

RESOLUTION NO. 26-2021

Introduced by Mark Claus

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT ON BEHALF OF THE CITY OF HURON, OHIO, WITH SCOOTER DING DING, LLC FOR COMMERCIAL SCOOTER RENTAL OPERATIONS WITHIN THE CITY OF HURON, OHIO.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:

SECTION 1. The City Manager be, and he hereby is, authorized and directed to execute an agreement for and on behalf of the City of Huron, Ohio with Scooter Ding Ding, LLC, for a commercial scooter rental operation in the City of Huron, said agreement to be substantially in the form of Exhibit "A" attached hereto and made a part hereof.

SECTION 2. That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22

SECTION 3. This Resolution shall be in full force and effect from and immediately following its adoption.



Sam Artino, Mayor

ATTEST:


Clerk of Council

ADOPTED: 27 APR 2021

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT ("Agreement") made and entered into this 28th day of April, 2021 by and between **THE CITY OF HURON, OHIO**, an Ohio Municipal Corporation, hereinafter referred to as "City" and **SCOOTER DING DING, LLC**, an Ohio Limited Liability Company, hereinafter referred to as "Company."

WITNESSETH:

WHEREAS, the City desires to provide amenities and attractions for the benefit of residents and visitors, and;

WHEREAS, Company has proposed an opportunity to the City which satisfies that goal, and;

WHEREAS, it is the purpose and intent of this document to set forth the agreements which have been reached by the parties concerning the above referenced matters and other matters.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration of the mutual promises of the parties and other good and valuable consideration, the parties agree as follows:

1. **PURPOSE.** The Purpose of this Agreement is to establish a revocable license agreement between the City and the Company for the use of land consistent with Company's rental service, which license shall be fully revocable by City and any time and for any or no reason upon notice of same to Company.

1.1. Company will own and operate a rental service consisting of the rental of electric scooters. Company is expressly prohibited from any commercial activities which may be deemed in competition with City sponsored endeavors. Additionally, Company is expressly forbidden to engage in marketing or advertisement of any form identifying Company as being a partner, subsidiary or agent of the City. It is anticipated by the Parties that the rental of the electric scooters will commence on Memorial Day Weekend and conclude on Labor Day of each calendar year subject to this Agreement. This Agreement is intended and shall convey from the City to Company a revocable license to permit such operations as outlined herein, which license shall be fully revocable by City and any time and for any or no reason upon notice of same to Company.

1.2. The City will provide storage space on Nickel Plate Beach and within the Huron Boat Basin, with the exact locations to be determined mutually by the parties, for the installation and placement of **one (1) storage rack at each of the aforementioned locations** for the storage of Company's electric scooters during the term of this Agreement, all at Company's sole cost and expense. The storage racks shall be firmly and safely affixed to the ground at all times, and shall be removed upon termination of this Agreement (regardless of cause). Company shall remove the electric scooters from the storage racks nightly. Company understands and affirms that the storage racks will not be monitored by the City, and Company assumes the risk of loss as to the storage racks and electric scooters from any and all causes,

including theft, loss, or mysterious disappearance of same. Company shall maintain the storage racks and electric scooters in good repair and in an aesthetically pleasing appearance during the term of this Agreement.

2. TERM. The term of this Agreement shall commence upon the execution of all parties and shall terminate promptly after Labor Day weekend of 2021, subject to annual renewal periods as follows, unless written notice is provided by a party to the Agreement of an intent to terminate the Agreement pursuant to Section 4 or renegotiate the Agreement's terms within sixty (60) days prior to the expiration of the then existing term: (i) Memorial Day Weekend thru Labor Day in the year 2022; and (ii) Memorial Day Weekend thru Labor Day in the year 2023.

3. COSTS. In consideration of the grant by the City to Company of the revocable license to operate the electric scooter rental business and use the City's property for storage of the electric scooters, upon execution of the Agreement, and for the initial term of the Agreement and any and all renewals thereof, Company agrees to pay to City \$150.00 annually, payable in three (3) monthly installments of \$50.00 each, payable in June, July, and August of the given year. Payments are due no later than the 7th day of the month. Notwithstanding the termination provisions set forth in Section 4 below, the costs are non-refundable and shall not be prorated in the event of the early termination of the Agreement.

4. TERMINATION. Notwithstanding any contrary provision of this Agreement, the City shall have the absolute, unqualified right and option to terminate this Agreement and revoke the license at any time upon notice to Company in the City's sole and absolute discretion.

4.1. Should the City terminate this Agreement for reason other than an Event of Default (defined in Section 9 herein), all costs associated with this Agreement and paid to the City shall not be prorated.

4.2. Should Company terminate the Agreement prior to the expiration of the term, all costs associated with this Agreement and paid to the City shall not be prorated.

5. AMENDMENT. This Agreement may only be amended by written instrument executed by all parties.

6. ASSIGNABILITY AND TRANSFER. The rights and authority conveyed through this Agreement shall not be assignable or transferrable by either party. This Agreement shall not be recognized as valid for any sublease, subcontract or conveyance to another party regardless of whether said sublease, subcontract or conveyance is in exchange for compensation.

7. LIMITATION OF LIABILITY AND INDEMNIFICATION.

7.1 Company agrees to indemnify, defend, release, and hold the City (and City's officers, employees, and agents) harmless from any and all actual or threatened actions, causes of action, claims, costs, demands, fines, fees, suits, judgments, expenses, and losses for any alleged injury, disability, illness,

death, or loss or damage to person or property, arising or claimed to arise by participants, customers, and any and all third parties arising directly or indirectly from Company's acts, omissions, gross negligence or willful misconduct in conducting the proposed activities authorized by this Agreement, including, but not limited to, the lease and use of electric scooters to third parties and the storage of the electric scooters on City property. This indemnification shall include all costs of defense, including reasonable attorneys' and expert witness fees, and shall also extend to use of the any City property by Company.

7.2 Company shall secure general liability insurance, at least in the amount of One Million Dollars (\$1,000,000), for bodily injury and death; One Hundred Thousand Dollars (\$100,000) property damage, which policies shall name City as an additional named insured by endorsement. Company shall furnish City with evidence that the required insurance has been obtained, with proof of payment of the premium for the duration of this Agreement, prior to the beginning of the term of this Agreement and any and all renewals thereof, and a copy of such shall herein be attached and incorporated as Exhibit A. Such policy shall include a 30-day cancellation clause.

7.3 Company understands that its proposed activities under this Agreement will expose the it and its employees, agents, guests, contractors and other persons subject to its control to a risk of injury and illness (such as communicable diseases such as MRSA, influenza, and COVID-19), including the potential for permanent paralysis and death, and while particular rules, equipment, and personal discipline may reduce these risks, the risks of serious injury and illness do exist, and Company KNOWINGLY AND FREELY ASSUMES ALL SUCH RISKS, both known and unknown, EVEN IF ARISING FROM THE NEGLIGENCE OF THE CITY, and assumes full responsibility for any such risk which may occur during its proposed activities under this Agreement and the use of City property.

8. CHOICE OF LAW. This Agreement shall be governed and interpreted in accordance with the laws of the State of Ohio and the parties hereto agree that any dispute or other matter arising out of the interpretation or operation of this Agreement shall be determined in a Court of competent jurisdiction located within the State of Ohio and County of Erie.

9. EVENTS OF DEFAULT. The following events are referred to, collectively, as "Event(s) of Default;"

9.1. Failure to provide due and timely payments. In the event that Company fails to provide timely installment payments as set forth in Section 3, the City shall provide written notice of the payment default. Such written notice shall permit the Company to rectify the payment delinquency within five (5) business days. Failure to do so shall result in an Event of Default of the Agreement. The City will not be required to provide any further written notice beyond the first notice; or,

9.2. Company vacates or abandons the electric scooters or storage racks or Company's cessation of the operation of its rental service set forth in Section 1.1; or,

9.3. Company purports to assign this Agreement, or sublet all or a portion of the storage racks, in violation of the terms set forth herein; or,

9.4. Company breaches any of the other agreements, terms, covenants, or conditions not in conflict with the terms included herein, and such breach continues for a period of five (5) days after written notice from the City to Company.

9.5 Notwithstanding any contrary provision of this Agreement, the license granted herein shall be fully revocable by City and any time and for any or no reason upon notice of same to Company.

10. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAW, ORDERS, GUIDANCE, RULES AND REGULATIONS. Company shall ensure that it and all employees, agents, contractors, and any other persons subject to their direction and control shall **strictly** comply with all federal, state, and local laws, orders, instructions, requirements, guidance, and any other safeguards, including, but not limited to, those related to any and all communicable diseases, including COVID-19. Company agrees to be solely responsible for ensuring that the activities covered by this Agreement will be operated, run, managed, and conducted in a manner consistent with all applicable all federal, state, and local laws, orders, instructions, requirements, guidance, and any other safeguards, including those related to COVID-19, and will coordinate with the Erie County Department of Health to ensure the same.

11. REMEDIES OF DEFAULT. If any one or more Events of Default set forth in this Agreement occurs, or if the City exercises its unilateral and unqualified right to revoke the license granted herein, then the City has the right, at its election:

11.1. To terminate this Agreement, in which case Company's right to use the storage racks and operate its rental service within the City will cease. If this Agreement is terminated pursuant to this Section, the City will be entitled to recover from Company: (i) the unpaid costs that has been earned at the time of termination; (ii) if the termination is a result of Company's default, the unpaid costs for the balance of the term of this Agreement.

11.2. Remedies Cumulative. The City's rights hereunder shall be in addition to, and not in lieu of, every other right or remedy provided for herein or now or hereafter existing at law or in equity by statute or otherwise, including, but not limited to injunctive relief, specific performance and damages. The exercise or beginning of exercise by the City of any one or more rights or remedies, provided herein or now or hereafter existing at law or in equity by statute or otherwise, shall not preclude the simultaneous or later exercise by the City of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity by statute or otherwise. All such rights and remedies shall be considered cumulative and nonexclusive.

12. GENERAL TERMS AND CONDITIONS. This Agreement constitutes the entire Agreement between the parties and supersedes all prior or written agreements or understandings. Company shall

comply with all Federal, State and Local laws and ordinances. Company shall submit a completed Regional Income Tax Registration Form at the time of execution of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to duplicates hereof on the day and year last aforesaid.

CITY OF HURON, OHIO



Matthew Lasko, City Manager

Date: 4/28/21

SCOOTER DING DING, LLC

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

Todd A. Schrader, Law Director

Notary Jurats Follow

ACKNOWLEDGEMENT

STATE OF OHIO)
)
COUNTY OF ERIE) SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named City of Huron, Ohio, by Matthew Lasko, its City Manager who acknowledged that he did sign the foregoing instrument in his capacity as City Manager and that the same is his free act and deed in such capacity. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to signer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Huron, Ohio, this 28th day of April, 2021.



TERRI S. WELKENER
Notary Public, State of Ohio
My commission expires July 30, 2024

TERRI S. WELKENER
NOTARY PUBLIC

My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF OHIO)
)
COUNTY OF _____) SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Scooter Ding Ding LLC, by _____, its _____ who acknowledged that he did sign the foregoing instrument in his capacity as _____ and that the same is his free act and deed in such capacity. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to signer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this ____ day of _____, 2021.

NOTARY PUBLIC

My Commission Expires: _____