

NON-DISCLOSURE AND RESEARCH AGREEMENT

THIS NON-DISCLOSURE AND RESEARCH AGREEMENT (this "Agreement") is made effective **DATE**, by and between the **CITY NAME**, a municipal corporation of the **STATE NAME** ("STATE") and **UNIVERSITY NAME** ("RESEARCH ORGANIZATION"). This Agreement may refer to the CITY and RESEARCH ORGANIZATION individually as a Party, or collectively as the Parties.

Unless terminated sooner under the provisions of this Agreement, the term of this Agreement shall be from **DATE** ("Effective Date") through **DATE**.

RECITALS

- A. The CITY is responsible for managing the shared electric scooter ("Shared Scooter") program in the CITY.
- B. The research project ("Project") contemplated by this Agreement is of mutual interest and benefit to the Parties.
- C. In furtherance of the Project to be undertaken by RESEARCH ORGANIZATION, the CITY agrees to disclose certain Confidential Information to RESEARCH ORGANIZATION that is considered to be confidential, proprietary and/or a trade secret to the CITY and/or to providers of Shared Scooters.
- D. In order to protect the confidentiality of such Confidential Information and in consideration of the mutual promises set forth herein, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The Recitals set forth above are hereby incorporated into this Agreement as though set forth in full herein.
2. **Definitions**

A. Aggregated Data means data has been generalized to remove information that could potentially be used to identify individual Shared Scooter trips.

B. Confidential Information. The term "Confidential Information" includes, but is not limited to, any and all tangible or intangible information that is or has been received by RESEARCH ORGANIZATION from the CITY that is:

- (i) Marked "Confidential" or "Proprietary" or bears a mark of similar import; or
- (ii) Orally disclosed information or information in an intangible form that (a) is contemporaneously identified as Confidential Information and a written statement describing such oral information or information in intangible form and identifying it as Confidential Information is delivered to RESEARCH ORGANIZATION within thirty (30) calendar days after disclosure; or (b) from all relevant circumstances, a reasonable person would understand that such information is confidential and proprietary to the CITY or its licensors; or
- (iii) Information that is not generally known, to the public or others who can obtain economic value from its disclosure, misappropriation or use, including without limitation non-public business, financial, commercial and technical data or end user or customer data, that is provided or made available to RESEARCH ORGANIZATION pursuant to this Agreement; or
- (iv) Any information that identifies specific Shared Scooter providers in Data; or

- (iii) Information that would be exempt from disclosure under **STATE NAME's** Public Records laws.

C. Data means all data related to the CITY's Shared Scooter program.

D. Human Subjects Review Protocol means the rules and procedures set forth in the attached **Exhibit D**.

E. Institutional Review Board (IRB) means the administrative body that reviews and approves the Human Subjects Review Protocol.

3. **Proposed Work.**

A. RESEARCH ORGANIZATION shall perform the work ("Work") as described in **Exhibit A**, Scope of Work attached hereto. RESEARCH ORGANIZATION shall provide reports on the progress of the Work as required in the Scope of Work, **Exhibit A**.

B. The Project will be under the direction and supervision of the University representative identified in **Exhibit A**.

C. No fees or reimbursements shall be paid by the CITY to RESEARCH ORGANIZATION for the performance of the Work.

4. **Maintenance of Confidentiality.** RESEARCH ORGANIZATION shall treat as confidential any Confidential Information that has been made known or available to RESEARCH ORGANIZATION or that RESEARCH ORGANIZATION has received, learned, heard or observed; or to which RESEARCH ORGANIZATION has had access. RESEARCH ORGANIZATION obligates itself in good faith not to disclose the Confidential Information in order to maintain exemptions from disclosure under the **STATE NAME** Public Records Law. RESEARCH ORGANIZATION shall use Confidential Information exclusively for the CITY's benefit and in furtherance of the Work provided by RESEARCH ORGANIZATION. RESEARCH ORGANIZATION shall protect the confidentiality of Confidential Information using at least the same degree of care to avoid disclosure as RESEARCH ORGANIZATION employs with respect to protecting its own proprietary and confidential information, but not less than reasonable care. RESEARCH ORGANIZATION shall follow Human Subject Review Protocols outlined by its Institutional Review Board and attached hereto as **Exhibit D** to protect the Confidential Information.

5. **Excluded Information.** Confidential Information shall not include information that:

- (a) Is information that was in the possession of RESEARCH ORGANIZATION prior to its receipt from the CITY without an obligation to maintain its confidentiality;
- (b) Is or becomes generally known to the public without violation of this AGREEMENT;
- (c) Is obtained from a third party without an obligation to maintain its confidentiality;
- (d) Is independently developed by RESEARCH ORGANIZATION without use of the Confidential Information;
- (e) Is disclosed by RESEARCH ORGANIZATION with the prior written consent of the CITY; or
- (f) Is disclosed pursuant to Section 6.

6. **Public Records Law.**

A. The Parties agree that Confidential Information may constitute the trade secrets of the CITY and/or the CITY's licensors and may be exempt from disclosure pursuant to ORS 192.345(2) and ORS 646.461(4).

B. The Parties agree that the CITY is providing such Confidential Information voluntarily to RESEARCH ORGANIZATION for use in developing the CITY's governmental policies and the Confidential Information may be exempt from disclosure pursuant to ORS 192.355(4).

C. The Parties further agree that Confidential Information is not required to be submitted by law.

D. The Parties understand that third persons may claim that Confidential Information possessed by RESEARCH ORGANIZATION is by virtue of that possession a public record and subject to disclosure pursuant to **STATE NAME** law. The Parties agree that if such claim is made RESEARCH ORGANIZATION shall immediately notify the CITY of the claim. CITY may, at its own cost, defend such claim and RESEARCH ORGANIZATION agrees to reasonably cooperate with the CITY in such defense. RESEARCH ORGANIZATION agrees not to disclose any such proprietary or Confidential information in response to any such claim until either a) CITY fails to contest the release in advance of RESEARCH ORGANIZATION's statutory deadline to release the information; or b) a final unappealable order from a court or agency having authority to issue such order shall have been issued. Any such disclosure shall be the minimum necessary to comply with a) the requested information and b) the requirements of the final order.

7. **Data Security Requirements.** RESEARCH ORGANIZATION shall comply with all CITY information confidentiality and data security rules, regulations, standards, practices, and procedures set forth in **Exhibit B**, Data Security Requirements, with respect to transfer, communication or dissemination of Confidential information on any media (including, but not limited to, email, paper, tape, computer memory, disk, CD, portable disk, thumbscrew, flash drives, and cloud storage systems).
8. **Disclosure of Confidential Information.** When RESEARCH ORGANIZATION receives Confidential Information, it shall restrict the disclosure, dissemination and availability of such Confidential Information to its directors, officers employees, and students who: (a) have a demonstrable need to know such Confidential Information for purposes of carrying out the Work; (b) have agreed in writing to obligations of confidentiality by signing the form of Confidentiality Agreement attached to this Agreement as **Exhibit C**; and (c) have been identified in writing to the CITY prior to receiving access to the Confidential Information (collectively, the "Permitted Personnel"). RESEARCH ORGANIZATION shall instruct its Permitted Personnel with regard to the restrictions on use of Confidential Information as well as this Agreement generally and shall require the Permitted Personnel to sign the form of Confidentiality Agreement set forth in **Exhibit C**.
9. **Prohibitions.** RESEARCH ORGANIZATION shall not:
 - (a) Use any Confidential Information received by it in any way detrimental to the CITY or the CITY's licensors.
 - (b) Disclose or make available to any third party, including but not limited to consultants and other agents of RESEARCH ORGANIZATION, any Confidential Information received by it without prior written consent of the CITY;
 - (c) Reproduce or copy the Confidential Information without the prior written consent of the CITY;
 - (d) Use any Confidential Information received by it to develop a product or service for sale;
 - (e) Use any Confidential Information received by it to develop products or services which are similar to or imitates it based on the Confidential Information; or
 - (f) Otherwise use the Confidential Information received by it for any purpose other than the Work, as described in **Exhibit A**, or for its own benefit or the benefit of another.
 - (g) Use the Data for any purpose other than that specifically permitted in this Agreement.
 - (h) Circumvent any access restrictions relating to the Data.
 - (i) Use the Data in any unlawful manner or for any unlawful purpose.
10. **Rights to Confidential Information, No License.** All Data received by RESEARCH ORGANIZATION shall remain the sole and exclusive property of the CITY or the City's licensors, as applicable. The Parties recognize and agree that nothing contained in this Agreement shall be construed as granting to the other any rights, by license or otherwise, to any of the Data.

Copyright and Inventions. Copyright in work product ("Work Product") created by RESEARCH ORGANIZATION under this Agreement will vest in RESEARCH ORGANIZATION. Notwithstanding the

foregoing, all Data will remain the exclusive property of the CITY or its licensors and all Pre-existing Intellectual Property Rights of the CITY or its licensors incorporated into the Work Product will remain the exclusive property of the CITY or its licensors. For purposes of this Agreement, "Pre-Existing Intellectual Property Rights" means any invention, development, concept or other proprietary information developed, obtained, licensed or acquired by the CITY or its licensors prior to the Effective Date of this Agreement or that the CITY or its licensors develop, obtain, license or acquire independently of this Agreement.

RESEARCH ORGANIZATION hereby grants CITY a worldwide, non-exclusive, royalty free, irrevocable, perpetual, transferable license, with the right to sublicense, to use, modify, disclose, display, perform, copy, distribute and prepare derivative works of the Work Product.

It is anticipated that there will be no patentable inventions made under this Agreement. However, in the event that RESEARCH ORGANIZATION creates, conceives or develops any patentable inventions ("Inventions") as a result of performing the Work under this Agreement, RESEARCH ORGANIZATION shall promptly disclose the Inventions to the CITY. RESEARCH ORGANIZATION hereby grants the CITY a worldwide, non-exclusive, royalty free, irrevocable, perpetual license to use, disclose, display and perform the Inventions for governmental purposes.

11. **Publication by RESEARCH ORGANIZATION.** Subject to the confidentiality provisions of this Agreement, RESEARCH ORGANIZATION may publish or publicly disclose the results of the Work. Prior to submission for publication or public presentation of a manuscript or abstract describing the results of the Work, RESEARCH ORGANIZATION shall send a copy of the proposed manuscript or abstract to the CITY. The CITY shall have thirty (30) days to review and approve the proposed manuscript or abstract. Furthermore, RESEARCH ORGANIZATION may only publish data resulting from the Work in Aggregated Data form.
12. **No Warranty.** THE DATA IS PROVIDED "AS IS," AS AVAILABLE (AT THE CITY'S SOLE DISCRETION) AND AT RESEARCH ORGANIZATION'S SOLE RISK. TO THE MAXIMUM EXTENT PROVIDED BY LAW, CITY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CITY FURTHER DISCLAIMS ANY WARRANTY THAT THE DATA WILL MEET RESEARCH ORGANIZATION'S NEEDS OR WILL BE OR CONTINUE TO BE AVAILABLE, COMPLETE, ACCURATE, TIMELY, SECURE, OR ERROR FREE.
13. **Return.** Upon the CITY's request, RESEARCH ORGANIZATION shall, at CITY's option, either promptly destroy or return all Confidential Information along with all copies thereof. It is also agreed that all information of the CITY that may not constitute Confidential Information shall be the exclusive property of the CITY or its licensors. RESEARCH ORGANIZATION may retain one copy of any information that is required under **STATE NAME** Public Records and state archiving laws. At no time shall RESEARCH ORGANIZATION possess such information longer than required by law. At CITY's request, RESEARCH ORGANIZATION shall provide written confirmation of its compliance with this section.
14. **Copies.** RESEARCH ORGANIZATION agrees not to reproduce or make copies of any Confidential Information without the prior written consent of the CITY and that any such copies made shall be destroyed or returned to the CITY as specified in Section 14 above.
15. **AGREEMENT Supplements Other Rights and Remedies.** Notwithstanding any term or provision hereunder to the contrary, this Agreement is supplementary to any and all rights and remedies the Parties have or may have in the future under applicable local, state and federal law. No provision or term of this Agreement shall be deemed to supplant or be deemed a waiver of the Parties' rights and remedies under applicable local, state and federal law.
16. **Termination**
The following conditions apply to termination of this Agreement:
 - A. The Parties, by mutual written agreement, may terminate this Agreement at any time.
 - B. The CITY, on thirty (30) calendar days' written notice to RESEARCH ORGANIZATION may terminate this Agreement for any reason deemed appropriate in its sole discretion.

17. **Remedies for Breach.**
- A. RESEARCH ORGANIZATION acknowledges that any publication or disclosure of Confidential Information to others may cause immediate and irreparable harm to the CITY or its licensors. The Parties agree that money damages would be inadequate to remedy any breach of this Agreement. As a result, the CITY shall be entitled to seek, and a court of competent jurisdiction may grant, specific performance and injunctive or other equitable relief as a remedy for any breach of this Agreement. Such remedy shall be in addition to all other remedies, including money damages, at law or in equity.
- B. RESEARCH ORGANIZATION agrees to instruct all Permitted Personnel on these obligations with respect to use, copying, protection, and confidentiality of the Confidential Information and to provide the CITY with signed Confidentiality Agreements, in the form of **Exhibit B**, for all RESEARCH ORGANIZATION staff assigned to do Work. If RESEARCH ORGANIZATION should publish or disclose such Confidential Information, the CITY shall immediately be entitled to seek temporary or permanent injunctive relief or any other remedies to which they are entitled under law or equity without requiring a cure period. RESEARCH ORGANIZATION shall indemnify, defend, and hold harmless the CITY from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) caused by or arising from RESEARCH ORGANIZATION's failure to protect Confidential Information. Violation of information confidentiality shall be considered a material breach of this Agreement. RESEARCH ORGANIZATION's obligations under this paragraph will survive the termination of this AGREEMENT.
18. **Limitation of Liability and Covenant Not to Sue.** CITY and its respective directors, officers, employees and agents will not be liable to RESEARCH ORGANIZATION or anyone else for any loss or damage, including any direct, indirect, incidental, and consequential damages, whether foreseeable or not, based on any theory of liability, resulting in whole or in part from RESEARCH ORGANIZATION's access to or use of the Data. RESEARCH ORGANIZATION will not bring any claim for damages against any of those persons or entities in any court or otherwise arising out of or relating to this Agreement, the Data, or RESEARCH ORGANIZATION's use of the Data. In any event, if RESEARCH ORGANIZATION were to bring and prevail on such a claim, CITY's maximum liability is limited to \$100 in the aggregate even if they had been advised of the possibility of liability exceeding that amount.
19. **Indemnification.** RESEARCH ORGANIZATION shall defend, indemnify and hold harmless the CITY and its directors, officers, employees and agents against any and all losses, liability, and damages (including reasonable attorneys' fees and costs imposed in any judgment or order) which may arise out of or relate to (i) any cause or event relating to RESEARCH ORGANIZATION's use or possession of the Data, including any breach of any of the obligations, representations, warranties or covenants of Confidentiality in this Agreement.
20. **Amendment and Waiver.** No amendment to this Agreement shall be valid and binding unless such amendment is agreed to in writing and signed by an authorized officer of each of the Parties. No waiver by a Party of any breach by another Party of any condition or provision contained in this Agreement to be performed by such other Party shall be deemed a waiver of a similar or dissimilar condition or provision at the same or any prior or subsequent time. Any waiver must be in writing and signed by the Party to be charged with the waiver. No delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
21. **Severability.** In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law.
22. **Successors and Assigns.** This Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall not be construed to confer any right, interest or benefit in favor of any other person or entity. Notwithstanding the foregoing, no Party shall be entitled to assign or transfer all or any of its rights, benefits and/or obligations under this Agreement without the prior written consent of the other Parties.

23. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.
25. **Survival.** All obligations relating to confidentiality, indemnification, representations and warranties, proprietary rights, and limitation of liability shall survive the termination or expiration of this Agreement and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between RESEARCH ORGANIZATION and the CITY. Nothing in this Agreement shall alter, modify, or supersede the content and survival of such provisions, except as otherwise expressly agreed to in writing by the Parties and with the prior approval of the CITY Attorney's Office.

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26. **Entire Agreement.** This Agreement contains the entire understanding and agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, whether written or oral, between the Parties concerning the subject matter hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

The City: CITY NAME	RESEARCH ORGANIZATION: RESEARCH ORGANIZATION
By:	By:
Name: Chris Warner	Name:
Title: Director	Title:
Date:	Date:
Legal Approval as to Form	Legal Approval as to Form
By:	By:
Name:	Name:
Title: Deputy City Attorney	Title:
Date:	Date:

EXHIBIT A

SCOPE OF WORK

1. Description of Services

University Representative

2. Timeline

3. Status Reports

4. Annual Meeting to Review Research Agreements

EXHIBIT B

DATA SECURITY REQUIREMENTS

1. **Minimum Requirements.** RESEARCH ORGANIZATION shall employ procedures for safeguarding the Confidential Information subject to the Human Subject Research Protocols of its Institutional Review Board which should include, at a minimum:
 - a. Maintain on RESEARCH ORGANIZATION's premises a secure location in which any and all Confidential Information shall be stored, where such storage may include electronic storage;
 - b. Electronically stored Confidential Information shall be stored on no more than two desktop computers that are password protected;
 - c. Confidential Information shall not be transferred to or stored on any network, including a cloud network;
 - d. Confidential Information shall not be transferred to or stored on laptop computers or portable storage devices such as USB keys and external hard drives.

2. **Additional Requirements.**
 - a. Within 60 days of the Effective Date of this Agreement and every six (6) months thereafter, RESEARCH ORGANIZATION shall provide the CITY a list of Permitted Personnel (as defined in Section 8 of this Agreement) along with the research question(s) undertaken for the Project by each Permitted Personnel.
 - b. Each of the Permitted Personnel must complete and sign the Confidentiality Agreement in the form of **Exhibit C** prior to having access to the Confidential Information.
 - c. RESEARCH ORGANIZATION and the CITY will meet, at a minimum, on an annual basis to review and update, as necessary, the data security requirements contained herein.

EXHIBIT C

CONFIDENTIALITY AGREEMENT

NAME:

DEPARTMENT

PHONE:

EMAIL:

PROJECT PURPOSE AND TYPE OF DATA ANALYSIS:

As a result of my employment with **UNIVERSITY NAME** (“RESEARCH ORGANIZATION”), I will be providing services to the **CITY NAME** (“City”) pursuant to the Non-Disclosure and Research Agreement between the City and RESEARCH ORGANIZATION dated **[EFFECTIVE DATE]** (the “Agreement”) and may be the recipient of certain confidential information relating to the City’s Shared Scooter program.

The term “Confidential Information” includes, but is not limited to, any and all tangible or intangible information that is or has been received by RESEARCH ORGANIZATIONS from the City that is:

- (i) Marked “Confidential” or “Proprietary or bears a mark of similar import; or
- (ii) Orally disclosed information or information in an intangible form that (a) is contemporaneously identified as Confidential Information and a written statement describing such oral information or information in intangible form and identifying it as Confidential Information is delivered to RESEARCH ORGANIZATION within thirty (30) calendar days after disclosure; or (b) from all relevant circumstances, a reasonable person would understand that such information is confidential and proprietary to the CITY; or
- (iii) Information that is not generally known, to the public or others who can obtain economic value from its disclosure, misappropriation or use, including without limitation non-public business, financial, commercial and technical data or end user or customer data, that is provided or made available to RESEARCH ORGANIZATION pursuant to this Agreement; or
- (iv) Any information that identifies specific Shared Scooter providers in Data; or
- (iv) Information that would be exempt from disclosure under **STATE NAME**’s Public Records laws.

It is imperative to the City that any such Confidential Information disclosed to me remain strictly confidential.

1. I will be responsible for not disclosing Confidential Information by any means. I am responsible for the safekeeping of such Confidential Information and for the handling of materials and

documents embodying Confidential Information so as to prevent their disclosure to unauthorized persons.

2. I have been provided a copy of the Agreement between the City and RESEARCH ORGANIZATION. I have had an opportunity to ask questions. I understand my responsibility to not divulge Confidential Information.
3. I acknowledge I am responsible for the protection of all such Confidential information in my possession no matter how it is acquired.
4. I will use the Confidential Information solely for the purpose of providing services to the City under the Agreement.
5. I will discuss Confidential Information only with employees of RESEARCH ORGANIZATION who have a business need to know and who have been approved to receive Confidential Information by the City.
6. After termination of my employment, I shall not disclose to anyone any Confidential Information of any kind obtained by me as a result of my work for the City under the Agreement without the authorization of the City's Director of the Bureau of Transportation or designee.
7. I will immediately notify my supervisor of any circumstances that cause me to believe the confidential nature of the work with which I am familiar or responsible for may be compromised.
8. This Confidentiality Agreement does not prevent me from bringing forward complaints disclosing fraud and impropriety.

My signature below acknowledges I have received, read and had an opportunity to ask clarifying questions regarding this Confidentiality Agreement.

I understand that any violation of this Confidentiality Agreement may result in disciplinary action up to and including termination of my employment.

I HAVE REVIEWED THE HUMAN SUBJECTS REVIEW PROTOCOL AND THE NON-DISCLOSURE AND RESEARCH AGREEMENT BETWEEN THE CITY NAME AND RESEARCH ORGANIZATION AND AGREE TO THE CONDITIONS SET FORTH IN EACH.

AGREE (please check) _____

DISAGREE (please check) _____

SIGNATURE _____

DATE _____

SUPERVISOR NAME _____

SUPERVISOR SIGNATURE _____

DATE _____

