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MEMORANDUM

TO: Mayor Blad and City Council

FROM: Jared Johnson, City Attorney 

DATE: February 7, 2023

RE: Memorandum of Understanding; Bird Rides, Inc.

I have reviewed the Memorandum of Understanding with Bird Rides, Inc. I have no legal concerns with the Mayor executing this MOU if authorized to do so by the City Council.

Please contact me with any questions or concerns.

**BIRD RIDES INC. MEMORANDUM OF UNDERSTANDING
EXECUTIVE SUMMARY
FEBRUARY 16, 2023 COUNCIL MEETING**

The Planning & Development Services Department requesting approval of:

- a) An agreement with Bird Rides Inc. requests deployment of a minimum of 50 and no more than 300 stand-up electric scooters, using a sharing system, owned and/or operated by Bird Rides Inc. within the City of Pocatello jurisdictional boundaries. Scooter rentals are governed by rules applying to bicycles and are ridden on the streets and where available, in bike lanes and bike paths. Riders must be 18-years or older. Hours of operation are 24 hours a day, seven days a week under appropriate environmental circumstances.

Bird Rides Inc will provide proof of insurance coverages exclusively for the operation of Stand-up electric scooters, per item 10 of agreement and the agreement is valid for one year of agreement date. See the attached MOU provided by the City's Legal Department.

Memorandum of Understanding

The City of Pocatello will permit Bird Rides, Inc. to provide services under the following terms and limitations. This agreement shall remain in effect until December 31, 2023 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, owned and/or operated by Bird Rides, Inc., within The City of Pocatello's jurisdictional boundaries. Bird Rides, Inc. shall not deploy a Stand-up electric scooter sharing system in the City of Pocatello in violation of this Agreement. All references in this MOU to stand-up electric scooter refer specifically to stand-up electric scooter owned and/or operated by Bird Rides, Inc.
- 2) Stand-up electric scooters shall be governed by the rules applying to bicycles and are to be ridden on streets, 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 be 18 or older. Users of Stand-up electric scooters who violate these provisions may be fined by City of Pocatello consistent with fines for cyclists.
- 3) Bird Rides, Inc. 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.
- 4) Hours of operation: Stand-up electric scooters will be made available to rent 24 hours per day, under appropriate environmental circumstances.
- 5) Bird Rides, Inc. shall provide a minimum of 50 stand-up electric scooters at launch and at no time shall operate more than 300 stand-up electric scooters in the City of Pocatello without a mutually agreed upon amendment to this MOU.
- 6) Safety Education: Bird Rides, Inc. will provide materials, videos, signage to promote safe riding and educate riders on rider responsibilities and encourage safe and courteous riding and parking. Bird Rides, Inc. shall communicate and coordinate with the City of Pocatello regarding the content and distribution of safety education material. Both parties shall agree upon content and a distribution plan of said material prior to launch of initial stand-up electric scooters.
- 7) While this Agreement and Pilot are in effect, Company shall pay City a revenue-share of ten cents (\$0.10) per ride. Company shall pay the revenue-share to City on a quarterly basis, in arrears within thirty (30) days from the end of the preceding month
- 8) Data sharing: Bird Rides, Inc. will provide data to the City of Pocatello as necessary to assist with monitoring program usage.

9) Indemnification: Bird Rides, Inc. agrees to indemnify, defend and hold harmless City of Pocatello (and City of Pocatello's employees, agents and affiliates) from and against all actions, damages or claims brought against City of Pocatello arising out of Bird Rides, Inc.'s actions, negligence, or willful misconduct, except that Bird Rides, Inc.'s indemnification obligation shall not extend to claims of City of Pocatello's (or City of Pocatello's employees', agents' or affiliates') negligence or willful misconduct. City of Pocatello expressly acknowledges that in no event shall Bird Rides, Inc. be liable for any special, indirect, consequential or punitive damages. Bird Rides, Inc.'s indemnification obligations shall survive for a period of one (1) year after expiration of this Agreement. Bird Rides, Inc. shall be released from its indemnification obligations under this section if the loss or damage was caused by the City of Pocatello's negligent construction or maintenance of public infrastructure. City of Pocatello's right to indemnification shall be contingent on City of Pocatello notifying Bird Rides, Inc. promptly following receipt or notice of any claim. ;

10) Insurance: Bird Rides, Inc. shall provide City of Pocatello 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 Bird Rides, Inc. employs persons within the City / County, Workers' Compensation coverage of no less than the statutory requirement.

11) Notices: All notices and communications to the City of Pocatello from Bird Rides, Inc. shall be made via email correspondence with an optional dated copy sent via certified mail to the address(es) listed below:

Email: jajohnson@pocatello.us
City of Pocatello
Attn: Legal Department
P.O. Box 4169
Pocatello, ID 83205

Notices: All notices and communications from the City of Pocatello to Bird Rides, Inc. shall be made in writing (includes electronic communications) and sent to:

Email: legal@birdlegal.co
With a copy to:
Bird Rides, Inc.
406 Broadway, Suite 369
Santa Monica, CA 90401

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

13) 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.

14) This agreement shall be governed by and construed in accordance with the laws of the Idaho.

15.) Bird Rides, Inc. shall be required to apply for, and receive a Right of Way Use license from the City of Pocatello prior to launch.

16.) Bird Rides, Inc. shall provide to its users a standard Rental Agreement and acknowledgment of local laws or applicable ordinances that shall govern the use of stand-up electric scooters owned and/or operated by Bird Rides, Inc.

17.) Bird Rides, Inc. shall comply with any reasonable requests of the City of Pocatello regarding areas that are restricted to stand-up electric scooter use. Such restricted areas shall be geo-fenced by Bird Rides, Inc.

18.) As this is a pilot program for both Bird Rides, Inc. and the City of Pocatello, all reasonable requests for modification to this agreement shall be given due consideration by the non-requesting party.

19.) Non-discrimination: Bird Rides, Inc, agrees that no person on the grounds of race, color, sex, age, sexual orientation, gender identity, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the use of said services.

20.) No Waiver: The failure by the City of Pocatello to require strict performance of any term or condition of this agreement shall not affect the City's right to subsequently enforce the same, nor shall a waiver of any term or condition be construed to be a waiver of any other term or condition of this agreement. To be effective, any waiver by the City must be in writing.

21.) In the event it becomes necessary for either party to enforce the terms of this agreement, the prevailing party shall be awarded by a sum which will reasonably compensate it for the attorney's fees and costs incurred by such party to enforce the terms of this agreement. In the event attorney fees are awarded by a Court of law, the parties agree that a reasonable rate for attorney fees is \$150.00 per hour.

22.) Corporate Authority: Any individual or individuals executing this agreement on behalf of any corporation which is a party hereto, hereby acknowledge and represent that they have the power and authority to so bind the corporate authority, and that such authority was conferred by an act of the Board of Directors of such corporate authority, unless the binding of any such corporation is within the power of the person or persons executing this agreement on such corporation's behalf. In the event that the party or parties executing this document on behalf of any corporate party hereto, do not have authority to so bind the corporation for any cause or reason, then such person or persons shall be personally liable under the terms hereof.

23.) Severability: If any provision of this agreement shall be held or made invalid by a court decision, statute or rule, or shall be otherwise rendered invalid, the remainder of this agreement shall not be affected thereby.

City of Pocatello, Idaho

Bird Rides, Inc.

Signed By:

Signature: _____

Signature: Austin Marshburn

Print Name: _____

Print Name: Austin Marshburn

Title: _____

Title: Sr. Director, City Partnerships

Email: _____

Email: birdlegal@bird.co