

## INTERIM OPERATING AGREEMENT

This Interim Operating Agreement (the “Agreement”) is executed this \_\_\_\_ day of [Month] 2022, by and between Bird Rides, Inc., with its principal offices located at 406 Broadway, #359, Santa Monica, CA 90401 (the “Company”), and the City of Payson, a Utah municipal corporation and political subdivision of the State of Utah, with its principal offices located at 439 West Utah Avenue, Payson, Utah 84651 (hereinafter referred to as the “City”).

### Recitals

WHEREAS the Company desires to operate a shared mobility device business that makes Shared Personal Transportation Devices (as defined herein) available to members of the public in the City; and

WHEREAS the Payson City Code does not currently include specific regulations for businesses providing Shared Personal Transportation Devices (SPTDs) to the public and the City is currently evaluating the best way to regulate the use of SPTDs and the companies that make SPTDs available to the public; and

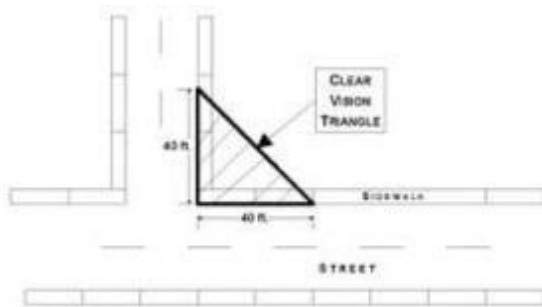
WHEREAS the City and the Company desire to enter into this Interim Operating Agreement to establish interim rules and regulations governing the operation of Shared Personal Transportation Devices while the City continues to study and evaluate how such uses should be regulated.

### Covenants

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the City and the Company hereby agree as follows:

1. **Scope.** This Agreement applies to Company's proposed deployment of an SPTD sharing system within the City's jurisdictional boundaries. Nothing in this Agreement requires the Company to deploy a particular type of SPTD or to deploy SPTDs in a particular location.
2. **Non-Exclusive Agreement.** This is a non-exclusive agreement and the City reserves the right to allow other providers of SPTDs to operate in the City.
3. **Definitions.** For purposes of this agreement, the following terms have the meanings provided.

**Clear Vision Area:** means that portion of a street corner lying within a triangular area formed by measuring back along each of the curb lines to a point forty feet from the intersection of said curb lines, and then connecting the points thus established with a third line as illustrated in the following diagram:



**Motor assisted scooter:** means a self-propelled device with:

- (i) at least two wheels in contact with the ground;
- (ii) a braking system capable of stopping the unit under typical operating conditions;
- (iii) an electric motor not exceeding 2,000 watts;
- (iv) either (A) handlebars and a deck design for a person to stand while operating the device; or (B) handle bars and a seat designed for a person to sit, straddle, or stand while operating the device;
- (v) a design for the ability to be propelled by human power alone; and
- (vi) a maximum speed of 20 miles per hour on a paved level surface.

**Shared Personal Transportation Device (SPTD):** means a motor assisted scooter, a bicycle or an electric assisted bicycle

4. **Duration.** This Interim Operating Agreement shall be effective for an initial period of six (6) months unless otherwise terminated in accordance with the terms of this Agreement. This Agreement shall be automatically renewed for up to three additional terms of six (6) months each unless either party provides notice to the other party that it has elected not to renew this Agreement.

5. **Maximum Number of SPTDs.** Because the potential impact of the deployment of a substantial number of SPTDs in the City is not known and to address the variety of competing needs for public space, Company shall begin operations with a fleet size of not more than 200 SPTDs.

1.1. **Increase in Number of SPTDs in City.** Immediately following any month in which Company's utilization rate of SPTDs in the City exceeds three rides per SPTD, Company may increase its fleet of SPTDs operating in the City by up to, but no more than ten percent (10%).

1.2. **Removal of SPTDs for Low Rate of Use.** Immediately following any month in which Company's utilization rate of SPTDs in the City is less than one ride per SPTD, Company shall remove at least ten percent (10%) of its fleet of SPTDs in the City.

1.3. **Data.** Company shall provide City with data on at least a monthly basis to determine and demonstrate the utilization rate of SPTDs in the Company fleet.

6. **Fees.** As compensation for the use of the right-of-way for parking of SPTDs, Company shall pay City ten cents (\$ 0.10) per ride rental within the City. Payments under this section will be made on a monthly basis. This fee shall be in addition to, and not in lieu of, any business license or other applicable fee or charge.

## 7. Operating Regulations.

1.1. **Identifying Number.** Each SPTD shall have a unique identifying number that is

readily visible to a rider or any member of the public.

1.2.**Contact Information.** Company shall provide easily visible contact information, including toll-free phone number and e-mail address on each SPTD for City employees and/or members of the public to make relocation requests or to report other issues with devices.

1.3.**No Third Party Advertising.** Company shall not allow any third-party advertising on its SPTDs.

1.4.**Adoption and/or Amendment of Regulations.** City may at any time and at City's sole discretion, adopt and/or amend operating regulations, parking guidelines and operations requirements if those amendments are uniform for all providers of SPTDs in the City.

8. **Deployment and Parking Guidelines.** Company acknowledges and understands the following rules for Company's deployment of SPTDs and where riders may park SPTDs. While Company is not responsible for the decisions of its customers in parking an SPTD at the end of a rental, Company will provide notice to its customers of the following parking rules.

1.1. Users of Stand-up Electric Scooters shall park devices upright in the furniture zone of the sidewalk, beside a bicycle rack or in another area specifically designated for bicycle parking, or on the street next to an unmarked curb.

1.2. Users shall not park Stand-up Electric Scooters in such a manner as to block the pedestrian clear zone area of the sidewalk; any fire hydrant, call box, or other emergency facility; bus bench; or utility pole or box.

1.3. Users shall not park Stand-up Electric Scooters 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.

1.4. Users shall not park Stand-up Electric Scooters in such a manner as to impede or interfere with the reasonable use of any bicycle rack or news rack.

1.5. Users may park Stand-up Electric Scooters in on-street parking spaces in the following circumstances:

- i. When marked parking spaces are officially designated stations for such devices in business districts;
- ii. Where the furniture zone is less than three feet wide;
- iii. Where there is no furniture zone;
- iv. In neighborhoods with rolled curbs, or with inadequate sidewalk space;
- v. In marked parking spaces designated for motorcycles.

1.6. Users may park Stand-up Electric Scooters on blocks without sidewalks only if the travel lane(s) and 6-foot pedestrian clear zone are not impeded.

1.7. Users shall not park Stand-up Electric Scooters in the landscape/furniture zone directly adjacent to or within the following areas, such that access is impeded:

- i. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;
- ii. Loading zones;
- iii. Disabled parking zone;
- iv. Street furniture that requires pedestrian access (e.g., benches, parking pay stations, bus shelters, transit information signs, etc.);
- v. Curb ramps;
- vi. Entryways; and
- vii. Driveways.

1.8.



1.9. **On-Street Parking.** SPTDs may be parked in on-street parking spaces where vehicular street parking is allowed. When parked on the street, SPTDs shall be placed as close to edge of the street as reasonably practicable. However, SPTDs shall not be parked on a street in a location where vehicle parking is limited to 15 minutes or less, in a clear vision area, or where parking is otherwise prohibited, such as in a no parking zone, adjacent to a red painted curb, or in an area subject to a neighborhood parking permit program.

1.10. **Prohibited Parking Areas.** SPTDs may not be parked in any of the following locations:

1.10.1. In any landscaped buffer strip (the area between the back of a street curb and a public sidewalk).

1.10.2. Within five feet of any of the following areas:

(A) Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks;

(B) Loading zones;

(C) Disabled parking zone;

(D) Curb ramps;

(E) Entryways; and

(F) Driveways.

1.10.3. In any location that would impede or interfere with the reasonable access to or from any building.

1.10.4. In the clear vision area of an intersection. or within 5 feet of a street corner pedestrian ramp.

1.10.5. In any location that would impede access to any fire hydrant, call box, or other emergency facility; bus bench or shelter; or utility pole or box.

1.10.6. On any other City-owned property except in areas where parking by vehicles or bicycles is allowed or where express written permission is given by

1.10.7.

the City.

1.10.8. SPTDs shall not be parked on property owned by any other person or entity unless permission has been given by the owner/lessee of such property.

1.11. **Night Operation.** Company shall not allow SPTDs to be operated in the City thirty minutes after sunset or thirty minutes before sunrise unless the SPTD is equipped with a functional headlight and rearlight.

## 9. **Operations.**

1.1. **Customer Service Line.** Company shall maintain a 24-hour customer service phone number for customers to report safety concerns, complaints, or to ask questions.

1.2. **Education.** Company shall provide education to SPTD riders on the City's existing rules and regulations, safe and courteous riding, and proper parking.

1.3. **Repairs.** If a safety or maintenance issue is reported for a specific device, that SPTD shall be made unavailable to riders and shall be removed within the timeframes provided herein. Company shall repair any inoperable or unsafe SPTD before it is put back into service.

1.4. **Relocation and Removal of SPTDs.** Company shall respond to requests for rebalancing, reports of incorrectly parked SPTDs, including SPTDs not parked in an upright position, or reports of unsafe/inoperable SPTDs by relocating, re-parking, or removing the SPTDs, as appropriate, usually within 2 hours, but not later than 4 hours, of receiving notice.

1.5. **Removal During Winter Storms.** Company shall make a reasonable effort to remove all SPTDs from the right-of-way during times that a winter storm warning or winter weather advisory is in effect for the Payson, Utah area when issued by the National Weather Service and immediately following any storm in which three or more inches of snow has accumulated in the City. The City shall not be responsible for damage to any scooter left in the right-of-way that is caused by snow plows, application of salt (or other de-icing agents) to the right-of-way, or the moving and piling of snow.

1.6. **Removal and Storage by City.** An SPTD may be removed by City employees and taken to a City facility for storage and the Company agrees to reimburse the City for the cost of removing and impounding such SPTD(s) if the SPTD is:

1.6.1. Not relocated, re-parked, or removed within the timeframe specified in Subsection 9.4 or 9.5; or

1.6.2. Parked in one location for more than 72 hours without moving.

1.7. **Reimbursement for Costs Incurred.** Company shall reimburse City for reasonable costs incurred in abating any violations of this Agreement by Company, including costs incurred under Section 9.6 or costs of repair or maintenance of public property caused by Company's negligence within 30 days of receipt of an invoice detailing such costs.

1.8. **Notice to be Provided to Riders.** Company shall provide notice to all riders through a mobile or web application that:

1.8.1. SPTDs are to be primarily ridden on streets, and where available, in bike lanes and bike paths;

1.8.2. SPTDs are to stay to the right of street lanes and, where bike lanes are available, SPTDs should be operated in the bike lane and to offer the right of way to bicycles on bike lanes and bike paths;

1.8.3. Motor assisted scooters may not be operated at a speed greater than 15

1.8.4. miles per hour;

1.8.5. Riders shall yield to pedestrians;

1.8.6. Helmets are strongly recommended for all riders;

1.8.7. SPTDs are to be operated in accordance with rules applicable to pedestrians when crossing through crosswalks when vehicular traffic does not have the right of way;

1.8.8. Parking is prohibited on City sidewalks and the other areas listed in Section 8.2; and

1.8.9. SPTDs must be parked in an upright position.

1.9. **Photo at End of Ride.** SPTD riders are required to take a photo and submit the photo to Company whenever they park their scooter at the end of a ride.

1.10. **Cooperation.** Company will collaborate with City to address areas where SPTDs are observed to routinely either be in violation of any term of this Agreement or to where demand for SPTDs shows that additional operational changes may be needed.

1.11. **No Rentals to Individuals Under 18.** Company shall not knowingly rent or allow any of its motor assisted scooters to be operated by a person under the age of 18 years.

10. **Data Sharing.** Upon request, Company shall provide City with anonymized fleet and ride activity data for completed trips starting or ending within City on an SPTD owned by Company or of any person or company controlled by, controlling, or under common control with Company, provided that, to ensure individual privacy the trip data:

1.1. Is provided via an application programming interface, subject to Company's

license agreement for such interface, meeting the requirements of the Mobility Data Specification format, a standard for data exchange and storage of operational information that the City is enabled to query;

1.2. Shall be treated as trade secret and proprietary business information, and may not be shared to third parties without Company's consent, and may not be treated as owned by City;

1.3. Shall be considered private information, and, pursuant to Utah Code section 41-6a- 1115, may not be disclosed under Title 63G, Chapter 2, Government Records Access and Management Act, pursuant to a public records request received by City without prior aggregation or obfuscation to protect individual privacy; and

1.4. May be aggregated or provided in a format necessary to protect the privacy of individual riders.

11. **Contact Information.** The official addresses for providing notice to each party is as follows, and may be changed at any time by providing notice to the other party:

Company:  
Bird Rides, Inc.  
406 Broadway Ave., #369  
Santa Monica, CA 90401

City:  
City of Payson  
439 West Utah Avenue  
Payson, Utah 84651

The parties intend that much of the coordination and implementation of the terms of this Agreement will not require official notice. Contact information for such matters are as follows:

Company:  
Bird Rides, Inc.  
406 Broadway, #369  
Santa Monica, CA 20401  
Attn: Austin Marshburn  
Email: licenses@bird.co  
With a required copy to:  
Email: birdlegal@bird.co

City:  
Dave Tuckett 801-465-5234  
Jason Sant 801-465-5207

12. **Amendments.** No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement.

13. **Relationship of Parties.** This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto, nor any rights or benefits to a third party.

14. **Termination or Suspension.** The City may terminate or suspend Company's use of the City right-of-way for Company's failure to comply with any of the terms of this Agreement or

for failure to comply with any applicable regulations adopted by the City pertaining to the operation of SPTDs in the City.

15. **Indemnification.** Company agrees to defend, indemnify and hold harmless the City and its officials, officers, employees, volunteers, representatives and agents ("City Indemnitees") from all claims, suits, actions, damages, demands, costs, or expenses of any kind or nature asserted (including attorney fees and court costs) against the City (or other City Indemnatee) by a third party ("Third Party Claims") alleging (i) the negligence or willful misconduct of Company or its employees in the performance of the Services hereunder; (ii) infringement by Company of a third party's intellectual property rights or (iii) a breach of the terms of this Agreement by Company. Company shall indemnify and hold City Indemnitees harmless from and against all damages finally awarded by a court of competent jurisdiction or agreed to by Company in settlement with respect to such Third Party Claims; provided, that (a) City shall provide Company with written notice promptly upon learning of any Third Party Claims or complaints that may reasonably result in the indemnification of City, provided, however, that failure by City to provide notice to Company shall not relieve Company of its obligations under this Section unless such failure prejudices Company's defense or settlement of the Third Party Claim; (b) City will permit Company to control the defense and settlement of the Third Party Claim, provided, however, that Company may not settle the Third Party Claim in a manner adverse to City or which would impose liability on City without City's prior written consent; and (c) City will provide Company with assistance in the defense and settlement of the Third Party Claim at Company's expense. City may (at its own cost) engage its own counsel to participate in the defense and settlement of the Third Party Claim. City will not settle any Third Party Claim without Company's prior written consent. Company's obligations under this Section 15 shall not apply to the extent such claims, suits, actions, damages, demands, costs, or expenses arise from the negligence or willful misconduct of a City Indemnatee.

16. **Insurance.** Prior to commencing operations in the City pursuant to this Agreement, the Company shall furnish to the City evidence that it has insurance coverage meeting the following requirements:

1.1. **Commercial General Liability.** Commercial General Liability insurance coverage with a limit of no less than \$1,000,000.00 each occurrence and \$2,000,000 aggregate;

1.2. **Business Auto.** Business Auto insurance with coverage with no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage.

1.3. **Workers' Compensation and Employer's Liability.** Workers' Compensation insurance as required by the State of Utah and \$500,000.00 per accident for Employer's Liability.

1.4. **Umbrella or Excess Liability.** Umbrella or Excess Liability coverage with a limit of no less than \$5,000,000.00 each occurrence.

17. **Waiver.** City's decision or failure to insist upon strict performance of any provision of this Agreement on one or more occasions shall not constitute a waiver of such provision by the City, nor shall the City relinquish any rights it may have under this Agreement to require performance of such conditions in the future.

18. **No Limitation on Exercise of Police Power.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement.

19. **Assignment.** This Agreement may not be transferred or assigned without the prior written consent of the City which consent shall not be unreasonably withheld; provided, however, that Company may assign its interest to its parent company, any subsidiary or affiliate or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets.

20. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

21. **Utah Law/Venue.** This Agreement shall be governed by and interpreted pursuant to Utah law. Any action brought in connection with this Agreement shall be filed in the Fourth Judicial District for the State of Utah, Utah County, or in the Federal District Court for the District of Utah.

22. **No Presumption.** This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either City or Company. Each Party represents and warrants to the other Party that it has been represented by, and has had the opportunity to consult with, legal counsel in connection with the review, negotiation and execution of this Agreement.

23. **Lawful Agreement.** The parties represent that each of them has lawfully entered into this

24. Agreement, having complied with all relevant statutes, ordinances, resolutions, bylaws, and other legal requirements applicable to their operation. The parties further represent that each of them has authority to enter into this Agreement and that the individuals signing this Agreement on behalf of each party have authority to bind the party represented by the signing individual.

25. **Incorporation of Recitals.** The Recitals to this Agreement are incorporated by reference into the Covenants section of this Agreement as if fully set forth herein.

26.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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William R. Wright, Mayor

ATTEST:

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Kim E. Holindrake, City Recorder

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Bird Rides,  
Inc.  
By:

STATE OF UTAH                    )  
                                          :SS.  
COUNTY OF UTAH                    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_ 2022,  
by \_\_\_\_\_ as \_\_\_\_\_ of Bird Rides, Inc.,  
who acknowledged that he/she signed this Agreement on behalf of Bird Rides, Inc.

**Notary Certificate Attached**

NOTARY PUBLIC