

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: October 13, 2022

Reviewed by: NA

SUBJECT: Urgency Ordinance Adding a New Section to the Albany Municipal Code Relating to Mobility Sharing Services and Authorization to Enter into a Temporary Operating Agreement

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SUMMARY

The action before the City Council is the adoption of Urgency Ordinance No. 2022-08, amending Chapter 5 of the Municipal Code to regulate mobility sharing services and authorization to enter into a temporary operating agreement.

STAFF RECOMMENDATION

That the Council:

1. Adopt Urgency Ordinance No. 2022-08, entitled:
An Urgency Ordinance of the City of Albany, California, Adding a New Section 5-12 of the Albany Municipal Code Relating to Mobility Sharing Services, for the Immediate Preservation of the Public Peace, Health, and Safety, and Declaring Same to be an Urgency Measure to take effect immediately.

2. Authorize the City Manager to enter into a temporary operating agreement with dockless shared mobility operators in advance of permit issuance.

TRANSPORTATION COMMISSION RECOMMENDATION

That the Council adopt an ordinance to amend the Albany Municipal Code to include the proposed permitting regulations of shared micromobility services.

BACKGROUND

Shared electric scooters (also identified as e-scooters or motorized scooters) are a "micromobility" transportation option that have been expanding in the region and in other cities. These scooters are owned and operated by private companies offering shared scooter services and can be used for one-way trips and unlocked/locked with a mobile phone application. These scooters are generally used for shorter trips and are meant to be used by many different people each day. Most shared scooters are "dockless" meaning that they do not need to be parked in specific locations.

In 2018 and early 2019, Lime operated dockless bikes in Albany. In January of 2019, Lime requested authorization to deploy scooters. Lime proceeded to deploy a small number of scooters throughout 2019. In the spring and summer of 2019, multiple class action lawsuits were filed against various cities alleging disabled accessibility impacts from the shared electric scooters permitted in those cities. As a result, shared scooter permitting was put on hold in many cities across California, and many shared scooter companies suspended operation. Currently no shared electric scooter companies are actively deploying scooters in Albany.

The suit against the City of Oakland reached a final Settlement Agreement in April 2021, and since then, Berkeley, Emeryville, and Oakland have developed regulations and permit programs in accord with the settlement agreement and now have several companies operating in their cities. Three companies, Veo, Link, and Spin, launched in Berkeley this summer. One company, Veo, has applied for an Albany business license and coordinated with city staff on plans to launch scooters in Albany on October 15.

At the July 28, 2022 Transportation Commission meeting, the commission reviewed regulations adopted by nearby cities related to shared micro-mobility operations and provided feedback to staff for development of regulations in the City of Albany.

At the September 22, 2022 Transportation Commission meeting, the Commission reviewed the draft ordinance and permit language and recommended Council adoption of the ordinance amending the Municipal Code.

DISCUSSION

State Law

The California Vehicle Code (Sections 407.5, 2220-21235, 22411) regulates the operation of motorized scooters, whether individually owned, or owned by an operator and rented to qualified users. These regulations include:

- Operators of motorized scooters upon a roadway generally have all the rights and are subject to all of the provisions applicable to drivers
- Motorized scooters are not required to have license plates and have safety requirements regarding visibility and braking
- Operators must have a valid driver's license or instruction permit and must wear a bicycle helmet if under 18 years of age
- Operators are prohibited from exceeding 15 miles per hour
- Operators are prohibited from operating a motorized scooter with any passengers
- Operators are prohibited from operating on a sidewalk or leaving a scooter lying on the sidewalk or in apposition that does not provide an adequate path for pedestrian traffic
- Operators are required to ride as close as practicable to the right-hand curb or within a Class II bicycle lane when available

Local jurisdictions are permitted, by ordinance, to regulate the parking and operation of motorized scooters on pedestrian or bicycle facilities and local streets and highways, if that regulation is not in conflict with the Vehicle Code (CVC Section 21225).

Local Law

Currently, under the Albany Municipal Code, Chapter VIII Law Enforcement, Section 8-4 Parks, Recreation, Open Space, Waterfront and Albany Hill Areas, motorized scooters are defined as motor vehicles (8-4.2) and generally may not be operated in the Albany Hill open space area nor in the Waterfront area (8-4.8) unless authorized by the City Manager or designee. Outside of this section, motorized scooters are not separately defined and are currently regulated by the City of Albany the same as other motor vehicles. Mobility sharing services are not currently regulated in the Municipal Code beyond the requirement to obtain a business license to operate in Albany.

ANALYSIS

The Urgency Ordinance before Council is for incorporation of permitting and regulation of mobility sharing services in Chapter 5 “General Licensing and Business Regulations” of the Municipal Code. If adopted, a summary of the Ordinance will be posted at each of the City’s posting locations and take effect immediately upon its passage by a 4/5 vote. The proposed ordinance does not regulate the use of privately owned micromobility devices.

The proposed ordinance is intended to regulate the use of shared scooters to maintain the safety and accessibility of sidewalks and roadways for all. At the same time, the goal is to create a permeable border with our neighboring Cities by creating regional consistency in the rules for shared scooter operations. Given Albany’s size and travel behavior that does not follow jurisdictional boundaries, these services will only be effective in Albany if they can operate across borders.

Staff has developed draft municipal code language and permit requirements for the permitting and regulation of mobility sharing services. The regulations are primarily a simplified version of those adopted in Emeryville. The proposed municipal code language requires companies to apply for a permit annually and specifies requirements for parking the devices and removing improperly parked devices.

Municipal Code Requirements

Scooters must be parked upright, locked to a bike rack or other fixed object. They must not impede the right of way or any of the following:

- (1) Disabled parking zone, or any other accessible route that would otherwise create a barrier to accessibility;
- (2) Curb ramps;
- (3) Fire hydrant zones;
- (4) Roadways;
- (5) Loading zones;

- (6) Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
- (7) Locked to street furniture that requires pedestrian access (e.g. benches, parking pay stations, bus shelters, transit information signs, etc.);
- (8) Entryways;
- (9) Driveways; and
- (10) Handrails.

In order to ensure compliance with these requirements and respond to improper parking, the operators will be required to provide a contact number or email on each device for parking-related complaints and respond to all complaints within 3 hours. Damaged devices or devices with depleted batteries must also be removed. If operators fail to respond to complaints, the City has the right to charge a fine, remove and/or dispose of the devices, and revoke the operator's permit.

Permit Requirements

The Ordinance primarily addresses the accessibility concerns associated with parking of vehicles and allows the City Engineer or designee to implement other regulations, which are detailed in the draft permit requirements. Leaving the majority of regulations outside of the Ordinance offers flexibility to easily adjust them as lessons are learned about the use of shared mobility devices and technology evolves. needs arise. A draft of permit requirements is attached (Attachment 2). The draft contains the majority of Emeryville's requirements and a few requirements from Berkeley, summarized below.

- User education: Operators will be responsible for educating users about all State and local requirements. Operators also must ensure that riders have a driver's license or permit and take a photo of the parked device at the end of each ride.
- Pollution: Operators must have a plan to prevent devices from entering the Bay and to retrieve any devices. They must also have a plan or repair and recycling of devices.
- Device specifications: Devices should have a maximum speed of 15 miles per hour and be able to temporarily reduce the maximum speed in slow zones. Devices also need to be marked with information regarding essential rules of the road and a contact number for the operator.
- Data: Operators must supply the City with various data regarding the use of the scooters, and issues or complaints. Specific indicators are listed in Attachment 2. This data will allow the City to analyze the success of the program and adjust requirements as needed. Data collection from users must follow State privacy law and use industry standard data security protocols.

- Community Engagement: Operators must provide ways for residents to contact them with complaints and suggestions. They must also offer free helmets to users. Staff, in consultation with the Commission, can implement other requirements for a community engagement process, including presentations to the Commission.
- Legal and insurance: Indemnity and insurance requirements will be included in the permit application. Staff are still communicating with legal experts and the specific language of these requirements. A draft version is included in Attachment 2.
- Location: Staff may also implement additional regulations regarding the location and use of devices, such as no riding zones, no parking zones, slow zones, and parking hubs. Staff will consult with the Commission before implementing or changing such requirements.
- According to the Municipal Code, the City Manager can authorize the use of motorized vehicles on the waterfront and Albany Hill. Use of shared scooters can be authorized under this authority along the Bay Trail but remain prohibited in unpaved areas of the Albany Bulb or Albany Hill.

Temporary Operating Agreement

A temporary operating agreement (Attachment 3) has also been prepared to permit the operation of shared mobility services in advance of permit issuance under the urgency ordinance. This will allow staff and an applicant time to prepare and review permit materials.

SUSTAINABILITY/SOCIAL EQUITY CONSIDERATIONS

City General Plan policies include encouraging the use of low emission or zero emission vehicles, along with the infrastructure to support such vehicles (Policy T-2.3) and supporting car sharing and bike sharing programs (Policy T-2.5). In addition, Goal 1 of the first strategy (Advance Active, Shared, and Electric Transportation) in the 2019 Climate Action and Adaptation Plan is to decrease passenger vehicle miles traveled (VMT) through use of alternative modes. Action 1.1.6 is to work with third party programs to provide shared electric mobility options, and calls for the city to work with companies to encourage the provision of these services to Albany community members and visitors, while considering safety implications and reducing potential safety hazards.

In order to ensure equity and provide access to all Albany residents, operators must serve the entire City and distribute devices throughout Albany. Operators also need to provide adaptive devices for user with disabilities. The ordinance also authorizes the City to develop a program offering heavily discounted rides for low income residents, and make it possible to use devices without a smartphone or credit card.

CITY COUNCIL STRATEGIC PLAN INITIATIVE

Goal 1 Objective 1 of the Strategic Plan is to advance climate action and adaptation.

FINANCIAL CONSIDERATIONS

Permit fees can be assessed to recuperate staff costs and costs of additional parking infrastructure. This will be brought to the Council as an amendment to the master fee schedule at an upcoming Council meeting.

NEXT STEPS

It is considered a best practice to follow-up the adoption of urgency ordinances with approval of a similar ordinance through the usual two-reading/30-day effective date procedure. Thus, in the near future, the Council will have an opportunity to further discuss and act on shared mobility services regulations.

Attachments

1. Ordinance No. 2022-08
2. Draft permit requirements
3. Temporary operating agreement

1 property, increased traffic congestion and collision, and potential for serious injury to persons
2 and property; and

3 **WHEREAS**, the City Council desires to immediately and expressly prohibit the
4 operation of unauthorized mobility sharing services within the City, unless and until
5 authorized and permitted by a written operating agreement between the City and the mobility
6 sharing operator and/or a permit as set forth in this Ordinance; and

7 **WHEREAS**, the City Council finds that this Ordinance is necessary to preserve the
8 public peace, health, and safety; and

9 **WHEREAS**, any and all other legal prerequisites relating to the adoption of this
10 Ordinance have occurred.

11 **NOW THEREFORE, THE ALBANY CITY COUNCIL DOES ORDAIN AS
12 FOLLOWS:**

13 **SECTION 1:** The recitals above are each incorporated by reference and adopted as findings
14 by the City Council.

15 **SECTION 2: Declaration of Urgency.** The City Council finds that the recitals set forth above
16 are true and correct and hereby adopts and incorporates the recitals herein as findings in
17 support of this Ordinance. Pursuant to Government Code section 36937(b), the City Council
18 hereby declares that the unauthorized and unregulated operation of motorized scooter share
19 programs in the City will result in significant and immediate adverse impacts to City
20 residents, visitors, businesses, public and private property, including impacts on traffic and
21 congestion, unlawful encroachment on property and the public right-of-way, and potential for
22 serious harm to riders and pedestrians alike. Because of these impacts, this Ordinance
23 prohibits motorized scooter share programs unless and until authorized and permitted by
24 future action of the City Council, in order to preserve the public peace, health or safety. To
25 this end, this Ordinance is hereby declared an urgency ordinance to take effect immediately
26 upon adoption by a four-fifths vote of the City Council.

27 **SECTION 3:** The City Council finds that this Ordinance is not subject to the requirements of
28 the California Environmental Quality Act (“CEQA”) for the following reasons:

- 29 A. This Ordinance is not a “project” within the meaning of Section 15378 of the State
30 CEQA Guidelines. (See State CEQA Guidelines, § 15060, subd. (c)(3) [“An activity
31 is not subject to CEQA if ... [t]he activity is not a project as defined in Section
32 15378”].) Here, the Ordinance is not a “project” within the meaning of Section
33 15378 because the Ordinance has no potential “for resulting in a direct physical
34 change in the environment, or a reasonably foreseeable indirect physical change in the
35 environment,” as further discussed below. (State CEQA Guidelines, § 15378.)
- 36 B. In the alternative, and if a project, this Ordinance is exempt under State CEQA
37 Guidelines section 15061(b)(3), the common sense exemption, because it can be seen
38 with certainty that there is no possibility that the activity in question may have a
39 significant effect on the environment.

1 **SECTION 4:** Albany Municipal Code, Title 5, General Licensing and Business Regulations,
2 is hereby amended to add Chapter 5-12, Dockless Shared Mobility Systems, to read in full as
3 follows:

4 **“§ 5-12 DOCKLESS SHARED MOBILITY SYSTEMS**

5 **§ 5-12.1 Definitions.**

6 **§ 5-12.2 Dockless Shared Mobility System Operator Permits Required.**

7 **§ 5-12.3 Operating Agreement While Permit Application is Pending**

8 **§ 5-12.4 Parking Requirements Established.**

9 **§ 5-12.5 Revocation or Suspension of Permits.**

10 § 5-12.1 Definitions.

11 For the purposes of this section, unless otherwise apparent from the context, certain
12 words or phrases used in this section are defined as follows:

13 (a) “City Engineer” means the City Engineer or their designee.

14 (b) “Deployment” means the placement of devices by the dockless shared mobility
15 system operator.

16 (c) “Dockless shared mobility device,” or “device,” means a device for short-term rental
17 for point to point trips where, by design of the dockless shared mobility operator, the
18 device is intended to remain in the public right-of-way, even when not being rented,
19 and is not required to be docked in a designated docking station for rental. “Devices”
20 include, but are not limited to, electric-assist scooters and dockless bicycles. This
21 definition shall not apply to dockless, point to point car rental services that may be
22 separately authorized to operate within the City.

21 (d) “Dockless shared mobility system,” or “system,” means a system providing devices
22 as defined above.

23 (e) “Dockless shared mobility system operator” or “operator” is an entity that owns
24 and/or operates a dockless shared mobility system in the public right-of-way. The
25 term includes any employee, agent or independent contractor hired or retained by the
26 operator.

27 (f) “Dockless shared mobility system permit” is the permit granted to the operator under
28 this chapter which allows the operator to commence services within the City.

(g) “Dockless shared mobility user,” or “user,” is any person that uses, rents, or rides a
dockless shared mobility device or is a customer of the operator.

1 (h) "Locking mechanism" is a locking mechanism integrated into or on the device which
2 cannot be removed using simple tools and which securely holds the device upright
3 when parked at a bike rack or other fixed object.

4 (i) "Roadway" is defined in Section 530 of the California Vehicle Code or any successor
5 statute.

6 § 5-12.2 Dockless Shared Mobility System Operator Permits.

7 (a) All operators seeking to operate a dockless shared mobility system within the City
8 must obtain a dockless shared mobility system permit pursuant to this Chapter.

9 (b) The City Engineer is authorized to issue system operator permits to operators who
10 submit applications and fulfill all requirements of this chapter, including payment of
11 all fees, fines, and penalties to operate such systems.

12 (c) A permit issued pursuant to this chapter shall expire on June 30 of each year. Permits
13 issued prior to July 1, 2023 shall expire on June 30, 2024. Operators must renew such
14 permits annually to continue operation.

15 (d) Operators seeking a permit or renewal of an existing permit shall obtain a business
16 license tax certificate from the Finance Department. Failure to maintain a business tax
17 certificate or pay delinquent business license tax penalties or fees constitutes a basis
18 for revocation or non-renewal of a permit.

19 (e) Operators seeking a permit or renewal of an existing permit shall submit a permit
20 application or renewal application on a form that is provided by the City, and shall
21 pay any applicable application or renewal fee.

22 (f) The City Engineer may impose conditions as part of permit issuance, and may deny a
23 permit to applicants who do not meet program requirements.

24 (g) The City Engineer may establish conditions including, but not limited to, locations for
25 parking devices, locations for riding, speed limits for devices, deployment of devices,
26 device specifications, requirements to indemnify the City and provide certain levels of
27 insurance coverage, and requirements to advance community engagement, equity,
28 accessibility, and personal privacy.

29 § 5-12.3 Operating Agreement While Permit Application is Pending

30 While an operator is engaged in the process of obtaining a permit pursuant to Section 5-
31 12.2, the operator may commence operations immediately without violating this Chapter by
32 entering into a Temporary Operating Agreement with the City. The Temporary Operating
33 Agreement will be of a limited period established by the City Manager, which period is
34 intended to allow staff to process and approve or deny the permit application, and will
35 contain such terms as are necessary to adequately protect the City's and applicant's interests.
36 Section 5-12.4 will apply to the dockless shared mobility service while the operator is
37 awaiting a determination on the permit application.

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2 § 5-12.4 Parking Requirements Established

3 (a) Unless otherwise specified, dockless shared mobility devices must be locked upright
4 to a bike rack or other fixed object, which shall not include trees, and may not impede
5 access to or use of the right-of-way. Devices are required to have locking
6 mechanisms. Devices shall not be parked adjacent to or within:

- 7 (1) Disabled parking zone, or any other accessible route that would otherwise
8 create a barrier to accessibility;
- 9 (2) Curb ramps;
- 10 (3) Fire hydrant zones;
- 11 (4) Roadways;
- 12 (5) Loading zones;
- 13 (6) Transit zones, including bus stops, shelters, passenger waiting areas, and
14 bus layover and staging zones, except at existing bicycle racks;
- 15 (7) Locked to street furniture that requires pedestrian access, such as benches,
16 parking pay stations, bus shelters, and transit information signs;
- 17 (8) Entryways;
- 18 (9) Driveways; and
- 19 (10) Handrails.

20 (b) Dockless shared mobility systems must comply with the following requirements:

- 21 (1) Provide a single point of contact (phone number and email) for a customer
22 service representative who is available 24 hours per day, 7 days a week for
23 matters relating to the system's operation within the City.
 - 24 (i) This information shall be clearly displayed on each device, along
25 with a unique device identification number.
- 26 (2) Issue a "ticket number" for each complaint to both the City's designated
27 contact person and the person who filed the complaint.
- 28 (3) Address such complaints within three hours of receipt of such complaint,
or advise the City and the complainant that additional time is required to
address the complaint and provide an estimated resolution timeframe.

1 (4) Provide a response to the complainant when a complaint is closed.

2 (5) Provide sufficient operations and maintenance staff to respond to the City
3 within three hours to remove improperly parked devices.

4 (c) Operator may be charged an improper parking fee, to be set by resolution of the City
5 Council, if any of operator's devices are found to be improperly parked and are not
6 removed within three hours of receiving a complaint.

7 (d) If operator does not adequately enforce the parking requirements set forth in this
8 chapter, the City Engineer reserves the right to reduce the number of shared mobility
9 devices allowed under the operator's permit, or revoke the permit entirely, subject to
10 section 5-12.5.

11 (e) Any device that remains parked in one location for more than three consecutive
12 calendar days without being moved may be removed and taken to a City facility for
13 storage at the expense of the operator. The City will notify the operator that a device
14 has been removed, and will advise operator that they have 72 hours to retrieve the
15 device before a fee will be imposed, which fee shall be set by resolution of the City
16 Council.

17 (f) Operators shall promptly remove devices from the public right-of-way when they are
18 damaged or their battery has been depleted.

19 (g) Should the City determine that the number of devices deployed within the City is
20 creating a public safety impact, the City may cap or reduce the number of devices
21 each operator is allowed under their existing permit.

22 § 5-12.5 Revocation or Suspension of Permits.

23 (a) The City Manager or designee may revoke or suspend a permit, or impose penalties at
24 their reasonable discretion for reasons including, but not limited to, the following:

25 (1) A failure to comply with the Albany Municipal Code;

26 (2) A failure to comply with the conditions of the permit, if any;

27 (3) A violation of the provisions of this chapter;

28 (4) A determination that the operation of the shared mobility service poses a
risk to public safety;

(5) A determination that the operation of the shared mobility service by the
permittee conflicts with the City's obligation to manage the right-of-way
responsibly;

(6) A transfer of the permit to another party without prior written approval by
the City;

- 1
- 2 (7) A material misstatement or omission in the permit application or any other associated document;
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- 4 (8) The permittee sells or shares confidential and individual user data;
- 5
- 6 (9) The permittee does not pay fees, surcharges, or penalties required by this chapter or City policy;
- 7
- 8 (10) The permittee blocks or alters the presentation of any information or denies access to the online application (“app”), through which it provides its services, by any City representative authorized to enforce the provisions of the associated permit and this chapter, or for the purpose of thwarting or interfering with any City representative’s enforcement or oversight of the associated permit or this chapter; and
- 9
- 10
- 11 (11) Failure by the users of devices of specific permittee to comply with applicable laws and the requirements of this chapter.

12

13 (b) The following procedures shall apply to govern the permittee’s appeal of a disapproval, revocation, or suspension of a permit under this chapter:

- 14
- 15 (1) Within 15 days after the City Engineer serves notification of disapproval, revocation, or suspension of a permit, an applicant or permit holder may appeal the action by notifying the City Clerk in writing of the appeal, the reasons for the appeal, and paying any applicable fees.
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- 17
- 18 (2) The City Clerk shall set a date and time certain for the hearing, within 30 days after the receipt of the appeal, unless the City and the applicant/permit holder agree to a longer time to consider the appeal. The City Clerk shall provide notice of the date, time, and place of hearing, at least seven days prior to the date of the hearing.
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- 20
- 21 (3) The City Manager shall appoint a Hearing Officer to hear the appeal, determine the order of procedure, and rule on all objections to admissibility of evidence. The applicant/permit holder and the City Engineer shall each have the right to submit documents, call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions.
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- 25 (4) The Hearing Officer shall issue a written decision within fifteen (15) days after the close of the hearing. The decision of the Hearing Officer shall be final.”
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- 27
- 28

1 **SECTION 5: SEVERABILITY.**

2 If any provision of this Ordinance or its application to any person or circumstances is
3 held invalid, such invalidity has no effect on the other provisions or applications of the
4 Ordinance that can be given effect without the invalid provision or application, and to this
5 extent, the provisions of this Ordinance are severable. The City Council declares that it would
6 have adopted this Ordinance irrespective of the invalidity of any portion thereof.

7 **SECTION 6: PUBLICATION AND EFFECTIVE DATE.**

8 The Mayor shall sign and the City Clerk shall certify to the passage and adoption of
9 this Ordinance and shall cause the same, or the summary thereof, to be published and posted
10 pursuant to the provisions of law and this Ordinance shall take effect immediately upon its
11 passage by a 4/5 vote.

12 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on the
13 13th day of October, 2022, by the following vote:

14 AYES:

15 NOES:

16 ABSENT:

17 ABSTAIN:

18
19
20 PRESTON JORDAN, MAYOR

21
22 ATTEST:

23
24 Anne Hsu, City Clerk

Draft Permit Requirements

1. Operator Obligations

Parking

- a. Unless otherwise specified, dockless shared mobility devices must be locked upright to a bike rack or other fixed object, which shall not include trees, and may not impede access to or use of the right-of-way. Devices are required to have locking mechanisms. Devices shall not be parked adjacent to or within:
 - i. Disabled parking zone, or any other accessible route that would otherwise create a barrier to accessibility;
 - ii. Curb ramps;
 - iii. Fire hydrant zones;
 - iv. Roadways;
 - v. Loading zones;
 - vi. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
 - vii. Locked to street furniture that requires pedestrian access (e.g. benches, parking pay stations, bus shelters, transit information signs, etc.);
 - viii. Entryways;
 - ix. Driveways; and
 - x. Handrails.

- b. Dockless shared mobility systems must comply with the following requirements:
 - i. Provide a single point of contact (phone number and email) for a customer service representative who is available 24 hours per day, 7 days a week for matters relating to the system’s operation within the City.
 - 1. This information shall be clearly displayed on each device, along with a unique device identification number.
 - ii. Issue a “ticket number” for each complaint to both the City’s designated contact person and the person who filed the complaint.
 - iii. Address such complaints within three hours of receipt of such complaint, or advise the City and the complainant that additional time is required to address the complaint and provide an estimated resolution timeframe.
 - iv. Provide a response to the complainant when a complaint is closed.
 - v. Provide sufficient operations and maintenance staff to respond in the City within three hours to remove improperly parked devices.

- c. Operator may be charged an Improper Parking Fee, to be set by resolution of the City Council, if any of operator’s devices are found to be improperly parked and are not removed within three hours of receiving a complaint.

- d. If operator does not adequately enforce the parking requirements set forth in Chapter 5-12, the City Engineer reserves the right to reduce the number of shared mobility devices allowed under the operator's permit, or revoke it entirely, subject to Section 5-12.5.
- e. Any device that is parked in one location for more than three consecutive calendar days without being moved may be removed and taken to a City facility for storage at the expense of the operator. The City will notify the operator that a device has been removed, and will advise operator that they will have 72 hours to retrieve the device before a fee will be imposed, which fee shall be set by resolution of the City Council.
- f. Operator shall promptly remove devices from the public right-of-way when they are damaged or their battery has been depleted.
- g. Should the City determine that the number of devices deployed within the City is creating a public safety impact, the City may cap or reduce the number of devices each operator is allowed under their existing permit.

User Education

- h. Operator must inform users of how to properly park/store a device, and must deploy in-app technology that requires a customer to submit a photo of their parked device at the end of each ride. Operator must provide a quarterly report to the City on the effectiveness of efforts to enforce proper parking within their mobile application; the report must include information on the number and description of incidents of improper parking reported to or found by the operator, the minimum, maximum, and average response time to these incidents, and other data as requested by the City.
- i. Operator must implement any available means of enforcing "no parking zones" in areas in which the City has prohibited parking for devices, within 72 hours of the City notifying Operator of such parking restriction.
- j. Operator must include visible language within its mobile and web application that notifies customers that they are encouraged to wear helmets, must follow all state and local traffic law (including the California Vehicle Code and Albany Municipal Code), and are not permitted to ride devices on the sidewalk.
- k. Operator must comply with all federal, state, and local laws, and will be responsible for its customers' compliance with the same while using the devices.
- l. If Operator deploys devices requiring a driver's license or instructional permit, Operator must verify that such customers have valid credentials for their use, as required by the California Vehicle Code. Verification may include in-app driver's license scanning, or similar technologies. If a customer's account is permitted to be used to rent more than one device at a time, use of each device requires the same identification verification as set forth in this section.

Pollution Prevention

- m. Operator must provide a plan to prevent devices from being misplaced in bodies of water, including the San Francisco Bay. Operator must provide to the City its standard operating procedures for retrieval of such devices from any bodies of water, along with proof of any agreements with third parties contracted to provide services for device removal.
- n. Operator must detail for City's benefit how any damaged devices are repaired or recycled, and what efforts will be made to reduce landfill waste. All batteries and other potentially toxic materials must be disposed of or recycled, per state law, at an appropriate recycling facility. Operator must provide proof of proper disposal upon request.

Device Specifications

- o. Operator must ensure electric or electric-assist devices are not capable of reaching speeds greater than 15 miles per hour when operated on a level surface, and that device speeds may further be limited upon City request.
- p. Devices must have always-on front and back lights that are visible from a distance of at least 300 feet under normal atmospheric conditions at night. Front and rear lights must stay illuminated for at least 90 seconds after the device is stopped.
- q. Devices must display clearly visible language notifying customers that:
 - i. Helmets should be worn when operating an electric scooter if over eighteen (18) years of age, and helmets must be worn when operating such a device if under eighteen (18) years of age;
 - ii. Device users must yield to pedestrians;
 - iii. Device users must follow all motor-vehicle laws and ordinances in the City of Albany;
 - iv. "No Riding On Sidewalks" shall be written in minimum forty-eight (48) point font on the platform or handles of every device; and
 - v. For electric or electric-assisted devices, device user must have a valid driver's license or other State-authorized approval to operate the device.
- r. Customers must be provided with a clearly visible mechanism, within the Operator's mobile application and a phone number printed on the device itself, to notify the Operator if there is a safety or maintenance issue with the device. Devices reported as damaged or inoperable must be taken out of service by the Operator within three hours of such notification, and remain out of service until repaired.

- s. Operator must ensure the devices do not create excessive or annoying noise in violation of Section 1.6 of Chapter 8 of the Albany Municipal Code.

Equitable Service Areas and Rebalancing of Dockless Shared Mobility Devices.

- t. Devices covered under this Agreement may only be operated within the City public right-of-way. Operator may not restrict use of its devices within certain geographical areas of the City unless previously approved by the City. Before requesting permission from the City to operate the devices outside the public right-of-way, Operator must obtain permission of all affected property owners. Operator must ensure it has a way of communicating with a customer when a device has been operated in a non-permitted area.
- u. Operator must not restrict vehicles from operation within geographical areas of the City without written permission.
- v. Devices must be distributed throughout the City, and Operator must provide the City real-time access to data showing the location of all devices within the City.
- w. Operator must closely monitor ridership, and adjust device density and location accordingly, to maximize convenience to the greatest number of riders.
- x. If charging or servicing of devices is contracted to third parties, Operator must take steps to prevent conflicts between contractors seeking to charge or service devices. This may include partnering with local organizations to provide this service, allocating devices to charging personnel in a cohesive way, hiring charging staff directly, or other such mechanisms that remove or reduce the incentive for conflicts.

Accessibility to Persons Experiencing Disabilities

- y. Operator must include adaptive devices for users experiencing disabilities. The total percentage of adaptive devices should be based on expected need, performance, and usage.
 - i. If Operator is unable to deploy adaptive devices at the time of permit issuance, a plan must be submitted to the City Engineer detailing a timeline for incorporation of shared adaptive devices into their fleet. This plan shall detail the types and numbers of adaptive devices that will be made available.
- z. Operator's mobile application and other customer interface technology must be fully accessible to persons with disabilities and accessible to screen readers, and must comply with Section 508 of the United States Workforce Rehabilitation Act of 1973.

Affordability

- aa. Operator must offer a discounted membership plan for those with low incomes, equivalent to five dollars (\$5.00) for one (1) year of unlimited thirty (30) minute rides for those who participate in the State Nutritional Assistance Program (SNAP) or California Alternative Rates for Energy (CARE).

- i. Operator must also make available free or discounted helmets to those participating in the discounted membership program through in-person events or through its mobile application.
 - ii. Helmets provided to users under this section should be available by mail or equivalent as well as at an accessible physical location.
- bb. Operator must implement a marketing and targeted outreach plan at its own cost, or, pay an in-lieu fee to the City to increase awareness of low-income discount options.
- cc. Operator must make available ways to use and pay for the service that do not require a smart phone or credit card.

Personal Data and Privacy

- dd. Operator must clearly communicate to customers and to the City what personal information is being collected about customers, how it is being used, and for how long.
- ee. Operator must employ an electronic payment system that is compliant with the Payment Card Industry Data Security Standards (PCI DSS), and provide proof of compliance to the City.
- ff. Operator must produce a privacy policy that complies with the California Online Privacy Protection Act (CalOPPA) and any data protection laws applicable to minors, and which expressly limits the collection, storage, or usage of any personally identifiable information to the extent absolutely required to successfully accomplish Operator's business purpose.

System Data and Reports

- gg. Operator must make real-time data available to the City and City-designated third parties via the "Mobility Data Specification (MDS)," or similar standard as determined by the City.
- hh. Operator must provide quarterly reports to the City on key performance indicators, including, but not limited to, the following:
 - i. Utilization rates;
 - ii. Total trips by day of week and time of day;
 - iii. Origins and destinations;
 - iv. Routes;
 - v. Trips per device by day of week, time of day;
 - vi. Average trip distance;
 - vii. Device maintenance reports including battery life and disposition;
 - viii. Incidents of theft and vandalism;
 - ix. Number and summary of complaints;
 - x. Call volume, wait time, and call abandonment rates;
 - xi. Crash information;
 - xii. Payment method information;
 - xiii. Rebalancing information;

- xiv. Outreach activities completed;
- xv. Number of free or discounted helmets distributed;
- xvi. Number of users taking advantage of low-income discount;
- xvii. Number of discounted rides taken;
- xviii. Number of account suspensions or revocations, including reason for the action.

Community Engagement Process

- ii. Operator must provide quarterly reports to the City on key performance indicators, including, but not limited to, the following:
 - jj. The City Engineer or designee, in consultation with the Transportation Commission, may establish requirements for a community engagement process, including public forums where operators co-plan the system with the community and/or operators present their proposals directly to, and receive comments from, members of the Albany community including residents and members of the business and educational communities. Public outreach plans shall be pre-approved by designated City staff, and should include a full list of presentations, activities, and events.
 - kk. Operator must have a way to receive and respond to complaints in multiple languages, including, but not limited to, Spanish and Mandarin.
 - ll. Operator must provide methods for both users and nonusers to suggest device deployment locations or prohibited locations.
2. Indemnification

Operator shall defend (at Operator's sole expense, with legal counsel approved by City, with such approval not to be unreasonably withheld or delayed), indemnify, and hold harmless the City, and members of its City Council, its boards and commissions, officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively "the Indemnified Parties"), from and against any and all losses, damages, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs, expenses and reasonable attorneys' fees and judgments arising out of or in any manner related to this Agreement, including, but not limited to, loss or damage to persons or property, arising out of or in any way related to Operator's use, or its subcontractors' use, of the public space, public right-of-way, or public property. This indemnification includes, but is not limited to, tort liability to a third person for bodily injury and property damage. Operator agrees that this obligation to indemnify, defend, and hold harmless extends to liability and/or claims arising from Indemnified Parties' active or passive negligence. Notwithstanding the foregoing, nothing herein shall be construed to require Operator to indemnify an Indemnified Party from any claim arising from the sole negligence or willful misconduct of that Indemnified Party. The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice from City to Operator of a claim within the potential scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of Operator, City, or any Indemnified Party.

3. Waiver/Release of Liability

a. Operator expressly assumes the sole and exclusive risk with respect to its Shared Mobility business, any devices or equipment it uses as part of its business, or services authorized pursuant to this Agreement.

b. Accordingly, to the greatest extent permitted by law, without limiting any indemnification obligations of Operator or other waivers contained within this Agreement, and without impairing any applicable insurance coverage described herein, as a material part of the consideration for this Agreement, Operator hereby fully and forever RELEASES, WAIVES, AND DISCHARGES any and all claims, demands, rights, lawsuits, and causes of action, against the City and its Councilmembers, officers, directors, partners, agents, and employees for consequential and/or incidental damages (including without limitation, lost profits), and covenants not to initiate or prosecute any legal action against City or its Councilmembers, officials, officers, directors, partners, agents, and employees, in any forum or tribunal, for such losses or damages, arising out of this Agreement.

c. This waiver and release includes, without limitation, any and all claims whether direct or indirect, known or unknown, foreseen and unforeseen, that may result from, arise out of, relate to, or in any way be connected with the design, construction, maintenance, repair, replacement, oversight, management, or supervision of any physical, environmental, or dangerous condition(s) of the public Rights-of-Way and any related improvements, or the suitability of the public rights-of-way for Operator's or its users' intended use.

d. Operator further acknowledges that it understands and agrees that it hereby expressly waives any and all rights and benefits which it now has, or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY".

e. Operator recognizes and understands that by waiving the provisions of this section, Operator will not be able to make any claims for damages that may exist, and which, if known, would materially affect its decision to agree to these terms and conditions, regardless of whether Operator's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

4. Insurance

Operator shall procure and maintain for the duration of this permit insurance against claims for injuries to persons or damages to property that may arise from or in connection with this permit. Operator shall submit proof of insurance as required by this permit prior to permit issuance.

a. Minimum Scope and Limits of Insurance

- i. General Commercial Liability insurance with a minimum liability limit of two million dollars (\$2,000,000) and which lists the City as provided in Section 4.b.
- ii. Workers' Compensation insurance, as required by the State of California.
- iii. Automobile insurance with a minimum liability of one million dollars (\$1,000,000) and which lists the City as primary additional insureds as provided in Section 4.b.

b. Additional Insurance Requirements

i. Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Service Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed: operations, property damage, bodily injury and personal and advertising injury, with limits of no less than \$2,000,000 per occurrence. If such CGL insurance contains a general aggregate limit, the general aggregate shall have a limit of not less than \$4,000,000 annually and shall apply separately to dockless scooter operations.
2. Workers' Compensation: Workers' Compensation insurance as required by the State of California, with Statutory Limits and Employers' Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. If Operator maintains broader coverage or higher limits than the minimums shown above, the City of Albany requires and shall be entitled to the broader coverage or higher limits maintained by Operator. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Albany.

ii. Each insurance policy must contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** The City of Albany and its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy. CGL coverage can be provided in the form of an endorsement to the Contractor's insurance consistent with the City's standard insurance requirements.
2. **Primary Coverage:** For any claims related to this Agreement, Operator's insurance shall be primary coverage as respects the City of Albany and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Albany or its

officers, officials, employees, or volunteers shall be in excess of Operator's insurance and shall not contribute with it.

3. **Notice of Cancellation:** Each insurance policy required herein shall show that coverage shall not be canceled except after notice has been given to the City of Albany.
 4. **Waiver of Subrogation:** Operator hereby grants to the City of Albany a waiver of any right of subrogation which any insurer of Operator may acquire against the City of Albany by virtue of payment of any loss. Operator agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City of Albany has received a waiver of subrogation endorsement from the insurer.
- iii. Self-Insured Retentions. Self-insured retentions must be declared to and approved by the City of Albany. Operator shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, agents and authorized volunteers; or (2) Operator shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.
 - iv. Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City of Albany.
 - v. Verification of Coverage. Operator shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind The City reserves the right to require complete, certified copies of all required insurance policies, at any time.
 - vi. Failure to Maintain Coverage. If Operator, for any reason, fails to maintain insurance coverage which is required pursuant to this permit, the same shall be deemed a material breach of the permit. The City, at its sole option, may revoke or suspend the permit and obtain damages from Operator resulting from said breach.
5. Independent Contractor. In rendering services under this permit, the Operator is and will remain an independent contractor and not an employee of the City. It is expressly understood and acknowledged by the Parties that Operator is responsible for assuming any applicable Federal or State withholding taxes, estimated tax payments, or any other fees or expenses whatsoever related to services provided pursuant to this permit.
 6. No Assignment. Neither this permit nor any privileges, duties, or obligations hereunder may be assigned, conveyed, or delegated by Operator.

CITY OF ALBANY

TEMPORARY OPERATING AGREEMENT – DOCKLESS SHARED MOBILITY SYSTEM

This Agreement is dated _____, 2022 (“Effective Date”) by and between the City of Albany (“City”) and VeoRide, Inc., a Delaware corporation d/b/a Veo (“Operator”). City and Operator are sometimes individually referred to as “Party” and collectively as “Parties”.

Recitals

1. The City regulates companies that rent devices for short-term point to point usage, including electric-assist scooters and bicycles (collectively, “dockless shared mobility devices” or “devices”) pursuant to state law and Albany Municipal Code Chapter 5-12.

2. Pursuant to Albany Municipal Code Section 5-12.3, while a dockless shared mobility company is engaged in the process of obtaining a permit to operate within the City, the City and the operator may enter into a Temporary Operating Agreement (“Agreement”) for a limited period. In accordance with that provision, this Agreement is intended to allow the operator to commence operations pursuant to the same basic terms that will be part of the permit, while giving City staff time to process and finalize the permit process.

Agreement

1. Operator Obligations. Operator agrees to the following conditions:
 - a. Dockless shared mobility devices must contain locking mechanisms.
 - b. Unless otherwise specified, Operator will ensure that customers are aware that dockless shared mobility devices must be locked upright to a bike rack or other fixed object (not including trees) and may not impede access to or use of the right of way.
 - c. Dockless shared mobility devices may not be parked adjacent to or within:
 - i. A disabled parking zone, or any other accessible route that would otherwise create a barrier to accessibility;
 - ii. Curb ramps;
 - iii. Fire hydrant zones;
 - iv. Roadways;
 - v. Loading zones;

- vi. Transit zones, including bus stops, shelters, passenger waiting areas, and bus layover and staging zones, except for existing bicycle racks;
 - vii. Locked to street furniture that requires pedestrian access (e.g., benches, parking pay stations, bus shelters, transit information signs);
 - viii. Entryways;
 - ix. Driveways; and
 - x. Handrails.
- d. Operator must ensure that a point of contact (phone number and email) for Operator’s customer service team is available to the City and to customers twenty four hours a day, seven days a week, for complaints regarding improper parking. This contact information must be clearly displayed on each device, in addition to a unique identifying number for that device.
 - e. Operator must address City or customer complaints about improperly parked dockless shared mobility devices within three hours of receipt of such complaint.
 - f. Operator must issue a “ticket number” for all complaints received under subdivision (e) to both the complainant and the City, and provide a response to both the complainant and the City when the complaint has been closed.
 - g. Operator may be charged an improper parking fee of \$80 per day if any devices are found to be improperly parked and not removed by Operator within three hours of a complaint.
 - h. If Operator does not enforce the parking requirements set forth in this Agreement, the City Engineer reserves the right to recommend that the City terminate this Agreement immediately.
 - i. Devices parked in one location in the City for more than three consecutive days without moving may be removed by City staff and taken to a City facility for storage at the Operator’s expense. The City will notify Operator that the device has been removed, and Operator will have 72 hours to retrieve the device before a fee is imposed.
 - j. Operator must promptly remove devices from the public right-of-way when they are damaged or their battery has been fully depleted.
 - k. Operator must inform users of how to properly park/store a device, and must deploy in-app technology that requires a customer to submit a photo of their parked device at the end of each ride.

- l. Operator must implement any available means of enforcing “no parking zones” in areas in which the City has prohibited parking for devices, within 72 hours of the City notifying Operator of such parking restriction.
- m. Operator must include visible language within its mobile and web application notify customers that they are encouraged to wear helmets, must follow all state and local traffic law (including the California Vehicle Code and Albany Municipal Code), and are not permitted to ride devices on the sidewalk.
- n. Operator must comply with all federal, state, and local laws, and will be responsible for its customers’ compliance with the same while using the devices.
- o. If Operator deploys devices requiring a driver’s license or instructional permit, Operator must verify that such customers have valid credentials for their use, as required by the California Vehicle Code. Verification may include in-app driver’s license scanning, or similar technologies. If a customer’s account is permitted to be used to rent more than one device at a time, use of each device requires the same identification verification as set forth in this section.
- p. Operator must provide a plan to prevent devices from being misplaced in bodies of water, including the San Francisco Bay. Operator must provide to the City its standard operating procedures for retrieval of such devices from any bodies of water, along with proof of any agreements with third parties contracted to provide services for device removal.
- q. Operator must detail for City’s benefit how any damaged devices are repaired or recycled, and what efforts will be made to reduce landfill waste. All batteries and other potentially toxic materials must be disposed of or recycled, per state law, at an appropriate recycling facility. Operator must provide proof of proper disposal upon request.
- r. Operator must ensure electric or electric-assist devices are not capable of reaching speeds greater than 15 miles per hour when operated on a level surface, and that device speeds may further be limited upon City request.
- s. Devices must have always-on front and back lights that are visible from a distance of at least 300 feet under normal atmospheric conditions at night. Front and rear lights must stay illuminated for at least 90 seconds after the device is stopped.
- t. Devices must display clearly visible language notifying customers that:
 - i. Helmets should be worn when operating an electric scooter if over eighteen (18) years of age, and helmets must be worn when operating such a device if under eighteen (18) years of age;
 - ii. Device users must yield to pedestrians;

- iii. Device users must follow all motor-vehicle laws and ordinances in the City of Albany;
- iv. “No Riding On Sidewalks” shall be written in minimum forty-eight (48) point font on the platform or handles of every device; and
- v. For electric or electric-assisted devices, device user must have a valid driver’s license or other State-authorized approval to operate the device.
- u. Customers must be provided with a clearly visible mechanism, within the Operator’s mobile application and a phone number printed on the device itself, to notify the Operator if there is a safety or maintenance issue with the device. Devices reported as damaged or inoperable must be taken out of service by the Operator within three hours of such notification, and remain out of service until repaired.
- v. Operator must ensure the devices do not create excessive or annoying noise in violation of Section 1.6 of Chapter 8 of the Albany Municipal Code.
- w. Devices covered under this Agreement may only be operated within the City public right-of-way. Operator may not restrict use of its devices within certain geographical areas of the City unless previously approved by the City. Before requesting permission from the City to operate the devices outside the public right-of-way, Operator must obtain permission of all affected property owners. Operator must ensure it has a way of communicating with a customer when a device has been operated in a non-permitted area.
- x. Devices must be distributed throughout the City, and Operator must provide the City real-time access to data showing the location of all devices within the City.
- y. Operator must closely monitor ridership, and adjust device density and location accordingly, to maximize convenience to the greatest number of riders.
- z. If charging or servicing of devices is contracted to third parties, Operator must take steps to prevent conflicts between contractors seeking to charge or service devices. This may include partnering with local organizations to provide this service, allocating devices to charging personnel in a cohesive way, hiring charging staff directly, or other such mechanisms that remove or reduce the incentive for conflicts.
- aa. Operator must include adaptive devices for users experiencing disabilities. The total percentage of adaptive devices should be based on expected need, performance, and usage.
 - i. If Operator is unable to deploy adaptive devices at the time of entering into this Agreement, a plan must be submitted to the City Engineer detailing a timeline for incorporation of shared adaptive devices into their fleet. This plan shall detail the types and numbers of adaptive devices that will be made available.

- bb. Operator's mobile application and other customer interface technology must be fully accessible to persons with disabilities and accessible to screen readers, and must comply with Section 508 of the United States Workforce Rehabilitation Act of 1973.
- cc. Operator must offer a discounted membership plan for those with low incomes, equivalent to five dollars (\$5.00) for one (1) year of unlimited thirty (30) minute rides for those who participate in the State Nutritional Assistance Program (SNAP) or California Alternative Rates for Energy (CARE).
 - i. Operator must also make available free or discounted helmets to those participating in the discounted membership program through in-person events or through its mobile application.
 - ii. Helmets provided to users under this section should be available by mail or equivalent as well as at an accessible physical location.
- dd. Operator must implement a marketing and targeted outreach plan at its own cost, or, pay an in-lieu fee to the City to increase awareness of low-income discount options.
- ee. Operator must make available ways to use and pay for the service that do not require a smart phone or credit card.
- ff. Operator must clearly communicate to customers and to the City what personal information is being collected about customers, how it is being used, and for how long.
- gg. Operator must employ an electronic payment system that is compliant with the Payment Card Industry Data Security Standards (PCI DSS), and provide proof of compliance to the City.
- hh. Operator must produce a privacy policy that complies with the California Online Privacy Protection Act (CalOPPA) and any data protection laws applicable to minors, and which expressly limits the collection, storage, or usage of any personally identifiable information to the extent absolutely required to successfully accomplish Operator's business purpose.
- ii. Operator must make real-time data available to the City and City-designated third parties via the "Mobility Data Specification (MDS)," or similar standard as determined by the City.
- jj. Operator must have a way to receive and respond to complaints in multiple languages, including, but not limited to, Spanish.
- kk. Operator must provide methods for both users and nonusers to suggest device deployment locations or prohibited locations.

2. Indemnification

Operator shall defend (at Operator's sole expense, with legal counsel approved by City, with such approval not to be unreasonably withheld or delayed), indemnify, and hold harmless the City, and members of its City Council, its boards and commissions, officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively "the Indemnified Parties"), from and against any and all losses, damages, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs, expenses and reasonable attorneys' fees and judgments arising out of or in any manner related to this Agreement, including, but not limited to, loss or damage to persons or property, arising out of or in any way related to Operator's use, or its subcontractors' use, of the public space, public right-of-way, or public property. This indemnification includes, but is not limited to, tort liability to a third person for bodily injury and property damage. Operator agrees that this obligation to indemnify, defend, and hold harmless extends to liability and/or claims arising from Indemnified Parties' active or passive negligence. Notwithstanding the foregoing, nothing herein shall be construed to require Operator to indemnify an Indemnified Party from any claim arising from the sole negligence or willful misconduct of that Indemnified Party. The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice from City to Operator of a claim within the potential scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of Operator, City, or any Indemnified Party.

3. Waiver/Release of Liability

a. Operator expressly assumes the sole and exclusive risk with respect to its Shared Electric Micromobility business, any devices or equipment it uses as part of its business, or services authorized pursuant to this Agreement.

b. Accordingly, to the greatest extent permitted by law, without limiting any indemnification obligations of Operator or other waivers contained within this Agreement, and without impairing any applicable insurance coverage described herein, as a material part of the consideration for this Agreement, Operator hereby fully and forever RELEASES, WAIVES, AND DISCHARGES any and all claims, demands, rights, lawsuits, and causes of action, against the City and its Councilmembers, officers, directors, partners, agents, and employees for consequential and/or incidental damages (including without limitation, lost profits), and covenants not to initiate or prosecute any legal action against City or its Councilmembers, officials, officers, directors, partners, agents, and employees, in any forum or tribunal, for such losses or damages, arising out of this Agreement.

c. This waiver and release includes, without limitation, any and all claims whether direct or indirect, known or unknown, foreseen and unforeseen, that may result from, arise out of, relate to, or in any way be connected with the design, construction, maintenance, repair, replacement, oversight, management, or supervision of any physical, environmental, or dangerous condition(s) of the public Rights-of-Way and any related improvements, or the suitability of the public rights-of-way for Operator's or its users' intended use.

d. Operator further acknowledges that it understands and agrees that it hereby expressly waives any and all rights and benefits which it now has, or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY".

INITIAL

e. Operator recognizes and understands that by waiving the provisions of this section, Operator will not be able to make any claims for damages that may exist, and which, if known, would materially affect its decision to agree to these terms and conditions, regardless of whether Operator's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

4. Insurance

Operator shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with this Agreement. Operator shall submit proof of insurance as required by this Agreement prior to the Parties' execution of the Agreement.

a. Minimum Scope and Limits of Insurance

- i. General Commercial Liability insurance with a minimum liability limit of two million dollars (\$2,000,000) and which lists the City as provided in Section 4.b.
- ii. Workers' Compensation insurance, as required by the State of California.
- iii. Automobile insurance with a minimum liability of one million dollars (\$1,000,000) and which lists the City as primary additional insureds as provided in Section 4.b.

b. Additional Insurance Requirements

- i. Coverage shall be at least as broad as:
 1. Commercial General Liability (CGL): Insurance Service Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed: operations, property damage, bodily injury and personal and advertising injury, with limits of no less than \$2,000,000 per occurrence. If such CGL insurance contains a general aggregate limit, the general aggregate shall have a limit of

not less than \$4,000,000 annually and shall apply separately to dockless scooter operations.

2. **Workers' Compensation:** Workers' Compensation insurance as required by the State of California, with Statutory Limits and Employers' Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. If Operator maintains broader coverage or higher limits than the minimums shown above, the City of Albany requires and shall be entitled to the broader coverage or higher limits maintained by Operator. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Albany.
- ii. Each insurance policy must contain, or be endorsed to contain, the following provisions:
1. **Additional Insured Status:** The City of Albany and its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy. CGL coverage can be provided in the form of an endorsement to the Contractor's insurance consistent with the City's standard insurance requirements.
 2. **Primary Coverage:** For any claims related to this Agreement, Operator's insurance shall be primary coverage as respects the City of Albany and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Albany or its officers, officials, employees, or volunteers shall be in excess of Operator's insurance and shall not contribute with it.
 3. **Notice of Cancellation:** Each insurance policy required herein shall show that coverage shall not be canceled except after notice has been given to the City of Albany.
 4. **Waiver of Subrogation:** Operator hereby grants to the City of Albany a waiver of any right of subrogation which any insurer of Operator may acquire against the City of Albany by virtue of payment of any loss. Operator agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City of Albany has received a waiver of subrogation endorsement from the insurer.
- iii. Self-Insured Retentions. Self-insured retentions must be declared to and approved by the City of Albany. Operator shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, agents and authorized volunteers; or (2) Operator shall procure

a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

- iv. Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City of Albany.
- v. Verification of Coverage. Operator shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind The City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- vi. Failure to Maintain Coverage. If Operator, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of the Agreement. The City, at its sole option, may terminate this Agreement and obtain damages from Operator resulting from said breach.

5. Term and Termination. This Agreement is authorized pursuant to Albany Municipal Code section 5-12.3, and will terminate automatically, with no further action required by the City or Operator, upon Operator's receipt of a permit in accordance with Chapter 5-12 of the Albany Municipal Code or the expiration of 90 days from the Effective Date, whichever occurs earlier. This Agreement may also be terminated immediately by the City Manager upon a recommendation to the City Manager to that effect by the City Engineer for the Operator's failure to adequately address parking restrictions, as set forth in section 1.h. of this Agreement. City reserves the right to terminate this Agreement for convenience upon 10 calendar days' written notice to Operator, or immediately upon a breach of any of the terms of this Agreement.

6. Independent Contractor. In rendering services under this Agreement, the Operator is and will remain an independent contractor and not an employee of the City. It is expressly understood and acknowledged by the Parties that Operator is responsible for assuming any applicable Federal or State withholding taxes, estimated tax payments, or any other fees or expenses whatsoever related to services provided pursuant to this Agreement.

7. No Assignment. Neither this Agreement nor any privileges, duties, or obligations hereunder may be assigned, conveyed, or delegated by Operator.

8. Entire Agreement. This written document contains the entire agreement of the Parties and supersedes any prior oral or written statements or agreements between the Parties. Except as otherwise expressly provided herein, no supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the Parties.

9. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

10. Authority; Binding on Successors. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement and bind each respective party. This Agreement shall be binding on and inure to the benefit of the successors of the respective parties. This Agreement shall be governed by the laws of the State of California. Venue shall be in Alameda County.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the Effective Date.

CITY OF ALBANY

OPERATOR

By: _____
Nicole Almaguer
City Manager

By: _____
[NAME]
[TITLE]
[BUSINESS NAME]