

**CITY OF LEE'S SUMMIT'S
STANDARD TERMS AND CONDITIONS FOR THE DEPLOYMENT AND OPERATION OF
SHARED MOBILITY DEVICES IN THE RIGHT-OF-WAY**

Purpose

The provisions of these terms and conditions are designed to promote:

- A. Effective management of the right-of-way;
- B. Balancing the needs of the last-mile transportation industry to deploy its devices with the responsibility the City has to its residents and businesses to ensure that such devices comply with all public safety regulations and will not block or interfere with other users of the right-of-way; and
- C. To the fullest extent permitted by law, an aesthetically pleasing community for its residents and businesses throughout all areas of Lee's Summit.

The City's Standard Terms and Conditions for the Deployment and Operation of Shared Mobility Devices in the Right-Of-Way consist of Standard Terms for Right-of-Way Use and the Standard Conditions for Deployment, Installation, Operation, and Maintenance, and are incorporated into any license issued as though set forth fully therein.

STANDARD TERMS FOR RIGHT-OF-WAY USE

1. DEFINITIONS

The terms used in these Standard Ts and Cs shall have the meanings assigned to them in Chapters 26 and 29 of the Code of Ordinances, unless otherwise defined below or where context clearly indicates a different meaning:

1.1 *Initial Application* means the first request, on a form provided by the City, by a Company for a License to have a Shared Mobility Operation within the City of Lee's Summit.

1.2 *Approval* means the written and signed approval of the Director of Public Work of a Company's Initial, Renewal, or Supplemental Application.

1.3 *CFR* means the Code of Federal Regulations.

1.4 *Code of Ordinances* means the City of Lee's Summit Code of Ordinances

1.5 *Company* means the same as the term "Company" is defined in Chapter 26 of the Code of Ordinances

1.6 *Day* means a calendar day.

1.7 *Device* means the same as the term "Shared Mobility Device" as defined in Chapter 26 of the Code of Ordinances

1.8 *Shared Mobility Operation License or License* means a non-exclusive, limited permission to use certain parts of the City of Lee's Summit right-of-way as set forth in these Standard Ts and Cs and the terms and conditions of Approval specific to the Company.

1.9 *Lock-to Facility* means any Company installed support appurtenance, facility, pole, rack or other mechanism by which a Shared Mobility Device may securely locked to until another user uses the device.

1.10 *Renewal Application* means a request, on a form provided by the City, by a Company to renew the term of its License to have a Shared Mobility Operation within the City of Lee's Summit.

1.11 *Section* means the cited section within the Code of Ordinances

1.12 *Shared Mobility Device Placement Plan* means the written plan regarding the Company's internal program, policy decisions and proposed actions in order to come into compliance with the rules, regulations and standards established by the City, in order to avoid violation of the City's ordinances or the license terms and conditions.

1.13 *Supplemental Application* means the request, on a form provided by the City, by a Company to amend (i) the number of Shared Mobility Devices, (ii) Permitted Use Area, and/or (iii) Permitted Zones authorized by Company's License.

2. License

2.1 General: These Standard Terms and Conditions are made in conjunction with the Code of Ordinances and any other agreement between the Company and the City of Lee's Summit. A License issued to Company is subject to these Standard Terms and Conditions, the Code of Ordinance of the City of Lee's Summit, regulations, the City Charter, applicable Jackson County laws and regulations and Missouri and federal laws and regulations (collectively "**Standard Ts and Cs**"), and by submitting an Initial, Renewal or Supplemental Application, Company acknowledges that it has read, understands, and shall comply with these Standard Ts and Cs. If any of these Standard Ts and Cs conflict with any provision of the Code of Ordinances, Company shall comply with the stricter of the two provisions.

Company, including its contractors, agents, and employees, shall not deploy or operate a Shared Mobility Operation or any Shared Mobility Devices unless it (i) obtains the necessary City approval of an Initial Application or Renewal Application, as necessary, or Supplemental Application, as applicable, to deploy and operate a Shared Mobility Operation and Shared Mobility Devices, (ii) has been issued a License and (iii) any generally applicable

permits for operating, or occupying the right-of-way ("**ROW**") as required by local laws or regulations and/or any other applicable state and federal laws and regulations.

Upon approval of an Initial Application, the City shall issue Company a License to operate a Shared Mobility Operation. Company's License is contingent on Company's compliance with these Standard Ts and Cs. To the extent permitted by valid, constitutional law, Company's placement of any unauthorized facilities or Shared Mobility Devices on or in the ROW without a License shall constitute trespass.

2.2 Grant of License: Upon the City's approval of an Initial Application or Renewal Application, as necessary, or Supplemental Application, as applicable, Company shall be permitted to operate a Shared Mobility Operation within the City of Lee's Summit subject to these Standard Ts and Cs and any provisions set forth in the City's Approval of an application(s).

Company shall only deploy and allow its Shared Mobility Devices to operate and be used in public right-of-way located within the area authorized by the City ("**Permitted Use Area**"), and which may also be restricted to limit a subdivided number of total devices to certain boundaries or zones ("**Permitted Zone**") of the overall Permitted Use Area. A map of the Permitted Use Area and the Permitted Zones will be attached to the License as an exhibit. A sample exhibit is included at the end of these Standard Ts and Cs.

Company shall only receive one License per Shared Mobility Device type. If desires a License to operate multiple types of Shared Mobility Devices, Company shall submit an Initial Application for each type of Shared Mobility Device it desires to deploy and operate.

Company shall not operate or access devices within parks, publicly accessible plazas, private property, off-street public parking lots/garages, state owned land and/or facilities, state rights of ways, school district properties, campuses, or other areas outside of the City of Lee's Summit public right-of-way, unless specifically authorized by a separate agreement with the property owner.

If Company, including its contractors, deploys or allows its Shared Mobility Devices to (i) operate and be used outside the Permitted Use Area or Permitted Zone(s) or (ii) allows the number of Shared Mobility Devices to exceed the total amount approved (a) for a Permitted Zone or (b) for the entire Permitted Use Area, Company shall be deemed in default of this Agreement. Company shall equip every Shared Mobility Device with a component that automatically makes the device inoperable if it leaves the Permitted Use Area or its designated Permitted Zone, and Company shall ensure that such component is operational and functional on every device deployed pursuant to this Agreement.

2.3 Verification of Ownership. City does not warrant its own or any other person's title to or rights to use the ROW or any other property. It is the responsibility of the Company to determine if the Permitted Use Area is within City ROW. A Company's rights in the Permitted Use Areas are limited to the specific rights created by the City's Standard Ts and Cs and the License.

3. NON-EXCLUSIVE RIGHTS/PRIORITY RIGHTS

3.1 Non-Exclusive. Permission to use the ROW is not exclusive and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation, or to deny to or lessen the powers and privileges granted to the City under the Constitution and laws of the State of Missouri.

3.2 Prior Rights. Any and all rights granted to Company to use the ROW shall be subject to the prior and continuing right of City to use the ROW exclusively or concurrently, with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the ROW or public property. Any use of the ROW shall be subordinate to: A) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; B) any prior lawful occupancy or use thereof by any other person; and C) to any prior easements therein, provided however,

that nothing herein shall extinguish or otherwise interfere with property rights established independently of these Standard Ts and Cs.

3.3 No Real Property or Leasehold Rights Conveyed. Nothing in these Standard Ts and Cs or a License shall be construed to grant, convey, create, or vest a perpetual real property interest in land to a Company, including any fee or leasehold interest, easement, or any franchise rights in adjacent land or ROW nor any ownership or leasehold interest in the City-owned structures, replacement poles or ROW. A License with a Company does not constitute an assignment of any of City's rights to regulate or use the public property upon which a Shared Mobility Device deployed or used or any part of the Shared Mobility Operation is located (other than expressly provided herein or in the License).

4. INSURANCE REQUIREMENTS

4.1 General

- 4.1.1 *Insurer Qualifications*. Without limiting any obligations or liabilities of Company, Company shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
- 4.1.2 *No Representation of Coverage Adequacy*. The City shall have the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Company from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- 4.1.3 *Coverage Term*. All required insurance shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
- 4.1.4 *Primary Insurance*. Company's insurance shall be, or endorsed to be, primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.
- 4.1.5 *Claims Made*. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for six (6) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and containing the required provisions for the six-year period.
- 4.1.6 *Policy Deductibles and/or Self-Insured Retentions*. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Company shall be solely responsible for any such deductible or self-insured retention amount.
- 4.1.7 *Use of Contractors*. If Company uses independent contractors or similar such third-party (for purposes of this subsection "Contractors") to fulfill any of its obligations under this Agreement, Company shall execute written agreements with its Contractors containing the indemnification

provisions and insurance requirements set forth in this Agreement protecting the City and Company. Company shall be responsible for executing any agreements with its Contractors and obtaining certificates of insurance verifying the insurance requirements.

4.1.8 *Evidence of Insurance.* Prior to receiving any Funds, or commencing any work or services under this Agreement, Company will provide the City with suitable evidence of insurance in the form of certificates of insurance, endorsements, and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Company's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance, endorsements, and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, Company shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the title or this Agreement. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

A. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds for commercial general liability under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 and CG 20 37 07 04, or their equivalents.

B. Company's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.

C. All policies, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Company under this Agreement.

All Certificates of Insurance shall name the City of Lee's Summit as the certificate holder and send the certificate and any endorsements to:

City of Lee's Summit
Attn: Director of Public Works
220 S.E. Green Street
Lee's Summit, MO 64063

4.1.9 *Endorsements.* Company shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Article.

4.2 Required Insurance Coverage.

4.2.1 *Commercial General Liability.* Company shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under

ISO, Commercial General Liability Additional Insured Endorsement forms CG 20 10 03 97 and CG 20 37 07 04, or their equivalents, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

4.2.2 *Vehicle Liability.* Company shall maintain Business Automobile Liability insurance with an unimpaired limit of \$1,000,000 each occurrence on Company’s owned, hired and non-owned vehicles assigned to or used in the performance of the Company’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

4.2.3 *Workers’ Compensation Insurance.* Company shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Company’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance with an unimpaired limit of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees.

4.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days’ prior written notice to the City.

5. INDEMNITY

5.1 *General.* Company shall defend, indemnify and hold harmless the City and its elected officials, officers, directors, employees and agents thereof (the City and any such person being herein called an “Indemnified Party”), each in their individual and official capacity, for, from, and against all claims, liabilities, demands, damages, losses, fines, penalties, injuries to property or persons (including death), and expenses (including attorney fees and litigation expenses, and the cost of appellate proceedings) (collectively “Claims”) to the extent that such Claims relate to, result from, and/or arise out of (i) Company’s acts, errors, directives, or omissions in the deployment and operations of Company’s Shared Mobility Operation, (ii) a breach of these Standard Ts and Cs, Company’s License, or a violation of law by Company, its officers, agents, employees, contractors, or any other person for which Company is liable, and/or (iii) a false representation or warranty made by the Company; provided that, the Company’s indemnifications hereunder shall not extend to claims of the City’s (including the City’s elected officials’, officers’, directors’, employees, agents’ or affiliates’) sole negligence or willful misconduct. The City’s right to indemnification shall be contingent on City notifying Company following receipt or notice of any claim; Company shall have sole control of any defense; City shall not consent to the entry of a judgment or enter into any settlement without the prior written consent of Company. The obligations of Company in this Section include Company’s employees, agents, advertisers, contractors, subcontractors, or any other person for which Company may be legally liable.

The amount and type of insurance coverage requirements set forth in these Standard Ts and Cs will in no way be construed as limiting the scope of the indemnity in this Section. The indemnity requirements set forth in these

Standard Ts and Cs will in no way be construed as limiting the insurance required in these Standard Ts and Cs.

5.2 *No Limitations or Waiver.* The indemnity required hereunder shall not be limited by reason of the specification of any insurance coverage in these Standard Ts and Cs, or by a limitation of the amount or type of damages or compensation payable by or for Company under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under these Standard Ts and Cs, or the terms, applicability or limitation of any insurance held by Company. The City does not, and shall not, waive any rights against Company which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by Company, of any of the insurance policies described in these Standard Ts and Cs. Except as provided in subpart A above, this indemnification by Company shall apply regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

5.3 *Notification of Claims.* With respect to any claims which are subject to indemnity hereunder, Company shall immediately notify the City of all claims filed or threatened to be filed against Company or Company and the City jointly. Company shall provide the City with a copy of the same within forty-eight (48) hours after receiving it.

5.4 *Challenges to Contract.* Company shall indemnify, defend and hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, against all claims or challenges brought against the City with respect to the validity of the terms and conditions of these Standard Ts and Cs.

5.5 *Use of Independent Contractors.* The fact that Company carries out any activities of its Shared Mobility Operation through independent contractors shall not constitute an avoidance of, or defense to, Company's duty of defense and indemnification under this section.

6. PERFORMANCE BOND AND FEES

6.1 Prior to deploying any Devices, Company shall submit to the Director of Public Works a performance bond in an amount equal to \$100.00 per Device and Lock-to Facility authorized for use or to be installed, as set forth in an exhibit attached and incorporated to the License, or \$10,000.00, whichever is greater, in a form of the bond shall be approved by the Director. These funds shall be accessible to the Director of Public Works for future public property repair and maintenance costs that may be incurred removing and storing devices improperly parked or if a Company is not present to remove units if its license is terminated. If Company increases the number of devices deployed beyond the amount approved in its initial license, the performance bond shall be adjusted appropriately before deploying additional devices.

6.2 If a City agency, department or commission incurs any costs for addressing or abating any violations of law, including impound dollars, legal fees and expenses, impound fees, costs to recover a unit from a waterway and other ancillary costs, including repair or maintenance of public property, the Company, upon receiving written notice from the City of Lee's Summit regarding such costs shall reimburse the Director for these costs within (30) thirty days. Any payment made pursuant to this paragraph shall not substitute for any other payment otherwise owed or to be paid to the Director.

6.3 Any device left for more than forty-eight (48) hours in the same location without moving, except for devices properly locked to a Lock-to Facility, may be removed and stored by the City of Lee's Summit at the expense of the Company.

7. LICENSE FEE

7.1 Application Fee: Upon submission of its Initial Application and any subsequent Renewal Application or Supplemental Application, Company shall pay the appropriate nonrefundable fees, as set forth in the City's Schedule of Fees and Charges.

7.2 Per Device Fee: The Company shall pay an annual fee per Device as set forth in the City's Schedule of Fees and Charges, and such fee shall be paid prior to the Approval of the applicable Initial Application, Renewal Application, or Supplemental Application.

8. LICENSE TERM

8.1 Initial Term: Unless terminated or revoked as set forth in these Standard Ts and Cs, Company's License shall be valid for one (1) year from the date of the City's Approval of Company's Initial Application ("**Initial Term**").

8.2 Renewal: Upon expiration of the Initial Term, the City may renew Company's License for one (1) year ("**Renewal Term**") with the same terms and conditions, upon payment of applicable fees, unless either the City or Company chooses not to renew. If Company desires to renew its License, Company shall provide the City with at least forty-five (45) days written notice of its to renew and submit its Renewal Application at least thirty (30) days before the term expires. If the Company chooses not to renew its License, the Company shall notify the City of non-renewal at least ten (10) days prior to the expiration of the then-current term.

If Company fails to timely submit either(i) its notice of intent to renew or (ii) its Renewal Application as set forth in this Section, Company's License shall terminate at the end of the then current term and Company must submit a new Initial Application.

9. SUPPLEMENTAL LICENSES

Company may apply for a supplemental license, one for each Shared Mobility Device type, to deploy additional devices outside the initial permitted use area, provided Company submits a Supplemental Application and meets the following criteria:

1. The Company provides a specific geographic area, in ESRI ArcGIS shapefile format, of no greater than 5 square miles in size, of where the Devices will be deployed and operated in each Permitted Zone;
2. The performance bond provided with Company's initial License shall be increased by \$100.00 per device to cover the additional Shared Mobility Devices operated by the Licensee; and
3. There is not another compelling reason, as determined by the City Traffic Engineer, to limit Company's fleet size.

10. LICENSE REVOCATION/TERMINATION

10.1. Termination for Cause by City: The City may revoke or terminate Company's License, based on the Company's inability to cure the defaults listed below. The City's right to revoke or terminate Company's for Company's default is not cumulative of all its rights and remedies which exist now or in the future. Default by Company includes, but is not limited to:

- A. Failure of the Company to comply with any requirement in City Code or these Standard Ts and Cs;
- B. Company fails to comply with a directive from the City authorized by the license, these Standard Ts and Cs, or the City Code; or
- C. Company becomes insolvent, or fails to pay any money Company owes to the City or any related entity for Ad Valorem Taxes on real or personal property located within the boundaries of the City, provided that Company shall have thirty (30) days after receipt of written notice of such debt to pay the debt and cure the default.

10.2 Termination for Gratuities by City: The City may, by written notice to the Company, revoke or terminate a License if it is found by the City that gratuities, in the form of economic opportunity, future employment,

entertainment, gifts or otherwise, were offered or given by Company or any agent or representative of Company to any officer, agent or employee of the City for the purpose of securing a License. If the City revokes or terminates a License pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover from Company an amount equal to 150% of the gratuity.

10.3. Termination by Company: Company may terminate a License at any given time, by providing the City a minimum of a thirty (30) days written notice. Upon termination, the Company shall inform its customers of the change and remove the units within ten (10) business days. If Company terminates its License before the end of the current term, Company understands and acknowledges that Company is not entitled to a refund of any fees its paid the City.

10.4 Outstanding Payments to the City: Within thirty (30) days of the date of termination by the City or Company, the City shall send Company a final invoice for the amounts owed to City through the date of termination. Company shall pay the final invoice within thirty (30) days of the date of the invoice.

10.5 Duties Upon Termination. On or before the date of termination of Company's License, Company shall remove all of its Shared Mobility Devices and Lock-to Facilities from the ROW.

11. PENALTIES FOR VIOLATION OF TERMS. The City may pursue any remedy at law, including but not limited to injunctive relief, citations, civil trespass, and withholding other City permits and authorizations until Company complies with these Standard Ts and Cs or applicable law. Such remedies are cumulative and may be pursued in the alternative.

STANDARD CONDITIONS FOR DEPLOYMENT, INSTALLATION, OPERATION, AND MAINTENANCE

12. SHARED MOBILITY DEVICES

Unless Company has been issued a License from the City, Company shall not (i) deploy, operate, or use any of Shared Mobility Devices or (ii) permit any person deploy, operate, or use any Shared Mobility Devices within the City.

12.1 Required Device Information.

- A. Company shall make Shared Mobility Devices available to customers at rates that are clearly and understandably communicated to the customer prior to use.
- B. Each Shared Mobility Device shall prominently display the name of the Company, the Company's current contact information, including a phone number for the purposes of requesting removal, relocation or retrieval of the unit, and a unique device identification number.
- C. Every Shared Mobility Device shall include language clearly visible to users that:
 1. Users are encouraged to wear helmets;
 2. Users shall follow all traffic laws;
 3. Users shall yield to pedestrians in the public right-of-way;
 4. Users shall follow proper parking procedures; and
 5. Users shall confirm, during the sign up stage and on stand-alone pages, their agreement to comply with Company's user requirements.

Nothing in this subsection C shall prevent the Company from imposing standards that are stricter than those set forth in this subsection, provided such standards comply with the law.

12.2 Required Device Equipment. Shared Mobility Devices shall be equipped:

- A. with a brake, in accordance with Section 29-515, and a bell, horn, or other lawful sound signaling device, pursuant to Section 29-578. If a Shared Mobility Device will be available to operate at

nighttime, it must have (i) a front light that emits white light and (ii) a red light and reflector at the rear of the device that comply with Section 29-516;

- B. such that the Shared Mobility Device can securely stand upright when parked;
- C. with an on-board GPS unit or equivalent that can report the location of the Shared Mobility Device at any time for the purposes of use, recovery, repair, data collection, and incident investigation; and
- D. with remote activation and deactivation.

12.3 Minimum Device Specifications. In addition to the requirements in the Code of Ordinance, a Company shall comply with the following:

- A. Shared Mobility Devices shall be high quality, sturdily built to withstand the rigors of outdoor storage and constant use.
- B. Bicycles used in Shared Mobility Operations issued a License shall meet standards outlined in the Code of Federal Regulation (CFR) under Title 16, Chapter II, Subchapter C, Part 1512 – Requirements for Bicycles. Additionally, licensed systems shall meet the safety standards outlined in International Organization for Standardization (ISO) 43.150 – Cycles, subsection 4210.
- C. Electric bicycles used in Shared Mobility Operations shall meet the definition of low-speed electric bicycle outlined in CPSC Public Law 107-309, as amended, for Low Speed Electric Bicycle and 15 U.S.C. § 2085, as amended, and be equipped with fully operable pedals and shall be subject to the same requirements as ordinary bicycles.
- D. Scooters used in Shared Mobility Operations shall meet the most current equivalent safety standards as those outlined in the Code of Federal Regulations and the International Organization for Standardization for bicycles. As of September 1, 2021, scooters shall meet CPSC in Public Law 107-309 for standards around weight bearing.

12.4 Rules for Company.

- A. Company shall inspect each Shared Mobility Device when it is removed from routine service, to ensure that all of its components are present and functioning properly.
- B. Company shall permit only one person to ride or operate on a Shared Mobility Device at any time.
- C. Unless approved by the Director of Public Works or his/her designee, Company shall not advertise for a third party on any equipment related to its Shared Mobility Operation or on its Shared Mobility Devices.
- D. Company shall provide information relating to Device locations and Device users upon request of law enforcement or pursuant to judicial subpoena.

13. SAFETY

- A. Company shall identify and address safety and maintenance issues with one or more of its Shared Mobility Devices, including a mechanism for customers to notify the company that there is a safety or maintenance concern with the device.
- B. Company shall be capable of remotely disabling the use of a device should it be reported or found to have a safety, maintenance or other hazardous condition.
- C. Company shall maintain its Shared Mobility Devices in a clean, safe, and good working manner. If an issue is reported regarding a specific Share Mobility Device's operability, balancing (e.g. rebalancing), safety or maintenance, Company shall respond and deactivate that Shared Mobility Device from operations immediately, and remove that Shared Mobility Device from the right of way within two (2) hours of receiving notice. Such a notice or report may be from a Rider, the City, or any other person/entity. Any imbalanced, inoperable, or unsafe Shared Mobility Device shall be repaired before it is placed back in service. Company

agrees that the City has no obligation or liability with regards to the maintenance of the Company's Shared Mobility Devices.

- D. Company shall respond to complaints and obstructions within the following timeframes:
 - 1. Sidewalk Obstruction of less than 3 feet – 30 minutes;
 - 2. Travel and bicycle lanes – 30 minutes;
 - 3. Transit stop obstructions – 30 minutes;
 - 4. Environmentally sensitive area– 30 minutes;
 - 5. Private property – 2 hours;
 - 6. Rebalancing off-hours – 2 hours;
 - 7. Other obstructions and nuisances – 2 hours;
 - 8. Unauthorized portions of parks and trails – 2 hours; and
 - 9. Other unauthorized areas – 2 hours.
- E. Company shall keep a record of reported accidents or collisions caused by, whether directly or indirectly, the use of Company's Shared Mobility Devices in a format approved by the City.
- F. Company shall keep a record of maintenance activities which includes the Shared Mobility Device identification number and maintenance performed, and provide such documentation to the City every three (3) months for review.
- G. Company shall educate users on lawful and safe use of the Shared Mobility Devices, including encouraging users to obey traffic control devices and ride with the flow of traffic.
- H. Company's deploying electric-assist devices shall have a program to ensure proper recycling of batteries and disposal of these batteries under Universal Waste Battery disposal standards under Title 40 of the Code of Federal Regulations (CFR) in part 273.
- I. Company shall require its individuals and contractors that pick up, drop off or charge devices to wear high-visibility safety apparel that identifies Company and meets the Performance Class 2 or Class 3 requirements of the ANSI/ISEA 107–2004 publication entitled "American National Standard for High-Visibility Apparel and Headwear" and identifies the Company.
- J. Company shall employ an electronic method to test the device user no less than one (1) out every five (5) rentals, on proper usage, ADA accessibility and device parking prior to allowing the usage of a device as approved by the City.

14. PARKING

- A. Company shall only allow Shared Mobility Devices within a Permitted Zone designated as "dockless" to be parked in accordance with Chapter 29 of the Code of Ordinances. Company shall also instruct users on how to park devices in accordance with Chapter 29 of the Code of Ordinances and in the following areas:
 - 1. The hard surface (e.g. concrete, asphalt) within the Furnishing Zone;
 - 2. At a bike rack available for public use;
 - 3. A Lock-to Facility; and
 - 4. Any other method as determined by the Director.
- B. Company shall only allow Shared Mobility Devices within a Permitted Zone designated as "lock-to" to be parked to a Lock-to Facility.
- C. Company shall NOT park Shared Mobility Devices, and shall instruct users to NOT park Shared Mobility Devices, where prohibited in accordance with the Code of Ordinances Chapter 29 nor in restricted areas for Shared Mobility Operation, defined as follows:
 - 1. In the area within or immediately adjacent to:
 - a. A Frontage Zone, unless specifically designated for device parking;
 - b. A Throughway Zone or Crosswalk;
 - c. Public Art;

- d. Any fixed regulatory, warning or informational sign or sign post; or
 - e. Portions of parks that are signed restricted for Shared Mobility Device use by the Director of the Parks and Recreation Department.
2. City blocks where (i) the Furniture Zone is less than 3 feet wide; (ii) there is no Furniture Zone; or (iii) the area between sidewalk and curb is less than 3 feet wide;
 3. The paved right-of-way between curb lines, unless there is a parking zone approved and so designated by applicable signs and or markings; and
 4. The City Traffic Engineer may further restrict additional areas for device parking, through geofencing requirements or written notice for the purposes of maintaining order, safety and mobility.
- D. Shared Mobility Devices that are parked incorrectly shall be re-parked in a correct manner or removed by the Company within the time frames listed in Section 13 of these Standard Ts and Cs.
- E. Company shall install and maintain, at its sole expense, all costs associated with the installation, maintenance, repair and replacement of its Lock-to Facilities in the areas approved by the Director of Public Works. Company acknowledges and agrees that Company shall not install any Lock-to Facilities without the City's prior written approval, which shall not unreasonably withheld, regarding the design and location of the Lock-to Facilities. Company shall further receive all proper permits, including a right-of-way permit, before it installs any Lock-to Facilities. Installed Lock-to Facilities shall be publicly accessible to any device and remain property of the City after installation.

Company shall remove its Lock-to Facilities on or before the final day its License is in effect. Within XX days after termination, expiration, or revocation of Company's License, Company shall repair all damage to the right-of-way necessary to return the right-of-way to its condition, including the matching the existing materials, before Company install its Lock-to Facilities, reasonably wear and tear accepted. If Company fails to repair the right-of-way as set forth in this clause to the City's reasonable satisfaction, the City may perform the repairs and Company shall pay the City, within thirty (30) days invoice, all costs necessary to repair the right-of-way.

15. OPERATIONS AND CUSTOMER SERVICE

- A. Company shall have a customer service phone number with a live operator, website, and smart phone application customer interface that are available (24) twenty-four hours a day, (7) seven days a week for customers to report safety concerns, complaints or ask questions.
- B. Company shall have a staffed operations and customer service center in the City of Lee's Summit.
- C. Company shall electronically notify the user of the following user obligations:
 1. Pedestrians First - People operating Shared Mobility Devices shall yield to pedestrians on sidewalks;
 2. Parking Responsibly – Shared Mobility Devices shall be parked in a secure upright position only in designated areas or Lock-to Facility locations;
 3. Stay on Right-of-Way - Users shall not take Shared Mobility Devices to areas where they are not authorized to operate; and
 4. Right and Report – If you see a Shared Mobility Device on the ground or parked improperly; help out by righting the device and reporting the issue via 816-969-1800 or www.seeclifix.com/lees-summit.

The City reserves the right to modify the aforementioned user obligations and/or require licensees to provide additional information to their users.

- D. Company shall provide the Director with a direct contact for Company staff that are capable of rebalancing devices. Company shall remove, relocate or rebalance devices based on the times listed in Section 13 of these Standard Ts and Cs.
- E. Company shall implement and submit to the Director a maintenance, cleaning, repair and waste management plan for approval prior to any Devices are deployed. This plan shall address ongoing maintenance of devices, routine cleaning and repair as well as how devices that are no longer capable of service will be disposed of responsibly. If Company makes any changes to its plan, such changes shall be submitted to the City for approval within thirty (30) days after the update is made.
- F. Company shall employ an electronic payment system that is compliant with the Payment Card Industry Data Security Standards (PCI DSS). Each transaction shall include the Shared Mobility Devices identification number listed on the device inventory list.
- G. Company shall perform all charging and maintenance activities off public right-of-way and off public property.
- H. Company shall require companies, contractors, or any other individuals that pick up and drop off devices to perform such activities during the hours between 7:00 p.m. and 6:00 a.m. Monday through Friday and during the hours between 11:00 p.m. and 6:00 a.m. on Saturday and Sunday, unless responding to a call as required by these Standards Ts and Cs. All pick up and drop off activity shall be conducted in a lawful manner so as not to disrupt the normal flow of traffic (e.g. no stopping, standing or parking within the travel lane or where stopping, standing or parking is prohibited).

16. PRIVACY, DATA REPORTING AND SHARING

- A. Company shall implement and submit to the Director prior to any Devices are deployed a privacy policy that anonymizes users' information, including personal, financial, and travel information, and safeguard's such information at a level that is at least as secure as the industry standard. If Company makes any changes to its policies, such updates shall be submitted to the City for approval within thirty (30) days after the change is made.
- B. Company shall not require users to grant location services to use the Company's mobility service, while the application is not in use. All other private data belonging to the user, including but not limited to contacts, photos and files, shall not be required to be shared in order to use Company's Shared Mobility Devices.
- C. Company shall not require users to share their private data with third parties in order to use the Company's Shared Mobility Devices.
- D. Company may allow users to opt-in (not opt-out) to providing access to their contacts, photos, files, other private data and third-party data sharing only with clear notice to the customer.
- E. Company shall provide the Director with updates to the terms of its End User License Agreement (EULA) published on the Company's website and app.
- F. On a monthly basis, Company shall provide a complaint history report including the number of complaints, the nature of the complaints, and the time it took to remedy the complaint.
- G. On a monthly basis, Company shall provide a collision history report including the number, severity, location and time of crash, in a format as determined by the Director.
- H. Company shall provide the Director or a Director-authorized third party, with real time and historical information for its entire fleet through a documented web-based application programming interface (API). The Company is directly responsible for providing the API key to the Director and shall not refer the City to another subsidiary or parent company representative for API access. The API shall deliver data according to the most current Director authorized specifications, in a manner that protects individual user privacy. Prior to deploying any devices, Company shall demonstrate that it has a verifiable and functional API to the Director's reasonable satisfaction.

17. MISCELLANEOUS PROVISIONS

17.1 No Joint Venture, Partnership, Agency. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Nothing in this Agreement will be construed in any form or manner to establish a partnership, joint venture or agency, express or implied, nor any employer – employee or borrowed servant relationship by and among the parties

17.2 No Private Rights. Nothing in this Agreement will be construed in any form or manner to convey any private property right in, or to, the use of any street or public right-of-way. All permissions granted by this agreement shall be subject to the superior right of the public to the safe and orderly movement of people and traffic.

17.3 Entire Agreement. These Standard Ts and C constitute the full agreement with respect to the subject matter hereof. Any previous agreement, assertion, statement, understanding or other commitment before the date of Company's License, whether written or oral, shall have no force or effect. No agreement, assertion, statement, understanding, or other commitment during the term of Company's License, or after the term of Company's License, shall have any legal force or effect unless properly executed in writing by persons duly authorized to enter into contracts by the parties.

17.4 Applicable Law; Venue. These Standard Ts and Cs shall be construed and interpreted under the laws of the State of Missouri and any lawsuit concerning Company's License or these Standard Ts and Cs must be initiated and maintained in the federal or state courts of Jackson County, Missouri. The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

17.5 Laws and Regulations. Company shall keep fully informed and shall at all times during the performance of its duties under these Standard Ts and Cs ensure that it and any person for whom Company is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws including, but not limited to, the following: (1) existing and future City and County ordinances and regulations; (2) existing and future state and federal statutes and regulations; and (3) existing and future Occupational Safety and Health Administration standards.

17.6 Severability. The provisions of these Standard Ts and Cs are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

17.7 Assignment; Delegation. No right or interest in Company's License shall be assigned or delegated by Company without prior, written permission of the City, signed by the City Manager. Any attempted assignment or delegation by Company in violation of this provision shall be a breach of the License and these Standard Ts and Cs by Company. The requirements of the License and these Standard Ts and Cs are binding upon the authorized heirs, executors, administrators, successors, and assigns of Company.

17.8 Rights and Remedies. No provision in these Standard Ts and Cs shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of these Standard Ts and Cs. The failure of the City to insist upon the strict performance of any term or condition of these Standard Ts and Cs or to exercise or delay the exercise of any right or remedy provided in these Standard Ts and Cs, or by law, or the City's acceptance of and payment, shall not release the Company from any responsibilities or obligations imposed by these Standard Ts and Cs or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of these Standard Ts and Cs.

17.9 Notices and Requests. Any notice or other communication required or permitted to be given under this Standard Ts and Cs shall be in writing and shall be deemed to have been duly given if (1) delivered to the party at the address set forth below, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the

address set forth below or (3) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City:

City of Lee's Summit
220 SE Green Street
Lee's Summit, Missouri 64063
Attn: Director of Public Works

If to Company:

The address and person designated on the Initial Application

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (1) when delivered to the party, (2) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (3) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day.

17.10 Non-Exclusive License. Company understands and agrees that others Company's may apply for and receive a License to operate a Share Mobility System at the City's sole discretion.

SAMPLE EXHIBIT

TO LICENSE

FOR

[INSERT ENTITY NAME]

Approved Number of Shared Mobility Devices; Lock-to Facility Locations

and

Map of Permitted Use Area and Permitted Zones

Subject to the Standard Ts and Cs, Company may deploy up to [INSERT AUTHORIZED # OF DEVICES] [INSERT TYPE OF SHARED MOBILITY DEVICES] for use within the Permitted Use Area, a map of which is included below.

Company shall install a Lock-to Facility at the following locations:

- [INSERT LOCATION FOR FACILITIES]

The design of each Lock-to Facility must be approved by the City prior to its installation.