

**CITY OF EVERETT
LIME
SCOOTER SHARE PILOT PROGRAM**

THIS AGREEMENT is made and entered into as of this 9th day of May , 2019, by and between the **CITY OF EVERETT** (the “City”) and **LIME** (“Company”).

RECITALS

1. Company desires to administer a shared motorized foot scooter program in the City of Everett and upon City rights-of-way (the “scooter share pilot program”).

2. The City finds that Company’s scooter share program will allow the City and its residents and visitors to evaluate the operation and regulation of shared scooters upon City streets, through the following criteria:

a. Whether shared scooters have a positive effect on the environment by reducing motorized vehicle trips;

b. Whether shared scooters are a viable alternative for commuters and visitors;

c. Whether shared scooters have a positive effect on the health, safety, and welfare of the general public; and

d. Whether the general public, including residents and visitors, support ongoing scooter share programs within the City.

3. The scooter share pilot program will begin on May 10, 2019 and continue through September 2, 2019 (Labor Day).

4. Further, in consideration for the use of City rights-of-way for the storage and placement of shared scooters, the Company will compensate the City as described in section two of this Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Company agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to authorize Company to operate a scooter share pilot program pursuant to the terms of this agreement within the City and upon City rights-of-way from May 10, 2019 through September 2, 2019.

2. **PAYMENT.** In addition to any and all fees for permits, licenses, or other fees necessary for compliance with all applicable regulatory requirements, Company will pay the City the following:

A. A one-time fee in the amount of five hundred dollars (\$500) for the City's consideration of this Agreement.

B. A per trip fee equal to ten cents (\$0.10) times every trip initiated within the City limits. This fee will be paid quarterly upon the completion of every 3 calendar months of operations.

3. LICENSE TO USE CITY RIGHTS-OF-WAY.

A. For the duration of this Agreement, City hereby grants to Company a nonexclusive authorization to disseminate, pursuant to the terms of this Agreement, a maximum of 300 shared scooters at any one time upon the City streets to operate a scooter share pilot program. Company may request to have a higher maximum number of shared scooters upon furnishing supportive scooter usage data. The City, in its sole discretion and upon written notice to Company, may authorize a higher maximum number of shared scooters after due consideration. The City may not unreasonably deny such increases and shall provide a basis for its decisions.

B. This Agreement is intended to convey limited rights and interests only as to those rights-of-way in which the City has an actual interest. It is not a warranty of title or interest in any right-of-way, it does not provide Company with any interest in any particular location within the right-of-way, and it does not confer rights other than as expressly provided in this Agreement.

4. **TERM.** This Agreement begins on May 10, 2019, and ends upon the close of September 2, 2019. This Agreement will automatically extend for an additional 60 days subject to either party's right to terminate this Agreement pursuant to section 9.B below.

5. OBLIGATIONS OF COMPANY.

A. *Compliance with laws.* Company will operate its scooter share pilot program in conformance with all state and local laws, including chapter 46.80 of the Everett Municipal Code (Motorized Foot Scooters), permit requirements, and the terms of this Agreement.

B. *Right-of-way use permit.* Consistent with subsection 5.A above, Company must obtain a right-of-way use permit from the City prior to beginning its scooter share pilot program. Company must comply with the terms of such right-of-way permit

through the term of the permit. If language in this Agreement and the right-of-way permit conflict, the language of this Agreement shall prevail.

C. *Company point of contact.* Company must provide the City a point of contact with authority to act on Company’s behalf with regard to its scooter share pilot program and this Agreement for the duration of the scooter share pilot program. Company may change its point of contact upon written notice to the City.

COMPANY POINT OF CONTACT	CITY POINT OF CONTACT
NAME: Isaac Gross TITLE: General Manager COMPANY: Lime ADDRESS: 1516 2nd Ave, Seattle WA 98101	Tim Miller City Traffic Engineer City of Everett Public Works 3200 Cedar Everett WA 98201

D. *Meeting with the City.* Company point of contact and representatives will meet with the City within three days of written or oral request by the City to review any matters related to Company’s scooter share pilot program, including without limitation, concerns of the City, the public, or customers, compliance with this Agreement, or to share and review statistical information regarding users of the scooter share pilot program.

E. *Evaluation of scooter share pilot program.* Company agrees to participate in the evaluation of its scooter share pilot program, including without limitation, collecting and providing data the City believes will be relevant to evaluating the success of the scooter share pilot program, distributing an online City survey to Company customers and the results of such survey to the City. At a minimum, Company will provide anonymized monthly summary data on the following information regarding the scooter share pilot program:

- i. Number of customer complaints;
- ii. Summary of nature of customer complaints;
- iii. Number of reported injuries; and

The City acknowledges the data above has not been investigated by a public safety authority. All data received in such reports are anecdotal comments provided to the Company and does not reflect information provided in a formal police report.

iv. *Shared Scooter Usage Data.* Company must provide in to the City their scooter travel data including:

- 1. Shared scooter availability

2. Trip starts
3. Trip destinations; and
4. Route travelled.

F. *Temporary removal of shared scooters from rights-of-way.* Upon request of the City due to emergency, severe weather, construction, parade, public gathering, or other situation affecting the normal use of the right-of-way, Company must collect and remove from the rights-of-way all or, at the City's sole discretion, a portion of Company's shared scooters, until such time the City authorizes the shared scooters to return to the rights-of-way. If Company does not remove the shared scooters in the time prescribed by the City, the City is authorized to remove the scooters to a location of its choosing. In this event, Company may retrieve the shared scooters from the City at any time during normal business hours. The Company will pay the City within 30 days of the City issuing Company a written invoice, any and all costs incurred by the City to move the shared scooters, but in no case less than fifty dollars (\$50.00) per removed scooter.

G. *Customer education.* Company must inform its customers of applicable legal requirements governing shared scooters, including without limitation, helmet requirements, prohibitions on traveling on sidewalks, and parking or leaving shared scooters in a manner that impedes pedestrian or vehicular traffic.

H. *Shared scooter parking*

i. *Authorized parking.* Shared scooters may be parked in or upon the following areas:

1. *On Sidewalks.* Shared Scooters may be deployed within the right-of-way on sidewalks and located within the furniture zone, or just behind the sidewalk in areas with typical 5 to 6' wide sidewalks.

2. *In a Designated Scooter Corral.* Shared scooters may also be parked in a marked scooter corral officially designated with markings, signs, or both by the City or a private property owner.

ii. *Parking prohibited.* Shared scooters are prohibited from parking in or upon the following areas:

1. *Streets and Alleys.* Shared scooters shall not be parked on street pavements or alleys.

2. *Doorways and building entrances.* Shared scooters shall not be parked so as to block doorways or entrances to buildings.

3. *Driveways and Alleys Entrances.* Shared scooters shall not be parked in or so as to block driveways or alleyway approaches to streets.

4. *Curb Ramps and Pedestrian Access Routes.* Shared scooters shall not be parked so as to block curb ramps or leaving less than a 4 foot wide pedestrian access route remaining on the sidewalk.

iii. *Improperly parked shared scooters.* It is the sole responsibility of Company to remove or move shared scooters that are parked or stored in violation of the terms of this Agreement as soon as is practicable, or within two hours of receiving notice thereof, to an area authorized for shared scooter parking. Regardless of the foregoing, the City, at any time, may move shared scooters parked in violation of the terms of this Agreement to an area authorized for shared scooter parking. If the City moves any shared scooter from an unauthorized parking area, the City will charge, and Company will pay the City, fifty dollars (\$50.00) for each scooter moved by the City. The Company will pay the City within 30 days of the City issuing Company a written invoice.

I. *Shared scooter removal between dusk and dawn.* Company shall remove all shared scooters that are damaged, require recharging, or will not otherwise be fully functional and operational upon dawn the following morning from the right-of-way nightly between dusk and dawn. All shared scooters left in the right-of-way, must be parked in accordance with this Agreement and locked or prevented from being operated between dusk and dawn.

J. *Company response to misplaced or abandoned scooters.* Company must take corrective action within 4 hours for any report of a damaged, misplaced, or abandoned scooter. For the purpose of this subsection, “corrective action” means relocating a vehicle to a location compliant with all terms of this Agreement.

K. *Deployment location and methods.* Company shall deploy shared scooters geographically according to ridership demand data. Staging shall generally be in groups of 2-8 scooters.

L. *Maximum speed of shared scooters.* Shared scooters shall be limited to a maximum speed limit of 15 MPH.

M. *Excluded ride areas.* Shared scooters shall be geo-fence excluded from the Interurban Trail, the Wetmore Theatre Plaza and Everpark Plaza.

N. *Customer complaints and safety concerns.* Company shall respond within 4 hours to each customer complaint related to safety or improperly parked shared scooters. Company shall maintain an online request logging system with a portal provided for City to review. The system shall log time the request was received, nature of the request, time of Company response, time and nature of Company's resolution.

O. *Minimum shared scooters.* Company shall make a minimum of 75 shared scooters available for rental daily between dawn and dusk during pilot program, effective within 2 weeks of launch date.

P. *Identification and tracking of shared scooters.* Each shared scooter shall be clearly branded with color, Company logo, phone number, email address and website to contact with questions, complaints or problems. It is the sole responsibility of Company to track and monitor each shared scooter that is deployed onto City right-of-way.

Q. *Damage to or loss of shared scooters.* Company is solely responsible for maintaining all of its shared scooters deployed in the City in fully functioning and good working order. Company is solely responsible for any and all damage to or loss of a shared scooter and for any and all costs associated therewith. Company should make every effort to recover a lost or locate a stolen shared scooter prior to contacting law enforcement.

R. *Damage or loss to other persons or property.* Company is solely responsible for any and all damage to property or injury to person, including death, arising out of or related to scooter share pilot program and any and all costs associated therewith.

6. **INSURANCE.**

A. Company shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Company's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City.

i. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, Company shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the Company covers such employees.

ii. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$5,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

iii. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

B. The above liability policies shall be primary and noncontributory as to the City and shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Company to furnish the required insurance during the term of this Agreement.

C. Upon written request by the City, the insurer or his/her agent will furnish, prior to or during the operation of Company's scooter share pilot program, a copy of any policy cited above, certified to be a true and complete copy of the original.

D. Prior to the Company beginning operations of its scooter share pilot program, Company shall provide the City with a Certificate of Insurance and endorsements acceptable to the City Attorney evidencing the required insurance. Company shall provide the City with an endorsement naming the City of Everett, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary and noncontributory insurance on behalf of such Additional Insureds. Receipt by the City of any certificate showing less coverage than required is not a waiver of Company's obligations to fulfill the requirements.

E. Company certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Company shall comply with the provisions of Title 51 of the Revised Code of Washington before beginning the operation of its scooter share pilot program. Company shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before it begins operations of its scooter share pilot program.

F. In case of the breach of any provision of this section 6, the City may, at its option and with no obligation to do so, provide and maintain at the expense of Company, such types of insurance in the name of the Company, and with such insurers, as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Company under this Agreement or may demand Company to promptly reimburse the City for such cost.

7. **INDEMNIFICATION.** Except as otherwise provided in this section 7, Company hereby agrees to defend and indemnify the City from any and all Claims arising out of, in connection with, or incident to, to the maximum extent allowed by law, any negligent or intentional acts, errors, omissions, or conduct by Company (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Agreement, whether such Claims sound in contract, tort, or any other legal theory. Company is obligated to defend and indemnify the City pursuant to this section 7 whether a Claim is asserted directly against the City, or whether it is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. Company's duty to defend and indemnify pursuant to this section 7 is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of Company.

Company's obligations under this section 7 shall not apply to Claims caused by the sole negligence of the City. Solely and expressly for the purpose of its duties to indemnify and defend the City, Company specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Company recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this section 7: (1) "City" includes the City, the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damages, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Company employs or engages subconsultants or subcontractors, then Company shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as Company pursuant to this section 7.

8. **MODIFICATION AND TERMINATION.**

A. *Modification.* Any change, addition or other modification to this Agreement shall not be valid or binding upon any party unless such change, addition or modification is in writing and executed by an authorized representative of each party.

B. *Termination.* The City or Company has the option to terminate this Agreement at its sole discretion. In order to exercise this termination option, the City or Company shall deliver written notice of termination to the other party. This Agreement then terminates on the date that is 10 days after the date of delivery of the termination notice.

9. **DEFINITIONS.**

A. “*City right-of-way*” or “*City street*” means land within the city of Everett which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to the general public for street, highway, alley, public utility, or pedestrian walkway purposes, whether or not the land has been improved or accepted for maintenance by the city.

B. “*Furniture zone*” means a linear portion of the sidewalk corridor, adjacent to the curb that contains elements such as street trees, signal poles, street lights, bicycle racks or other street furniture. This area does not include the width of the actual curb.

C. “*Geo-fence*” means a virtual geographic boundary, defined by GPS or RFID technology, that enables software to trigger a response when a mobile device enters or leaves a particular area.

D. “*Motorized foot scooter*” means a device with two wheels that has handlebars, a floorboard that can be stood upon while riding, and is powered by an internal combustion engine or electric motor that has a maximum speed of no greater than twenty miles per hour on level ground. Motorized foot scooter does not include a motor-driven cycle, a moped, an electric assisted bicycle, or a motorcycle as those terms are defined by chapter 46.04 RCW.

E. “*Scooter share program*” means the offering of shared scooters for hire and, specifically, Company’s pilot program described in this Agreement.

F. “*Scooter share operator*” means a person offering shared scooters for hire, and, specifically for this Agreement, Company.

G. “*Shared scooter*” means any motorized foot scooter offered for hire. All shared scooters must bear a single unique alphanumeric identification visible from a distance of five feet, which shall not be obfuscated by branding or other markings, which shall be used throughout the state, including by local authorities, to identify the share scooter.

10. MISCELLANEOUS PROVISIONS.

A. *Complete Agreement.* This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement. This Agreement supersedes and replaces all other written or oral agreements thereto.

B. *Governing Law.* The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

C. *Venue.* The parties shall bring any litigation arising out of or relating to this Agreement only before the Snohomish County Superior Court.

D. *Amendment.* No amendment to this Agreement will be effective unless it is in writing and signed by the parties.

E. *Waiver.* No waiver of satisfaction of any condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

F. *Severability.* If any provision of this Agreement is unenforceable to any extent, the remainder of this Agreement (or the application of that provision to any persons or circumstances other than those as to which it is held unenforceable) will not be affected by that unenforceability and will be enforceable to fullest extent permitted by law.

G. *Notice.* For a notice under this Agreement to be valid, it must be in writing and the sending party must use one of the following methods of delivery: (A) personal delivery to the address stated below; (B) first class postage prepaid U.S. Mail to the address stated below; or (C) nationally recognized courier to the address stated below, with all fees prepaid. Either party may change its notice address or email effective on written notice to the other party of the change.

Notice to City	Notice to Company
Tim Miller City Traffic Engineer City of Everett Public Works 3200 Cedar Everett WA 98201	Lime ATTN Isaac Gross 1516 2nd Ave Seattle WA 98101

H. *Assignment.* Neither party may assign or sublet this Agreement without the written consent of the other party, which consent may be withheld at that party's sole discretion.

I. *Successors.* This Agreement shall be binding upon the parties and their respective successors and assigns.

J. *Rights and Remedies.* The rights and remedies provided in this Agreement are in addition to any other rights and remedies that may be provided by law. Only the City or Company may enforce this Agreement. Company customers may not enforce any obligation under this Agreement.

K. *Signature.* At the sole discretion of the City, the City may consent to the Company's signature on this Agreement being by email, fax, photocopy, pdf or other electronic means, in which case such Company signature will be deemed an original signature for all purposes. The City will be deemed to have given such consent effective upon execution of this Agreement by the Mayor of the City.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement.

CITY OF EVERETT

LIME

By: _____
Cassie Franklin, Mayor



Date

By: Tianying Lucci

Its: Regional General Manager

5/8/2019
Date

ATTEST:

Sharon Fuller, City Clerk
Date: _____
APPROVED AS TO FORM:

James D. Iles, City Attorney
Date: _____