



## *Engineering Department*

**DATE:** March 16, 2021  
**FROM:** Gabe Schell, City Engineer  
**ITEM:** Bird Scooters – Memorandum of Understanding

### **REQUEST**

Consider approval of Memorandum of Understanding with Bird Rides, Inc to operate stand-up electric scooter sharing within the City of Bismarck.

Please place this item on the 3/23/2021 City Commission meeting agenda.

### **BACKGROUND INFORMATION**

Bird Rides, Inc has approached the City of Bismarck to operate a stand-up electric scooter rental program within the city. The scooters would operate on the street similar to a bicycle and would be enabled via a geofence to operate in specific areas within the community. Scooters are available to rent between 4 AM to Midnight via a smartphone app and all users are required to be 18 years of age or over. Helmet use is not required but is encouraged and incentivized by Bird Rides, Inc. When not in use, it is likely that scooters would be located within the public rights of way but would be stored outside of ADA required pedestrian access routes.

A memorandum of understanding (MOU) was drafted to note the terms and conditions associated with this proposal. The MOU would expire on December 31, 2021 and can be terminated with 30 days written notice.

A representative from Bird Rides will present their proposal as well as be available for any questions.

### **RECOMMENDED CITY COMMISSION ACTION**

Direction on request for Memorandum of Understanding with Bird Rides, Inc to operate stand-up electric scooter sharing within the City of Bismarck.

### **STAFF CONTACT INFORMATION**

Gabe Schell, PE | City Engineer, 355-1505 or [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

## Memorandum of Understanding

City of Bismarck ("City"), a municipal corporation located 221 North 5<sup>th</sup> Street, Bismarck, North Dakota 58501 will permit Bird Rides, Inc. ("Vendor"), a Delaware Corporation located at 406 Broadway Ave. #369, Santa Monica, CA 90401 to provide services under the following terms and limitations. This agreement shall remain in effect until December 31, 2021 unless terminated as set forth below.

### AGREEMENT

- 1) Scope: This Agreement and its terms apply to any proposed deployment of Stand-up electric scooter sharing systems within the City's jurisdictional boundaries. No person shall deploy a Stand-up electric scooter sharing system in the City in violation of this Agreement.
- 2) Stand-up electric scooters shall be governed by the rules applying to bicycles and are to be ridden on streets and not on sidewalks except as they cross a street or bike path, and where available, in bike lanes and bike paths. Stand-up electric scooters are to stay to the right of street lanes and to offer the right of way to bicycles in bike lanes and on bike paths. Users of Stand-up electric scooters shall park scooters upright outside of the pedestrian pathway of sidewalks or in such a manner as to impeded with the reasonable use of any commercial window display or access to or from any building. Users of Stand-up electric scooters shall be 18 or older. Users of Stand-up electric scooters who violate these provisions may be fined by City consistent with fines for cyclists.
- 3) Vendor shall provide easily visible contact information, including toll-free phone number and/or e-mail address on each Stand-up electric scooter for members of the public to make relocation requests or to report other issues with devices. The number or e-mail address shall have a response time of not more than 3 hours of receiving notice between the hours of 7:00am and 7:00pm or within three hours the following day outside of those times.

- 4) Hours of operation: Stand-up electric scooters will only be available to rent from 4 a.m. to 12:00 a.m. (local time).
- 5) Vendor shall exercise care in deploying and activating the stand-up electric scooters during inclement weather and will remove from the public right of way and store off site all stand-up electric scooters during snow events and limited use. On days where snow is anticipated, Vendor will halt its operations completely and remove its scooters from City rights-of-way. Vendor agrees to hold the City harmless for damage to scooters caused by City's snow removal operations and for any damage caused to City vehicles by improper location and removal of scooters.
- 6) Vendor shall coordinate within reason with the City regarding geofenced areas of operations for the purpose of eliminating or reducing speed conflicts between the Stand-up electric scooters and other vehicles and pedestrians.
- 7) Vendor shall provide a minimum of 100 vehicles within the City at launch.
- 8) Safety Education: Vendor will provide materials, videos, signage to promote safe riding and educate riders on rider responsibilities and encourage safe and courteous riding and parking.
- 9) Data sharing: Vendor will provide data to the City as necessary to assist with monitoring program usage.
- 10) Indemnification: Vendor agrees to indemnify, defend and hold harmless City (and City's employees, agents and affiliates) from and against all actions, damages or claims brought against City arising out of Vendor's negligence or willful misconduct, except that Vendor's indemnification obligation shall not extend to claims of City's (or City's employees', agents' or affiliates') negligence or willful misconduct. City expressly acknowledges that in no event shall Vendor be liable for any special, indirect, consequential or punitive damages. Vendor's indemnification obligations shall survive for a period of one (1) year after expiration of this Agreement.
- 11) Insurance: Vendors shall provide additional insured status of the City with proof of insurance coverage exclusively for the operation of Stand-up electric scooters including: (a) Commercial General Liability insurance coverage with a limit of no less than \$1,000,000.00

each occurrence and \$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; and (c) where Vendor employs persons within the City, Workers' Compensation coverage of no less than the statutory requirement.

12) Notices: All notices and communications to the City from Vendor shall be made in writing (includes electronic communications) and sent to the address below.

13) Either party may terminate this agreement at any time and without cause upon (30) days prior written notice.

14) In carrying out their responsibilities, the parties shall remain independent contractors, and nothing herein shall be interpreted or intended to create a partnership, joint venture, employment, agency, franchise or other form of agreement or relationship.

15) The parties acknowledge that Vendor may utilize independent business logistics providers to facilitate local operations. Vendor's use of these logistics providers does not constitute a transfer or assignment of this Agreement, and Vendor remains responsible for all obligations and requirements under this Agreement.

16) Vendor shall provide the City of Bismarck contact information for a representative authorized to act on behalf of Vendor in fulfilling the terms and conditions of this agreement.

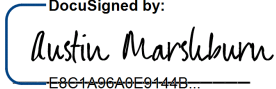
17) This agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

Signed By:

**City of Bismarck, North Dakota**

Signature: \_\_\_\_\_  
Print Name: Steve Bakken  
Title: President, Board of City Commissioners  
Email: sbakken@bismarcknd.gov  
  
Date: \_\_\_\_\_

**Bird Rides, Inc.**

Signature:   
Print Name: Austin Marshburn  
Title: Head of City and University Partnerships  
Email: birdlegal@bird.co  
  
Date: 3/11/2021