**MEMORANDUM OF AGREEMENT**

Between

_____

*Type Company Name*

and

**The County of Henrico, Virginia**

This Memorandum of Agreement ("MOA") is entered into by and between the County of Henrico, Virginia ("the County") and _____ ("the Company"). This MOA governs the terms,
*Type Company Name*
responsibilities and performance measures between the County and the Company regarding the Company's provision and operation of shared mobility devices (SMDs) on property within the County (the "Demonstration Project").

**RECITALS**

**WHEREAS**, the purpose of this MOA is to permit the Company to operate under the Demonstration Project and ensure that the Company SMDs are used and parked appropriately without impeding pedestrian access or obstructing access to fire hydrants and valves, street furniture, bus stops, driveways, crosswalks, intersections, traffic operations, outside dining or retail, building access, or any other public use of right-of-way in the County; and

**WHEREAS**, the County, along with the Virginia Department of Transportation owns, controls, and maintains the public space on which the Company intends to operate and park its SMDs; and

**WHEREAS**, Virginia Code §15.2-2001 enables the County to regulate its right-of-way; and

**WHEREAS,** Virginia Code §46.2-1315 authorizes the County to establish a demonstration project regulating the operation of motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire; and

**WHEREAS**, the Henrico County Police Division ("HPD") shall be the primary County agency that shall enforce the conditions set forth in this MOA; and

**WHEREAS,** the Company desires to operate under the Demonstration Project in the County; and

**WHEREAS**, the County desires to facilitate the Demonstration Project to assess the viability of SMD operations within the County and to understand the parameters that will allow SMDs to operate effectively and to avoid any public nuisance in the County.

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

**Article I. Responsibilities of the County**

The County, by and through HPD, shall, with good faith and in an effort to achieve the County's policy goals, cooperate and communicate with the Company and the public to work towards a successful, safe, and sustainable regulatory environment for SMDs.

1. The County shall notify enforcement agencies not to ticket, impound or otherwise take enforcement action with respect to the Company's SMDs provided that the Company has an

approved permit from the County to participate in the County's demonstration Project and provided the SMDs are parked and operated in compliance with this MOA and all applicable laws.

2. The County may, as needed, establish and update parking and other requirements applicable to SMDs including signage, striping or other means of identifying areas that should serve as parking locations for these devices.

3. The County provides that an HPD Permits officer shall serve as the County point of contact (POC) for the Demonstration Project.

4. All obligations of the County under this MOA shall be subject to and contingent upon the appropriation of any necessary funds.

5. The County reserves the right to change the rules applicable to its Demonstration Project with appropriate notice in writing to the Company.

**Article II. Responsibilities of the Company**

The Company shall, in good faith, through the County POC, cooperate and communicate with the County 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. <u>Authorization to Operate</u>

   a. Prior to operating in the right-of-way of the County, the Company shall 1) execute a copy of this MOA; 2) complete and submit to the County the required Permit Application; 3) obtain the County's approval for the Permit Application; and 4) pay the required fee to participate in the Demonstration Project.

2. <u>Service Management and Communication with the County</u>

   a. Upon executing this MOA, and as part of its permit application, the Company shall provide to the County 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 the Company changes their POC, it must immediately notify the County of such change.

   b. The Company representatives shall meet with the County's POC within three days of any request by the County to review service status and issues. In addition to ad-hoc meetings, the Company shall meet with the County POC at least one week before launch, and in person or by phone monthly thereafter throughout the duration of the Company's participation in the Demonstration Project.

   c. Upon the request of the County 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, the Company shall collect and secure all of, or a portion of, the Company's owned or controlled SMDs to a location outside of the public right-of-way or to a location that does not otherwise impede the County'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 HPD and communicated by the County POC, the Company shall be available within the Response Time to respond to emergency needs and to coordinate with the County. The County has the right to exercise "self-help" if it determines that an emergency 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 8 AM and 9 PM – 1 hour from the time of report
2) When reported between 9 PM and 8 AM – 2 hours from the time of report.

e. The Company POC shall respond within three business days regarding issues or questions raised by the County in meetings, through telephone inquiries, or other correspondence.

f. The Company shall be solely responsible for providing information to its customers on proper parking and operation throughout the duration of the Demonstration Project.

3. Safety

a. Bicycles shall meet any applicable standards, including those under the Code of Federal Regulations (CFR) Title 16, Chapter II, Subchapter C, Part 1512 – Requirements for Bicycles.

b. Bicycles and Scooters shall comply with Virginia Code §46.2-1015 requiring both headlight and taillight. Notwithstanding this provision, the Company shall not allow its scooters to be operational between sunset and sunrise.

c. Any electric Bicycles used by the Company with a permit issued under this pilot program shall meet the definition of *electric power-assisted bicycle* in Virginia Code §46.2-100 *et. seq.*, and shall be subject to the same requirements as ordinary Bicycles. Electric bicycles shall have fully operable pedals that allow propulsion by human power, an electric motor with an input of no more than 1,000 watts, and a top motor-powered speed not to exceed 15 miles per hour.

d. Any electric Scooter used by the Company with a permit issued under this pilot program shall meet the definition of *motorized scooter* in Virginia Code §46.2-100. Such scooters shall be powered by an electric motor having an input of no more than 1,000 watts, and a top motor-powered speed of 10 miles per hour.

e. The County reserves the right to terminate any permit issued under this Demonstration Program if it determines the SMDs to be unsafe for public-use.

f. The County may modify the top speed of any SMDs subject to this MOA at its discretion over the course of the Demonstration Project.

g. 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.

h. All SMDs shall have brakes and a bell.

i. The Company shall provide visible safety language on Bicycles and Scooters.

j. The Company shall not deploy any device or device component before receiving approval to do so by the County POC. To obtain approval, the Company shall furnish design specifications, any applicable certifications of compliance with safety standards, and illustrative images of the device or device components. Upon request by the County, the

Company shall provide an opportunity for the County POC to physically inspect and test-ride the same model proposed for deployment. The County does not agree to inspect every SMD in the Company's fleet and does not warrant the safety of every such SMD.

k. The Company shall ensure that each SMD that it deploys or uses is fully operable, free of defects, conforms to relevant safety standards, and is well-maintained and clean.

l. If a Company SMD is reported in need of maintenance or cleaning in violation of the terms and performance measures in this MOA and all laws, the Company shall immediately prevent further use of the device, and within one day of notification, shall remove it from the County right-of-way.

m. The Company shall require the following and inform its customers accordingly:

1) SMDs are prohibited from operating on sidewalks and bike trails, except as allowed by Henrico County Code §22-42;
2) SMDs may operate on streets and, where available, in bike lanes, but that they are prohibited from operating on roads with a maximum speed greater than 25 mph and from crossing roads with a maximum speed greater than 35 mph;
3) Scooters must stay to the right on streets and to offer the right of way to bicycles on bike lanes;
4) Wearing headphones while riding an SMD is prohibited;
5) Texting while operating an SMD is prohibited;
6) Riding an SMD while under the influence of alcohol or drugs is prohibited;
7) The minimum age for any rider of its SMDs shall be eighteen (18) years of age;
8) Only one person may ride on each SMD;
9) All riders of SMDs must use a helmet; and
10) Riders must submit a photo of the SMD and its location when they park their SMD at the end of a ride.

4. <u>Operations</u>

a. The Company is responsible for maintaining its fleet size within the County at or below the maximum permitted fleet size of 100 SMDs. If the Company can demonstrate an average of at least four (4) trips per device per day over a full month, and compliance with this MOA's requirements, however, the Company may request in writing to the County POC to expand its fleet size by as many as 50 devices per mode each month.

b. After any increase under the preceding paragraph, if the Company cannot maintain at least two (2) trips per device per day on average over a full month, the County may require the Company to decrease its fleet size in increments of 50 SMDs, until the Company meets this average or reaches its initial fleet size.

c. The Company shall have a staffed operations center in Henrico County or an adjacent jurisdiction.

d. The Company 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 provided on every SMD that is in service within the County

e. The Company shall provide to the County POC the phone number and email for the Company's local general manager.

f. The Company shall provide their preferred contact information for SMD parking issues to the County POC.

g. The Company shall affix its logo and a unique identifying number on each SMD in the County so that it is clearly visible. The Company shall not allow other logos or advertisements to appear on any of its SMDs.

h. The Company shall regularly monitor the deployment and dispersion of its SMDs to maintain service throughout the County.

i. The Company must notify SMD users of County and state regulations applicable to operating SMDs in the County. These notifications must at minimum be received through the mobile app and website for the service.

j. The Company shall promptly respond directly to County residents and all users reporting problems, issues, or requesting information regarding the Company services.

5. Parking

a. The Company shall ensure that its 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.

b. The Company shall work to ensure that its SMDs are parked in a manner that does not impede pedestrian access; does not obstruct access to fire hydrants and valves, street furniture, crosswalks, the public right of way, or any public property, including but not limited to, public buildings, public parks or open spaces, public trails, driveways or private property; does not damage any property, including but not limited to, landscaping, street trees or other aesthetic features; and does not interfere with traffic or bus stop operations. Parking of all SMDs shall be done in such a manner as to afford the least obstruction to pedestrian and vehicular traffic.

c. The Company shall instruct its customers to park bicycles only at bicycle racks, street signs, and light posts.

d. SMDs shall not be parked with any part of the vehicle extending over the face of curb.

e. SMDs shall be upright when parked.

f. Customers may not park any SMD on private, federal, or military property without the consent of the owner. Any SMD parked on such property is subject to the requirements of that property owner and may be towed at any time at the Company's expense.

g. Within two (2) hours of reporting by the County or others, the Company shall remove its 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 County.

h. SMDs are not permitted to park in one location in the public right-of-way longer than three consecutive days without moving.

i. Failure to adhere to these parking performance measures may result in the County removing the SMD and storing it in a facility available to the County. The Company 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 County shall consider SMDs abandoned and dispose of them as the County deems fit in the event of that the Company fails to retrieve devices in due time upon being notified of the removal and storage.

6. Data

a. Without prejudice to the Company's rights and interest to its commercially privileged and sensitive information, the Company shall provide to the County POC the following data in a Monthly Report by the 15th of each month for the previous month's activity:

i. Total active customers who reside in the County;
ii. Trips starting and trips ending, separately, in the County during the month, and trips starting and trips ending in the County 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 County;
vi. A map of trip route data for all trips starting, ending, or passing through the County (especially to understand the equity implications of coverage of these services), by month;
vii. Crashes – giving time, date, precise location, number of parties impacted, and police report number, if available;
viii. Injuries – giving time, date, precise location, type of injury and cause (if known);
ix. Number and precise location of SMDs that had to be towed after three (3) consecutive days in one location;
x. Complaints received – giving the reason (improper parking, speeding, etc.) with date and location, if available;
xi. Incidences of vandalism, including a description of the damage and police report number, if available;
xii. Available data regarding compliance with rules requiring helmet usage; and
xiii. Other feedback received – by date, time, and precise location, if applicable.

b. If the Company collects de-identified demographic data from their customers, including age cohort, gender, and general trip purpose, such data shall be provided by to the County, upon request.

c. The Company shall provide a publicly-accessible application program interface, clearly posted on the company's website that shows, at minimum, the current location of any dockless vehicles available for rental at all times.

d. A smart phone-based application used to rent dockless vehicles does not qualify as a publicly accessible application program interface.

e. The County reserves the right to request additional categories of data, in a format specified by the County, during the duration of the Company's participation in the Demonstration Project.

7. Penalties and Fines

The Company shall be financially responsible for any and all penalties, fines, and other

costs incurred by the County as a result of illegally parked SMDs or as a result of other enforcement action taken by the County against the Company.

8. Surety Bond

The Company shall maintain a $5,000 surety bond which the County 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 the Company within 30 days of billing.

9. Advertising

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

10. Remedies

If the Company violates its obligations under this MOA or obligations imposed by the County in accordance with Article I (5) above, and such violation is not corrected within one week's time following written notice by the County, the County may immediately terminate the Demonstration Project, this MOA, and may immediately suspend or revoke the Company's permit.

11. No Right, Title or Interest

The Company 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. Unless otherwise terminated pursuant to Article VII, this MOA shall become effective upon signature by the County and shall remain in effect for an initial term of eighteen (18) months and may be renewed by either party for three (3) months upon ten (10) days' notice to, and the written consent of, the other party.

2. Upon expiration of the MOA, the Company shall remove all of its SMDs from the County's right-of-way.

**Article IV. Service Area**

This MOA, in conjunction with a completed and approved Permit Application, authorizes the Company to operate within any public portion of the County, so long as it does so in compliance with this MOA and all applicable laws.

**Article V. Insurance and Indemnification**

1. Insurance Requirements

a. Before providing any SMDs associated with this MOA or any extension of this MOA, the Company must provide to the County POC a Certificate of Insurance indicating that the Company has in force at a minimum the coverage below. The Company 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.

i. 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.

ii. Commercial General Liability - $1,000,000 per occurrence, with $2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractor, and products liability. The certificate must specifically state that the aggregate limit applies per location/contract. Evidence of contractual liability coverage must be typed on the certificate. Claims Made coverage is not acceptable.

iii. Business Automobile Liability - $1,000,000 combined single-limit (owned, non-owned and hired).

iv. Additional Insured – Henrico County 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 the additional insured endorsement must be typed on the certificate.

v. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the MOA Term, The Company must notify the HPD Permits officer 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.

vi. Contract Identification - All insurance certificates must state this MOA 's number and/or title.

2. The Company must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Company may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Company can demonstrate in the sole discretion of the County sufficient financial capacity. To do so, the Company must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

3. The County may request additional information to determine if the Company 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 County.

4. The County's acceptance or approval of any insurance will not relieve the Company from any liability or obligation imposed by this MOA or permit documents.

5. The Company is responsible for the for all materials, tools, equipment, appliances and property used in connection with this MOA. The Company 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. The Company insurance shall be

the primary non-contributory insurance for any work performed or activities or services provided for under this MOA.

6. The Company is as fully responsible to the County for the acts and omissions of its sub-contractors and of persons employed by them as it is for acts and omissions of persons whom the Company employs directly.

B. Indemnification.

The Company covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "County 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 Company's product, 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 the Company fails or refuses to fulfill its obligations contained in this section, the Company must reimburse Henrico County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Company must pay such expenses upon demand by the County.

**Article VI. FOIA**

The parties understand and agree that the County is subject to the terms and provisions of Code of Virginia §§ 2.2-3700 *et. seq*., the Virginia Freedom of Information Act ("VFOIA"). All public records in the County's custody, possession or control shall be open to the public for inspection and copying to the extent that such disclosure is required by law.

**Article VII. Termination**

Either party may terminate this MOA (and in doing so, the associated Permit) with 10-days' notice to the other party. Upon termination, the Company 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 Company agrees that the County may consider any of the Company's SMDs not removed as abandoned property and may dispose of them as it deems fit.

The County of Henrico, Virginia

Title: County Manager

Signature: _____

_____

*Company Name*

Title:

Signature: _____