CITY OF DULUTH
OPERATING AGREEMENT FOR
SHARED ACTIVE MOBILITY SYSTEM

THIS OPERATING AGREEMENT ("Agreement") is by and between the City of Duluth, a municipal corporation, hereinafter referred to as "City," and_____ _____, hereinafter referred to as "Operator." City and Operator are each individually referred to herein as a "Party" and collectively as the Parties."

WHEREAS, the City wishes to encourage safe and affordable multi-modal transportation options to all residents, reduce traffic congestion, and maximize carbon free mobility; and

WHEREAS, Operator wishes to implement its Shared Active Mobility System ("SAMS") within the City of Duluth corporate boundaries; and

WHEREAS, Operator's SAMS requires use of the City's right of way; and

WHEREAS, City wishes to allow Operator's SAMS to operate in Duluth's public right of way under certain terms and conditions which will protect and manage City property while assessing the transportation an recreational value of the SAMS.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. PURPOSE. The purpose of this Agreement is to establish rules and requirement governing the operation of SAMS within the City and to ensure that the operation of the SAMS is consistent with the safety and well-being of pedestrians, shared device Customers, and other users of the public right-of way.

2. SCOPE. The Operating Agreement applies to any SAMS operating within the City's jurisdictional boundaries.

3. DEFINITIONS.

3.1 "Device operation area" means the right of way for all shared devices and trails where operation of a shared device is authorized by city ordinance and this Agreement.

3.2 "Customer" means a person that rents or operates a shared device from Operator.

3.3 "Public Way" means public right of way, sidewalks, bike paths, and any other property owned by the city and open to the public.

3.4 “Shared active mobility system (“SAMS”) means a business that provides one or more shared devices for rental where the shared devices are intended to be parked in a device operating area.

3.5 “Shared Device” means bicycle or motorized foot scooter rented by Operator to customers through a SAMS.

3.6 “Throughway Zone” means the portion of the sidewalk for pedestrian travel.

4. TERM. This Agreement will be effective upon execution and continue in effect until December 31, 2020, unless earlier terminate pursuant to Section 13.

5. USE OF CITY PROPERTY.

5.1 City grants Operator a non-exclusive license to use the portions of the public right of way within the device operating area for purposes set forth in section 5.2 of this Agreement. This authorization is not a lease or an easement, and is not intended and shall not be construed to transfer any real property interest in City property.

5.2 Permitted Use. Operator and its customers may use the public right of way for riding shared devices owned and maintained by operator. Operator shall not place or attach any personal property, fixtures or structures to public or private property without the prior written consent of the owner.

5.3 Use of the Public Way and SAMS operation within the City shall not:

5.3.1 Adversely affect the public’s use of the Public Way;

5.3.2 Adversely affect any private property;

5.3.3 Inhibit pedestrian or vehicular movement within or along the Public Way or any other property, whether public or private; or

5.3.4 Create conditions which are a threat to public safety or security.

5.4 Use of the Public Way located within City of Duluth Parks or along designated trails requires an additional City of Duluth Parks and Trails Commercial Operations Permit and is subject to restrictions imposed by the City of Duluth Parks and Recreation Director.

6. OPERATOR’S RESPONSIBILITIES.

6.1 Any person/Operator seeking to operate a SAMS within the City shall execute this Agreement. Operator acknowledges and agrees that this is a non-exclusive agreement and that City may enter into operating agreements with other operators of SAMS at its sole discretion.

6.2 The City reserves the right to amend, modify or change the terms and conditions within this Operating Agreement at its discretion.

6.3 Operator shall provide easily visible contact information, including a 24-hour toll free phone number and email address on each Shared Device for use by the public to report safety concerns, complaints, or to ask questions.

6.4 Operator shall provide City with the contact information of a locally-based manager/operations staff with decision making power who can respond to City requests, emergencies, and other issues 24 hours a day seven days a week.

6.5 From 6:00 a.m. to 6:00 p.m. on weekdays, not including legal holidays, Operator shall respond to public, Customer, or City requests for rebalancing, reports of incorrectly parked Shared Devices, or reports of unsafe/inoperable Shared Devices by relocating, re-parking, or removing Shared Devices completely within two hours of receiving written or oral notice. During all other times, Operator shall remove or re-locate Shared Devices within 12 hours of receiving notice. City representatives may relocate, re-park, or adjust incorrectly parked or unsafe/inoperable Shared Devices without providing notice to Operator.

In the event a Shared Device is not relocated, re-parked, or removed within the timeframe specified herein, or any Shared Device is parked in one location for more than 72 hours without moving, such Shared device may be removed by City personnel and taken to a City facility for storage at the expense of the operator. Notwithstanding the foregoing, City reserves the right to impound Shared Devices that may impact the health, safety, or welfare of City residents or visitors or is placed or operated in a manner that violates the terms of this Agreement without notice to Operator and at the expense of the Operator. The City shall not be responsible for any damage to any Shared Devise impounded or taken into storage and City is under no obligation to safe-keep any Shared Device. Operator's policy for handling complaints of improperly parked or abandoned Shared Devices is attached hereto as Exhibit A.

6.6 Operator shall halt its SAMS Operation completely daily by 10:00 p.m.(CST). Shared Devices shall remain inactive until 5:30 (CST) of the following day.

6.7 Operator will be responsible for all costs associated with disposal of Shared Devices.

6.8 On days where accumulating snow is anticipated, Operator shall remove its Shared Devices from City public rights-of-way. Operator agrees to hold the City harmless for damage to Shared Devices caused by City's snow removal operations and for any damage caused to City vehicles and removal of Shared Devices.

. 6.9 Operator shall maintain its Shared Devices in a good working manner. In the event a safety or maintenance issue is reported for a specific Shared Device, that Shared Device shall be made unavailable to users and shall be removed within the timeframes provided herein. Any inoperable or unsafe Shared Device shall be repaired before it is placed back in service. City shall not have any obligations with regards to the maintenance of Operator's Shared Devices. A copy of the Operator's maintenance plan is attached to this Agreement as Exhibit B and Operator's description of how Operator will respond to notification of safety or operational concerns of Shared devices is attached as Exhibit C.

7. NUMBER OF SHARED DEVICES.

7.1 Operator shall begin operations in City corporate limits with a Fleet of not more than 100 Shared Devices. During the term of this Agreement, Operator may not reduce the size of its Fleet below 25 Shared Devices without written notification to City, provided at least seven (7) days before the reduction is to occur. Operator shall not increase the size of its Fleet beyond 100 Shared Devices without City's approval pursuant to Section 7.2 of this Agreement. However, City may deny a request to increase the Fleet size as described herein if in its sole discretion it determines that an increase would not be in the best interest of the public health, safety, or welfare.

7.2 City may, at its sole discretion, approve and permit reasonable increases to Operator's Fleet based on utilization of the Shared Devices. Such increase requests will not be unreasonably denied. City may deny any increase for more than 150 Shared Devices if City in its sole discretion believes that an increase is not in the best interest of the safety, health, or welfare of its residents or visitors.

8. PARKING.

8.1 Operator acknowledges and agrees that Operator is solely responsible for its Shared Devices and ensuring they are in compliance with the following guidelines for parking Shared Devices:

8.1.1 Shared Devices shall not be parked in the street.

8.1.2 Shared Devices shall be parked in a manner so as not to block the Throughway Zone of the sidewalk, any curb ramp, any ADA ramp or access points, benches, fire hydrant, call box, or other emergency facility, or utility pole or box. At all times, the Shared Devices shall be parked in a manner and location which ensures the Throughway Zone meets minimum ADA accessibility guidelines.

8.1.3 Shared Devices shall not be parked 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 or access to or from off-street parking lots or garages.

8.1.4 Shared Devices shall not be parked in such a manner as to impede or interfere with the reasonable use of any bicycle rack or news rack.

8.1.5 Shared Devices shall not be parked in any portions of transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, which would inhibit access.

8.2 To the extent Operator desires to park Shared Devices in areas other than the public right-of-way, Operator must first obtain the right to do so from the appropriate property owner, or public agency and shall communicate this right to Customers through signage approved by the respective entity and/or through a mobile or web application. To the extent Operator desires to park Shared Devices on city property other than right-of-way, Operator must first obtain written consent granting the right to do so from the City or such other department or agency of the City who has authority to grant such rights.

9. PUBLIC NOTICE.

9.1 Operator shall provide detailed notice to all Customers by means of signage and through a mobile or web application that:

9.1.1 Shared Devices that are motorized foot scooters are to be ridden only on streets, and where available in bike lanes, and not on sidewalks, or other areas designated by City to be closed for Shared Device Traffic.

9.1.2 Shared Devices that are bicycle may not be ridden on sidewalks within the Business District or other areas designated by City to be closed for Shared Device Traffic.

9.1.3 Shared Devices are to be ridden to the right of street lanes and should offer the right-of-way to bicycles on bike lanes.

9.1.4 Customers who are under the age 18 must wear helmets when riding Shared Devices.

9.1.5 Customers must park Shared Devices in accordance with the parking regulations in section 8.

9.1.6 Rider cannot ride a Shared Device while intoxicated.

9.1.7 Customers are at all times to operate the device in a manner consistent with City's Code of Ordinances and any other applicable laws.

9.1.8 Customers are subject to City's Code of Ordinances and will be subject to penalties and enforcement for operating the device in a manner which violates City's Code of Ordinances.

9.2 Shared Devices which do not rely solely on human propulsion and are equipped with an electric motor that is capable of propelling the device shall be governed at a speed not to exceed fifteen (15) miles per hour on a paved level surface.

9.3 Operator shall provide education to Shared Device Customers on City's existing rules and regulations, safe and courteous riding, and proper parking. Operator shall also provide City-specific information through Operator's mobile or web application that explains the terms of service, user instructions, privacy policies, fees, penalties, unexpected charges, and local management and operations contact information. A description of the Customer education and outreach plan for proper use of Shared Devices is attached hereto as Exhibit D.

10. DATA SHARING. Operator agrees to provide data to City related to the utilization of Shared Devices. Operator will maintain real-time data feeds, and upon request, provide the city with trip information including, but not limited to, the following: aggregated reports on system use, compliance, operations- including but not limited to parking complaints, crashes, damaged, or lost Shared Devices, utilization rates, total trips by day of week and time of day, origins & destination information for all trips, trips per Shared Device by day of week and time of day, average trip distance, parking compliance at designated zones and at transit and bus stops, incidents of Shared Device theft and vandalism, Shared Device maintenance reports, payment method information. Anonymized/de-identified demographic data, such as age cohort, gender, general trip purpose, etc., collected by Operator shall be provided to City on a yearly basis, or upon request. Operator shall make available to City any information from private entities related to requests for Shared Devices not to be used or parked at a private location upon request. Any data shared by Operator with City will comply with Operator's terms of service and privacy agreement with Customers and will not reveal proprietary information that puts at risk Operator or its employees, agents, or Customers.

Operator will be expected to comply with all data sharing requirements in order to remain compliant with this Agreement. City in its sole discretion may determine if Operator has failed to comply with the data sharing requirements. Operator's failure to comply may result in Default or Termination of this Agreement as described herein.

11. SIGNAGE. Operator agrees that as it relates to all signage on Shared Devices, it will abide by applicable local, state, and federal law relating to signs. The Shared Devices are not a public forum for public debate or discourse. Operator agrees that in addition to any restrictions set forth by City ordinance, the content of any sign located on Operator's' Shared Devices will not include any message that is illegal, obscene, libelous or fraudulent. A violation of this Section shall be cause for City to terminate this Agreement if said violation is not corrected within twenty-four (24) hours' notice to Operator. The determination that there has been a violation of these signage guidelines shall be solely at City's discretion.

12. DEFAULT OR TERMINATION.

12.1 Except where specifically provided otherwise in this Agreement, in the event the Operator shall default in any of the covenants, agreements, commitments, or conditions herein, or if any of the conditions set forth herein shall occur, and any such default shall continue unremedied for a period of three (3) business days after written notice thereof to Operator, City may, at its option and in addition to all other rights and remedies which it may have at law or equity against Operator, including expressly the specific enforcement hereof and the enforcement of City ordinances, have the cumulative right to immediately terminate this contract and all rights of Operator under this Agreement. Termination of this agreement will also result in revocation or termination of operator's license.

12.2 Notwithstanding anything to the contrary herein, City may suspend or terminate this Agreement and Operator must cease operations at any time if City finds, in its sole discretion that Operator's SAMS is not in the best interest of the health, safety, or welfare of City's residents and visitors.

12.3 Operator's obligation with regards to indemnification as provided in Section 15 of this Agreement shall survive the expiration or termination of this Agreement with regards to any claims arising during such time as this Agreement was in effect.

12.4 Upon instances of Default or Termination, Operator shall remove its Shared Devices from the right-of- way within two (2) days of being notified of termination by City. If Operator fails to remove the Shared Devices upon due notice, any remaining Shared Devices may be removed by City at Operator's expense. Operator shall not be entitled to damages for the removal of Shared Devices by City. Operator agrees to hold the City harmless for any damage to Shared Devices caused by City's removal and or storage of such vehicles.

13. IMPOUNDMENT. Operator agrees to the following penalties and procedure for those Shared Devices subject to impounding as described herein. City may remove a Shared Device that impacts with the health, safety, or welfare of City residents or visitors and may store the impounded Shared Devices at a location convenient for the City. City

may, in its sole discretion, provide documentation to Operator of the violation. However, such documentation is not required and shall not be a condition precedent before City may enforce the terms herein. City may assess a penalty of $100 for each Shared Device it impounds. City shall notify the Operator of the impounded Shared Devices and their location. In such instances, Operator shall retrieve Shared Devices from City within twenty-four (24) hours of receiving notice. Operator is responsible for paying storage costs of Fifty Dollars ($50) per day, penalties, and all other expenses related to the impounding before having the Shared Devices returned. If Operator does not retrieve the Shared Devices within (24) hours of receiving notice, City may dispose of Shared Devices at Operator's expense within seventy-two (72) hours of providing notice. City may invoice the Operator for the cost of disposal and Operator agrees to pay the invoice within ten (10) days of receipt.

14. INSURANCE.

14.1. During the Term, Operator shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than One Million Five Hundred Thousand Dollars ($1,500,000) aggregate per occurrence for personal bodily injury and death. City shall be named as additional insureds therein. Operator's insurance policies shall cover:

14.1.1 Public Liability, including premises and operations coverage.
14.1.2 Independent contractors - protective contingent liability.
14.1.3 Personal injury.
14.1.4 Owned, non-owned and hired vehicles.
14.1.5 Contractual liability covering the indemnity obligations set forth herein.

14.2 Operator shall provide to City a Certificate of Insurance in form acceptable to the Duluth City Attorney's Office evidencing such insurance coverages. City does not represent or guarantee that these types or limits of coverage are adequate to protect Operator's interests and liabilities. The form of the Certificate of Insurance shall (i) contain an unconditional requirement that the insurer notify City not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate; and (ii) provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against City.

14.3. During the Term, Operator shall also have workers' compensation insurance in accordance with applicable law.

15. INDEMNIFICATION.

15.1 To the fullest extent not prohibited by law, Operator shall indemnify and hold harmless City, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise of Operator, of any subcontractors (meaning anyone including but not limited to contractors having a contract with Operator) or a subcontractors for part of the services), of anyone directly or indirectly employed by Operator or by any subcontractors, or anyone for whose acts Operator or its

subcontractors may be liable, in connection with manufacturing Shared Devices or providing SAMS services.

15.2. No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or laws.

16. INDEPENDENT CONTRACTOR. Operator shall be responsible for all of its employee compensation in connection with the SAMS, including but not limited to payroll and all other expenses. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties or as constituting Operator or Operator's personnel as an agent, representative, or employee of City for any purpose or in any manner whatsoever. Operator and its employees shall not be considered employees of City and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Operator's employees or agents while so engaged, shall in no way be the responsibility of City. Furthermore, City shall not, in any way, be responsible to defend, indemnify or save harmless Operator from liability or judgments arising out of the intentional or negligent acts or omissions of Operator while performing the work specified by this Agreement.

17. ASSIGNMENT. Operator shall not in any way assign or transfer its rights or interests under this Agreement without the express written agreement of the City.

18. GOVERNMENT DATA PRACTICES. Operator must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Operator under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by Operator. If Operator receives a request to release the data referred to in this clause, Operator must immediately notify the City and consult with the City as to how Operator should respond to the request. Operator's response to the request must comply with applicable law.

19. MISCELLANEOUS

19.1 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Minnesota. Any dispute arising out of this Agreement, including, but not limited to, any issues relating to the existence, validity, formation, interpretation or breach of this Agreement, shall be

brought and litigated exclusively in a state or federal court located in St. Louis County, Minnesota; and the Parties consent to the exclusive jurisdiction thereof.

19.2 Notices. Any notice, demand, request, or communication required or authorized by this Agreement, unless otherwise specified herein, shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt request, with postage prepaid to:

CITY:	OPERATOR:
City of Duluth	_____
Attn: City Clerk	_____
Room 310 City Hall	_____
411 West First Street	_____
Duluth, MN 55202	_____

Any notice required by this Agreement to be given in writing, or that either City or Operator wishes to give to the other in writing, shall be signed by or on behalf of the Party giving notice. The notice shall be deemed to have been completed when sent by certified or registered mail to the other Party at the address set forth herein, or delivered in person to said Party or their authorized representative.

19.3 No Third-Party Beneficiary. No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such person a third-party beneficiary under this Agreement.

19.4. Amendments. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

19.5 Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties relative to the contracted services herein. All previous or contemporaneous contracts, representations, promises and conditions relating to the contracted services herein are superseded.

19.6 Waiver. The waiver by the City of any provisions of this Agreement shall not constitute a future waiver of performance of such provisions. To be effective, any waiver by the City shall be in writing.

19.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute this Agreement on the date set forth above.

THE CITY OF DULUTH

By_____
Mayor

ATTEST: _____
City Clerk

Date:_____

COUNTERSIGNED:

_____
City Auditor

APPROVED AS TO FORM:

_____
City Attorney

OPERATOR

By_____
Its_____

Date:_____