



## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** Bird Scooters - Memorandum of Understanding

**REQUEST:**

Consider approval of a Memorandum of Understanding with Blue Jay Transit USFM LLC to operate standup electric scooter sharing within the City of Bismarck right of way.

**BACKGROUND INFORMATION:**

Bird has operated a stand-up electric scooter rental program within Bismarck since 2021 under a series of annual Memorandum of Understandings (MOU) approved by the Board. Bird will operate under a new parent company, Blue Jay Transit USFM LLC, and has requested a new MOU so that they can provide scooter rentals in 2024. The 2024 agreement also includes automatic renewals but maintains the 30-day termination clause.

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. When not in use, the scooters would be located within the public rights of way but would be stored outside of ADA pedestrian access routes.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve a Memorandum of Understanding with Blue Jay Transit USFM LLC to operate standup electric scooter sharing within the City of Bismarck right of way.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

1. Bismarck MOU 2024

## Memorandum of Understanding

City of Bismarck ("City"), a municipal corporation located 221 North 5<sup>th</sup> Street, Bismarck, North Dakota 58501 will permit Blue Jay Transit USFM LLC dba Bird ("Vendor"), a Delaware Corporation, located at 8605 Santa Monica Blvd. #20388, West Hollywood, CA 90069 to provide services under the following terms and limitations. This agreement shall remain in effect until December 31, 2024 and shall automatically renew for successive annual terms unless terminated by either party 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 City Ordinance 12-09-41.
- 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 may operate 24 hours per day.
- 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. Notwithstanding the above, Vendor shall coordinate within reason with the City regarding any request to alter operations due to weather conditions.
- 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.
- 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 three (3) years after expiration of this Agreement.

11) Insurance: Vendor 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 \$2,000,000.00 each occurrence; (b) Automobile Insurance coverage with a limit of no less than \$2,000,000.00 each occurrence; 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) This Agreement may be assigned by either party but only with the prior written consent of the other party.

17) 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.

18) 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: Michael T Schmitz  
Title: President, Board of City Commissioners  
Email: mschmitz@bismarcknd.gov

Date: \_\_\_\_\_

**Blue Jay Transit USFM LLC dba Bird**

Signature: \_\_\_\_\_  
Print Name: Stewart Lyons  
Title: President  
Email: birdlegal@bird.co

Date: \_\_\_\_\_