

The Corporation of the Town of Tecumseh

By-Law Number 2023-057

Being a by-law to authorize and execute of an Agreement between The Corporation of the Town of Tecumseh and Bird Canada, Inc.

Whereas The Corporation of the Town of Tecumseh is desirous of entering into an agreement with Bird Canada, Inc. to implement an E Scooter pilot program to operation within the jurisdiction of the Town;

And whereas Ontario Regulation 389/19 regarding a pilot project for electric kick-scooters ("E-Scooters"), prohibits the operation of electric kick-scooters unless such operation is permitted by and in accordance with a municipal by-law;

And whereas the Town intends to give consideration to a by-law to opt-in on the Provincial Pilot Project so as to permit E-Scooters on a Highway within the Town of Tecumseh;

And whereas upon Town passage of a by-law to permit the operation of electric kick-scooters, the Town is desirous of implementing a Pilot program for a Commercial E-Scooter operator(s) to run an E-Scooter sharing program in the Town of Tecumseh ;

And whereas pursuant to the *Municipal Act, S.O. 2001, c.25* the powers of the municipality shall be exercised by by-law.

Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:

1. That the Mayor and Clerk be and hereby authorized and empowered on behalf of the Corporation of the Town of Tecumseh to execute a Service Agreement between The Corporation of the Town of Tecumseh and Bird Canada, Inc. dated the 9th of May, 2023, a copy of which Agreement is attached hereto and forms part of this by-law and to do such further and other acts which may be necessary to implement the said Agreement.
2. **Read** a first, second, third time and finally passed this 9th day of May, 2023.

Gary McNamara, Mayor

Robert Auger, Clerk

E-Scooter SUPPLY AGREEMENT

This Agreement made effective as of the 23rd day of May 2023

BETWEEN:

BIRD CANADA INC.

(the “**Service Provider**”)

-and

The Town of Tecumseh

(the “**Town**”)

WHEREAS:

- A. In January 2021, the Province of Ontario began a five-year pilot project allowing municipalities to permit and regulate the use of electric kick-style scooters (e-scooters) in municipalities that opt-in to the program.
- B. In accordance with Ontario Regulation 389/19 the Town of Tecumseh intends to opt-in via By-law and pilot the Program in accordance with Town by-laws and regulations and Ontario Regulation 389/19.
- C. The E-Scooter Service Provider has agreed to provide Services relating to the Program, at no cost to the Town; and
- D. The E-Scooter Service Provider has agreed to carry out the Services in accordance with the terms and conditions of this Agreement,

NOW THEREFORE in consideration of the premises and mutual covenants and agreements herein, the receipt and sufficiency of which are hereby acknowledged, the Town and the E-Scooter Service Provider hereby covenant and agree as follows:

1. DEFINITIONS

- 1.1. In this Agreement, the following terms when capitalized and grammatical variations thereof shall have the following meanings:
 - 1.1.1 **Agreement**” means this E-Scooter Systems Supply Agreement including all schedules referenced herein;
 - 1.1.2 **“E-Scooter”** means an electric kick-scooter which:
 - 1.1.2.1 Consists of a footboard mounted on wheels and a steering handle;
 - 1.1.2.2 Is designed to be operated from a standing position; and,
 - 1.1.2.3 While capable of being propelled by the rider, may be propelled by an electrical motor or motors;

- 1.1.3 “**Effective Date**” means the effective date of this Agreement as specified on the first page of this Agreement;
- 1.1.4 “**Furniture Zone**” means a portion of a sidewalk that buffers pedestrians from the adjacent roadway and where elements such as trees, streetlights, hydrants, parking meters, or street furniture are typically located;
- 1.1.5 “**Maintenance**” means repair and maintenance of E-scooters including:
 - 1.1.5.1 Regular maintenance;
 - 1.1.5.2 Monitoring the condition of E-scooters;
 - 1.1.5.3 Repairing damage, regardless of the cause; and
 - 1.1.5.4 Making best efforts to retrieve lost or stranded E-scooters;
- 1.1.6 “**Program**” means a E-Scooter program for the deployment of shared E scooters on Town Property to promote the goals of the Town’s transportation-related strategies;
- 1.1.7 “**Services**” means the services identified in Schedule “A”; and
- 1.1.8 “**Town Property**” means roads, sidewalks, public parks, reserve parcels, and other areas that are owned by the Town or in the Town’s direction, control and management.

2. TERMS AND AGREEMENT

- 2.1. This Agreement and its terms and conditions hereunder are expressly made conditional upon passage of a By-law by the Town permitting Town opt-in on the Pilot Project pursuant to Ontario Regulation 389/19.
- 2.2 The term of this Agreement (the “**Term**”) shall commence on the Effective Date being May 23, 2023 and shall continue until September 30, 2023, unless otherwise terminated as provided herein or extended with the consent of both parties.
- 2.3 Upon a successful assessment of the pilot project as determined by the Town, this agreement and its term may automatically renew for subsequent periods of one year each unless and until either party gives the other written notice of termination at least 30 days prior to expiration of the then current term.

3. FEES AND SECURITIES

- 3.1 No fees or securities shall be required to be paid by either party to the other hereunder except as expressly set out herein.

4. SERVICES

- 4.1 The E-Scooter Service Provider shall provide the Services as identified in Schedule “A” as same may be amended from time to time.
- 4.2 The E-Scooter Service Provider shall be entitled to engage contractors to provide the Services, however the E-Scooter Service Provider shall at all times remain ultimately responsible for provision of the Services.
- 4.3 The E-Scooter Service Provider shall provide easy visible contact information, including toll-free phone number and/or email address on each stand-up electric scooter for members of the public to make relocation requests or to report other issues with devices.
- 4.4 Stand-up electric scooters will be made available to rent 24 hours per day or for such times as may be regulated by municipal by-law.

5. EXCLUSIVE PROVIDER

- 5.1 During the Term, the E-Scooter Service Provider shall have the exclusive right to provide E-scooter rentals to the general public under the Program within the boundaries of the Town specified herein.

6. COMPLIANCE WITH LAWS

- 6.1 The E-Scooter Service Provider shall perform its obligations hereunder and ensure that all of its activities hereunder comply with all applicable laws in force from time to time, including Ontario Regulation 389/19, any by-laws passed by the Town to regulate E-Scooter usage and any and all other bylaws of the Town as may be amended from time to time.
- 6.2 The E-Scooter Service Provider shall make best efforts to ensure that all use of the E-scooters complies with all applicable laws in force from time to time, including Ontario Regulation 389/19, any by-laws passed by the Town to regulate E-Scooter usage and any and all other bylaws of the Town as may be applicable and amended from time to time.

7. PARKING REQUIREMENTS AND SERVICE AREAS

- 7.1 The E-Scooter Service Provider shall make commercially reasonable efforts, including but not limited to regular monitoring, to ensure that all E-scooters are parked according to the following:
 - 7.1.1 No E-scooter shall be parked on Town Property except within the Furniture Zone;
 - 7.1.2 No E-scooter shall be parked such that it obstructs the pedestrian path of travel along the sidewalk, vehicular traffic on roadways, or access to roadways, driveways, or buildings;

- 7.1.3 No E-scooter shall be parked such that it obstructs utility accesses, garbage bins, transit access, doorways or other accesses to buildings;
 - 7.1.4 E-scooters must be parked upright and on hard surfaces;
 - 7.1.5 Where bicycle racks or other bicycle parking areas are provided, E-scooters must be parked in those areas but not in such a way that they interfere with reasonable use of the bicycle rack; and
 - 7.1.6 No E-scooter shall be left on private property without the appropriate authorization.
- 7.2. Without restricting the preceding section and without restricting the Town's remedies for breach of this Agreement, the E-Scooter Service Provider shall remove any E scooter parked in any location contrary to the terms of this Agreement within three (3) hours of notice by telephone or email by the Town or any member of the public between the hours of 7:00am and 7:00pm or within three (3) hours the following day outside of those times.
- 7.3. If the Town determines, acting reasonably, that the parking of E-scooters contrary to this Agreement is causing undue interference with the use of Town Property or is creating safety issues, the Town may terminate this Agreement on seven (7) days' notice to the E-Scooter Service Provider. This right does not restrict the Town's remedies for breach of this Agreement.
- 7.4 The service areas applicable shall be the following unless otherwise specified by the Town:
- That area which is bound by the riverfront pathway to the north, Brighton Road to the east, Tecumseh Road and/or County Road 22 to the south and a seamless boundary to the western Town boundary to facilitate users accessing trails and pathways. E-scooters scooters shall be parked at areas mutually agreed upon by the Town and Bird Canada Inc. Initially these locations will be:
- i. Lakewood Park South
 - ii. Town Hall
- Additional parking locations may be agreed upon at a later date with no supplementary documentation required at the discretion of the Town.

8. ADVERTISEMENTS ON E-SCOOTERS

- 8.1 The E-Scooter Service Provider may sell or supply advertising space on the E Scooters and shall be solely entitled to any corresponding revenues.
- 8.2 The E-Scooter Service Provider acknowledges and agrees that the E-Scooters will be visible in public spaces and that it is important for the content of advertising in public spaces. The E-Scooter Service Provider shall ensure that the content of advertising on the E-scooters is:

- 8.2.1 In compliance with the Canadian Code of Advertising Standards;
 - 8.2.2 Complies with any corporate sponsorship or advertising policies of the Town as adopted from time to time on notice to the E-Scooter Service Provider; and,
 - 8.2.3 Refrains from directly or indirectly promoting vaping products.
- 8.3 Without restricting the preceding section and without restricting the Town's remedies for breach of this Agreement, the E-Scooter Service Provider shall remove any advertising content from the E-scooters which the Town determines shall be removed, acting reasonably, promptly upon notice from the Town and in any event no later than within seven (7) days of notice from the Town.

9. EMERGENCIES

- 9.1 In the event of an emergency which requires any steps taken in respect of the E scooters, the E-Scooter Service Provider shall comply immediately with the Town's directions, which may be provided by telephone or written notice. If it is necessary for the Town to take any steps relating to the E-scooters to respond to an emergency and it is not practical for the Town to provide directions to the E-Scooter Service Provider or the E-Scooter Service Provider fails to immediately comply, the Town may take such steps as it deems necessary on the E-Scooter Service Provider's behalf.

10. DATA REPORTING

- 10.1 The E-Scooter Service Provider will provide access to the following data to the Town:
- 10.1.1 The number of trips taken on a daily basis;
 - 10.1.2 A breakdown of the locations of trip starts and ends;
 - 10.1.3 Average trip duration;
 - 10.1.4 Average trip length;
 - 10.1.5 Total number of users within a given time period; and
 - 10.1.5 Such other information as the Town may request, acting reasonably.

11. INDEMNITY

11.1 The E-Scooter Service Provider shall indemnify and hold harmless the Town, including the Town's employees, officials, managers, insurers, contractors, agents and servants, from and against all actions, claims, damages, causes of action, suits, fines, penalties, charges or costs claimed or brought in relation to the Services, the E-scooters or the use thereof, the E-Scooter Service Provider's exercise of its rights or obligations hereunder, or any breach of this Agreement, negligence or willful misconduct by the E-Scooter Service Provider, the E-Scooter Service Provider's employees, officers, managers, contractors, agents, customers, or any person for whom the E-Scooter Service Provider is responsible at law, such indemnification to include costs on a solicitor and own client full indemnity basis. Such indemnity shall not apply to the extent that such actions, claims, damages, causes of action, suits, fines, penalties, charges or costs are a direct result of the breach of this Agreement, negligence or willful misconduct by the Town or any person for whom the Town is responsible at law.

12. INSURANCE

- 12.1 The E-Scooter Service Provider shall maintain throughout the Term, at its own cost and expense and with insurance providers legally entitled to provide insurance in Ontario and reasonably satisfactory to the Town:
- 12.1.1 Commercial general liability insurance on an occurrence form with limits of not less than five million dollars (\$5,000,000.00) per occurrence; and,
 - 12.1.2 Cyber liability insurance coverage with limits of not less than two million dollars (\$2,000,000.00) per occurrence. Such insurance coverage shall include the Town as an additional insured and shall include a waiver of subrogation.
- 12.2 The E-Scooter Service Provider shall maintain throughout the Term, at its own cost and expense, workers' compensation coverage as required by law.
- 12.3 The E-Scooter Service Provider shall provide the Town with certificate of insurance confirming that the E-Scooter Service Provider carries insurance as required pursuant to this Agreement within three (3) days of the Effective Date and at any time during the Term upon request by the Town.
- 12.4 The E-Scooter Service Provider shall notify the Town at least thirty (30) days prior to cancellation, non-renewal or material change to any insurance policy required to be carried pursuant to this Agreement.

- 12.5 The E-Scooter Service Provider shall ensure that any contractors engaged by the E-Scooter Service Provider in respect of this Agreement also carry all insurance required to be carried by the E-Scooter Service Provider hereunder.

13. TERMINATION

- 13.1 In addition to the Town's right to terminate this Agreement in the event of a breach by the E-Scooter Service Provider, either party may terminate this Agreement on thirty (30) days' notice to the other.
- 13.2 At the expiry or termination of this Agreement, the E-Scooter Service Provider shall remove all E-scooters from Town Property.

14. NOTICES

- 14.1 Except as otherwise specified in this Agreement, all notices, reports, demands, requests, agreements, consents, and approvals shall be in writing and shall be sufficiently given if delivered by email or hand delivery to the parties at the following addresses:

14.1.1 To the Town:
The Town of Tecumseh
917 Lesperance Road
Tecumseh ON N8N 1W9
Attention:
Email:

14.1.2 To the E-Scooter Service Provider:
Bird Canada Inc.
161 Bay Street, Suite 2300
Toronto, ON, M5J 2S1
Attention:
Email:

or such other address as the parties may select on notice to the other.

- 14.2 Materials provided to the parties at the above addresses shall be deemed the day of sending or delivery if sent or delivered before 4:00pm on a business day, Tecumseh time, or the next business day if delivered after that time or on a weekend or holiday.

15. GENERAL

- 15.1 This Agreement constitutes the entire agreement between the parties with respect to the matters set out herein and shall not be amended except with the written agreement of both parties. This Agreement supersedes any prior or concurrent negotiations, representations, agreements or understandings between the parties with respect to the matters set out herein, whether verbal, written or implied.
- 15.2 Nothing in this Agreement shall be taken to create or imply any partnership, joint venture agreement, employment agreement, or agency agreement.
- 15.3 The E-Scooter Service Provider acknowledges that the Town is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended (“FOIP”), and that any information provided to the Town in connection with this Agreement is subject to disclosure in accordance with the requirements of FOIP.
- 15.4 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.
- 15.5 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.
- 15.6 Any failure by a party to insist upon or enforce performance by the other 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.
- 15.7 The indemnity, intellectual property, and other terms of this Agreement which by their nature are intended to survive the expiry or termination of this Agreement shall survive such expiry or termination for a period of one (1) year.
- 15.8 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, labor disputes, epidemic, pandemic (including the Covid-19 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.
- 15.9 This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein and the parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario.

15.10 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.

[Remainder of page deliberately blank, signatures on following page]

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

SIGNED, SEALED AND DELIVERED

TOWN OF TECUMSEH

By: _____

Name: Gary McNamara

Mayor

By: _____

Name: Robert Auger

Clerk

I/We have the authority to bind the Town of Tecumseh.

BIRD CANADA INC

By: _____

Name: Austin Marshburn

*Senior Director of Government Partnerships
Bird Canada Inc.*

I have the authority to bind Bird Canada Inc.

**BY-LAW 2023-057
SCHEDULE A**

The pilot would provide that the Town of Tecumseh will grant access to sidewalks and other agreed upon municipal lands for carrying out the pilot program on an exclusive basis in accordance with Town by-laws and governed by the rules applying to bicycles and applicable provincial laws.

Bird Canada, Inc. will:

- Provide the pilot program at no cost to the Town of Tecumseh and will provide proof of insurance coverage exclusively for the operation of stand-up E Scooters including:
 - (a) Commercial General Liability Insurance coverage with a limit of no less than \$2,000,000.00 aggregate;
 - (b) Automobile Insurance coverage with a limit of no less than \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate;
- Provide an education plan to educate customers on user services, proper riding behaviour, how to operate and park devices, traffic and helmet laws;
- Maintain all devices in a safe, functional state and will inspect parking stations at least once per day to ensure that devices identified as damaged, unsafe or non-functioning will be removed from public property and that the devices and parking stations are kept in safe, tidy and sanitary conditions;
- Respond to pedestrian obstructions and safety concerns within 4 hours of receiving notification and should communicate by text or alert to let customers know if a device is parked in a non-permitted area described below:
 - In a 2-meter pedestrian zone (sidewalk)
 - Blocking a sidewalk, vehicle parking space, travelled portion of a roadway, curb ramp or a pedestrian push-button for a traffic signal
 - Within 0.5 m of trees or shrubs or within a designated bus stop zone (within 10m of a bus stop sign)
- Tipped devices should be upright within 1 hour;
- Ensure that devices which have traversed the boundary between Tecumseh and Windsor and parked in Windsor are relocated/rebalanced to the Town of Tecumseh within 24 hours;
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SCHEDULE A
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- Be responsible for any and all costs associated with operating the pilot program in 2023 in addition to any other requirements that the Town may reasonably specify for the program in 2023.
- Pricing is \$1.15 to unlock + \$0.42/min. (subject to change upon notice and changes to Bird pricing policy;
- Other aspects include an Equity Pricing Program and Ride Pass Program, applications and criteria available through the Bird Canada mobile app.
- Fees are managed by Bird Canada through their mobile app and are not managed by the Town of Tecumseh.