

## MICROMOBILITY SYSTEMS SUPPLY AGREEMENT

THIS MICROMOBILITY SYSTEMS SUPPLY AGREEMENT (the “Agreement” is made this 1st day of June, 2023 (the “**Effective Date**”) BETWEEN:

**BETWEEN:**

BIRD CANADA INC., a corporation duly incorporated and validly existing under the Business Corporations Act (Alberta), and having a registered office address at 161 Bay Street, Suite 2300, Toronto, Ontario, M5J 2S1.

(“Micromobility Service Provider”)

**AND:**

CITY OF SPRUCE GROVE, a municipal corporation duly incorporated and validly existing under the Municipal Government Act (MGA) Alberta, and having an office at 315 Jespersen Avenue, Spruce Grove, Alberta, T7X 3E8.

(“City”)

(each a “Party”, and collectively the “Parties”)

**WHEREAS:**

- The City intends to pilot, for the 2023 season, a micromobility program for the deployment of shared electric kick-scooters (referred to herein as “e-scooters”) on City rights of way and City-owned lands to promote the goals of the City’s transportation and micromobility related strategies; and
- The Micromobility Service Provider has agreed to provide a micromobility program, at no cost to the City, to provide e-scooters for use by the public within the City of Spruce Grove; and
- The Micromobility Service Provider and its agents have further agreed to provide the services described herein in accordance with the terms and conditions of this Agreement.

**NOW THEREFORE IN CONSIDERATION OF** the premises and the mutual covenants and agreements herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

## **1. DEFINITIONS**

### **1.1 In this Agreement:**

“Street Furnishing” means poles, Traffic Control Devices, waste receptacles, benches, transit shelters, fire hydrants, trees, plants, grass, utilities, planters, Bicycle racks, mail boxes or other similar property placed or located on a Highway”

"Furniture Zone" means the portion of a sidewalk that buffers pedestrians from the adjacent highway or roadway and where elements such as trees, streetlights, hydrants, parking meters, or street furniture are typically located.

"Maintenance" means:

- repairing all physical damage, including vandalism, and normal wear and tear to e-scooters; and
- making best efforts to retrieve lost or stranded e-scooters.

“Electric or Motorized Scooter” means a vehicle ridden while standing that consists of a narrow footboard mounted between or atop two wheels tandem that has an upright steering handle attached to the front wheel, and that is primarily propelled by an electric, combustion engine, or other means, other than human propulsion.

“Traffic Control Devices” means any sign, signal, marking or device placed, marked or erected for the purposes of regulating, warning or guiding traffic.

## **2. TERM**

2.1 The term of the Agreement commences on the Effective Date and expires on November 30, 2023 (the "Term"), unless otherwise terminated as provided herein. The term can be extended in writing for multiple one year terms, on terms mutually acceptable to the Parties.

2.2 The launch date for 2023 by the Micromobility Service Provider shall be June 1, 2023, subject to adverse weather. In subsequent years governed by this agreement, the launch date shall be mutually agreed to by both Parties.

## **3. FEES AND SECURITIES**

3.1 The Micromobility Service Provider shall pay no program fees or securities to the City except for the business licence fee.

#### **4. SERVICES**

4.1 The Micromobility Service Provider and its agents shall provide the e-scooters and associated equipment and services during the Term in accordance with the terms and conditions of this Agreement. The Micromobility Service Provider shall have the exclusive right to provision of a micromobility system of e-scooters (e-scooter rental) in the City during the Term.

4.2 The Micromobility Service Provider shall have the right to establish its operational service zone within the legal boundaries of the City of Spruce Grove.

4.3 The Micromobility Service Provider and its agents shall perform its obligations hereunder and shall ensure its Services are in compliance with all applicable laws, including the Traffic Safety Act, as amended and the regulations thereunder.

4.4 The Micromobility Service Provider shall provide the City with a Designated Point of Contact who has overall responsibility for the operation of this Agreement, and can be a single point of contact for any issues that arise with respect to the operations of the Micromobility Service Provider and its agents under this Agreement.

4.5 The Micromobility Service Provider and its agents shall obtain prior written authorization from the City before driving on any trails or parkland with any vehicle larger than an e-scooter, bicycle, or cargo bicycle.

#### **5. VEHICLES**

5.1 The Micromobility Service Provider must supply a minimum of 50 e-scooters and up to a maximum of 150 e-scooters for use by members of the public that are registered with the Micromobility Service Provider in the City of Spruce Grove.

5.2 Each e-scooter shall have affixed to it the name and contact information of the Micromobility Service Provider and unique vehicle identification number. Each e-scooter will also come equipped with a large visible number on the neck of the e-scooter.

5.3 The e-scooter shall be equipped with a bell, brake and automatic front and rear light in accordance with the Alberta Transportation, Carrier and Vehicle Safety Branch Operations of Rental E-scooters Permit Conditions.

5.4 The Micromobility Service Provider shall ensure the speed of the e-scooters is limited to no more than twenty four (24) kilometres per hour and the speed shall be further reduced to a lower speed upon entering any area(s) designated by the City.

5.5 The Micromobility Service Provider shall retain full ownership rights over the e-scooters throughout the Term. For greater clarity, the City shall have no proprietary rights to any of the e-scooters supplied by the Micromobility Service Provider pursuant to this Agreement.

5.6 The Micromobility Service Provider shall ensure all e-scooters are equipped with geofencing technology to automatically slow the e-scooter upon entry and/or come to a gradual stop within any designated area(s) proposed by the City.

## **6. INCREASE TO FLEET**

6.1 The Parties must mutually agree to any e-scooter fleet increase above and beyond the maximum number provided for under section 5.1.

## **7. PARKING REQUIREMENTS**

7.1 E-scooters shall all be parked within the Furniture Zone in accordance with the following conditions:

- a. No e-scooter shall be parked such that it prevents pedestrian path of travel along the sidewalk;
- b. No e-scooter shall be parked less than 0.3 metres from the roadside curb edge; and
- c. No e-scooter shall be parked on, or in such a manner that it obstructs Street Furnishing, utility accesses, garbage bins, transit access, doorways or other accesses to buildings.

## **8. TECHNICAL REQUIREMENTS**

8.1 The Micromobility Service Provider agrees and acknowledges that its software/mobile application(s) used for the purpose of e-scooter rental pursuant to this pilot program will:

- a. require riders to acknowledge riding is only permitted on sidewalks, trails, and pathways, as those terms are defined in the City's Traffic Bylaw, as amended from time to time, and the proper parking procedure of e-scooters as a condition to unlocking the e-scooter so as not to impede or interfere with pedestrian, vehicular, or similar traffic, or access to or from any buildings;
- b. require riders to comply with all applicable laws, including local traffic by-laws;
- c. require that riders operate in a courteous and safe manner so as not to endanger or interfere with pedestrian and vehicular traffic;
- d. require riders to park e-scooters upright on hard surfaces in the Furniture Zone of any sidewalk away from pedestrian walking areas, beside a bicycle rack or in another area specifically designated for bicycle parking where they exist but not in a manner to impede or interfere with the reasonable use of any bicycle rack, or in other locations out of the public right of way;
- e. encourage helmet use;
- f. require that riders not allow passengers; and
- g. require that riders must be 16 years of age or older to ride an e-scooter.

8.2 The Micromobility Service Provider shall maintain a 24-hour customer service phone number and email address for customers or the City to report concerns, complaints or to ask questions.

8.3 In the event a safety or maintenance issue is reported for a specific e-scooter, that e-scooter shall be made unavailable to customers. Any inoperable or unsafe e-scooter shall be repaired by the Micromobility Service Provider before it is returned to service in the City.

8.4 The Micromobility Service Provider shall require riders to take a photo whenever they park an e-scooter at the end of a trip.

## **9. REMOVAL**

9.1 The Micromobility Service Provider and its agents shall remove all e-scooters pursuant to this Agreement at its own expense by the earliest of:

- a. November 30, 2023;
- b. an earlier date if reasonable notice is provided by the Micromobility Service Provider; or
- c. termination of this Agreement.

9.2 Notwithstanding section 9.1, in accordance with the City's direction, the Micromobility Service Provider shall remove such e-scooters as required by the City:

- a. within six (6) hours of receiving notification from the City in the event of removal related to an emergency, a short-term event, snowfall, or
- b. by 6 P.M. the evening before a planned road closure for a festival, event, protest, or similar special event.

9.3 If the Micromobility Service Provider and its agents do not remove all e-scooters by such time as specified above, the City may remove any remaining e-scooters at the Micromobility Service Provider's expense and may recover the costs in accordance with sections 14.1 — 14.2, except for any removal related to an emergency where the City does not provide advance notice to the Micromobility Service Provider.

9.4 The Micromobility Service Provider and its agents shall regularly monitor and remove e-scooters parked in unauthorized areas and misparked e-scooters. Additionally, the Micromobility Service Provider and its agents shall remove misparked e-scooters within two (2) hours of being notified by a member of the public and/or City staff. In the event that the Micromobility Service Provider fails to remove misparked e-scooters within the two (2) hour period, the City may proceed with the removal and shall recover the costs in accordance with sections 14.1 — 14.2.

## **10. MAINTENANCE OF E-SCOOTERS**

10.1 The Micromobility Service Provider shall provide, in a timely fashion, Maintenance for all e-scooters supplied pursuant to this Agreement. For clarity, the Micromobility Service Provider shall be responsible for all costs associated with the Maintenance required pursuant to this Agreement.

10.2 The City may provide written notice to the Micromobility Service Provider when it reasonably considers that an e-scooter requires immediate Maintenance. The Micromobility Service Provider shall, as soon as possible, but no later than twenty-four (24) hours after receiving such notice from the City, undertake regular Maintenance of such e-scooter identified in the City's notice and may place in circulation in the City a replacement e-scooter for an e-scooter(s) subject to Maintenance.

10.3 In the event that the Micromobility Service Provider fails to complete the Maintenance of any e-scooter requiring Maintenance for which notice has been provided, the City may, acting reasonably, may undertake to remove said e-scooter(s) from circulation and may recover its costs in accordance with sections 14.1 — 14.2 of this Agreement.

10.4 The Micromobility Service Provider shall regularly monitor e-scooters and ensure proper Maintenance thereof.

## **11. COMMUNICATION AND EDUCATION**

11.1 The Micromobility Service Provider shall prepare communication and education material intended to prepare e-scooter users to operate e-scooters.

11.2 Upon the City's request, the Micromobility Service Provider shall attend a meeting of any relevant Advisory Committee and/or Committee including City Council virtually or otherwise as may be permitted, and be available to answer any questions that the Committee may have related to the operation of e-scooters under this Agreement.

## **12. SPONSORSHIP ADVERTISEMENTS ON VEHICLES**

12.1 The Micromobility Service Provider has the exclusive right to supply sponsorship advertisement on the e-scooters and has the sole and exclusive right to any and all corresponding revenues.

12.2 The Micromobility Service Provider shall use commercially reasonable efforts to ensure that all sponsorship advertisements that appear on the e-scooters meet the Canadian Code of Advertising Standards set out by the Advertising Standards Canada and are consistent, if and where they exist, with corporate sponsorship and advertising policies of the City and do not promote electronic cigarettes or products related to the use of electronic cigarettes, tobacco products, or alcohol.

12.3 If, in the reasonable opinion of the City, any sponsorship advertisement does not comply with the standards set out in section 12.2 or is otherwise objectionable, the City will provide written notice to the Micromobility Service Provider of the requirement to remove such sponsorship advertisements, and the Micromobility Service Provider shall use commercially reasonable efforts to promptly remove any such sponsorship advertisement.

### **13. NON-PERFORMANCE**

13.1 If, in its sole but reasonable opinion, the City considers that the Micromobility Service Provider and its agents are not performing its obligation(s) under this Agreement, the City may proceed as follows:

- a. provide written notice to the Micromobility Service Provider upon being aware of the non-performance;
- b. on receipt of such notice from the City, the Micromobility Service Provider shall have five (5) business days to remedy the non-performance;
- c. if, at the end of the time outlined in subsection 13.1(b) the obligation is not performed by the Micromobility Service Provider, the City may undertake the obligation and the cost shall be recovered from the Micromobility Service Provider in accordance with sections 14.1 — 14.2.

13.2 Notwithstanding subsection 13.1 above, where the City, acting reasonably, determines that a matter of non-performance must be addressed immediately, the Micromobility Service Provider agrees that the City may proceed to do the work or perform the obligation and the City shall recover its costs from the Micromobility Service Provider in accordance with sections 14.1 — 14.2.

13.3 Nothing in this section shall be construed to limit the City's right to termination under section 18.

### **14. WORK BY THE CITY**

14.1 Where the City must perform work that otherwise is the responsibility of the Micromobility Service Provider under this Agreement, the cost of the work may be recovered at the City's discretion and the City shall invoice the Micromobility Service Provider for the same.

14.2 The Micromobility Service Provider shall pay the invoices sent pursuant to subsection 14.1 within 30 days of receipt.

### **15. DATA REPORTING**

15.1 After the Term, the Micromobility Service Provider agrees to prepare and submit, upon request by the City, a relevant data report.

15.2 The Micromobility Service Provider agrees and acknowledges that data shared with the City under section 15.1 may be shared with internal City departments and with third parties for the purposes of undertaking transportation planning and mobility management activities, including, but not limited to analyzing e-scooter usage habits under this Agreement that may be included in public reports and documents.

## **16. INDEMNITY**

16.1 The Micromobility Service Provider agrees to indemnify, defend and hold harmless the City (and the City's employees, agents and affiliates) from and against all actions, damages, claims, damages to person or property, losses, and liabilities, including reasonable legal fees, arising out of or caused by the use of the e-scooters.

16.2 Each party to this Agreement shall indemnify, defend, and hold harmless the other party and its officers, directors, agents, employees, and owners from and against any and all demands, claims, damages to persons or property, losses, and liabilities, including reasonable attorneys' fees, arising out of or caused by the indemnifying party's gross negligence or willful misconduct in connection with the services contemplated by this Agreement.

16.3 The Micromobility Service Provider's indemnification obligations shall survive for a period of two (2) years after the expiration of the Term or the earlier termination of this agreement for any reason.

16.4 The City's right to indemnification shall be contingent on the City notifying the Micromobility Service Provider promptly following receipt or notice of any claim. The City shall not consent to the entry of a judgment or enter into any settlement without the prior written consent of the Micromobility Service Provider, which consent will not be unreasonably withheld.

## **17. INSURANCE**

17.1 The Micromobility Service Provider shall maintain throughout the Term, at its own cost and expense:

- a) commercial general liability insurance on an occurrence form with limits of not less than five million dollars (\$5,000,000.00) per occurrence; and
- b) workers' compensation insurance, as required by applicable law.

17.2 The coverage referred to in subsection 17.1(a) shall include the City as an additional named insured. Upon written request, the Micromobility Service Provider shall furnish the City with certificates of insurance evidencing compliance with the foregoing.

17.3 The Micromobility Service Provider shall provide for thirty (30) days' advance written notice to the City of any cancellation or non-renewal of the above insurance coverages.

## **18. TERMINATION**

18.1 The Parties may, at any time prior to the completion of the Term, terminate this Agreement for convenience by providing thirty (30) calendar days written notice.

18.2 The City may, at any time prior to the completion of the Term, terminate this Agreement by providing seven (7) calendar days notice to the Micromobility Service Provider if the Micromobility Service Provider breaches any of the terms of this Agreement.

18.3 Upon termination, the Micromobility Service Provider shall ensure all e-scooters are removed in accordance with Section 9.

## **19. NOTICE**

19.1 All notices, reports, demands, requests, agreements, consents, approvals and payments which may be or are required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given if delivered personally and accompanied by e-mail transmission as follows:

To the City: Dave Walker, Director, Economic & Business Development, City of Spruce Grove, [dwalker@sprucegrove.org](mailto:dwalker@sprucegrove.org), 315 Jespersen Avenue, Spruce Grove, AB T7X 3E8.

To Bird Canada Inc: Austin Marshburn, Senior Director, Sales and Partnerships, Bird Canada, [amarshburn@bird.co](mailto:amarshburn@bird.co) 161 Bay Street, Suite 2300, Toronto, ON, M5J 2S1.

## **20. AMENDMENTS**

20.1 No supplement, modification, amendment, or waiver of this Agreement will be binding unless executed in writing by the Parties.

## **21. MISCELLANEOUS**

21.1 The following apply to the interpretation of this Agreement:

- a. Unless stated otherwise, any reference in this Agreement to a section, subsection means the appropriate part of this Agreement.
- b. All headings in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify, or explain the scope or meaning of this Agreement or any of its provisions.
- c. A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it. All genders are included in any gender expressed.
- d. The words "include", "includes" and "including" are to be read as if they are followed by the phrase "without limitation".
- e. Any reference to a statute means that statute, and any regulations made under it, all as amended or replaced from time to time.

21.2 The Parties and their respective personnel are and shall be independent contractors and neither Party by virtue of this Agreement will have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other Party.

21.3 The Micromobility Service Provider acknowledges that the City is subject to the Alberta Freedom of Information and Protection of Privacy Act, as amended, ("FOIP"), and that any information provided to the City in connection with this Agreement is subject to disclosure in accordance with the requirements of FOIP.

21.4 Neither Party may assign this Agreement or any right, interest, or benefit under this Agreement without prior written consent of the other Party. Any attempted assignment in violation of the foregoing will be void. Subject to the foregoing, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by any permitted assignee.

21.5 If any provision of this Agreement is deemed unlawful, void or for any reason unenforceable, then that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provisions.

21.6 Any failure by a Party to insist upon or enforce performance by another Party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement or otherwise by law will not be construed as a waiver or relinquishment of any right to assert or rely upon the provision, right or remedy in that or any other instance; rather, the provision, right or remedy will be and will remain in full force and effect.

21.7 The respective rights and obligations of the Parties under sections 9, 16 and 18 shall survive any termination or expiration of this Agreement.

21.8 If the performance of any part of this Agreement by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labour disputes, epidemic, pandemic, act of God or any other causes beyond the control of such party, that Party will be excused from such requirements to the extent that it is prevented, hindered or delayed by such causes.

21.9 This Agreement constitutes the complete and exclusive statement of all mutual understandings between the Parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications, and understandings, be they oral or written. No amendment or modification to this Agreement will be valid or enforceable unless made in writing and signed by both Parties.

21.10 This Agreement shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein.

21.11 This Agreement may be signed in counterparts, either with the original signature or electronic/digital signature, and the signed copies may be sent by facsimile, digital or electronic transmission. The signed copy that is transmitted to the other party shall be considered binding as the original signature. Each counterpart shall be deemed an original and together constitute one and the same Agreement.

21.12 Each of the Parties will abide by all applicable laws and policies, including the City policies, by-laws and regulations of general application.

**IN WITNESS WHEREOF** the undersigned, intending to be legally bound, has executed this Agreement as of the Effective Date.

**SIGNED, SEALED AND DELIVERED**

**CITY OF SPRUCE GROVE**

**By:** \_\_\_\_\_

**Name:** Dean Screpnek

**Title:** City Manager

I have the authority to bind the City of Spruce Grove

**BIRD CANADA INC.**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

I have the authority to bind Bird Canada Inc.