

## MEMORANDUM OF UNDERSTANDING

### Personal Mobility Vehicles Pilot Program

This Services Agreement (“Agreement”) for Personal Mobility Vehicles is made this \_\_\_\_ day of \_\_\_\_ 2018, by and between the City of Coral Gables, a municipal corporation (“City”) and Bird Rides, Inc. (“Bird”). City and Bird are each individually referred to as a “Party,” and collectively, the “Parties.”

#### Recitals

1. City seeks to provide safe and affordable multimodal transportation options to all residents, reduce traffic congestion, and maximize carbon-free mobility.
2. Personal mobility share services are a component to help the City achieve their transportation goals, and the City desires to make personal mobility share services available to residents and those who work in the City.
3. Bird proposes to operate a personal mobility share program within the City, without the need for any physical stations or docks.
4. Bird will abide by relevant City ordinances and rules to efficiently and effectively provide personal mobility share services.
5. Bird possesses GPS, cell and/or Bluetooth connectivity, and self-locking technology in its dockless personal mobility products such that its vehicles may be locked and unlocked by users with an app and tracked to provide for operations and maintenance.
6. For purposes of this agreement personal mobility vehicles used as part of a personal mobility share service shall refer solely to electric kick-scooters also known as motorized scooters, as defined in Florida Statutes § 316.003(44).
7. The City’s intent for authorizing a pilot is to ensure public safety and minimize negative impacts on the public right of way, as well as to analyze data in a controlled setting to inform the City on a future RFP process.

In consideration of the mutual covenants and representations set forth in this Agreement, City and Bird hereby agree to launch a pilot personal mobility share program in in the City as follows:

#### Agreement

1. Pilot Term. Pursuant to the terms of this Agreement, the City hereby gives Bird a non-exclusive/exclusive revocable and non-transferrable license to utilize the City Right of Way in order to provide personal mobility share services within the City. For purposes of this Agreement, the term Right of Way (“ROW”) refers to sidewalks, roads, and other pathways owned and maintained by the City. City hereby grants Bird the right to operate a pilot personal mobility share program for an extended pilot period from execution of this agreement through \_\_\_\_\_, 2018. Upon conclusion of the pilot period, Bird shall return to the City Commission to present user data regarding the pilot period, and may seek extensions to the pilot program, pending City Commission approval.

2. License to Use City Right of Way. City authorizes Bird a license to use the public Right of Way solely for the purposes of maintaining and offering its personal mobility vehicle fleet within the City. Authority to utilize the City Right of Way for this fleet is dependent on compliance with all terms of this Agreement. This authorization is not a lease or an easement, and it is not intended and shall not be construed to transfer any real property interest in City property. A party that deploys or operates personal mobility vehicles in the City without Commission approval and without a signed agreement with the City will be penalized in accordance with relevant City Code provisions and any applicable RFP specifications.
3. Permitted Use. Bird users may use the public Right of Way solely for parking of personal mobility vehicles owned and maintained by Bird for use in this pilot program. Bird shall not place or attach any personal property, fixtures, or structures to City Right of Way without the prior written consent of City or private property owners.
  - a. Bird's operations within the City, shall, at a minimum: a) not adversely affect City Right of Way or the City's streets or sidewalks; b) not adversely affect the property rights of any third parties; c) not inhibit pedestrian movement within the public way or along other property or rights-of-way owned or controlled by the City; d) not create conditions which are a threat to public safety and security; and e) not impede ADA required accessibility on all City rights of way.
  - b. Upon termination of this Agreement by either party, Bird shall, at its sole cost and expense, remove its property from the Right of Way.
4. Personal Mobility Vehicle Parking. Bird personal mobility vehicles may be parked in a legal manner in Right of Ways including public sidewalks by individuals participating in the personal mobility share program. Vehicles parked on private property will be allowed at the discretion of the private property owner. Bird will actively manage the vehicle fleet to ensure orderly parking and the free and unobstructed use of the Right of Way in consultation with the City's Public Works Director. The City, at its own discretion, may choose to support the personal mobility sharing program with the installation of additional parking racks, painted parking spots, and/or recommended parking spots without racks or painting. The City will work with Bird to identify authorized parking and deployment locations throughout the term of this agreement.
5. Condition of City Right of Way.
  - a. City makes the public right of way available to Bird in an "as is" condition. City makes no representations or warranties concerning the condition of the public way or its suitability for use by Bird or its customers, and it assumes no duty to warn either Bird or its customers concerning conditions that exist now or may arise in the future.
  - b. City assumes no liability for loss or damage to Bird's personal mobility vehicles or other property. Bird agrees that City is not responsible for providing security at any location where Bird's vehicles are stored or located, and Bird hereby waives any claim against City in the event Bird's vehicles or other property are lost, stolen, or damaged.

- c. The City will notify Bird at [REDACTED], through Bird's customer service app portal listed in Exhibit A, or through another agreed upon mechanism, for any personal mobility vehicle that is found to be adversely affecting the City Right of Way. Bird shall be responsible to correct improperly parked personal mobility vehicle within the timeframes listed in "Exhibit A."
8. Maintenance and Care of Portion of City Right of Way. Bird expressly agrees to repair, replace, or otherwise restore any part or item of real or personal property that is damaged, lost, or destroyed as a result of the Bird's use of City Right of Way. Should Bird fail to repair, replace, or otherwise restore such real or personal property, Bird expressly agrees to pay City's costs in making such repairs, replacements, or restorations.
9. Operations and Maintenance. Bird will operate in the City no more than the maximum number of personal mobility vehicles that is specified in "Exhibit A," unless amended. Bird shall be responsible to maintain the Personal Mobility Fleet as set forth in "Exhibit A." Bird shall be solely responsible for all maintenance and service costs in order to maintain the Personal Mobility Fleet and associated maintenance to minimum level of service and reporting outlined in "Exhibit A."
10. Indemnification. To the fullest extent permitted by laws and regulations, Bird shall defend, indemnify, and hold harmless the City, its elected and appointed officials, attorneys, administrators, consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from this pilot program, including but not limited to:
  - a) Any occurrence upon, at, or from City Right of Way or occasioned wholly or in part by the entry, use, or presence upon City Right of Way by Bird or by anyone making use of City Right of Way at the invitation or sufferance of Bird,.
  - (b) Use of Bird's personal mobility vehicles by any individual, regardless of whether such use was with or without the permission of Bird, including claims by users of the vehicles or third parties

and caused in whole or in part by either (i) any willful, intentional, reckless, or negligent act or omission of Bird, any subconsultant, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder and regardless of the negligence of any such indemnified party, or (ii) any willful, intentional, reckless, or negligent act or omission of any individual or entity not a party to this agreement, or (iii) any negligent act or omission of the City or the City's officers, agents, or employees. The parties expressly agree that this provision shall be construed broadly, and Bird's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when Bird (or any subconsultant or any person or organization directly or indirectly employed by Professional) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work required under this Agreement. This provision shall survive termination of the Agreement.

In any and all claims against the City or any of its elected or appointed officials, consultants, agents, or employees by any employee of Bird, any subconsultant, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Bird or any such subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

11. Insurance. Prior to beginning and continuing throughout the term of this Agreement, Bird, at sole cost and expense, shall furnish the City with certificates of insurance evidencing that it has obtained and maintains insurance in the following amounts:
  - a. Workers' Compensation that satisfies the minimum statutory limits.
  - b. Commercial General Liability and Right of Way Damage Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, TWO MILLION DOLLARS (\$2,000,000) annual aggregate, for bodily injury, property damage, products, completed operations, and contractual liability coverage.
  - c. Comprehensive automobile insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury and property damage including coverage for owned and non-owned vehicles.

All insurance policies, except workers compensation, shall be written on a per occurrence basis and shall name the City Indemnitees as additional insureds on a primary and non-contributory basis while any City insurance shall be secondary and in excess to Bird's insurance. All policies, including workers compensation, shall include a waiver of subrogation in favor of the City of Coral Gables, If Bird's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible. The City's Risk Manager may waive or modify any of the insurance requirements of this section.

12. Sovereign Immunity. Bird acknowledges that the Florida Doctrine of Sovereign Immunity bars all claims by Bird against the City other than claims arising out of this Agreement. Specifically, Bird acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement.

Bird acknowledges that this Agreement in no way estops or affects the City's exercise of its regulatory authority. In addition, the City retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. Bird acknowledges that it has no right and will not make claim based upon any of the following:

- a. Claims based upon any alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement;
  - b. Claims based upon negligence or any tort arising out of this Agreement;
  - c. Claims upon alleged acts or inaction by the City, its commissioners, attorneys, administrators, consultants, agents, or any City employee;
  - d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the City and Bird
13. Compliance with Law. Bird, at its own cost and expense, shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities applicable to its operation of its personal mobility share program. If any license, permit, or other governmental authorization is required for Bird's lawful use or occupancy of City Right of Way or any portion thereof, Bird shall procure and maintain such license, permit, and/or governmental authorization throughout the term of this Agreement. City shall reasonably cooperate with Bird, at no additional cost to City, such that Bird can properly comply with this Section and be allowed to use City Right of Way as specified in Section 2, above. **Should the City promulgate or enact ordinances or regulations governing the operation of shared mobility vehicles within the City, Bird shall be required to comply with these regulations and ordinances as they may be amended from time to time.**
14. Required Reports. Bird shall provide reports to the City concerning utilization of its personal mobility vehicles and route usage not less than monthly. The format and type of data contained in the reports will be determined by the City, in coordination with Bird, as long as such information contains no personally identifiable information and is anonymized. Any and all documents, records, disks, or other information shall become the property of the City for its use and/or distribution as may be deemed appropriate by the City.
15. No Joint Venture. Nothing herein contained shall be in any way construed as expressing or implying that the parties hereto have joined together in any joint venture or liability company or in any manner have agreed to or are contemplating the sharing of profits and losses among themselves in relation to any matter relating to this Agreement.
16. Term. This Agreement shall commence on [\_\_\_\_\_], (the "Commencement Date") and shall continue per the terms in Section 1, unless earlier terminated pursuant to Section 17, below.
17. Termination. This Agreement may be terminated prior to the expiration date set forth in Section 1, above, upon the occurrence of the following conditions:  
Upon delivery of written notice from City to Bird, or vice versa, terminating this agreement for any reason, or for no reason, by giving at least fifteen (15) days' notice of such termination.

Upon the effective date of termination of this Agreement, Bird shall remove all vehicles covered in this agreement from the City and restore all City Right of Way to the condition of the City Right of Way at the Commencement Date of this Agreement.

18. Amendment. This Agreement may be amended by mutual agreement of the parties. An amendment to the maximum number of vehicles allowed can be made by mutual agreement via email with the City Manager, or the City Manager's designee. Any other amendments shall only be effective if incorporated in written amendments to this agreement and executed by duly authorized representatives of the parties.
19. Notice. Any notice, request, instruction or other document required or permitted to be given hereunder by either party hereto to the other shall be in writing, and delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, to the address set forth for such party at the bottom of this Agreement. Any notice so given shall be deemed received when personally delivered or three (3) business days after mailing. Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice. Notice as to the City of Coral Gables shall be to:

City Manager  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, FL 33134

cc: City Attorney

Notice as to the Bird shall be to:

\_\_\_\_\_  
\_\_\_\_\_

20. Applicable Law and Venue. The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce the Agreement will be held in Miami-Dade County, and the Agreement will be interpreted according to the laws of Florida.
21. Counterparts. This agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
22. Public Records. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Bird acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. Bird also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the

City. Furthermore, Bird agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated herein.

**IF BIRD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO BIRD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, [cityclerk@coralgables.com](mailto:cityclerk@coralgables.com), 405 Biltmore Way, First Floor, Coral Gables, FL 33134.**

(REMAINDER OF PAGE INTENTIONALLY BLANK)

Executed the day and year first above written, by the parties as follows:

Approved as to Insurance:

AS TO CITY:

\_\_\_\_\_  
David J. Ruiz  
Risk Management Division

\_\_\_\_\_  
Catherine Swanson-Rivenbark  
City Manager

Department Head

\_\_\_\_\_  
Eduardo Santamaria, P.E.  
Director, Public Works

\_\_\_\_\_  
Peter Iglesias  
Assistant City Manager

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

\_\_\_\_\_  
Miriam Soler Ramos  
City Attorney

-----  
ATTEST:

\_\_\_\_\_  
Corporate Secretary

Print Name: \_\_\_\_\_  
(SEAL)  
(OR)

WITNESSES (2):

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_





## Exhibit A

### Bird Operations and Maintenance Plan Personal Mobility Vehicle Pilot Program City of \_\_\_\_\_

#### FLEET SIZE

Bird will deploy an initial fleet of up to \_\_\_\_\_ personal mobility vehicles (“vehicles”) for purposes of this agreement this shall only include electric kick-scooters. The vehicles will initially be deployed with an emphasis on transit stations, commercial areas, and denser residential areas, or other locations identified in conjunction with the City’s Public Works Department, to help guide distribution based on user demand and usage trends. Bird may not operate more than \_\_\_\_\_ personal mobility vehicles in the City at one time.

#### PLACEMENT PLAN

Bird plans to initially deploy up to \_\_\_\_\_ personal mobility vehicles at key transit stations, commercial zones, and denser residential areas, where Bird vehicles may help address “last mile” transportation issues.

Initial deployment by Bird will be vetted by the Public Works Department staff and adjusted as deemed necessary by staff.

Vehicle deployment and distribution can be adjusted based on user demand and usage data. The City will be able to request deployment of vehicles at a particular location.

Rebalancing/relocation requests are a priority and should be handled by Bird a timely manner. Poorly placed vehicles and excessive numbers of vehicles in one staging location reflect poorly on the City and on Bird.

Furthermore, Bird will work with transit agencies and other relevant entities to determine areas at transit stations where Bird vehicles can be placed, as well as work with companies in the City to locate Bird distribution points, in addition to locating Bird vehicles on public right of ways.

Bird’s ground operations team will place Bird vehicles **upright** in a neat fashion on wide sidewalks, at or near racks and corrals, and any other locations designated or suggested by the City. Bird will ensure that personal mobility vehicles are not obstructing **any fire hydrant, call box, other emergency facility, bus bench, utility pole or box,** or pedestrian or motor vehicle traffic when they are deployed, and that ADA required paths of travel are available at all times. Bird **will ensure that personal mobility vehicles shall not be placed in such a manner as to impede or interfere with the reasonable use of any commercial window display or access to or from any building.** Bird will work with the Public Works Department to develop best practices for placement on City sidewalks and right of ways, and to develop a map of locations throughout the City suitable for placement, parking, and deployment. The City may veto any placement, parking, or deployment location at any time for any reason.

#### USER EDUCATION

Bird is responsible for all user education regarding their personal mobility vehicles, including

education regarding all relevant statutes, ordinances, and regulations. Bird believes that the most effective, consistent, and efficient method of providing important notices and educating users is through Bird's app. Any Bird user may utilize the app, helping to ensure important information is seen and acknowledged. Bird shall also place informative stickers regarding customer service and 24/7 contact information.

New Bird users will receive informational pop-ups when they use Bird's app to take a ride for the first time. The pop-ups will require the new users to affirmatively dismiss the pop-ups in order to proceed. The informational pop-ups will include: a) reminders about applicable laws; and b) instructions on how to park responsibly.

The City may request at any time that users be limited to those users who have a valid Driver's License scanned and verified by Bird within the app. Users should be limited to those sixteen years (16) of age and older.

Users should be instructed (via Bird's mobile app, printed instructions, and website) to not obstruct pedestrian paths when parking the vehicles. Users should also be instructed to park vehicles upright, and be instructed not to park vehicles mid-block on Miracle Mile, or anywhere on Giralda Plaza. Users are required to take a photo whenever they park their vehicle at the end of a ride.

Users should also be instructed to obey all traffic laws when riding in traffic, and obey all other official City-posted signs within the City.

#### RIDING

- Vehicles shall not be used on the sidewalk along Miracle Mile
- Vehicles shall not be used through Giralda Plaza
- Users shall dismount when riding through crowded sidewalks filled with pedestrians

#### CUSTOMER SUPPORT

Bird is solely responsible for all customer support for their personal mobility vehicles and any and all direct or indirect customer support needs related to use of their personal mobility vehicles. Bird will provide easy mechanisms through which users and the public can contact Bird to ask questions, report Bird vehicles that are damaged or obstructing the public right of way, or otherwise. Bird's app has a "Help" button on the user interface that enables users to report any issues. Users and members of the public can also contact Bird's customer support via email \_\_\_\_\_, phone, and social media for any issues or to make a relocation request. For additional details, please see \_\_\_\_\_. The City will be provided a 24/7 contact for City support.

The City should be provided copies of all complaints received by Bird involving Bird vehicles and pedestrian/automobile conflict, within 24 hours of receipt of such complaints by Bird. These complaints will be used to inform future staging changes, infrastructure improvements, and policy changes. Additionally, the City should be copied on all written injury complaints/reports involving Bird's vehicles. The complaints should be provided to the City within 24 hours of receipt by Bird.

## GROUND OPERATIONS

Bird's ground operations staff are hired locally and help ensure the safety, accessibility, and responsible placement of Bird vehicles. Bird shall provide the City with 24- 7 contact information for Bird's ground operations. The exact number of locally hired staff will depend on the fleet size in operation. The ground operations staff perform two primary functions:

- Maintenance
  - Every vehicle is inspected for safety before deployment, with a recorded history of inspections and repairs.
  - All repairs and staff training are done by experienced mechanics.
  - Tune ups can be performed on the spot by the local operations team, who are equipped with the necessary tools.
  - Repairs are performed at the warehouse by mechanics.
  - All vehicles are inspected, at a minimum, for cleanliness, damage, and safe and reliable operation.
- Fleet Management
  - Deploy vehicles in accordance with local parking and road rules, and shall not obstruct vehicular or pedestrian traffic when deploying or picking up vehicles.
  - Visually survey streets and sidewalks and reposition any obstructing vehicles.
  - Respond to and retrieve vehicles that have been marked for repair, relocation, or cleaning.
  - Rebalance/redistribute vehicles based on usage patterns and based on any City request or requirements.
  - Work with contractors to pick up vehicles at the end of each day to charge overnight.

Repair requests are a priority and should be handled by Bird in a timely manner. Broken or damaged vehicles reflect poorly on the City and Bird.

## PLACEMENT OF VEHICLES

- Vehicles will be neatly placed by Bird staff on wide sidewalks (minimum 6' width) and at or near public racks and corrals.
- Vehicles will be neatly placed such that they do not obstruct the public right of way, vehicles shall leave ADA required paths of travel at all deployment locations
- Bird will work with City of Coral Gables staff to determine authorized placement, deployment, and parking locations throughout the City.
- Bird vehicles shall not be staged mid-block on Miracle Mile, only at intersections.
- Vehicles shall not be staged mid-block within Giralda Plaza, staging locations should be located on the ends of Giralda Plaza, near existing bike racks.
- Vehicles should not be staged on the sidewalk on Ponce De Leon Blvd, three (3) blocks north or south of Miracle Mile.
- City can request removal of vehicles in certain areas, and request that Bird cease deployment of vehicles in certain areas upon request of City.
- In the event a hurricane watch for the Coral Gables area is issued, or upon request of the City Manager or the Manager's designee, Bird shall pick up all vehicles located within

the City within twelve (12) hours of the issuance of the watch or notification by the City.

### RELOCATION REQUESTS

- Bird users and the general public can report vehicles 24/7 via the website, app, email, phone, or social media.
- Bird will dispatch a ground operations member within three hours between the hours of 9am-6pm on weekdays to deal with vehicles reported as obstructing the public right of way.
- Requests received after normal business hours, weekends, and/or holidays will be handled as soon as practicable the following day. Bird shall provide the City with a 24-7 point of contact.
- City reserves the right to impound those improperly parked or deployed vehicles that create a nuisance or a life safety issue at the discretion of the City Manager or designee. In order to retrieve any impounded vehicle Bird must demonstrate proper proof of ownership and pay a \$50 impoundment fee per device, reflecting the City's enforcement, investigation, storage, and impound costs in accordance with Emergency Ordinance passed on July 10, 2018.

### MAINTENANCE AND SAFETY

Every Bird vehicle shall be inspected for safety, with a recorded inspection history, at least once per month. Vehicles requiring charging are picked up by our local operations team as a part of its daily responsibilities or are brought in by a member of our charger network.

Bird's local operations team shall be trained by professional mechanics and inspect the following:

- Handlebars
- Brakes
- Brake levers
- Grips
- Tires
- Bell
- Wheel lock
- Exposed wires
- Rear fender
- Wheels
- Rear red light
- Front white light

Once a vehicle has been repaired and/or cleaned, it will go through a quality assurance check before being processed for redeployment back into the field.

### REPORTING

Bird will provide, at a minimum, monthly reports to the City with aggregate usage data including:

- Number of users in the system
- Number of trips generated for the month
- Heat maps of usage trip showing top pick-up spots and drop-off spots

User route data

- Average trip length and trip time
- Number and nature of complaints logged by Bird vehicle users and the general public.
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Bird will also provide additional data and information, at the request of the City, to assist with City oversight and transportation planning and to inform the City's potential future RFP process for personal mobility share services.