penalties, liabilities or losses of any kind or nature whatsoever whether actual, threatened or alleged, which arise out of, pertain to, or relate to, or are a consequence of, or are attributable to, or are in any manner connected with the performance of this Agreement, work, activities, operations or duties of the Company, or anyone employed by or working under the Company or for services rendered to Company in the performance of this Agreement, notwithstanding that the City may have benefited from its work or services. This indemnification provision shall apply to any acts, omissions, negligence, recklessness, or willful misconduct, whether active or passive, on the part of the Company or anyone employed or working under the Company.

13. **Governing Law and Venue.** This Agreement is to be governed by and construed in accordance with the laws of the State of California and without regard to the conflicts of laws principles thereof. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of California, County of Riverside and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

14. **Notice.** Whenever any provision of this Agreement requires the giving of written notice, including notices or other documents required or permitted under this Agreement, service shall be sufficient if sent by one party to the other by overnight courier, or by registered, certified or United States first class mail, postage prepaid and addressed as follows:

City	Company
City of Riverside	Name of Company
Public Works Director	Contact
3900 Main Street	Address
Riverside, CA 92522	City, State, ZIP

15. **Waiver.** No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be agreed in writing.

16. **Severability.** Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

17. **Amendments.** This Agreement may be modified or amended only by a written agreement executed by the Company and City.

18. **Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Company each represent and warrant that they have the legal power, right and actual authority to bind Company to the terms and conditions hereof and thereof.

19. **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

IN WITNESS WHEREOF, City and Company have caused this Agreement to be duly executed the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation
a California corporation

[**COMPANY'S NAME**],
a California corporation

By: _____
City Manager

By: _____


[Printed Name]

[Title]

Attest: _____
City Clerk

Approved as to Form:

By: _____

By:  _____
Deputy City Attorney
Ruthann Salera

[Printed Name]

[Title]