

**2021 Memorandum of Agreement (MOA)**

**MEMORANDUM OF AGREEMENT**

Between  
**Name of Company**  
and  
**City of Fairfax, Virginia**

This Memorandum of Agreement (“MOA”) is entered into by and between the City of Fairfax, Virginia, a Virginia municipal corporation (the “City”) and [Name of Company] (“Operator”). Throughout this MOA, Operator and City may each be referred to as a “Party,” and may be referred to jointly as the “Parties.” This MOA governs the terms, responsibilities and performance measures between Operator and the City regarding Operator’s provision of shared mobility devices (SMDs) on property within City as part of a Citywide pilot program (the “Demonstration Project”). For the purposes of this agreement, SMDs include shared bicycles, electric-assist bicycles, and electric scooters.

**RECITALS**

**WHEREAS**, the purpose of this MOA is to permit Operator to participate in, and operate under, the Demonstration Project and ensure that Operator’s SMDs are used and parked appropriately without impeding pedestrian access and/or otherwise negatively impacting the use of public rights-of-way, and appurtenant facilities, within the City; and

**WHEREAS**, the City owns, controls, and maintains the public rights-of-way within the City; and

**WHEREAS**, Operator desires to participate in, and operate under, the Demonstration Project in the City; and

**WHEREAS**, the City desires to facilitate the Demonstration Project to assess the viability of SMD operations within the City and to understand the parameters that will allow SMDs to operate effectively, to provide residents and visitors with additional transportation options, to support economic activity in the City with improved access, to maintain public safety, and to avoid any public nuisance in the City of Fairfax.

**NOW, THEREFORE**, based upon the above recitals, Operator hereby agrees to the terms, responsibilities, and performance measures of this MOA as follows:

**Article I. Responsibilities of City**

The City, by and through its Department of Public Works (“DPW”), shall, in an effort to achieve the City’s policy goals, cooperate and communicate with Operator and the public to work towards a successful, safe, and sustainable regulatory environment for SMDs. All obligations of the City

under this MOA shall be subject to and contingent upon the appropriation of funds.

- A. The City shall notify enforcement agencies not to ticket or impound Operator’s SMDs if they are authorized pursuant to this MOA and parked according to performance measures of this MOA, the stipulations of the required Permit, and all applicable laws.
- B. The City may, as needed, establish and update parking requirements applicable to SMDs including identification through signage, striping, or other means of areas that should serve as preferred parking locations for these devices.
- C. The City shall provide to Operator a City point of contact (“POC”) for the Demonstration Project.

**Article II. Responsibilities of Operator** Performance Requirements: Operator shall, in good faith, through its City POC, cooperate and communicate with the City and the public to work towards a successful, safe, and sustainable Demonstration Project, conforming to all State and local laws, permit requirements, and the performance responsibilities outlined below:

1. Authorization and Fees to Operate
  - a. Prior to operating in the City right-of-way, Operator shall execute a copy of this MOA; complete and submit to City of Fairfax the required Permit Application; obtain the appropriate business license; and pay the required \$5,000 fee to cover the anticipated costs to City of administering the Demonstration Project.
  - b. In addition to the foregoing, Operator shall pay a usage fee of \$0.05 per trip, payable quarterly for the trips recorded in the previous quarter. Usage fee payments are due on the 15th of the month following the end of each quarter.
2. Service Management and City Communication
  - a. Upon executing this MOA, and as part of its permit application, Operator shall provide to the City a local General Manager who shall serve as a point of contact (POC). The POC shall have responsibility for, and control over, the services provided in this MOA for the duration of the Demonstration Project. If Operator changes their POC, they must immediately notify City of such change.
  - b. Operator’s representatives shall schedule a meeting with the City’s POC within three days (or as soon thereafter as may be reasonably practicable) of any request by the City to review service status and issues. In addition to ad-hoc meetings, Operator shall meet with the City POC at least one week before launch, and in person or by phone monthly thereafter throughout the duration of the Demonstration Project.
  - c. Upon the request of the City POC due to emergency, severe weather,

construction, parade, public gathering, or other situation affecting the normal operation of the right-of-way including sidewalks and trails, Operator shall collect and secure all of, or a portion of, Operator's owned or controlled SMDs to a location outside of the public right-of-way or to a location that does not otherwise impede City's access and response to the situation for the duration of the situation.

- d. In the case of a critical issue or emergency situation designated by the City POC, Operator shall be available within the Response Time to respond to emergency needs and to coordinate with the City. City has the right to take appropriate actions to respond to an emergency if the situation poses an imminent risk to public health and safety or property damage.

For the purposes of this MOA, the "Response Time" shall mean, based on the time of report:

- 1) When reported between 6 AM and 8 AM – 2 hours from the time of report
  - 2) When reported between 8 AM and 9 PM – 1 hour from the time of report
  - 3) When reported between 9 PM and 11 PM – 2 hours from the time of report
  - 4) When reported between 11 PM and 6 AM – Prior to 8 AM
- e. The Operator's POC shall respond within five business days regarding non-emergency issues or questions raised by City in meetings, through telephone inquiries, or other correspondence.
  - f. Operator shall be solely responsible for providing information to its customers on proper SMD parking prior to the launch of the Demonstration Project, and throughout its duration.
  - g. The Operator shall submit a copy of their Terms and Conditions, Privacy Policy, or any other user agreement that they may have with their customers.
  - h. Operator shall conduct outreach and education activities for the community including residents and businesses, including a minimum of six (6) in-person events in the City with at least two (2) events within the first month of operations. Alternative outreach and education event formats may be proposed if a public emergency restricts in-person events.
  - i. Operator shall submit a Community Engagement plan including examples of education and outreach events and activities and online materials for users, residents, and the business community.

### 3. Safety

- a. Bicycles shall meet the federal standards under the Code of Federal Regulations (CFR) [Title 16, Chapter II, Subchapter C, Part 1512 – Requirements for Bicycles](https://www.gpo.gov/fdsys/pkg/CFR-1998-title16-vol2/xml/CFR-1998-title16-vol2-part1512.xml).<sup>1</sup>
- b. Bicycles and Scooters shall meet the Code of Virginia [Section 46.2-1015](https://law.lis.virginia.gov/vacode/title46.2/chapter8/section46.2-1015) requiring both headlight and taillight.<sup>2</sup>
- c. Any electric Bicycles used in systems issued a permit under this pilot program shall meet the [Consumer Product Safety Commission](https://www.gpo.gov/fdsys/pkg/FR-2003-02-12/pdf/03-3423.pdf) definition of *low-speed electric bicycle*; and shall be subject to the same requirements as ordinary Bicycles.<sup>3</sup> Additionally, the City reserves the right to terminate any permit issued under this pilot program if the battery or motor on an electric Bicycle is determined by the City to be unsafe for public-use.
- d. Any electric Scooters used in systems issued a permit under this pilot program shall meet [section 46.2-100](https://law.lis.virginia.gov/vacode/title46.2/chapter8/section46.2-100) of the Code of Virginia definition of *motorized scooter*.<sup>4</sup>
- e. All SMDs shall have front and rear standing lights that flash or illuminate for at least 90 seconds after the SMD comes to a complete stop.
- f. All SMD shall have brakes and a bell.
- g. Operator shall provide visible safety language on Bicycles and Scooters.
- h. Operator shall not deploy any device or device component before receiving approval by the City POC. To obtain approval, Operator shall furnish design specifications, any applicable certifications of compliance with safety standards, and illustrative images of the device or device components. Upon City request, Operator shall provide an opportunity for City POC to physically inspect and test-ride the same model proposed for deployment.
- i. Operator shall ensure each SMD deployed and used is fully operable, free of defects, conforms to relevant safety standards, and is well-maintained and clean.
- j. If an Operator SMD is reported in need of maintenance and/or cleaning in violation of the terms and performance measures in this MOA and all laws, Operator shall immediately prevent further use the device, and within one day of notification, shall remove it from City right-of-way.
- k. Operator shall submit a device maintenance and recharging plan.
- l. Operator shall inform its customers about where scooters and bicycles are permitted to operate, including where riding is prohibited (if applicable).

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<sup>1</sup> <https://www.gpo.gov/fdsys/pkg/CFR-1998-title16-vol2/xml/CFR-1998-title16-vol2-part1512.xml>

<sup>2</sup> <https://law.lis.virginia.gov/vacode/title46.2/chapter8/section46.2-1015>

<sup>3</sup> <https://www.gpo.gov/fdsys/pkg/FR-2003-02-12/pdf/03-3423.pdf>

<sup>4</sup> <https://law.lis.virginia.gov/vacode/title46.2/chapter8/section46.2-100>

4. Operations

- a. Operator is restricted to a maximum of 250 SMDs per company at any one time during the Demonstration Program. Companies may request an additional 25 devices based on 4 consecutive weeks of use of the permitted maximum number of devices being used an average of at least 3 trips per day. Approval of additional devices shall be in the sole discretion of the City.
- b. Operator is responsible for maintaining its fleet size deployed within the City at or below the maximum permitted fleet size, it being expressly understood by Operator that it shall strive to have the fewest number of devices operating at any one time to justify efficient service.
- c. Operator shall have a staffed operations center in the Washington, D.C. region.
- d. Operator shall have a customer service phone number for reporting safety concerns, complaints, and questions that is live 24 hours a day. This phone number and its website shall be clearly visibly posted on every SMD that is in service within the City.
- e. Operator shall provide their preferred contact information for SMD parking issues to the City Police Department at 703-385-7924.
- f. Operator shall affix its logo and unique identifying number for the device to each SMD in the City so that it is clearly visible and shall not allow other logos or advertisements to appear on any of its SMDs.
- g. Operator shall regularly monitor the deployment and dispersion of its SMDs to maintain service throughout City.
- h. Operator must notify SMD users of City and state regulations applicable to operating SMDs in the City. These notifications must at minimum be received through the mobile app and website for the service.
- i. Operator shall promptly respond directly to City residents and all users reporting problems, issues and/or requesting information regarding services.
- j. Operator shall provide a safety and operations response plan including staffing resources and facilities available to respond to issues and maintain operations and safety in the service area.
- k. Operators shall provide the City with the pricing structure describing planned regular rental costs, any discounted programs, and any cash payment options.

5. Parking

- a. Operator shall ensure that SMDs are parked in accordance with the terms and performance measures outlined in this MOA, permit requirements, and in compliance with all state and local laws, and shall inform its

- customers about any applicable bays laws.
- b. Operator shall work to ensure that SMDs are parked upright in a manner that does not impede pedestrian access; does not obstruct access to fire hydrants and valves, street furniture, crosswalks, driveways or private property; does not damage landscaping, street trees or other aesthetic features; and does not interfere with traffic or bus stop operations or operation and use of Capital Bikeshare stations. Operator shall conduct outreach and education to its users on proper parking practices and shall continue developing and implementing technical solutions to ensure good parking behavior.
  - c. The Operator shall include language in the terms and conditions of any contract with its customers to inform them of the following parking requirements:
  - d. Any SMD parked on private, federal, or military property is subject to the requirements of that property owner and may be towed at any time at Operator's expense.
  - e. Within two (2) hours of reporting by the City or others, Operator shall remove SMDs parked in violation of the parking requirements outlined above, or otherwise in conflict with applicable laws and regulations, or in violation with other SMD or bicycle parking standards to be developed and periodically updated by the City
  - f. SMDs are not permitted to park in one location in the public right-of-way longer than seven consecutive days without moving.
  - g. Failure to adhere to these parking performance measures may result in the City removing the SMD and storing it in a City facility. Operator shall be required to pick up SMDs from such a facility and shall pay all costs associated with removal and storage of the devices, in addition to any applicable fines or fees, or other penalties as appropriate under the law. Subject to applicable laws and regulations, The City shall consider Operator's SMDs abandoned and dispose of them as the City deems fit in the event of that Operator fails to retrieve the device in due time upon being notified of the removal and storage.
6. Data
- a. Without prejudice to Operator's rights to and interest in its commercially privileged and sensitive information, Operator shall provide to the City POC the following data in a Monthly Report by the 15<sup>th</sup> of each month for the previous month's activity:
    - i. Total active customers who reside in the City
    - ii. Trips starting and trips ending, separately, in the City during the month, and trips starting and trips ending in the City since launch (raw trip data)

- iii. Average trip duration in minutes
- iv. Average and total distance of trips (if this is calculable from provided raw trip data, no need to provide separately)
- v. Daily SMDs in service in the City
- vi. A map of trip route data for all trips starting, ending, or passing through the City (especially to understand the equity implications of coverage of these services), by month
- vii. Crashes – giving time, date, precise location, and number of parties impacted
- viii. Injuries – giving time, date, precise location, and cause (if known)
- ix. Number and precise location of SMDs that were towed after seven (7) consecutive days in one location
  - x. Complaints received – giving the reason with date and location, if available/appropriate
    - 1. Incorrectly parked SMD reports – giving time, date, and precise location
    - 2. Speeding reports
    - 3. Other complaints
  - xi. Other feedback received – by date, time, and precise location, if applicable
- b. If Operator collects de-identified demographic data from their customers, including age cohort, gender, and general trip purpose, such data shall be provided by Operator to the City, upon request.
- c. Operator shall provide a publicly-accessible application program interface, clearly posted on the company’s website that shows, at minimum, the current location of any SMDs available for rental at all times.
- d. A smartphone-based application used to rent SMDs does not qualify as a publicly accessible application program interface.
- e. Operator shall use the General Bikeshare Feed Specification (GBFS) as documented at <https://github.com/NABSA/gbfs/> for its devices. Operator shall inform the City of the location of the gbfs.json file on the Internet. The gbfs.json file contains the necessary information to find other files related to the GBFS data. If a token or authentication is required to view that file, the location to apply for the token must also be submitted to the City.
- f. The City requires that Operator publish in a location accessible by City staff six of the GBFS v1.1 draft files. Below are the required files that must be published:

gbfs.json	Auto-discovery file that links to all of the other files published by the system. <i>This file is optional in the GBFS, but required by the City.</i>
system_information.json	Describes the system including system operator, system location, year implemented, URLs, contact info, and time zone.
station_information.json	Mostly static list of all stations, their capacities and locations. <i>(Note: This file may contain no information in a dockless system but is required by the City in order to maintain compliance with the GBFS standard.)</i>
free_bike_status.json	Describes bicycles that are available in non-station-based systems. <i>This file is optional in the GBFS, but required by the City.</i>
geofencing_zone_information.json	Mostly static list of all geofencing zones, their capacities, locations and areas. <i>This file is optional in the GBFS, but required by the City.</i>
geofencing_zone_status.json	Defines geofencing zones available in the system and their link to physical stations if any. <i>This file is optional in the GBFS, but required by the City.</i> Elements within the num_bikes_available_types array are required by the City and should be set to 0 if not applicable.
system_regions.json	Describes the regions the system is broken up into. <i>This file is optional in the GBFS, but required by the City.</i>
vehicle_type.json	The field “vehicle_type” shall be added to the public API to describe the vehicle type. This may be either “bicycle,” “e-bike,” “scooter,” or another type of permitted vehicle that must be specified.

- g. Operator shall also use the Mobility Data Specification (MDS) as documented at <https://github.com/openmobilityfoundation/mobility-data-specification> for its devices. Operator shall share required information with a third-party data aggregator upon request by the City.
- h. Upon request by the City, Operator shall allow the City to share GBFS, aggregated MDS, and other aggregated data available to the City with other jurisdictions or public entities including George Mason University. Additionally, upon approval from other jurisdictions or public entities, Operator shall share or allow the other jurisdiction or public entity to share similar data with the City. If required by the Operator a data sharing agreement can be established.



7. Penalties and Fines

Operator shall be financially responsible for any/all penalties, fines, and other costs to City as a result of illegally parked SMDs, including but not limited to, parking tickets or other enforcement actions against Operator.

8. Surety Bond

Operator shall maintain a \$5,000 surety bond which the City may use to pay costs related to removing and storing devices that do not comply with these permit requirements, if such costs are not born by Operator.

9. Advertising

Operator shall not advertise or publish City's participation in or endorsement of the Operator on its SMDs or promotional material without the written consent of City.

Operator shall not utilize its SMDs for the sale or display of third-party advertising.

10. Remedies

If Operator violates its obligations under this MOA and such violation is not corrected within five (5) business days following written notice by the City, the City may immediately terminate Operator's participation under the Demonstration Project, this MOA, and/or suspend or revoke Operator's permit.

11. No Right, Title or Interest

Operator expressly acknowledges that this MOA does not constitute any conveyance, title, or interest in real property, in whole or in part.

**Article III. Duration**

1. This MOA shall become effective upon the City's signature and shall remain in effect for a term of one year, or until December 31, 2021, whichever is sooner. This MOA may be modified only by mutual consent of authorized representatives from both parties, in writing.

**Article IV. Service Area**

This MOA, in conjunction with a completed and approved Permit Application, authorizes Operator to operate within any portion of City. The City will work with the Operator to identify areas where SMDs shall not be operated or parked.

1. Operator shall submit an initial plan for the service area and deployment locations and shall provide updates about modifications to this plan with the monthly usage reports.
2. Operator shall provide the City with information about any plans to operate in neighboring

jurisdictions (George Mason University and Fairfax County).

## **Article V. Insurance and Indemnification**

### **1. Insurance**

Before providing any SMDs associated with this MOA or any extension of this MOA, Operator must provide to the City Point of Contact a Certificate of Insurance indicating that Operator has in force at a minimum the coverage below. Operator must maintain this coverage until the completion of the MOA or as otherwise stated in the MOA and/or permit documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of “A-“ or better and a financial size of “Class VII” or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer’s liability with limits of \$100,000/100,000/500,000.
- b. Commercial General Liability - \$3,000,000 per occurrence, with \$5,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractor, and products liability. The general aggregate limit must apply to this MOA. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Additional Insured – The City and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and endorsement issued by the insurance company must be provided.
- e. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the MOA Term, Operator must notify the City Point of Contact immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this MOA. Not having the required insurance throughout the MOA Term is grounds for termination of this MOA.
- f. Claims-Made Coverage - Any “claims made” policy must remain in force, or Operator must obtain a 3-year extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- g. Contract Identification - All insurance certificates must state this MOA's number and/or title. Operator must disclose to the City the amount of any deductible or self-insurance component of any of the required policies. With the City’s approval, Operator may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that Operator can demonstrate sufficient financial capacity. To do so, Operator must provide the City with its most recent actuarial report and a copy of its

self-insurance resolution. The City may request additional information to determine if Operator has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the City. The City's acceptance or approval of any insurance will not relieve Operator from any liability or obligation imposed by this MOA or permit documents. Operator is responsible for all materials, tools, equipment, appliances and property used in connection with this MOA. Operator assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with any activities associated with this MOA and for all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under this MOA or in connection in any way whatsoever with the activities performed pursuant to this MOA. Operator's insurance shall be the primary non-contributory insurance for any work performed or activities or services provided for under this MOA.

- h. Operator is as fully responsible to the City for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom Operator employs directly.
1. Indemnification.  
Operator covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify The City and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "City Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Operator's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the MOA. This duty to save, defend, hold harmless and indemnify shall survive the termination of this MOA. If Operator fails or refuses to fulfill its obligations contained in this section, the Operator must reimburse the City for any and all resulting payments and expenses, including reasonable attorneys' fees. Operator must pay such expenses upon demand by the City.

## **Article VI. FOIA**

The Operator acknowledges that documents submitted to the City by Operator—both during the term of this MOA and/or as part of any proposal, quote, or presentation made by Operator to the City—constitute public records that may be subject to public disclosure and/or production under the Virginia Freedom of Information Act (VFOIA). Any information contained in any document or

record, which Operator considers confidential or of a proprietary nature must be noted at the time of submission. If the City receives a public disclosure request, whether informally or formally, from any person or entity, for such information or documents, the City agrees to immediately notify Operator. The City also agrees to work with Operator to determine whether any information and/or documents may be protected from disclosure or production under VFOIA; and will act reasonably in this regard. Nothing contained in this MOA shall affect the City’s rights and obligations with respect to disclosure or production of records in accordance with VFOIA or other applicable law.

**Article VII. Termination**

Either party may terminate this MOA (and in doing so, the associated Permit), for any reason, with at least ten (10) days’ advance notice to the other party. Upon termination, Operator shall remove all of the SMDs under its ownership or control within five (5) business days of the date of termination and shall cease all operations within the service area once the devices have been removed.

The City shall consider any of Operator’s SMDs not removed as abandoned property and shall dispose of them as it deems fit.

Operator shall not be entitled to any prorated refund of the [permit fee] or any associated costs in the event of termination.

Any termination of this MOA (and the associated Permit) shall be final and unappealable.

IN WITNESS WHEREOF, the Parties hereto have caused this MEMORANDUM OF AGREEMENT to be executed as of the date first above written by their duly authorized representatives.

City of Fairfax, Virginia

Title:

Signature: \_\_\_\_\_

Name of Company

Title:

Signature: \_\_\_\_\_