

TEMPORARY OPERATING AGREEMENT

This Temporary Operating Agreement (the “Agreement”) is entered into by and between Bird Rides, Inc., located at 406 Broadway #369 Santa Monica, CA 90401 (“Company”), and the City of Peoria (“City”) located at 8401 W. Monroe St. Peoria, AZ 85345 (the “City”) which shall become effective on the effective date of the City’s Ordinance No. 2018-36 (the “Effective Date”), and which shall remain in effect for a period of ninety (90) days.

1. Statement and Purpose

The purpose of this Agreement is to establish rules and regulations governing the temporary use and operation of Stand-up electric scooters sharing systems owned by the Company and launched within the City under a Stand-up Electric Scooter Sharing System Pilot Program (the “Pilot Program”) and to ensure that such Stand-up Electric Scooter Sharing System is managed in a manner consistent with the safety and well-being of pedestrians, bicyclists, motorists, and other users of the City’s right-of-way.

2. Term

This Agreement, unless earlier terminated as provided for herein, shall commence on the Effective Date of the City’s Ordinance No. 2018-36 , which establishes the City’s one hundred twenty (120) day Pilot Program and shall expire ninety (90) days thereafter. This Agreement may also be terminated as otherwise set forth in this Agreement or upon creation and adoption of a City operating ordinance or City operating license governing the operation of Stand-up electric scooter sharing systems and the Company shall be bound by the terms therein.

3. Scope

This Agreement applies to any and all proposed deployment(s) by the Company of Stand-up electric scooter sharing systems within the City’s jurisdictional boundaries. The Company agrees to abide by the Pilot Program and its terms and conditions are incorporated herein by reference.

4. Procedures

a. Within 90 days after termination of this Agreement, the City may establish an operating ordinance or operating license governing the operation of Stand-up electric scooter sharing systems if the City determines in its sole and absolute discretion that the Temporary Pilot Program is successful. The Company shall be required to comply with the adopted ordinance and/or license, and shall be required to comply with this Agreement, as amended, or any subsequent agreements between the City and Company.

5. Operating Requirements of Stand-up Scooters

a. Pursuant to this Agreement, Stand-up electric scooters shall mean a device with no more than two ten-inch (10” inch) or smaller diameter wheels that has handlebars, is designed to be stood upon, and is powered by an electric motor that is capable of propelling the device with or without human propulsion at a speed no more than twelve (12) miles per hour on a paved level surface. This

definition may be modified in the approved operating ordinance or operating license at the discretion of the City.

b. The Company shall provide easily visible contact information, including a toll-free phone number and e-mail address for the Company on each Stand-up electric scooter for City employees and/or members of the public to make relocation requests or to report other issues with Stand-up electric scooters.

6. Deployment Requirements

Company acknowledges and agrees to the following requirements for deploying Stand-up electric scooters in the City during the term of this Agreement:

a. During the term of this Agreement, deployment of Stand-up electric scooters shall be restricted to bus stops, as described in Section 6(b), along the major arterial routes in the City of Peoria, which are for purposes of this Agreement, 83rd Avenue, Peoria Avenue, and Thunderbird Avenue (the "Pilot Program Area"). See the Arterial Route Map in Exhibit A of this Agreement. Company acknowledges and agrees that Stand-up electric scooters shall not be deployed in any other location in the City, such as other locations along the arterial routes or side streets off these arterial routes, without the express written consent of the City and an Amendment to this Agreement. The Company agrees and affirms the deployment of Stand-up electric scooters is strictly prohibited in front of single-family residential properties except as otherwise required by the Pilot Program and/or as set forth in this Agreement.

b. For Stand-up electric scooter sharing systems, devices shall be parked upright and only on hard surfaces at bus stops along the major arterial routes established in Section 6(a) of this Agreement and as further described in the Arterial Deployment Area Illustration, attached as Exhibit B. However, if there is a bicycle rack or other area specifically designated for bicycle parking at the bus stop, Stand-up scooters may be deployed in these areas so long as the Stand-up scooters' deployment is consistent with the ADA and other federal, state and local laws. With the express written consent of the City, Stand-up electric scooters may also be deployed at the corner of the intersection of two City-approved local streets in the areas identified in the Neighborhood Deployment Area Illustration attached as Exhibit C. No other deployment areas are permissible in the City except those as set forth in this Section and as shown on the Arterial Route Map in Exhibit A.

c. Company agrees to limit deployment of Stand-up electric scooters to 3 Stand-up electric scooters at any single location established by this Agreement and shall deploy no more than 200 Stand-up electric scooters throughout the Pilot Program Area during the term of this Agreement.

d. Stand-up electric scooters shall not be parked in such a manner as to block the pedestrian traffic in any way, and shall be kept clear of any and all fire hydrants, call boxes, or other emergency facilities; bus benches; or utility poles or boxes. Stand-up scooters shall not be deployed within bus shelters, in front of, or next to bus seating and/or benches, and shall not, in any way impede or block

accessible sidewalks designed for the elderly or individual with disabilities. Stand-up electric scooters shall not be placed or parked in any manner that prevents or impedes bus operators from deploying the bus's lift or ramp.

e. Stand-up electric scooters shall not be parked in such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building.

f. Stand-up electric scooters shall not be parked in such a manner as to impede or interfere with the reasonable use of any bicycle rack or news rack.

g. Stand-up electric scooters shall not be parked:

- i. In any area not specifically allowed by this Agreement;
- ii. In the landscaping or greenbelts adjacent to bus stops or bus shelters;
- iii. In any bus stops, shelters, passenger waiting areas and bus layover and staging zones, except at existing bicycle racks and locations designated in the Arterial Deployment Area Illustration in Exhibit in Exhibit B;
- iv. On private property without the consent of the private property owner.
- v. Loading zones;
- vi. Disabled parking zone;
- vii. Curb ramps;
- viii. Entryways; and
- ix. Driveways.

h. Company agrees to pick up ALL Stand-up electric scooters every night, seven (7) days a week before 9pm and may deploy to areas designated by this Agreement no earlier than 6am.

i. Company agrees to pick up, immediately any and all Stand-up electric scooters that are not deployed pursuant to the terms and conditions of this Agreement. Company gives the City the right and authority to pick up and confiscate any Stand-up electric scooter not deployed or parked according to the terms and conditions of this Agreement.

7. Operations

a. Company shall maintain a 24-hour toll free customer service phone number for customers to report safety concerns, complaints, or to ask questions.

b. Company may implement a marketing and targeted community outreach plan at its own cost. The City may, at its own cost, promote the use of Stand-up electric scooter sharing citywide.

c. Company shall restrict the speeds reached by the Stand-up Electric Scooters to a maximum speed of twelve (12) mph by incorporating necessary technical and/or mechanical limitations to the Stand-up Electric Scooters and by integrating the twelve (12) mph speed restriction into the onboard software or hardware.

d. Company shall maintain its Stand-up electric scooters in a good working manner. In the event a safety or maintenance issue is reported for a specific device, it shall be the responsibility and duty of the Company to ensure that all Stand-up electric scooters with a safety or maintenance issue be made unavailable to users, and the Company shall remove such scooters immediately. Any inoperable or unsafe device shall be repaired before it is put back into service. The City shall not have any obligation with regard to maintenance of the Stand-up electric scooters.

e. Company shall respond to requests for rebalancing, reports of incorrectly parked Stand-up electric scooters, or reports of unsafe/inoperable Stand-up electric scooters by relocating, re-parking, or removing the Stand-up electric scooters, as appropriate, within 2 hours of receiving notice. Should a Stand-up electric scooter be incorrectly parked, unsafe/inoperable or in another condition which poses a health and safety risk, the City may immediately confiscate the Stand-up electric scooter prior to the expiration of the 2-hour period.

f. In the event a Stand-up electric scooter is not relocated, re-parked, or removed within the timeframe specified herein, or any Stand-up electric scooter is parked in one location for more than 24 hours without moving, such Stand-up electric scooters may be removed by the City crews and taken to the City Municipal Operations Center (the "MOC") located at 8850 N. 79th Avenue, Peoria Arizona 85345. The cost to transport and store these scooters shall be at the sole expense of the Company. In addition to any cost to transport and store the scooters, the Company shall pay the City a fee of \$25.00 for relocation of each Stand-up electric scooter. In such instance, Company shall retrieve the Stand-up electric scooters from the City within two (2) business days. If Company does not retrieve the Stand-up electric scooters within two (2) business days, the City shall dispose of Stand-up electric scooter at Company's expense. The Company waives any claim for damage to the Stand-up electric scooter as a result of removal under this Agreement.

g. Company acknowledges Stand-up electric scooters that are operated along arterial or collector streets are to be ridden only on City sidewalks and are not permitted to be ridden in motor vehicle lanes, in City bike lanes, in City bike paths, or in City river and wash trail networks.

h. Company shall provide notice to all users through a mobile or web application that:

- i. When operated along arterial or collector streets, Stand-up electric scooters are to be ridden on sidewalks, and are not permitted to be ridden in motor vehicle lanes, in City bike lanes, in City bike paths or in City river and wash trail networks;
- ii. Riders must yield to pedestrians, and other non-motorized users of the City sidewalks;
- iii. Riders must be at least eighteen (18) years of age and have a valid driver's license to drive Stand-up electric scooters;
- iv. Helmets are encouraged for all users;
- v. Stand-up electric scooters are restricted to one rider at a time;
- vi. Riders must abide by all existing traffic and safety laws when picking up, riding and parking the Stand-up electric scooter;

- vii. Parking must be done in the designated areas;
- viii. If a Stand-up Electric Scooter is left in front of the rider's private property it must be parked upright and parallel to the curb lane;
- ix. Riding responsibly is encouraged, those users who act irresponsibly, illegally, or ride scooters in violation of the Bird Terms of Service, the Bird User Rental Agreement, or this Agreement, that the Company shall lock the mobile or web application of that user, thereby prohibiting use of Bird Stand-up electric scooters; and
- x. Riders may not ride or leave Stand-up electric scooters where prohibited by official signs or designations, or where the curb is painted red (fire) or yellow (restricted) within the right-of-way or in City owned or maintained parking lots.

i. Stand-up electric scooter riders are required to take a photo whenever they park their scooter at the end of a ride.

j. The Company shall put together a detailed Communication and Education Plan to be approved by the City. The Communication and Education Plan (the "Plan") shall set forth actions the Company will undertake to educate Stand-up electric scooter riders regarding this Agreement, the Pilot Program Area, the City's existing rules and regulations, safe and courteous riding, proper parking, and other information required by the City consistent with public health and safety concerns. The Plan will also include the Arterial Route Map, the Arterial Deployment Area Illustration and the Neighborhood Deployment Area Illustration.

k. The Company's fleet size shall not exceed 200 during the time of this Agreement. The City may require Company to reduce its fleet size on a monthly basis in the event Company's fleet provides on average less than one rider per Stand-up electric scooter per day. The Company shall share data with the City as provided in Paragraph 8 to determine and demonstrate the utilization rate of scooters in the Company fleet.

8. Data Collection and Reporting

a. Company shall provide City with current baseline data of all information required by Section 8(a) for the existing fleet in the City of Peoria from the first date of deployment in the City to the Effective Date of this Agreement within one (1) week from the Effective Date.

b. Company shall provide City with the Stand-up electric scooter identification numbers for the entire City fleet and shall notify the City on a weekly basis with updated Stand-up electric scooter identification numbers.

c. All GPS data shall come from the active GPS that is affixed to each Stand-up electric scooter and shall not be collected from users' mobile devices. The City is permitted to publish all non-identifiable data.

d. Company shall provide the City with a weekly report that includes the following anonymized data for each trip record to inform and support safe and effective management of the system, and for transportation planning efforts: Trip duration, trip distance, start date, start time, end date, end time, start location, end location, scooter identification number.

e. Company shall provide the City with a weekly report that includes the following device availability data for oversight of parking compliance and device distribution by minutes: GPS coordinate, availability duration, availability start, and availability end.

f. Company shall provide raw data to the City as required by the City in a format acceptable to the City.

g. Company shall provide the City with a weekly report that includes, but is not limited to the following data related to utilization of the Stand-up electric scooters:

- i. Total number of rides for the previous month and total miles ridden;
- ii. Total number of scooters in service for the previous month;
- iii. Number of rides per scooter per day;
- iv. Rider beginning and end location and performance of all Stand-up electronic scooters;
- v. Real time anonymized trip data – GPS, date/time, duration;
- vi. Number of scooters removed from service;
- vii. Operatory staffing levels;
- viii. Customer Services Cases, including all complaints registered;
- ix. Vandalism Incidents;
- x. Crash Reports (to include injury/fatalities);
- xi. Aggregated reports on damaged or lost Stand-up electronic scooters; and
- xii. Anonymized/De-identified demographic data – such as age and gender, general trip purpose, etc. Gender must be reported as male, female, and non-binary. Age must be reported using these age groups: under 5, 5-15, 16-17, 18-24, 25-34, 35-44, 45-54, 55-64, 65 and over.

h. Company shall provide the City with an Affidavit, in a form attached hereto as Exhibit D, that attests to the accuracy, validity and completeness of the data and reports submitted to the City. An Affidavit shall accompany every submission of data and reports to the City.

i. Company shall establish a privacy policy that safeguards Rider personal identifying information. In addition, the Company shall provide an electronic system that is compliant with the Payment Card Industry Data Security Standards (PCI DSS).

9. Application and Enforcement Fee

The Company shall pay the City a Temporary Operating Agreement Application Fee of \$2,500, a monthly enforcement fee of \$2.50 per month per Stand-up electric scooter deployed in the City and a \$25.00 relocation fee for Stand-up electric scooters as provided for in Section 7(e) of this Agreement.

10. Termination

The City may terminate this Agreement with 24 hours-notice in its sole and absolute discretion. Upon expiration of this Agreement, or in the event the City terminates this Agreement, the Company shall remove its entire fleet of Stand-up electric scooters from the City within 72 hours. In the event the Stand-up electric Scooters are not removed within 72 hours as specified in this paragraph, City

crews shall pick up the Stand-up electric scooters and take them to the City MOC for storage. The Company will be responsible for the cost to transport and store the Stand-up electric scooters.

11. Indemnification

a. Company shall defend, indemnify and hold harmless the City, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively “the Indemnified Parties”), from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorney’s fees), which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of any and all legal liabilities associated with the use of the public right-of-way by Company’s Stand-up electric scooters, provided that Company shall not be so obligated in the event that the claim or occurrence at issue arose out of the gross negligence or willful misconduct of the Indemnified Parties or any one of them.

b. Company also agrees to hold harmless the City and its officers and employees for any loss or damage to persons or property, arising out of or in any way related to the Company’s use of the public space, public right-of-way, or public structures.

c. Company’s contracts with every rider shall require such persons or entities to release the City and any of its agencies, officials, officers and employees to the same extent that Company is required by this section to defend, indemnify, and hold harmless City and any of its agencies, officials, officers and employees. Company shall provide to City a copy of the rider contract.

12. Indemnification for Professional Negligence

a. If Company hires any architect, engineer or service technician in connection with design, manufacture, repair or maintenance of its Stand-up electric scooters, then Company shall indemnify and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, but only to the extent caused by the negligent acts, efforts, or omissions of such employees, agents or others.

13. Insurance

a. At all times during the term of this Agreement and any use of the public right-of-way by Company pursuant to this Agreement, Company shall maintain the insurance coverage set forth below:

- i. Commercial General Liability Insurance coverage of One Million Dollars (\$1,000,000) per occurrence with the City as an additional insured;
- ii. Workers’ Compensation Insurance coverage for all employees involved in operations pertaining to this Agreement including Employer’s Liability Insurance coverage of at least One Hundred Thousand Dollars (\$100,000) per occurrence. Company agrees to comply at all times with the provisions of the Workers’ Compensation laws of the State of Arizona; and

- iii. Insurance policies shall be written with responsible companies licensed by the State of Arizona.

b. Company shall deliver to City, prior to the Effective Date of this Agreement, copies of the insurance policies required by this Section.

c. All policies of insurance required to be purchased and maintained by Company will contain waiver provisions. The certificates of insurance will also contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

d. If the coverage afforded is cancelled or changed or its renewal is refused, Company shall give at least thirty (30) days prior written notice to City. In the event Company fails to ensure that the required insurance is procured and maintained in effect, or that City is named as an additional insured, City may order that the Agreement immediately stop and may pursue its remedies for breach of this Agreement as provided for herein and by law.

14. Advertising

a. Company shall not advertise or publish the City of Peoria's participation in or endorsement of the program in Company's marketing or promotional materials without the City's prior written consent.

b. Company shall not utilize its Stand-up electric scooters for the sale or display of third-party advertising.

15. Inclement Weather

On days where inclement weather (heavy rain) is anticipated, Company will not deploy Stand-up electric scooters in the City.

16. Environment

Company shall embrace transparency in recycling efforts and recycle or otherwise dispose of Stand-up Electric Scooters and Stand-up Electric Scooter parts in an environmentally-friendly method at the end of the Stand-up Electric Scooter life cycle.

17. Notices

All notices required by this Agreement shall be in writing sent by regular U.S. mail, postage prepaid, or delivered by courier to the following:

CITY:	City of Peoria
	City Manager
	8401 W. Monroe Street
	Peoria, AZ 85345

With a Copy to: City of Peoria
City Attorney's Office
8401 W. Monroe Street
Peoria, AZ 85345
Email: city.attorney@peoriaaz.gov

COMPANY: _____

All notices are effective on the date mailed or upon receipt if delivered by a courier. Either of the Parties may provide the other party a change of address in writing which change shall be effective ten (10) days after delivery.

18. Controlling Law

This Contract shall be construed and governed in accordance with the laws of the State of Arizona. City and Company: (1) shall submit to the jurisdiction of the state and federal courts located in Maricopa County, Arizona; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non conveniens as an objection to the location of any litigation.

19. Compliance with Laws

Company its employees, agents and contractors, including independent contractors, shall comply with all federal, state and local laws, ordinances and regulations applicable to the maintenance of the devices.

20. Default and Remedies

If Company shall be in default or breach of any provision of this Agreement, City may terminate this Agreement, suspend City's performance and invoke any other legal or equitable remedy after giving Company notice and opportunity to correct such default or breach.

21. Waiver

No consent or waiver, express or implied, by any party to this Agreement or any breach or default by any other party in the performance of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any party to complain of any act or failure to act or to declare any of the other parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. The parties reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the parties reserve the right to exercise any and all of their rights and remedies under this Agreement irrespective of any waiver granted.

22. Modification

This Agreement shall not be amended or modified without the written consent of the parties to this Agreement. This in no way prevents the City from terminating this Agreement as set forth in Section 10.

23. Headings; Construction of Agreement

The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

24. Severability of Provisions

Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

25. Assignment

Company may not assign or transfer any part or all of their obligations or interests under this Agreement without City's prior written approval. Company shall notify City, in writing, at least (30) days prior to any proposed assignment or transfer and shall provide with that notice, the proposed assignee's or transferee's written acceptance of the terms and conditions of this Agreement. Company shall not be released from its obligations under this Agreement unless and until such time as it is released, in writing, by the Director of Public Works.

26. Conflicts of Interest

Pursuant to A.R.S. 38-511, no member, official, or employee of the City will have personal interest, direct or indirect, in this Agreement, nor will any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancelation for conflicts of interest as provided by Arizona Revised Statutes Title 38, Article 8, Conflict of Interest of Officers and Employees.

27. No Partnership

It is expressly understood that the parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that

no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this Agreement.

28. Tax Compliance

Company shall be in compliance with the City's tax ordinances administered by the City's Tax Code. Company shall, upon request, furnish to City proof that it is in compliance with the City's tax ordinances administered by the City's Tax Code and not delinquent on any payment or other obligation imposed by such ordinances.

29. Further Acts

The parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement.

30. Cooperation

The parties shall cooperate in the implementation and performance of the acts, undertakings and obligations as set forth in this Agreement.

31. Binding Effect

This Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest.

32. Representations

The parties certify that they have the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with its terms.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date set forth above.

“CITY”

CITY OF PEORIA, ARIZONA,
An Arizona municipal corporation

By: _____
Cathy Carlat, Mayor

Attest:

Rhonda Geriminsky, City Clerk

Approved as to form:

Vanessa P. Hickman, City Attorney

IN WITNESS WHEREOF, the parties have entered this Agreement effective as of the Effective Date set forth above.

“COMPANY”:

BIRD RIDES, INC., a Delaware Corporation

By:

Name: _____

Its: _____

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2018, by _____, the _____ of Bird Rides, Inc., a Delaware corporation.

(Seal and Expiration Date)

Notary Public

Exhibit A – Arterial Route Map

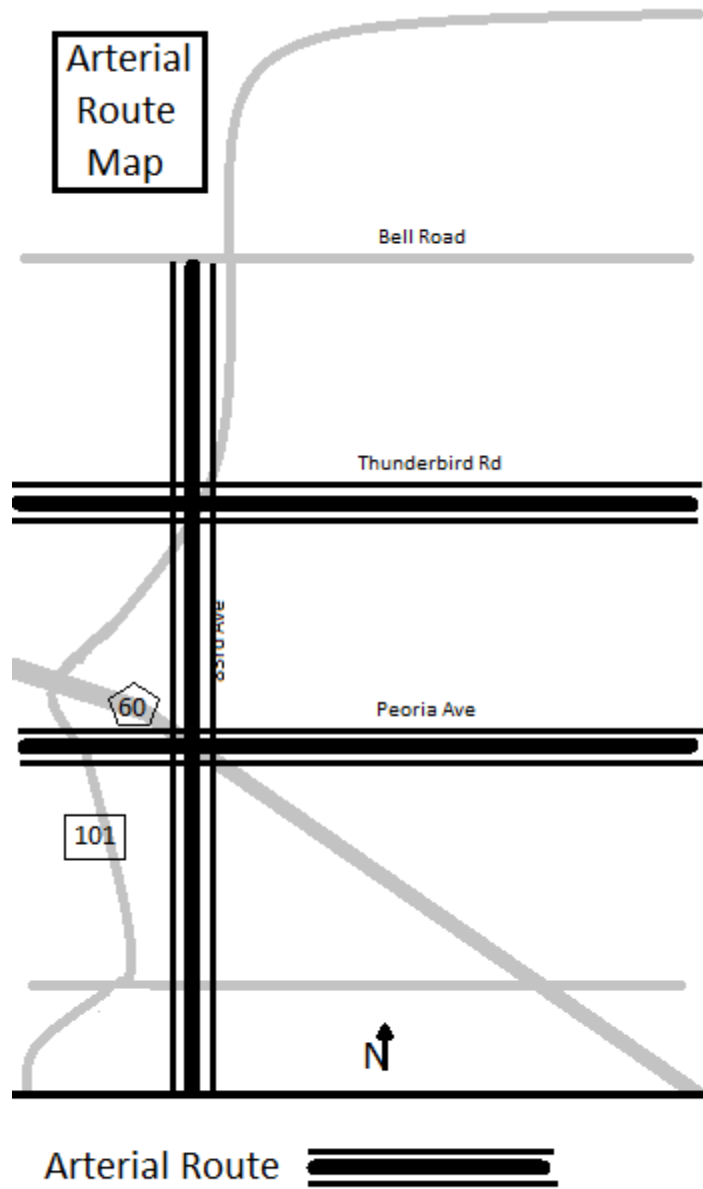


Exhibit B – Arterial Deployment Area Illustration

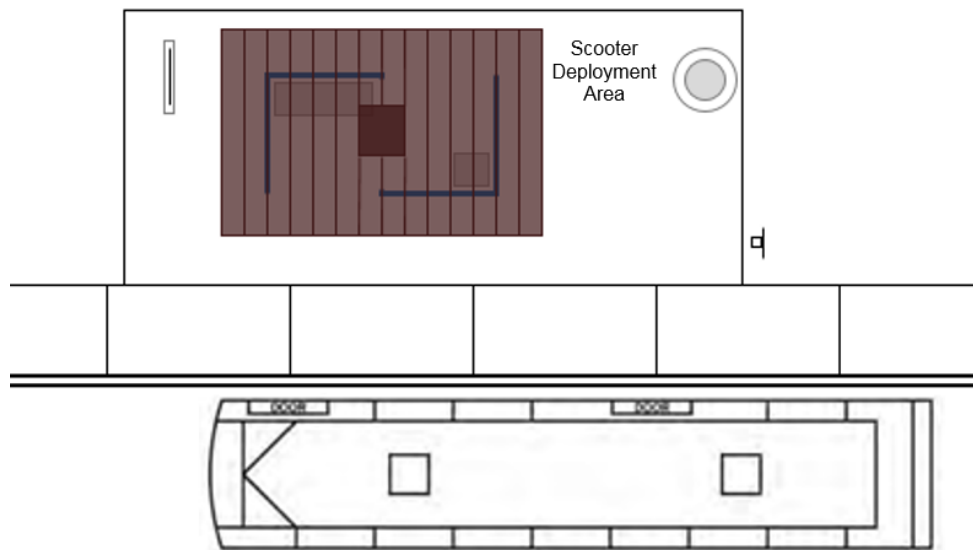


Exhibit C – Neighborhood Deployment Area Illustration

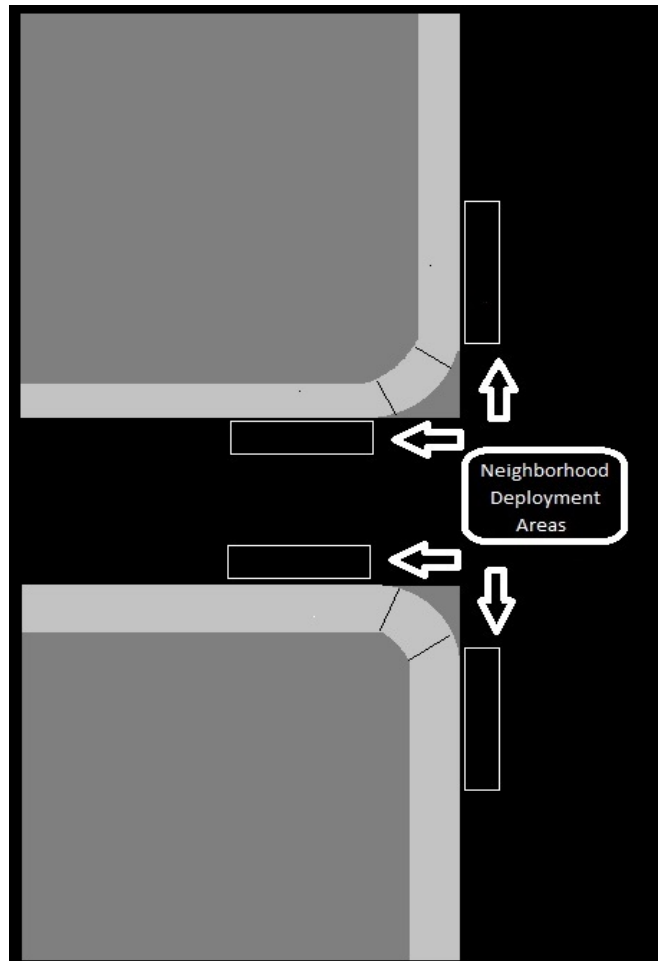


Exhibit D - AFFIDAVIT

AFFIDAVIT

STATE OF _____)
) ss.
County of _____)

I am the _____ for Bird Rides, Inc., a Delaware corporation.

1. I hereby certify that I am duly authorized and have authority to certify the data, reports and/or records submitted to the City of Peoria, Arizona pursuant to the terms of the Temporary Operating Agreement dated ____.

2. I hereby certify that the attached data, reports and/or records reflect the data required by Section 8 of the Temporary Operating Agreement dated ____, and are complete, true and accurate.

3. These records were prepared by me as _____ for the company, or persons acting under my direction, in the ordinary course of business at or near the time of the act, condition, or event.

DATED this ____ day of _____, 2019.

SUBSCRIBED AND SWORN to before me this ____ of _____, 2019.

Notary Public

My Commission expires:
